

Re SA (Vulnerable adult with capacity: marriage)

[2005] EWHC 2942 (Fam)

15/12/2005

Barristers

Teertha Gupta KC

Court

Family Division

Summary

The court exercised a jurisdiction in relation to incompetent adults which was for all practical purposes indistinguishable from its well-established *parens patriae* or wardship jurisdictions in relation to children.

Facts

The applicant local authority applied to the court to invoke its inherent protective jurisdiction in respect of a vulnerable adult (S). S had just attained her majority. She was deaf and unable to speak and communicated by British sign language. Communication within her family was limited as her parents spoke only Punjabi. S functioned at the intellectual level of a 13 or 14-year-old, with a reading age of seven or eight. While S was still a child the court exercised its inherent jurisdiction to protect her from the risk of an unsuitable arranged marriage. The issue in the instant application was whether the court had jurisdiction to continue that protection now that S was an adult. Expert evidence was that S had capacity to marry, having an understanding of the concept of marriage, including a sexual relationship. However, S would have difficulty understanding a specific marriage contract to a specific individual involving a change in her country of residence. S did not want to live in Pakistan. The local authority argued that S needed the continuing protection of the court.

Held

HELD: S was to be properly informed, in a manner she could understand, about any specific marriage prior to entering into it. The court exercised a protective jurisdiction in relation to vulnerable adults just as it did in relation to wards of court. The inherent jurisdiction was not confined to cases where a vulnerable adult was disabled by mental incapacity from making his own decision or where an adult was unable to communicate his decision. The inherent jurisdiction could be exercised in relation to a vulnerable adult who, even if not incapacitated by mental disorder, was either under constraint, subject to coercion or undue influence or otherwise deprived of the capacity to make the relevant decision, disabled from making a free choice, or incapacitated from giving or expressing a real and genuine consent. S was a vulnerable adult who might, by reason of her disabilities, be unable to make a free choice or express a real and genuine consent. There was a need to intervene to protect her from the harm she would suffer if she went through a marriage ceremony with which she did not in fact agree. It

was thus right to exercise the court's protective jurisdiction over S.

Application granted

Permission

Lawtel 