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Case No. 1377538T

IN THE COURT OF PROTECTION

IN THE MATTER OF SECTION 21A OF THE MENTAL CAPACITY ACT 2005

AND IN THE MATTER OF K

BETWEEN:

K

(by her accredited legal representative, Ian Campbell)

Applicant

and

N COUNCIL

First Respondent

and

N ICB

Second Respondent

and

G

Third Respondent

JUDGMENT

1. The court is concerned with the welfare of the applicant, K who is 89 years old (b.16/09/1933). K has a diagnosis of dementia and schizophrenia and is also registered deaf and blind. K is a Polish National. K is represented through her Accredited Legal Representative, Mr Campbell whose firm previously represented K during Mental Health Tribunal proceedings. These proceedings were commenced on 17th June 2021 as a challenge to the standard authorisation then in place at H residential care home.
2. The First Respondent is N Council. The Second Respondent is N ICB. Both parties are represented by Mr Bellamy.
3. The Third Respondent is G, who is K's great niece. She is the granddaughter of K's sister. G is unrepresented. Throughout proceedings, G has been advised and encouraged to obtain legal representation and in particular to consider taking on the role of Relevant Person's Representative for K, which would bring the benefit of non-means tested legal aid funding for legal representation. G has declined that option. She has been assisted by the court to raise her challenges to the Local Authority proposals for K's welfare.
4. K currently resides at J residential care home. The placement is jointly funded by the Local Authority and the Integrated Care Board.
5. The issues which require determination in this hearing are as follows:
 - i) Whether K lacks capacity to make decisions regarding her residence and care and, if so;
 - ii) Whether it is in K's best interests to continue to reside at J residential care home or alternatively to return to live at H Care Home.

Capacity

6. The court has received a report dated 26th May 2022 from Dr S (Associate Specialist, Old Age Psychiatry). Dr S attended on K in a face to face meeting on 31st March 2022 for an assessment with the assistance of a Polish interpreter. Dr S concluded on the balance of probabilities that as a consequence of her diagnosed Dementia and Schizophrenia:
 - a. K lacks capacity to conduct these proceedings
 - b. K lacks capacity to make decisions regarding her residence
 - c. K lacks capacity to make decisions regarding her care
 - d. K lacks capacity to make decisions regarding her property and affairs

7. No party disputes the conclusions reached by Dr S and having considered the report of Dr S, I make declarations in accordance with paragraphs 6a-d.

K's Best Interests

8. The Local Authority, the Integrated Care Board and K's Accredited Legal Representative all support the proposal for K to remain living at J. G firmly opposes that plan and wishes for her great aunt to return to a residential home in the area local to G, preferably H, where she was living previously.
9. I have read the bundle of evidence and heard oral evidence from Ms W, senior social worker; G and a friend of G. I have also had an opportunity to speak with K over a video link on 26th April 2022.
10. In determining what is in K's best interests, I act in accordance with the summary of the law set out in the Local Authority position statement and have regard to s4 Mental Capacity Act 2005.

History

11. K lived in a small village in Poland with her husband. Following his death, she lived alone for over 20 years. K has no children. G and K have enjoyed a very good and close relationship since G's childhood. After G moved to live in the United Kingdom, G would return to visit her great aunt once or twice a year, if she was able to do so. K has also visited G in the U.K. for a three month period previously. G told me that K regards her as a daughter and regards her son, B, as a grandson. I am in no doubt about G's love and commitment toward her great aunt. G told me of the affectionate nickname K has for her and that K often tells her that she loves her. It is undoubtedly a highly valued family relationship.
12. G brought K to live in England with her approximately 3 years ago as she was concerned that K was isolated and was presenting as neglected in Poland.
13. Following a deterioration in K's mental health, she was admitted to G Mental Health Unit in March 2020 pursuant to section 2 of the Mental Health Act 1983. In April 2020 K was further detained in hospital, pursuant to section 3 of the Mental Health Act 1983. K was transferred to S Health Care, in July 2020.
14. During her detention in S Health Care, K consistently expressed a desire to return to Poland. Repatriation at that stage was not considered feasible. During these proceedings, there have been wide-ranging enquiries about the potential for a return to Poland. There are no relatives or friends in Poland willing to support K. She no longer retains her home in Poland as G reports that she signed her property over to a niece.

