

IN THE COURT OF PROTECTION

Royal Courts of Justice
Thursday, 23rd August 2012

Before:

MR. JUSTICE MOSTYN

(In Private)

IN THE MATTER OF:

Re: AA

*Transcribed by **BEVERLEY F. NUNNERY & CO**
Official Shorthand Writers and Tape Transcribers
Quality House, Quality Court, Chancery Lane, London WC2A 1HP
Tel: 020 7831 5627 Fax: 020 7831 7737
Email: info@beverleynunnery.com*

MISS U. BURNHAM appeared on behalf of the Applicant, Mid-Essex NHS Trust.

MR. D. LOCK QC appeared on behalf of the Official Solicitor.

J U D G M E N T

(Approved)

NOTE BY MR JUSTICE MOSTYN (4 December 2013)

Although no-one has sought to appeal the judgment dated 23 August 2012 during the last 15 months, or to have it transcribed for any other purpose, I have decided to authorise its release together with the verbatim transcript of the proceedings and the order made so as to inform and clarify recent public comments about this case.

It will be seen that the application to me was not made by the local authority or social workers. Rather, it was an urgent application first made at 16:16 on 23 August 2012 by the NHS Trust, supported by the clear evidence of a consultant obstetrician and the patient's own treating consultant psychiatrist, seeking a declaration and order that it would be in the medical best interests of this seriously mentally ill and incapacitated patient, who had undergone two previous elective caesarean sections, to have this birth, the due date of which was imminent (she was 39 weeks pregnant), in the same manner.

The patient was represented by the Official Solicitor who instructed a Queen's Counsel on her behalf. He did not seek an adjournment and did not oppose the application, agreeing that the proposed delivery by caesarean section was in the best interests of the patient herself who risked uterine rupture with a natural vaginal birth. I agreed that the medical evidence was clear and, applying binding authority from the Court of Appeal concerning cases of this nature, as well as the express terms of the Mental Capacity Act 2005, made the orders and declarations that were sought.

Although I emphasised that the Court of Protection had no jurisdiction over the unborn baby, I offered advice to the local authority (which were not a party to or represented in the proceedings, or present at the hearing) that it would be heavy-handed to invite the police to take the baby following the birth using powers under section 46 of the Children Act 1989. Instead, following the birth there should be an application for an interim care order at the hearing of which the incapacitated mother could be represented by her litigation friend, the Official Solicitor.

MR JUSTICE MOSTYN:

1. I will make the declarations and orders. I am not going to give an extensive judgment because time is of the essence. This is a case that falls squarely within the guidelines given in *Re MB (Medical Treatment)* [1997] 2 FLR 426, CA. I remind myself that harsh though it is, the interests of this unborn child are not the concern of this court as the child has no legal existence until he or she is born, other than in respect of tortious acts committed on him or her. So the decision must be made squarely within the four corners of the Mental Capacity Act 2005.
2. The mother is a patient, compulsorily detained under the Mental Health Act 1983 suffering from a significant mental disorder which is psychotic in nature. It is explained in the two reports of the treating consultant psychiatrist, Dr Adimulam, both dated in August 2012, that say she suffers from psychotic episodes and delusional beliefs. Although, as Mr Lock QC has explained to me, the fact of detention under section 3 of the Mental Health Act does not ineluctably mean that she lacks capacity within the terms of Section 2 of the Mental Capacity Act, there is evidence here that demonstrates that this is the case. It is accepted by Mr Lock QC, whom I have appointed to represent her as her litigation friend, that she does lack capacity within the terms of section 2(1) of the Mental Capacity Act.
3. In those circumstances, following the decision of *Re MB*, which was in fact brought under the inherent jurisdiction before the advent of the Act, and following the express terms of the statute, it is for this court to make decisions that are in her best interests. Under section 1(5) I must make a decision that is in her best interests and in so doing I must have regard to the principle of least restriction. That by no means seeks to define the expression “best interests”.
4. The problem here is that as the mother has had two children by caesarean section before, it is the clear obstetric advice of Mr Spencer, in accordance with the guidance given by the Royal College of Gynaecology, and specifically in this case, that she should have an elective planned caesarean in order to avoid not only risks for the child, but to herself, of a ruptured womb. There is a significant risk of a ruptured womb, perhaps as much as 1%, were she to have a natural vaginal delivery. So the medical evidence from the obstetrician is clear that it is in her best interests that she should have the procedure in the way I described, which is by a planned or elective caesarean tomorrow. That is supported by the psychiatric evidence, which is that it is also in her interests, thereby mirroring what is said by Lady Justice Butler-Sloss in the decision of *Re MB* at page 439. So it is demonstrably in her best interests that it should be this way.

