



PC and NC v. City of York Council

[2013] EWCA Civ 478

Country:

Region: Europe

Year: 2013

Court: The Court of Appeal (Civil Division)

Facts

PC, the petitioner was a forty-eight-year-old woman who was diagnosed with mild learning disabilities with an IQ assessment between 66 and 69. She had been in and out of relationships and had sustained two terminations in the course of her relationships and had also denied having sexual intercourse during her first termination. In 2001, PC began a relationship with NC which was cut short as NC was sentenced to thirteen years imprisonment for serious sexual offenses committed against his previous wives. During this period, PC and NC got married and wished to resume cohabitation after his release from the prison. However, the Local Services Authorities believed that NC posed a serious risk to PC in her capacity as a cohabiting wife. In 2012, the court of protection ruled, pursuant to section 4 of the Mental Capacity Act, 2005 that although PC had the capacity to marry, she lacked the mental capacity to determine whether it was in her best interests to continue cohabitation with NC. The Court of Protection agreed with the local authority and held that PC lacked the capacity to decide to cohabit.

That conclusion triggered the Court of Protections jurisdiction under Mental Capacity Act 2005, s 4 [“MCA 2005”] to determine whether or not it was in PCs best interests to live with NC or otherwise to have contact with him. Upon reading their respective notices of appeal, and they were granted the right to appeal against the judge’s determination on capacity by the Court.

The central issue in this appeal concerns the capacity of a married woman to decide whether or not she is going to live with her husband. Principally, the issues were whether the test for capacity under the Mental Capacity Act is decision-specific or a general test and whether the test for capacity to cohabit was the same as the test for capacity to marry.

Decision and Reasoning

The Court allowed the appeal and set aside the Court of Protection’s finding that PC lacked the capacity to cohabit with NC. In coming to this conclusion, the court observed that the interpretation of sections 2 and 3 by the previous judge posed a danger as considering section 2(1) before looking at section 3(1) watered down the causative nexus between mental impairment and inability to decide. By using section 2(1) to simply collect the mental health element may make the keywords “because of” in the section lose its prominence. Further, the Court held that the determination of capacity under the Mental Capacity Act was decision-specific. It noted the fact that PC has the capacity to marry in turn enables her to have the capacity to perform the terms of the marriage contract unless there exists clear and cogent evidence to the contrary. Furthermore, the court was of the opinion that since PC had the capacity to enter into a contract whose essence was to live together with the husband, she also had the capacity to decide to keep her promise. Since there had neither been a finding of deterioration in her mental capacity nor a relevant change of circumstances, the court concluded that PC had the capacity to decide to perform the terms of the marriage contract, including cohabitation with NC. Therefore, Court held that if there was a finding of capacity under the Mental Capacity Act, the individual was entitled to make decisions regardless if they are considered unwise, since this was within the individual’s autonomy.

Decision Excerpts

“Mr Butler’s reference to Baroness Hale’s description of the approach that underpins the MCA 2005 is that the court’s jurisdiction is not founded upon professional concern as to the “outcome” of an individual. There may be many women who are seen to be in relationships with men regarded by professionals as predatory sexual offenders. The Court of Protection does not have jurisdiction to act to “protect” these women

if they do not lack the mental capacity to decide whether or not to be or continue to be, in such a relationship. The individual's decision may be said to be against the better judgment of the woman concerned, but the point is that, unless they lack the mental capacity to make that judgment, it is against their better judgment. It is a judgment that they are entitled to make. The statute respects their autonomy so to decide and the Court of Protection has no jurisdiction to intervene. Paragraph 53

Mr Bowen correctly submits that there is a space between an unwise decision and one which an individual does not have the mental capacity to take and he powerfully argues that it is important to respect that space, and to ensure that it is preserved, for it is within that space that an individual's autonomy operates. Paragraph 54

As Lewison LJ observed during the appeal hearing if PC has the capacity to marry she must be taken to have the capacity to decide to perform the terms of the marriage contract. Any finding to the contrary required clear and cogent evidence. Such evidence was lacking in the present case and the finding that PC was unable to make this decision was simply not open to the judge. On that basis, Hedley J's conclusion is not sustainable and the appeal must be allowed. Paragraph 59

I well understand that all the responsible professionals take the view that it would be extremely unwise for PC to cohabit with her husband. But adult autonomy is such that people are free to make unwise decisions, provided they have the capacity to decide. Like McFarlane LJ I do not consider that there was a solid evidential foundation on which the judge's decision can rest. We must leave PC free to make her own decision, and hope that everything turns out well in the end. Paragraph 64

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