

IN THE COURT OF PROTECTION AT NEWCASTLE

Newcastle Civil & Family Courts and Tribunals Centre
Barras Bridge
Newcastle upon Tyne
NE1 8QF

BEFORE:

MR JUSTICE POOLE

Aberdeenshire Council v SF and Anor (No. 3)(Change of Habitual Residence)

BETWEEN:

ABERDEENSHIRE COUNCIL

Applicant

- and -

(1) SF (by her Litigation Friend, The Official Solicitor)

(2) EF

Respondents

Legal Representation

Mr Joseph O'Brien KC instructed by the **Applicant Local Authority**

Ms Sophia Roper KC instructed by Simpson Millar LLP for the **First Respondent** (via the Official Solicitor)

The Second Respondent not in attendance nor represented

Judgment

Judgment date: 27 June 2024

This judgment was delivered in public but a transparency order is in force. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of SF, EF, and GF and the place where SF lives 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.

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Mr Justice Poole:

1. This is an ex tempore judgment. The Applicant in this case is Aberdeenshire Council, represented by Mr O'Brien KC. I am concerned with SF who is the First Respondent

who, as has previously been recorded, for the purposes of the Mental Capacity Act 2005 the Court has reason to believe lacks capacity to conduct these proceedings and to make decisions about her residence, care and support. Through the Official Solicitor she is represented today by Ms Roper KC.

2. Her mother is the Second Respondent EF, who is aware of today's hearing, has chosen not to attend, and is not represented. She has written a letter to me as the judge dated 6 June 2024 to which I have had full regard. She believes that SF has expressed her wishes and feelings about where she might live in the future in order to please people in England, rather than expressing her true views which are she says, to live with her family in Scotland.
3. SF is 44 years old. In January 2016, Aberdeenshire Council arranged for her transfer to hospital in England. She was detained in hospital in England under section 3 of the Mental Health Act until 13 June 2022. She was discharged into a community placement in Sunderland at that point. Sunderland City Council, concerned about SF's position including the deprivation of her liberty in that community placement, brought an application to the Court in August 2022. They have since been discharged as a party.
4. On 30 June 2023 I determined that SF was habitually resident in Scotland, and provided a full judgment containing that decision, *Aberdeenshire Council v SF* [2023] EWCOP 28. There were two elements of that decision that deserve mention, but obviously regard should be had to the full judgment. The first element is that in June 2021 a when making a Scottish Guardianship Order, a Scottish Court had impliedly found that SF was then habitually resident in Scotland. The second element to mention was my finding that there was no stability or integration in SF's life in England, certainly not sufficient integration, to establish habitual residence in this jurisdiction. She had been detained in hospital under the Mental Health Act for most of her period of stay in England, and for the year prior to the judgment after her discharge from hospital, whilst she had been in the community, she had been subject to restraint and seclusion, and had barely if at all left the placement, and had not engaged in the community in any meaningful sense at all.
5. There was also an element of instability in her residence in England because there had been continuing discussions about arrangements for her to return to Scotland, although they had never actually come to fruition. Further, SF herself had not really expressed any wishes and feelings about where to live. That may have been because she was not in a position to do so, or at least was not in a position where she thought she had any say in the matter. So, whilst in the community, SF was still to a large extent detained and her residence in England and Wales was not stable.
6. I decided that she was habitually resident in Scotland, but I did describe that as a finely balanced decision. The case came before me again earlier this year, 2024, to consider the recognition and enforceability of the Scottish Guardianship Order, and although not directly relevant to that determination, it was clear from the evidence and information given to me at that time there had been a remarkable change in SF's day to day life. I have even more evidence now as regards her daily activities and the nature of her living arrangements, her activities and her life in England, still in the community placement. I rely on all that evidence which is contained within a bundle of documents provided to the Court.