5. I would also add, I hope not at variance with *Re MB*, that I would have thought it was in her best interests, that is, her mental health best interests, that her child should be born alive and healthy and that such result should be, if possible achieved, and such risks attendant should be avoided. I think, looked at from her point of view, there is also a significant mental health advantage in her unborn child not being exposed to risk during his or her birth. In those circumstances it seems - and I hope very much that restraint will not be necessary - that the procedure that is proposed is manifestly in her interests.
6. Mr Lock QC has raised his concern that the Local Authority (who are not represented before me because the application is made by the National Health Trust) intend, in circumstances where AA's previous two children have been removed into care, to invite the police, under section 46 of the Children Act 1989, to exercise their powers to remove the child into police protection for a period not exceeding 72 hours, as the Act provides, on the basis that the police would, by virtue of information supplied by the local authority, have reasonable cause to believe that the child, once born, would be likely to suffer significant harm.
7. Mr. Lock QC questions what the risk of significant harm would be if the child was kept under supervision in a Mother and Baby unit following his or her birth. I expressed the view, which I require to be incorporated in the order, and to be communicated to the local authority, that I think on the basis of what has been said to me that would be heavy-handed and might cause significant deterioration in the mother's mental health in circumstances where I am required to consider her best interests. It would be better, I would have thought, for application to be made on notice to the Official Solicitor to me tomorrow (my being the applications judge) for an interim care order under section 38 of the Children Act 1989. On that occasion the mother would be represented by the Official Solicitor and debate would take place as to whether the child's welfare demanded his or her removal and if so when and on what terms. Miss Burnham has accepted that this advice of mine should be incorporated into the order and relayed to the local authority. So that advice will appear as a preamble.
8. The order will contain a declaration that I am satisfied that AA lacks capacity under the Mental Capacity Act. I am satisfied that the elective or planned caesarean is in her best interests and I authorise the use of reasonable restraint in order to achieve that operation safely and successfully.
9. LATER (24 August 2012): I have been informed District Judge Parnell of the Chelmsford County Court that care proceedings have today been issued by the Essex County Council in that court following the successful birth of the child earlier today. He has asked if I would consent to him dealing with an interim

care order application to be heard later today notwithstanding my offer to do so myself. I agreed to this.

IN THE COURT OF PROTECTION

The Royal Courts of Justice
Thursday, 23rd August 2012

Before:

MR. JUSTICE MOSTYN

IN THE MATTER OF

Re: AA

*Transcribed by **BEVERLEY F. NUNNERY & CO**
Official Shorthand Writers and Tape Transcribers
Quality House, Quality Court, Chancery Lane, London WC2A 1HP
Tel: 020 7831 5627 Fax: 020 7831 7737
info@beverleynunnery.com*

MISS BURNHAM appeared for the Applicant, Mid-Essex NHS Trust.

MR. D. LOCK QC appeared on behalf of the Official Solicitor.

PROCEEDINGS

INDEX

Page No.

OPENING

Miss BURNHAM
Mr. LOCK QC

1
4

(For judgment see separate transcript)

MR. JUSTICE MOSTYN: Yes.

MISS BURNHAM: My Lord, I appear on behalf of the applicant, Mid-Essex NHS Trust, and my learned friend Mr. Lock QC appears on behalf of the Official Solicitor.

MISS BURNHAM: My Lord, I am very grateful for you taking this hearing at such short notice, and indeed I apologise immediately for the state of the bundle that was handed up to you. It is not paginated, etc, but I wanted to get some documents in front of you for the purposes of the application.