No residential placements would be available in the area where K used to live (C10). There are no realistic options for K to live in Poland and no party suggests that K should return to Poland. I also note that Dr S stated that K *'will not be adversely affected regarding her mental health and well-being if her wish to return to Poland is denied.....it would appear that K considers she resides in Poland given her current placement is within J, a Polish speaking care home'* (E6).

15. At the beginning of 2021, a search was commenced for an appropriate placement for K upon discharge from hospital. It was agreed by all professionals and G that such placement should include Polish speaking staff. Two potential placements were identified:
 - a. H Care Home, which is local to the home of G, and her son, B, and at that time, had one Polish speaking member of staff; and
 - b. F care home in London, a Polish care home whose staff were mostly Polish volunteers.
16. On 1 March 2021, a mental health tribunal was held regarding K's ongoing detention under the Mental Health Act 1983. The tribunal noted that *"it is not the role of the Tribunal to direct discharge planning and the tribunal declined to make an informal recommendation. It nevertheless noted the concerns expressed by the hospital staff about the care home [close to G] with only one Polish speaking member of staff and K's own concerns and frustrations with being unable to communicate with others. She told the Tribunal she would prefer to go to the Polish care home and a bed is available* (A10).
17. A decision was however subsequently made that K should move to live at H Care Home as it is local to G and her son and would provide the benefit of regular contact with family. On 21st March 2021, K was discharged to H Care Home and in April 2021 a standard authorisation was granted.
18. In September 2021, the Local Authority made an application to the court for an order that it was in K's best interests to move to reside at J. Whilst J is a Polish speaking care home, it is a minimum of 1 hr 30 minutes' journey time away from G. The vacancy at the placement was only available until 25th September 2021 and so the matter was listed at short notice for determination.
19. The social worker set out in her evidence (C11) that K had lost 6.8kg at H since 8th April 2021. At times K was not eating. She reported that K was isolating herself in her room most days and was not socialising with other residents due to the language barrier.

K does not speak English. She presented as low in mood. The Polish speaking member of staff reported that K was asking to return to Poland daily. The social worker stated:

'I feel that whilst K's physical care needs are being met at H, her cultural needs are not despite a Polish member of staff and family being available and this is impacting her well-being. It is my understanding that H was chosen as a preferred option due to the ability for family to visit regularly and this would be of benefit to K however it appears that, given the time that has passed and K's current presentation, this has not been the case. This is not meant as any criticism to G and B however given K's current presentation and general unhappiness, I feel the option of a Polish care home where there is Polish staff and residents as well as Polish culture and cuisine would benefit K and improve her wellbeing and engagement (C11).

20. At a hearing on 23 September 2021, G voiced her strong objections to the proposed move as she did not consider that a Polish speaking care home was necessary or in K's best interests. G expressed the view that a move to an unfamiliar placement would be traumatic for K and that she would lose the significant benefit of frequent contact with family, due to the extra distance in travelling.
21. K herself expressed to Mr Campbell that the proposed move on a trial basis was a good idea whilst ever she waited for a decision as to whether she could return to Poland. The Accredited Legal Representative supported the trial move to offer K the opportunity to live in a home where she could communicate with others in her own language and her cultural needs would be supported. The court granted the Local Authority permission to relocate K to J for a trial period (B39-46). K subsequently moved to J in September 2021.
22. At a hearing on 26th April 2022, G expressed a number of concerns for K's welfare at J, many of which she has repeated during this hearing. She does not believe that K is settled or happy at J. G estimated she had visited her aunt on approximately 10 occasions. She reports that K has complained about the quality of the food and appears hungry when she visits. G produced videos of the thoughtful gifts that she had taken for her great aunt which included clothing, flowers and various food items. G reported that her great aunt had told her that the food is confiscated or taken by the staff for their own use. G was upset that K's hair had been cut short when she has habitually maintained a shoulder length hairstyle. G does not accept the explanation offered by the staff at J that K expressed a preference for short hair.

