

Neutral citation: [2024] EWCOP 78 (T2)

Case no. 14128926

IN THE COURT OF PROTECTION
IN THE MATTER OF THE MENTAL CAPACITY ACT 2005
AND IN THE MATTER OF SX

Coventry Combined Court,
Much Park St CV1 2SN

22 July 2024

Before:

HER HONOUR JUDGE S. JONES

Between:

VX

Applicant

-and-

KX [1]

AX [2]

SX [3]

(by her litigation friend, the Official Solicitor)

COVENTRY CITY COUNCIL [4]

Respondents

JUDGMENT

Mr Sebastian Elgueta (instructed by Cozens-Hardy LLP) for the **Applicant**

The **First Respondent** appeared in person

The **Second Respondent's** attendance was excused

Mr Benjamin Harrison (instructed by Moore & Tibbits Solicitors) appeared for the **Third Respondent**

Dr Charlotte Elves (instructed by Weightmans LLP) appeared for the **Fourth Respondent**

This judgment was delivered in public, but a Transparency Order dated 22 October 2024 is in force. This version of the judgment is published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of SX must be strictly preserved. All persons, including representatives of the media and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

HHJ S. Jones:

1. The court is concerned with SX, a 100-year-old lady who has a diagnosis of dementia. She has lived in her home in the community for the past 70 years. SX currently receives a package of care and support from a private care agency, which SX funds privately. The court has already made declarations pursuant to section 15 of the Mental Capacity Act 2005 to the effect that SX lacks capacity to:
 - (a) Conduct these proceedings;
 - (b) Make decisions as to her residence;
 - (c) Make decisions as to her care and support;
 - (d) Revoke her extant LPAs;
 - (e) Make new LPAs; and
 - (f) Manage her property and affairs.
2. AX, KX, VX, BM, MS and FN are all SX's children. AX and KX are donees of lasting powers of attorney for SX's property and affairs on a joint and several basis. VX, BM and MS are all current donees of lasting powers of attorney for SX's health and welfare on a joint and several basis.
3. VX is represented by Mr Elgueta (of counsel); KX appears in person; AX's attendance has been excused due to holiday commitments; Mr Harrison (of counsel) represents the interests of SX; and Dr Elves (of counsel) represents the local authority. BM, MS and FN are not parties to these proceedings. FN has attended some hearings in this matter. Despite the court's invitation to participate in these proceedings, BM and MS have chosen not to engage in these proceedings (save that BM has liaised to some extent with SX's solicitor).

4. At the last hearing in this matter, on 15 July 2024, I determined that VX's proposed care package for SX to remain living at home is not financially viable, even in the short-term, and that it is in SX's best interests to move to an EMI residential care home.
5. I have been asked by Mr Harrison to order at this directions hearing, on a summary basis, the revocation of the lasting powers of attorney for health and welfare which SX executed in favour of VX, BM and MS on 8 August 2020 (and which were registered with the Public Guardian on 28 October 2020).
6. I have received position statements from all the parties.
7. My powers in respect of revocation of lasting powers of attorney are governed by subsections 22(3) and (4) of the Mental Capacity Act 2005. These provisions say that:
 - (3) Subsection (4) applies if the court is satisfied—
 - (a)
 - (b) that the donee (or, if more than one, any of them) of a lasting power of attorney—
 - (i) has behaved, or is behaving, in a way that contravenes his authority or is not in P's best interests, or
 - (ii) proposes to behave in a way that would contravene his authority or would not be in P's best interests.
 - (4) The court may—
 - (a) direct that an instrument purporting to create the lasting power of attorney is not to be registered, or
 - (b) if P lacks capacity to do so, revoke the instrument or the lasting power of attorney.
8. It is submitted, on behalf of VX, that I should list a fact-finding hearing to determine this application.
9. I have had conduct of this case since September 2023. I have observed first hand each of the siblings and the interactions between them. I have also read and considered the extensive statements they have all filed.

10. I do not consider it necessary to apportion blame as to who is primarily at fault for the breakdown in the relationship between the siblings. But by way of example, VX writes in her statement dated 7 March 2024, and I quote:

What is in clear is that the strength of their toxic behaviour to some of My Mothers children is stronger than the strength of the love they have for their Mother. That behaviour sadly has coloured their judgement for four years.

11. It is also fair to say that, in their oral submissions, AX and KX have alleged that VX has sent them extensive and vile messages and that VX has prevented them from being involved in decisions about, and have access to information concerning, their mother's care (including by restricting their ability to communicate with health professionals).

12. It is clear to me that there is a complete breakdown in the relationship between the siblings. I find that it would be disproportionate to hold a fact-finding hearing to determine the reason for that breakdown and that, applying the overriding objective, it is proportionate and appropriate for me to make a determination today on the basis of submissions as to whether or not to revoke the lasting powers of attorneys for health and welfare executed by SX.

13. The Public Guardian has prepared a statement in these proceedings and recommended that all lasting powers of attorneys concerning SX's health and welfare and property and affairs ought to be revoked. The Public Guardian cites the ongoing conflict between the appointed attorneys since 2022 when they investigated concerns raised by VX about what she perceived to be the non-cooperation of AX and KX. The outcome of the Public Guardian's investigation was that there was no financial mismanagement by AX or KX, but there remained ongoing conflict between the attorneys. VX, AX and KX were reminded by Public Guardian of their duties to act in the best interests of their mother.

