



22 March 2017

PRESS SUMMARY

N (Appellant) v ACCG and others (Respondents) [2017] UKSC 22
On appeal from [2015] EWCA Civ 411

JUSTICES: Lady Hale (Deputy President), Lord Wilson, Lord Reed, Lord Carnwath, Lord Hughes

BACKGROUND TO THE APPEAL

The issue in this appeal is the role of the Court of Protection where there is a dispute between the providers or funders of health or social care services for a person who lacks the capacity to make decisions for himself and members of his family about what should be provided for him.

N is a profoundly disabled man, now in his twenties, who is part of a large, close and loving family. His disabilities require that carers are in attendance throughout the day and night. His parents have been unable to co-operate with the authorities in meeting his needs and a care order was made in respect of N when he was eight. This necessarily came to an end when he was eighteen. Shortly before that point, the local authority issued proceedings in the Court of Protection seeking orders pursuant to the Mental Capacity Act 2005 ('the MCA') that it was in N's best interests for N to reside in a care home and for contact with his parents to be regulated and supervised by the local authority. Responsibility for his care passed to the National Health Service when he turned 18.

It was not in dispute that N lacked the capacity to make decisions about his residence or contact with his family, nor that for the time being the care home provides a safe and settled environment for N. By the time of the hearing the issues between N's parents and the respondent clinical commissioning group had narrowed to whether N could visit the family home and whether his mother could assist care home staff with his intimate care when she was visiting him there. The respondent considered that neither was in N's best interests: the first would require additional trained carers which it was not prepared to fund, and the care home staff had concerns about the second, after the parents had declined an offer of the necessary training in manual handling.

At the hearing the respondent argued that the Court of Protection, on N's behalf, could only decide between the 'available options' and that it was inappropriate to try to obtain a best interests declaration to put pressure on the respondent to make further funding available. The judge agreed that she could not consider the parents' proposals for this reason, and she declared that the contact plan proposed by the respondents was in N's best interests. The Court of Appeal upheld the judge's decision.

JUDGMENT

The Supreme Court unanimously dismisses N's parents' appeal. Although the Court of Protection had jurisdiction to continue with the planned hearing, it did not have power to order the respondent to fund the parents' plan, nor to order the actual care providers to do that which they were unwilling or unable to do. The judge had therefore been entitled to conclude that no useful purpose was served by continuing the hearing. Lady Hale, with whom all the Justices agree, gives the only judgment.

REASONS FOR THE JUDGMENT

The jurisdiction of the Court of Protection is limited to decisions that a person ('P') could take if he had the capacity to do so. It is not to be equated with the jurisdiction of the courts to make orders in respect of children: under the MCA the court does not become the guardian of an adult who lacks capacity and the adult does not become the ward of the court [24]. The MCA focuses on capacity in relation to a specific decision or matter. Rather than granting declaratory relief available under section 15, it is better if possible for the court to make orders under section 16 [26]. There is scope under section 16 for the court to make a decision on P's behalf, or to appoint a deputy to make such decisions, and the court's powers set out in section 17 include the power to decide where P is to live and what contact, if any, P is to have with any specified persons. These powers do not extend to decisions compelling third parties to accommodate, or meet, or to provide services or treatments for P [29].

The fact that the court has no greater power to take a decision than P would have had himself means that it too can only choose between the 'available options'. It resembles the inability of the family court in children cases to oblige an unwilling parent to have the child to live with him, or to oblige an unwilling health service to provide a particular treatment for the child [35]. Nor can the court use its powers to put pressure upon a local authority to make particular decisions in exercise of its statutory powers and duties to provide public services. Such decisions can instead be challenged on judicial review principles, where the legal considerations for the public authority and for the court will be different from those under the MCA [37].

It was unfortunate in N's case that the issue was described as one of 'jurisdiction' since the Court of Protection clearly has jurisdiction to make declarations and orders under the MCA. The question was rather how N's case should be handled in the light of the limited powers of the court [38]. The court has wide case management powers, which include the identification of issues which need full investigation, and it is entitled to take the view that no useful purpose will be served by holding a hearing to resolve other issues [41]. In this case, there were good reasons for thinking that N's parents' wishes were impracticable and that the respondent had good reasons for rejecting them. The Official Solicitor supported the respondent. It was unlikely that investigation would bring about any further modifications or consensus and it would be disproportionate to devote any more of the court's scarce resources to resolving matters [42].

Accordingly, since the court did not have power to order the respondent to fund what N's parents wanted, nor to order the actual care providers to do that which they were unwilling or unable to do, the judge was entitled to conclude (as in substance she had) that no useful purpose would be served by continuing the hearing [44]. The appeal is therefore dismissed.

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:
<http://supremecourt.uk/decided-cases/index.html>