MR. JUSTICE MOSTYN: You only gave me every other page of *Re MB*.

MISS BURNHAM: Oh dear. I apologise for that.

MR. JUSTICE MOSTYN: However, I have got the book out and I have now read the intervening pages.

MISS BURNHAM: My Lord, I do apologise. If I may say so everything had to be done at some considerable speed.

MR. JUSTICE MOSTYN: I see. In *Re MB* on one of the missing pages, page 439, which is under “the best interests of the patient”, they having expressed the view that the interests of the child are irrelevant because the child is not born. It says this:

“There is psychiatric evidence in this case from Dr. F which strongly supports medical evidence as being in her best interest. That evidence is that she was likely to suffer...”

- that is the mother -

“... significant long-term damage if there was no operation and the child was born handicapped or died. She would not suffer lasting harm from the anaesthesia being administered to her to achieve a desired result of the safe delivery of her child. She faced with fortitude but with equanimity the pain and risk inherent in the evasive surgery.”

So there was some psychiatric evidence that the procedure in that case was in the patient’s interests. Now, what evidence are you pointing me to in order to show that this is in the mother’s interests as opposed to the baby’s interests? Is it the medical evidence about avoiding the risk of uterine rupture?

MISS BURNHAM: My Lord, yes. My Lord, again Dr. Spencer has provided a very short witness statement which is not before you at the moment simply because it was not able to be signed. I understand he annotated his witness statement but did not change very much the substance of it. I shall just ask my instructing solicitor to hand that up to you. My Lord, again I apologise for the state of the evidence.

MR. JUSTICE MOSTYN: That is all right. Do not worry. So while you are looking for that - I will come to you in a minute, but I am just staring in your direction in a vacant way - but while you are looking for that, the order you are seeking is presumably a declaration that it is in her best interest to have the caesarean.

MISS BURNHAM: My Lord, yes.

MR. JUSTICE MOSTYN: And authorising the use of force to achieve that - reasonable and proportionate force.

MISS BURNHAM: And indeed it is to do with the general anaesthetic rather than the spinal anaesthetic, but I believe, my Lord, there are other issues, tangential issues perhaps, which the Official Solicitor would want to address you on.

MR. JUSTICE MOSTYN: I will come to those in a minute. Would you like to hand that up to me then?

MISS BURNHAM: My Lord, yes. My Lord, the Official Solicitor has not as yet seen that statement, so if it were possible to be passed back down when your Lordship has read it ----

MR. JUSTICE MOSTYN: I will just read it first. (Pause) Could you pass that to Mr. Lock, please. What mental illness is she suffering from?

MISS BURNHAM: My Lord, it is said that she suffers from a schizophrenic disorder, which is psychotic in nature and she is currently under section 3. My Lord, that is as detailed as the identification of the disorder goes. It is in the report of Dr. Adimulam, which is at your clip 4. It is the second document entitled "private and confidential".

MR. JUSTICE MOSTYN: Just a second. Were the previous two children put in permanent care?

MISS BURNHAM: My Lord, that is as I understand the position. My Lord, there is a suggestion in the documents that they are currently with the grandmother.

MR. JUSTICE MOSTYN: One second. So there is psychiatric evidence here that the caesarean is in her best interest, from her mental health point of view. So we have obstetric and psychiatric evidence that this will be in this patient's best interests.

MISS BURNHAM: My Lord, yes. May I just update you? I managed to speak to Dr. Spencer myself before we came in and one of the issues that Dr. Spencer raised in relation to the C-Section was, he said, that there was another option of, for example, allowing her to go into spontaneous labour and doing the emergency C-Section if certain risks materialised. However, what he said was the crucial issue that caused him to exercise his clinical judgment in favour of a planned caesarean was the fact that because of her mental state, if she were dissembling or otherwise being uncooperative, they would not be able to monitor the baby's heartbeat, for example, to see whether there were the potential uterine rupture complications emerging - and that is what clinched it for him, as he explained it to me.

MR. JUSTICE MOSTYN: Although I am not allowed to consider the interests of the unborn child, it must be in the mother's interest to have a healthy baby.