14. The position of the Public Guardian is supported by both the Official Solicitor who acts as SX's litigation friend in these proceedings and by the local authority.

15. KX, AX and FN were also originally appointed attorneys for health and welfare by SX on a joint and several basis along with their other siblings. They have accepted the Public Guardian's recommendations and have already taken administrative steps to disclaim their lasting powers of attorney for health and welfare.
16. VX opposes an order revoking her appointment as attorney for health and welfare.
17. Despite being invited to participate in these proceedings, as indicated above, BM and MS have not meaningfully engaged in these proceedings.
18. I have dealt with the application for revocation by way of submissions and am giving this judgment *ex tempore*. Given that I have declined to list a fact-finding hearing I have considered the written evidence which is before me
19. I accept Mr Harrison's submissions that, in light of the wholesale breakdown in the relationship between the siblings, this will prevent VX from discharging her duties under sections 4(7)(b) and (8) of the Mental Capacity Act 2005. These provisions require individuals – when exercising their powers under a lasting power of attorney – to take into account, if it is practicable and appropriate to consult them, the views of '*anyone engaged in caring for the person or interested in [their] welfare*'. In this case, that would include each of SX's children. I find that, given the breakdown in their relationship, VX is unable to properly consult with, and properly take into account the views of, AX and KX when exercising her powers under her lasting power of attorney. It follows that decisions made by VX under her lasting power of attorney, because of this lack of proper consultation, would not comply with the best interests decision-making framework set out in section 4 of the Mental Capacity Act 2005. Again, it is not relevant who is responsible for this breakdown in their relationship. The key fact is that there has been such a significant breakdown.
20. It is not disputed by VX that she prevented her siblings from communicating with health professionals about SX's care. It is right that VX agreed to take certain steps at the last hearing to allow for such communication to take place in future (as recited in the last order). But I find it troubling that such recitals were necessary. That is indicative of the lack of trust which exists between these siblings.

21. I also agree with the Official Solicitor's submission that, on the evidence before the court, VX is unwilling and unable to take on board professional guidance. The papers are characterised by VX opposing the outcome of professional assessments. It is clear that, notwithstanding the outcome of professional assessments (which are, by and large, at one), and the court's own judgment about the level of SX's needs, VX's view remains concrete in that she alone knows what is best for her mother. For example, even after the court has already determined that it is no longer financially viable for SX to remain living in her own home, and that it is in SX's best interests to move to an EMI residential home, VX still pursues (in her latest statement) the continuation of SX's care arrangements at home. VX has previously advocated, in the alternative, for a nursing home for her mother. A nursing home would be an overly restrictive environment for SX who has, instead, been assessed by her social worker and two different placements to require an EMI residential care home. I agree with the Official Solicitor and the local authority that VX is currently proposing an outcome which would not be in SX's best interests, and which is in conflict with what this court has already determined to be in SX's best interests.
22. In the circumstances I am satisfied, for the reasons set out above, that I should make an order revoking the lasting power of attorney for health and welfare made in favour of VX because the test for doing so in sub-sections 22(3)(b) and (4) of the 2005 Act is met.
23. I will also make orders revoking the lasting powers of attorney for health and welfare executed by SX in favour of BM and MS. They have been invited to engage in these proceedings and advocate for an outcome in SX's best interests. For reasons which are not clear, they have chosen not to do so. BM and MS were also put on notice that the court may make orders revoking their lasting powers of attorney for health and welfare. I agree with Mr Harrison that it is not in SX's best interests for those lasting powers of attorney to continue when they are not being utilised at all. I find that their refusal to engage meaningfully in this process, where such a fundamental decision needed to be made about SX's future residence and care, has itself not been in SX's best interests.
24. I do not revoke the lasting powers of attorney for property and affairs executed in favour of AX and KX at this stage. But I make it clear that this is for pragmatic reasons, as

recommended by the local authority, to assist in the transition process for SX to move to her new residential care home. It would take time for a panel deputy to be appointed and take control of SX's affairs. It is important that there are no gaps or delay in the management of SX's finances at this critical time to ensure that SX's transition goes smoothly and that my decision at the last hearing is given effect to.

25. However, I make it clear that I expect AX and KX to disclaim their lasting powers of attorney at the first opportunity so that a panel deputy can be appointed, as recommended by the Public Guardian. If they do not disclaim their lasting powers of attorney for property and affairs, then I will make orders revoking them applying the same factors I have just set out in respect of the lasting powers of attorney for health and welfare.

26. I make it clear that all siblings should have an equal voice in making decisions on SX's behalf in future, following the best interests decision making process set out in section 4 of the Mental Capacity Act 2005.

27. That is my judgment. Is there any clarification needed?

Mr Harrison: Thank you, Your Honour. When you indicated that there is no dispute that VX has prevented her siblings from communicating with health professionals, it may assist to provide further reasons explaining that conclusion.

HHJ Jones: I say this because I have not seen, in the written evidence before me, that VX has ever challenged KX's and AX's assertion that they have been prevented from communicating with health professionals by VX. Does anyone want to correct me on that point?

Mr Elgueta: I have no points of clarification or correction.

Dr Elves: Neither do I.

HHJ Jones: That brings the hearing to a conclusion. The next hearing will consider SX's transition to the EMI residential home identified. Mr Harrison, I give you carriage of the order. Good afternoon.