23. G was also concerned that on a recent visit when she arrived at about 3pm, K was lying in bed (albeit dressed) complaining of a headache but had not been provided with any paracetamol. G further reported that having taken K out for a meal or a trip, K was reluctant to return to the placement, which had never happened when she used to return her to H. G has previously raised concerns that K is not able to go outside and does not appear to be able to smoke as she would wish as her cigarettes have been confiscated.
24. G's friend gave evidence that she has accompanied G on three or four visits and that K is always very pleased to see G. During the recent visit, she confirmed that K was lying in bed with a headache and that at the conclusion of a trip out, K did not want to return to J but wanted G to take her with her. She agreed that K can be chatty and maintain a good conversation, which is of course in Polish.
25. In addition, G has been very upset and frustrated by what she regards as the abrasive and rude attitude of the manager of the home (A) towards her from the initial phone call she made to J. It appears the relationship started off on a wrong footing and has not improved. G's friend was also critical of the manager's attitude and stated some of the staff were pleasant and some were abrupt.
26. In order to address G's concern about the quality of the food provided, arrangements had been made by the deputy manager (D) for G to visit and discuss K's food preferences with him. G specifically took a day off work and travelled to J to meet with D only to find that he was not available on the agreed date. It does not appear that there was any acknowledgement by the manager of the inconvenience that this created for G, who does not feel comfortable talking with the manager at J care home and so declined to discuss K's food preferences with her. Since then, the deputy manager has twice emailed G requesting information on K's food preferences but has received no response.
27. I note that Ms W agreed with the suggestion that there needs to be attempts on both sides to improve the relationship between G and J for the benefit of K. It is a positive sign that A suggested mediation with G as a means of building bridges. It is regrettable that G expressed in her evidence that she would not be willing or feel able to participate in such mediation as she considered the breakdown in the relationship as irreversible. I hope that G will reconsider her position bearing in mind that effective communication is very important between J and G for the benefit of K. Ms W stated that if both parties agree, then a social worker could provide a mediation service.

28. In contrast to her criticisms of J, G put forward a number of reasons why K should return to live at H. G is of course correct when she observes that there will be considerably less opportunity for K whilst at J to spend time with her family, who are important to her. G only lives 10 minutes away from H and she and B could visit frequently or bring K back to their home to spend time during the day or for overnight stays. Given the time, distance and expense involved in travelling to J, G can only visit every 3- 4 weeks for a limited number of hours. The opportunity for K to spend enjoyable time at G's home (where for example G pampers her great aunt with hair or nail treatments) will be greatly reduced from J.
29. G stated that there are some Polish speaking staff at H and as she and B would also be available to speak with K in her native language, she did not consider that K would be isolated or that there would be any impediment to staff understanding K's needs as they could always contact her. Currently, G is working limited hours and so would be available to visit her great aunt frequently and to respond to calls if Polish staff were not on duty. G confirmed that K is unable to hold a conversation in English so as to communicate her wishes or needs.
30. Overall, G did not accept that her great aunt had presented as low in mood or isolated when living at H and asserted that K was much happier at H than in her current placement. It was put to G that she is aware that K can at times state matters which are not factually correct (for example, that she is living in a hospital in Poland; that she has no mental health problems; that she owns 8 houses and is very wealthy; that her husband is still alive) and that it would assist if G raised matters of concern with the staff to find out what the staff say about K's reported complaints. Unfortunately, such is the level of distrust towards J that G does not feel able to accept their explanations or reassurances. When it was put to her that different professionals who have visited K confirm she is well settled and improved in her presentation, G's response was to say they care about the money rather than K's happiness.
31. The complaints that K has made to G should not be, and have not been, disregarded but merit proper investigation. Various concerns voiced by G have been duly investigated by the social worker. Ms W is an experienced practitioner and has viewed many care homes in her 10 years' tenure. She has visited J on several occasions and told me that she rated the home '*quite highly*'. She described it as a pleasant and welcoming environment with small occupancy and a high staff ratio to service users. She described various activities on offer for residents. She commented that 1-1 time is also available