MISS BURNHAM: My Lord, I was rather surprised, on reading *Re MB*, to see how strongly that passage put it about the rights of the unborn - if you like the separate between the rights of the unborn child and the mother in those circumstances. My Lord, I do not propose to address you at any great length in relation to that. It may be something that the Official Solicitor can address you on.

MR. JUSTICE MOSTYN: That is fine. We have unambiguous psychiatric evidence from Dr. Adimulam. Then I had the evidence from the obstetrician that it is clearly in her medical interests for her to have a caesarean. The point about "let us just see if we need one as we go along and allow her to go into normal labour" is that I am not sure that that would necessarily obviate the risk of uterine rupture.

MISS BURNHAM: No, it would not.

MR. JUSTICE MOSTYN: That is quite high. It is nearly 1%.

MISS BURNHAM: It is 1%. He says the real problem is the inability to monitor even that risk because of her mental ----

MR. JUSTICE MOSTYN: If she is behaving in a ----

MISS BURNHAM: He says also that there is a possibility that she might be dissembling and not telling when she is going into labour, for example. As you will have seen from the papers, my Lord, there is a suggestion that one of her anxieties is the removal.

MR. JUSTICE MOSTYN: Okay. Thank you very much. Mr. Lock, are you equipped to represent the interests of this lady?

MR. LOCK: My Lord, we invite your Lordship to appoint the Official Solicitor to represent her.

MR. JUSTICE MOSTYN: I do.

MR. LOCK: We accept the appointment, if the court will do so.

MR. JUSTICE MOSTYN: I do that.

MR. LOCK: Thank you.

MR. JUSTICE MOSTYN: Who represents her in the mental health proceedings, as a matter of interest? Some advocate, I expect.

MR. LOCK: My Lord, I am sure a very responsible and experienced mental health solicitor, but I am not able to assist your Lordship. We invite your Lordship to approach it in this way. First of all the question is: does she have capacity? She plainly does not, because there is evidence of delusional beliefs. We have thought carefully as to whether we ought to ask your Lordship to adjourn this so that we can get further into capacity, but given that this is the treating psychiatrist and she has been in his care since at least June of this year, there appears to be evidence, therefore, based on a fair amount of background information; not like a psychiatrist who has seen a patient on one occasion and just gives a view where there is always a concern that there may be some background that the psychiatrist was not fully aware of. This appears to be a reasoned report based on a good knowledge of the patient. Therefore we do not propose to ask your Lordship to adjourn.

MR. JUSTICE MOSTYN: No, I agree with that. I am struggling to envisage a circumstance where a patient detained under section 3 as an inpatient with a diagnosed mental illness has got capacity. It is possible, but I am struggling to imagine how it could happen.

MR. LOCK: Oh it could happen very easily.

MR. JUSTICE MOSTYN: Could it?

MR. LOCK: Yes, because if the mental health condition has been properly managed by drugs to a point where the patient is ----

MR. JUSTICE MOSTYN: On the point of being discharged, say.

MR. LOCK: Well, even not on the point of being discharged, but is managing well.

MR. JUSTICE MOSTYN: Okay. I take that point, but Dr. Adimulam is not describing her thus.

MR. LOCK: No, he is not. So, my Lord, for capacity there is a tick in the box. Best interests: my Lord, the one thing we were concerned about was the relationship between section 1(5) and section 1(6) of the Mental Capacity Act, because there is an argument to say the least restrictive option here would be to allow her to give birth naturally, if she was minded to do so and wanted to oppose the imposition of a caesarean, and that therefore if a decision has to be made, the way that is least restrictive of her rights and freedoms would be to proceed along the path of allowing a natural birth and then ----

MR. JUSTICE MOSTYN: Subsection (6) is subject to subsection (5). It is just that I must have regard to that.

MR. LOCK: Precisely.

MR. JUSTICE MOSTYN: But under (5) I must make it in the best interests.

MR. LOCK: That is exactly the point.

MR. JUSTICE MOSTYN: The Code of Practice says the final decision must be based entirely on what is in the person's best interests.