7. It appears that there was a change in SF's medication in the latter half of 2023. Her presentation improved after some initial issues and has now improved quite dramatically. She has begun to express her own wishes and feelings, to exercise a degree of autonomy within the natural restrictions that she suffers because of her impairments, and the need for her to be supported, cared for and supervised in the community, and she has begun to go out into the community, indeed she now engages in some regular activities in the community.
8. I am referred within the very helpful position statement of Ms Roper KC to visits by Ms Hurst to SF over time. I need not go into detail as to the various expressions of her wishes and feelings about where she should live that SF has communicated. What is clear from the evidence including SF's mother's letter to the Court, is that when influenced by her family, and I do not imply any malicious intent on the part of her family, SF will express wishes and feelings in accordance with what she believes they expect her to say. Indeed, there is evidence that they have rather directly told her what to say, I am sure with the best of intentions.
9. When she is free from that influence and speaks more independently, she has in fact indicated that she would like to remain living where she is, and therefore in England. She now goes to the shops regularly. She knows people in the shops such as Aldi by name. She goes swimming regularly. She goes weekly to a disco, and she has made a friend at the disco, with whom she corresponds. She goes to pubs, the cinema, and bowling.
10. She has become attached to members of staff. She attends staff training sessions for new members of staff, to help out no doubt, and goes into the Orbis office, Orbis provides the care for her at the placement. She even attended a conference earlier this year in February, a conference I believe attended by over 100 people, and she spoke about her autism and her experiences. The Orbis manager says she has a substantial life in England. She is described as being very sociable and as enjoying taking centre stage.
11. That is a remarkable transformation from the position that I was presented with and described in my judgment from 2023. There is much greater integration into the social environment. There are much improved relations with carers and indeed others outside of the placement, and she has expressed, when she is able to independently, wishes and feelings for herself in relation to her residence.
12. I take the relevance of her expression of wishes and feelings about where she should reside to the issue of habitual residence, as reflecting the degree of integration that she has, and the degree of stability that she now has in relation to her residence.
13. I remind myself of the case law in respect of habitual residence which I set out in my previous judgment on the issue of habitual residence at paragraphs 14 to 15, including *An English Local Authority v SW & Anor* [2014] EWCOP 43, *Health Service Executive of Ireland v IM & Anor* [2020] EWCOP 51, and in respect of children, *M (Children) (Habitual Residence: 1980 Hague Child Abduction Convention)* [2022] EWCA Civ 1105.
14. Habitual residence is a question of fact. The test is the place which reflects some degree of integration by the person. In children cases, that is said to be integration in a social and family environment. Adapting that test to the present case, it seems to

me the integration that I should focus on is integration in the social environment in a situation where a 44 year old lives in a different jurisdiction from her family. There are no family members around, and so one would not expect that degree of family integration or integration into a family environment.

15. In the current circumstances which are greatly changed from those in 2023, I am sure that SF is now habitually resident in the jurisdiction of England and Wales. She clearly now enjoys some integration into the social environment here. She has formed relationships as I have described. She is frequently active in the community outside her placement and the position could hardly be more different than it was only a year or so ago.
16. There is I acknowledge, some degree of instability in this sense: there are ongoing discussions and debates about where she should live in the future and whether she should return to Scotland, and I acknowledge that her mother and brother still live in Scotland and are in communication with her, and wish her to move to Scotland, but those factors are not sufficient to outweigh the close connections that SF has developed and established in this jurisdiction, and the relative stability of her current situation, and certainly the integration that she enjoys in the social environment in England and Wales.
17. Where does she live? Very clearly, she lives in England, and in answer to the question is she habitually resident here, I answer yes, she is. She now exercises much more autonomy and freedom. It is a very different life from the constrained one that she previously led, even in the community setting, and I do now conclude that she is habitually resident in the jurisdiction of England and Wales.

This Transcript has been approved by the Judge.

The Transcription Agency hereby certifies that the above is an accurate and complete recording of the proceedings or part thereof.

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Approved:

Nigel Poole

Mr Justice Poole, 30 October 2024