for residents as part of the standard care package. Such additional time is not usually available without being commissioned as an additional benefit. K is offered such time daily although she does not always wish to take it up.

32. Records from J show the range of meals that K is offered (two options at mealtimes) and a weight chart indicates that having lost some weight after suffering from Covid, with a diminished appetite at the beginning of 2022, K's weight has now stabilised, confirming there is no issue about her nutritional needs being met. K is encouraged to join in stimulating and social activities daily; records and photographs show her frequent engagement and show when she declines to participate. Ms W says that there are two other ladies in particular with whom K prefers to spend time. In order to provide K food dishes she prefers and to engage her, she is encouraged to assist in the kitchen but is reported to lose interest before a task is finished.
33. Ms W stated that K is offered the opportunity to go out into the gardens daily at different times at J and is accompanied by staff for safety reasons due to her sight impairment. K herself has suggested she would prefer to go outside unaccompanied as she maintains she did in her previous placement. Enquiries by Ms W ascertained that the same routine was in fact in place at H for the same safety reasons. In addition, K has reported that she enjoys the company of the staff who sit with her. It may be that she can be safely escorted outside and offered the option to sit alone, with staff at a little distance, if she so wishes.
34. In terms of cigarettes being confiscated or rationed, Ms W reports that for safety reasons, cigarettes and lighters are retained in the office but are regularly offered to K. Ms W has suggested that a small fridge could be obtained for K to keep any food stuffs to hand and that it is often K's habit to take rest after lunch and it may be that during the recent visit, it had not come to the attention of staff that she needed a paracetamol. Ms W is satisfied that K's care and mental health needs are met at J. During a visit on 31st May 2022, Ms W noted that K presented well and engaged in humour and was the best that she had ever seen her.
35. Ms W expressed her concern that as K's dementia progresses, she is likely to need more care and suggested that at H, she would find it difficult to explain what she wants or needs. Recent enquiries reveal that there are two Polish nurses at H who work opposite shifts. As there are several different units at H, one or other nurse may not be on duty or available. In addition, there is only one other Polish speaking member of staff. Ms W commented that K would not be placed in a nursing unit as she does not have nursing

needs or require a nurse on site. K was previously placed in a residential unit at H. Ms W also stated that K is likely to lose her language skills more quickly if she is limited in her language use.

36. Ms W was very clear in her evidence that K benefits from being able to converse and communicate freely with other Polish residents and staff. She has observed K mixing and engaged in the community of J in contrast to when she was at H where she declined to spend time in the communal areas. Ms W described how there is a noticeable improvement in K's overall presentation, mental health and wellbeing. She is experiencing fewer delusional episodes and no longer requires PRN medication.
37. There is a head on conflict in the evidence about K's presentation between Ms W and G. I note that in May 2022, an annual review pursuant to s117 of the Mental Health Act 1983 was conducted with the local Mental Health Services by a Community Psychiatric Nurse (CPN) who had not seen K since her arrival at J. It is recorded that the CPN *'stated that she sees a great improvement in K's presentation, engagement, mood and appearance. Sarah expressed that K was isolated and low in mood whilst placed at H and she can see the benefit of her residing in a Polish Care home'* (C49).
38. K herself has expressed on a number of occasions to the social worker that she prefers to live in a Polish care home and has stated the staff at J are good to her. Mr Campbell points out that K's preference would undoubtedly be to return to Poland, which is not an available option, but that his observations and discussions with K reveal that she is settled and expressing contentment at J within its Polish speaking setting.
39. I appreciate that as a family member, G has understanding and insight into her great-aunt's personality and her preferences, however I consider that she has a blind spot in respect of the benefits to K of residing at J. I prefer the evidence of Ms W and other professionals who note a significant improvement in K's overall presentation, appearance, mood and engagement since living at J, where she appears to be relaxed and less anxious. K's expressed wish to return with G to the area in which G lives after she visits is not at odds in my view with the overall settled presentation of K at J, given that it is a natural reaction for K to wish to be in the company of her great niece.
40. I accept the submission that in the event that K experiences a medical emergency or deterioration in her mental health, it is essential that she can reliably communicate with those caring for her at all times. Whilst G would seek to support any necessary communication in an emergency, it is not certain that she would always be available.

