

THE COURT OF PROTECTION  
SITTING AT PRESTON

Case No: 10370284

Sessions House  
Preston

Tuesday, 11<sup>th</sup> October 2016  
2016 EWCOP 46

Before:

THE HONOURABLE MR. JUSTICE PETER JACKSON

In the matter of:

MRS. ANN CLARKE

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Mrs Angela Wilde and Mr Kevin Clarke appeared in person.

Mr Michael Clarke did not attend and was not represented.

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JUDGMENT APPROVED BY THE COURT

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## JUDGMENT

MR. JUSTICE PETER JACKSON:

1. These proceedings concern Mrs Ann Clarke who is now 76 years of age. They have been brought in the Court of Protection by two of Mrs Clarke's children, that is Angela Wilde and Kevin Clarke, both of whom are present today, representing themselves. Their application of 17<sup>th</sup> March 2016 seeks orders firstly requiring that their mother, Mrs Clarke, should be brought back to the United Kingdom from Spain, where she is presently believed to be, and also that they should be allowed access to Mrs Clarke's property in Blackpool in order to put it into order and prevent it from deteriorating.
2. The other party to the proceedings is Mr Michael Clarke, who has not attended today. However, he has shown that he is aware of this hearing in the course of a number of documents that he has recently filed. In fact, it was recorded that Mr Michael Clarke visited the court on 23<sup>rd</sup> September to say that there would be some form of demonstration here today. This hearing began 15 minutes ago at 10.30, having been fixed to start at ten o'clock, but, as I say, Mr Clarke is not here. Instead, the documents he has filed contain the usual mixture of **delusion and abuse**.
3. Beneath all of that, there is a serious family dispute concerning Mrs Ann Clarke's welfare, with Mrs Wilde and Mr Kevin Clarke believing that she should be cared for in England, but Mr Michael Clarke being determined to keep her abroad. It is unnecessary to go into detail about the steps that the court has taken to try to de-escalate this situation. I have suspended a committal order made by another court in respect of Mr Michael Clarke to allow him to engage with the proceedings, but he has not done so. I have asked the Official Solicitor, by my order of 9<sup>th</sup> May, to look into Mrs Clarke's situation. So far this has produced an interim report and an opinion from counsel, those documents being dated mid-September.
4. The first issue that must be decided is whether the court has jurisdiction. There is no doubt, because her property is in Blackpool, that it has jurisdiction over that property. It is not known whether the property is empty or whether it is being informally let. At the moment, it cannot be sold because of the order made in previous proceedings and, apart from anything else, because the Official Solicitor has placed a charge upon it.
5. All previous decisions that I have taken have concerned issues of property in England and the issue of jurisdiction over Mrs Clarke's personal welfare has therefore not arisen before. As to this, the opinion of counsel, Mr Alexander Ruck-Keene, is comprehensive and clear. In order for the Court of Protection to exercise this jurisdiction, Mrs Clarke must be habitually resident in England and Wales. Dealing directly with that question, it is clear that since 2008 Mrs Clarke has spent the great majority of her time outside England. She has returned from time to time. Indeed, I remember seeing her myself at a hearing in 2012. However, she has, for the most part, been living in Spain in one place or another and has, on at least one occasion, left there. That was between September 2015 and February 2016 when Mr Clarke took her to Thailand from which she returned in a very poor physical state, requiring hospital treatment in Spain.
6. I do not know whether Mrs Clarke is habitually resident in Spain because I have relatively little information about her current circumstances. It is that which I wished to learn through the enquiries of the Official Solicitor. On the information presently

A available, I think that Mrs Clarke may not be habitually resident in England and Wales, although I reach no final conclusion about that. Even if, as the applicant children consider, Mrs Clarke has in effect been hijacked by Mr Michael Clarke and even if she, as seems likely, may lack capacity to decide where she should be living, she has nonetheless been out of this country for a very long time indeed and it open doubt that England is her place of habitual residence at this point. Of course we are not concerned about whether that is a situation that is right or wrong; we are simply looking at the reality.

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7. However, that is not the end of the matter. Mrs Clarke is clearly a very vulnerable person and she is likely, in my view, to lack capacity in relation to the issues that are now before the court. On either view it has been recently established that the High Court, exercising its inherent jurisdiction, has the ability to make orders for the protection of vulnerable or incapacitated individuals on the basis of their British citizenship, see the decision of Mr Justice Holman in the case of *Al-Jeffery [2016] EWHC 2151 (Fam)*.

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8. Although the circumstances in that case were factually somewhat different, I consider that the legal essentials are the same and that Mrs Clarke is not beyond the protection of this court, being the High Court exercising its inherent jurisdiction. That is not to say that the Court of Protection certainly lacks jurisdiction, merely that the inherent jurisdiction may now be the more appropriate vehicle for dealing with this welfare issue. I therefore hold that these proceedings, in so far as they concern the other children's application for Mrs Clarke to be returned to England, do not come to an end on jurisdictional grounds.

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9. The next and ultimately more important question is whether those powers, should in fact be exercised. In considering that, the court has to have regard to Mrs Clarke's welfare, the rights of all concerned, the likelihood that orders would be effective and all the surrounding issues in this unhappy case. At the moment the information that is available is insufficient to enable me to know whether any orders are appropriate. The matter is further complicated by an indication from Mr Michael Clarke that, despite what happened on the last occasion, he wishes to take his mother back to Thailand sometime next month with a view to spending some three months or so there.

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10. The outcome of this hearing is that I will declare that the court has jurisdiction in relation to Mrs Clarke's welfare under the inherent jurisdiction, whether or not it possesses it in the Court of Protection. I will ask the Official Solicitor to continue his inquiry into the matters set out in my order of 9<sup>th</sup> May and to report at the earliest opportunity. I will give the parties liberty to apply for interim orders in case of necessity and I will direct that the matter be reconsidered by the court on receipt of the Official Solicitor's further report.

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*(End of Judgment)*