MR. LOCK: My Lord, that is the point I was going to come on to. In fact, what is in her best interests may not be the least restrictive because in this case it appears to us that the psychiatric evidence on page 2 of Dr. Adimulam and the evidence of the obstetrician is that it is in her best interests, if she is going to have a caesarean, for it to be in a planned way with the right amount of staff to support her and the right structure, rather than being done at a time that nobody could predict (some time over the next two or three weeks) when you have absolutely no idea whether you are going to have the right staff or not, and whether it is going to be safe or not. So, my Lord, to that extent, even

though it is not at first blush the most restrictive option, it would appear, on the evidence, to be the option that is in her best interests.

My Lord, the thing that concerns the Official Solicitor is the proposal of the local authority to use police powers under a Public Protection Order to take the child away, when Dr. Adimulam, as your Lordship will have seen from the bottom of page 1 - it is his other report.... It is the report of 14th August. Does your Lordship have that?

MISS BURNHAM: My Lord, it is immediately in front of the report that you have previously been looking at.

MR. JUSTICE MOSTYN: Yes, I have that.

MR. LOCK: At the bottom of that page: “Our multi-disciplinary team are of the view that AA lacks the skills to look after the baby in her current mental state. However, we have an optimistic view that after treating her mental disorder for a period of time, her skills can be reassessed. There is a possibility that she can gain her skills to look after the baby.” There is reference in that report, over the page, to “recommendation” that AA be given a fair chance to get treatment for her mental disorder at a Mother and Baby Unit and her baby is allowed to stay with her.

My Lord, what slightly concerns the Official Solicitor is that to invite your Lordship to make an order which has the effect of giving the green light to remove the baby permanently - or set in train removing the baby permanently when the medical evidence does not appear to support that, and without giving our client, Miss AA, the opportunity properly to have her case considered by --
--

MR. JUSTICE MOSTYN: It only lasts for a very short period of time. I am just looking at it - police protection orders in the Children Act, which is what they are referring to here.

MR. LOCK: My Lord, I am afraid I ----

MR. JUSTICE MOSTYN: Hang on one second.

MR. LOCK: Your Lordship is ahead of me. I do not even have a Red Book with me.

MR. JUSTICE MOSTYN: Do not worry. Just give me a second. I think it only lasts for 72 hours. Section 46: “Where a constable has reasonable cause to

believe a child would otherwise be likely to suffer significant harm he may remove the child to suitable accommodation..." and so on. "As soon as reasonably practicable after taking a child into police protection the constable shall inform the local authority..." - although they know all about it. "No child may be kept in police protection for more than 72 hours."

MR. LOCK: My Lord, we understand that the background to this - this is going beyond what your Lordship can do this afternoon - but the background is that the two children were removed on the basis of neglect, not on the basis of any intentional harm being undertaken. It is a bit difficult to see how Miss AA can neglect the child when she is on a Mother and Baby unit.

MR. JUSTICE MOSTYN: There would have to be demonstrated that the police - because it is the police who exercise the powers - have reasonable cause to believe the child would otherwise be likely to suffer significant harm in a Mother and Baby unit.

MR. LOCK: My Lord, precisely.

MR. JUSTICE MOSTYN: The thing is that it is a power that is given to the police. The local authority say to the police, "Would you mind exercising those powers?"

MR. LOCK: Yes.

MR. JUSTICE MOSTYN: It seems to me that what ought to be happening is that... The baby is due on a Saturday, is it not?

MR. LOCK: My Lord, I think the proposal is the due date is Saturday. The proposal is that the planned elective caesarean would be done tomorrow, Friday morning. But of course my client ----

MR. JUSTICE MOSTYN: She has been expressing the view how much she wants to hold the baby. The baby has not been born yet, so it is not within my jurisdiction, but your opponent will hear what I am saying. It seems to me that to have a policeman there to take the child away when it would be open for your opponent to come back in front of me tomorrow to ask for an interim care order, when you could be present representing her because she is incapacitated, to discuss whether that should happen or whether it should be phased or something like that.....

MR. LOCK: If your Lordship would be minded.