41. I also concur with the submission of the Accredited Legal Representative, Mr Campbell as follows:

‘My overall conclusion is that K is well placed at J care home. In addition, I would add and emphasise that K’s schizophrenia and dementia are isolating mental disorders in and of themselves. Anything that further isolates K from being able to reliably communicate with people around her on a daily and hourly basis would not seem to be in K’s interests’.

42. As Mr Bellamy observed, the ideal solution of a Polish care home near G is sadly not an available option and so there is a stark choice to be made by the court. Placement at H would provide the significant benefit of family members being able to spend more extensive periods of time with K frequently, and at short notice, both at H and at G’s home. K’s relationships with G and her son are valued and loving relationships. The significant benefit of regular family contact is greatly diminished if K is to remain at J and as such represents a loss for K. G made a poignant and heart-felt plea for her great aunt to return to G’s locality to enjoy family contact more freely and urged me to consider that the family should be the most important consideration in the decision making. In conclusion G told me *‘I brought her to this country – not to be taken miles away’* Undoubtedly, the frequency of family contact is a factor which weighs in favour of a return to H.

43. Set against that however is a factor which in my view is a magnetic factor in this case, namely the need for K to be able to communicate freely 24/7, unhindered by any language barrier. Although I do not doubt that G would do everything in her power to support H, there can be no certainty that at any given time at H, K would be able to communicate her needs or wishes or engage socially as it would be dependent on staff availability or availability of G or BJ. On K’s behalf, Mr Campbell identifies that the ability to communicate with K in Polish not only supports her linguistic and cultural needs but supports her safety and care needs, particularly in the light of her diagnoses which mean that from time to time, she experiences delusional beliefs and may need support and reassurance.

44. K is currently placed in a small community of Polish residents and staff, who share her language, culture and traditions (which are celebrated at the placement). That environment has been demonstrated to provide tangible benefits to K’s well-being since her arrival in September 2021. That sense of community for K cannot be replicated at H even with G on hand. The decision made in March 2021 in respect of placement was

in favour of proximity to family. It has transpired that H has not been able to cater for K's holistic needs, which in turn has had a detrimental impact on K's well-being.

45. Having considered all the evidence in this case, I am satisfied that it is K's best interests to remain at J. I am satisfied that K's holistic needs, which include her linguistic, social, cultural and care needs, are met to a good standard at J. That assessment is not, as G has previously suggested, based on a discriminatory view that as a Polish national, K should be in a Polish care home. It is based on an evaluation of the overall quality of life that can be provided to K as a result of living in a Polish care home.
46. I hope that every effort will be made with the assistance of the newly allocated social worker to repair relations between G and J and to assist them to build on the more positive communication with the deputy manager. Family contact remains important for K and if appropriate and manageable, K's wish to spend some time at G's home should be accommodated. K told Ms W that she would like to spend a few days at G's home (C50).
47. I note that K was granted Leave to Remain in the UK until 2025 (C9). The Local Authority will need to consider what steps are required in due course to secure her immigration status.
48. I would be grateful if a draft order could be submitted to the court for approval.

H.H.Judge Kate Buckingham

23rd July 2022