MR. JUSTICE MOSTYN: The child is not born. I have no jurisdiction over this unborn child. I am just saying that it would seem quite heavy-handed to have the police there at the time of the birth.

MR. LOCK: Could I invite your Lordship to possibly approach it in this way: to give an indication this afternoon that in principle you will make the order. I am not in a position to put a draft order before your Lordship, but the substance of the order ----

MR. JUSTICE MOSTYN: That is understood.

MR. LOCK: That your Lordship has drawn the attention of the local authority and the police to the specific provisions that need to be satisfied before the power can be exercised, and expressed ----

MR. JUSTICE MOSTYN: I am in fact the applications judge tomorrow.

MR. LOCK: Yes. If the local authority wish to apply for an interim care order for the child, that you will invite them to make that application to you on notice to the Official Solicitor who can represent Miss AA. If your Lordship were prepared to go that far, then that would entirely deal with it.

MR. JUSTICE MOSTYN: That is, I think, what I would do but it would only be advice.

MR. LOCK: Would your Lordship give me a moment? (Pause) My Lord, if your Lordship took that course, then on behalf of P (the patient) I do not think I can formally consent to any order, but I certainly do not oppose it and I can see the strength in it. We therefore invite your Lordship to approach it in that way if your Lordship is so minded.

MR. JUSTICE MOSTYN: Very good. I do not know very much about this. You know much more about this lady than I do, but I am just saying that I am here as the applications judge tomorrow and I do think.... I have had cause in other cases to criticise the exercise of the police protection power and I think it would be better - it is only a thought - that if it could be done in front of me on notice to the Official Solicitor ----

MISS BURNHAM: My Lord, that will be communicated and perhaps helpfully I do not represent the Local Authority. I am here for the Trust.

MR. JUSTICE MOSTYN: You are here for the Health Trust. Could you make sure - is it Essex County Council?

MISS BURNHAM: My Lord, I believe it is Essex County Council.

MR. JUSTICE MOSTYN: It must be.

MISS BURNHAM: My Lord, I assume so, although it is Mid-Essex Trust. I do not think there is more than one County Council in Essex. So I will ensure that the order I- and I anticipate the way my learned friend outlined it, what I would propose to do because I am very happy to undertake to prepare the draft before the perfected order is to put that in the order by way of preamble.

MR. JUSTICE MOSTYN: But she is not going to know about this order, is she?

MISS BURNHAM: My Lord, no she would not.

MR. JUSTICE MOSTYN: She should not know about this order before she is taken, and goes to hospital.

MR. LOCK: My Lord, if it assists, it would be perfectly appropriate to include in the terms of the order that the substance of it shall not be communicated to the patient until after ----

MR. JUSTICE MOSTYN: Until after ----

MR. LOCK: ---- the operation. If she disagrees with it she can apply afterwards to discharge it.

MR. JUSTICE MOSTYN: Yes, that is right. So in those circumstances it is appropriate that.... Thank you very much.

(For judgment see separate transcript)

MR. JUSTICE MOSTYN: There will be an order drawn up by Miss Burnham.

MISS BURNHAM: My Lord, yes. About the order, ought I to email it to your clerks at your address for your approval? I had anticipated that my learned friend and I will make ----

MR. JUSTICE MOSTYN: My clerk will be gone. It is ten to five. You need the order made tonight.

MISS BURNHAM: My Lord, yes.

MR. JUSTICE MOSTYN: You know exactly what it needs to say. The two of you will agree it and you will email it straight to the Associate. If he has got any issues with it, he will bring it up to me.

MR. LOCK: Before your Lordship rises, it is usual in these orders invariably to order that the applying Trust pays one half of the Official Solicitor's costs.

MR. JUSTICE MOSTYN: That seems reasonable. Yes. Thank you very much.

Order

Proposed Proceedings

IN THE COURT OF PROTECTION

Before The Honourable Mr Justice Mostyn (sitting as a Judge of the Court of Protection) sitting in chambers at The Royal Courts of Justice, Strand, London WC2A 2LL on Thursday 23rd August 2012.

IN THE MATTER OF THE MENTAL CAPACITY ACT 2005

AND IN THE MATTER OF AA (D.O.B. 14.07.1978)

BETWEEN:

MID-ESSEX HOSPITAL SERVICES NHS TRUST

The Applicant in an intended application

- and -

AA

(By her litigation friend the Official Solicitor)

The Respondent in an intended application

UPON hearing counsel for the Applicant and leading counsel for the Respondent instructed by the Official Solicitor;

AND UPON the court considering letters concerning the Respondent from the Locum Consultant Psychiatrist, Dr R. Adimulam, dated 14th August 2012 and 20th August 2012 and an unsigned witness statement from the consultant obstetrician, Dr Spencer concerning:

1. The Respondent's capacity to consent to a proposed elective caesarean section operation; and
2. Whether it would be in the Respondent's best interests for the Applicant's clinicians to carry out a planned elective caesarean section on the Respondent, such operation being anticipated to be carried out within 24 hours of the making of this order.

AND UPON the learned Judge expressing the following views and requiring the following matters to be drawn to the attention of the relevant local authority, Essex County Council, who were not a party to this application and were not represented before the court:

- (a) That the local authority's proposal to invite the police to use their powers under s.46 of the Children Act 1989 to remove the Respondent's child arguably did not appear to the Judge, on the information presently before him, to be within the powers provided by that section and, in any event, appeared to him to be "heavy handed" and/or may result in a significant deterioration in the Respondent's mental state;
- (b) That in the event that the Essex County Council were minded to make an application in respect of the child to be born to the Respondent, it would be appropriate and the Judge would invite:
- i) any such application to be by way of an application for an interim care order under s.38(8) of the Children Act 1989;
 - ii) any such application to be made on notice to the Official Solicitor; and
 - iii) that such an application be made to The Honourable Mr Justice Mostyn, sitting as the Urgent Applications Judge in the Family Division of the High Court, The Royal Courts of Justice, Strand, London WC2A 2LL on 24th August 2012 at 10.30am (time estimate 30 minutes), subject to confirmation with the Clerk of the Rules.

AND UPON the Judge indicating that such a process would enable the Respondent to be represented by the Official Solicitor and would enable the court to consider whether the child's welfare required any order to be made and if so what order;

AND UPON all parties acknowledging that these proceedings are private in accordance with r.90 of the Court of Protection Rules 2007.

IT IS ORDERED THAT:

1. Upon being invited to do so by the court and upon the Official Solicitor accepting that invitation, the Official Solicitor is appointed to act as the Respondent's litigation friend within these proceedings.
2. Permission is granted to Applicant NHS Trust to make an application in the same terms as the oral application made today.
3. Save that witness statements shall be prepared and served on the Official Solicitor setting out the substance of the matters referred to by the Applicant's counsel on instructions, the requirements in the Court of Protection Rules 2007 for the Applicant to file and serve the relevant application forms and notices is hereby waived.
4. Save as provided herein, no information or documents filed in these proceedings shall be disclosed to any person other than to a person who is required to have such information for the purpose of providing care or treatment to the Respondent without the permission of the Court.
5. The terms of this order shall not be disclosed to the Respondent until after the medical procedure described below has been completed.
6. Essex County Council shall be served with a copy of this order as a matter of urgency.

AND IT IS DECLARED THAT:

1. The Respondent lacks the capacity to make decisions in respect of the following:
 - a. Consent to medical treatment relating to the delivery method of her baby, her ante-natal and post-natal treatment, the birth plan and related clinical matters;
 - b. This litigation.
2. It is lawful and in the Respondent's best interests for the Respondent's baby to be delivered by means of planned/elective caesarean section, which operation shall be scheduled to take place tomorrow 24th August 2012, under sedation by general anaesthetic if deemed appropriate by the relevant clinicians and with the use of reasonable restraint if the same is also deemed necessary and appropriate.

AND IT IS FURTHER ORDERED AND DIRECTED THAT:

1. There be general liberty for any party to apply on written notice to the parties of any application to vary or discharge this order or seek further directions.
2. Costs reserved save that Applicant will pay half of the Official Solicitor's costs of this application to be assessed on a standard basis if not agreed.

Dated this 23rd day of August 2012