

## Cognitive assessments – a reminder from the High Court.

### **West Northamptonshire Council v The Mother (Psychological Assessments) [2024] EWHC 395 (Fam)**

Lieven J has published a judgment concerning applications for cognitive assessments in care proceedings. It acts as a timely reminder on the legal test for such applications.

#### The background

Within this case, the Court was concerned with an application for a cognitive assessment made on behalf of the mother. A few minutes before the hearing commenced, the mother's solicitor informed the Court that he was seeking to withdraw the Part 25 application. The Court decided to not allow the application to be withdrawn and have a reasoned decision.

The Court stated that *it is not acceptable for court time and public funds to be wasted by decisions to withdraw applications being made so late*. The Court also noted that every skeleton argument / position statement was submitted late. This places an *undue burden on judges and causes quite unnecessary delays*.

There was nothing in the interim threshold or social work evidence that suggested the mother suffered from cognitive impairment or significant communication difficulties.

The Part 25 application stated *a cognitive assessment will provide valuable insight to parties regarding how hearings or cross examination should be conducted in respect of the mother and whether she will require any assistance within proceedings moving forward*.

There was minimal evidence submitted in support of the application indicating why the solicitor believe that the mother required an assessment. Lieven J noted the importance of this given the 'necessity' test. The lack of supporting evidence together with the late proposed withdrawal indicated that the application should never have been made.

The statement in support stated *the mother is deemed vulnerable due to her age, past experiences and mental health issues. She has indicated she struggles with engaging within professional meetings and retaining information*.

Lieven J, in relation to this, stated as follows: *"It hardly needs stating that these three matters are exceedingly common in care proceedings, and do not begin without further detail, to justify a psychological assessment. An application under Part 25 for a psychological/cognitive assessment must be accompanied by proper evidence which explains why the case goes*

*beyond the standard difficulties faced by many parents in care proceedings. The evidence must explain why the parent's needs cannot be properly managed by careful use of language and the professionals taking the time to explain matters in an appropriate manner. The evidence must address why such an assessment is necessary rather than just something that would be "nice to have".*

Counsel for the mother stated the application had been made as a "belt and braces" approach at a point when neither he nor the solicitor had met the mother but earlier counsel had.

### Positions of the parties.

The local authority resisted the application. They had not noted any issues with her cognitive functioning nor had this been pointed out by any of the other professionals working with the mother. The local authority confirmed they would take care not to use professional jargon in meetings with the mother and take steps to ensure she understood and retained information.

The children's guardian provided a skeleton argument which confirmed that she was content that the mother had understood their discussions and was able to explain her understanding of the written agreement. The only observation was that people working with the mother may need to spend more time with her and explain things in simple language. The skeleton argument referred to the relevant law and guidance. However, the guardian's position was neutral.

In relation to the neutrality, the Court said this: "It is in my view unfortunate that the Guardian and her solicitor stated they were "neutral". It is quite clear from the Skeleton that the Guardian did not consider the test of necessity in Part 25 to have been met, but still remained neutral on the application. Guardians, and the Children's solicitors, play an important role in care proceedings in ensuring that the interests of the child are met by minimising delay and maximising the efficient use of resources, in particular by assisting the Court to "Make Cases Smaller", see the President of the Family Division's *The Road Ahead*. If it is clear to the Guardian and the Child's solicitor that an application should be refused, then they should make that clear to the Court.

### The law

Part 25.43 FPR states: *the court may give permission only if the court is of the opinion that the expert evidence is necessary to assist the court to resolve the proceedings.*

The meaning of necessary was considered in *Re HL (A Child)* [2013] EWCA Civ 655 where the Court stated: *"The short answer is that 'necessary' means necessary. It is, after all, an ordinary English word. It is a familiar expression nowadays in family law, not least because of the central role it plays, for example, in Article 8 of the European Convention and the wider Strasbourg jurisprudence. If elaboration is required, what precisely does it mean? That was a question considered, albeit in a rather different context, in Re P (Placement Orders: Parental Consent)* [2008] EWCA Civ 535, [2008] 2 FLR 625, paras [120], [125]. *This court said it "has a meaning lying somewhere between 'indispensable' on the one hand and 'useful', 'reasonable'*

*or 'desirable' on the other hand", having "the connotation of the imperative, what is demanded rather than what is merely optional or reasonable or desirable." In my judgment, that is the meaning, the connotation, the word 'necessary' has in rule 25.1 ."*

Another important consideration is the Advocates Gateway and the requirement for all those working with parents in care proceedings to be sensitive to their needs. It would only be appropriate to order a psychological assessment if the approach within the gateway was insufficient.

### Conclusions

The application was dismissed. The application did not come close to meeting the test of being necessary to resolve the proceedings.

Lieven J stated as follows: *"It will often be the case that parents may struggle to absorb information, to understand the proceedings and to concentrate through meetings and hearings. However, the solution to this problem is not, in the majority of cases, to have cognitive assessments and appoint intermediaries. It is for all the professionals involved, including lawyers and judges, to bear closely in mind the need to use simple language, avoid jargon, and where appropriate check that a litigant has understood what is being said. That is all set out in the Advocates Gateway."*

**A test of necessity does not mean that a report would be "nice to have" or might help in determining what psychological support the parent might need in the future. That is not necessary to resolve the proceedings.**

This case serves as a timely reminder to practitioners as to the test for expert assessments in care proceedings. It may now be the case that Courts scrutinise these applications with rigour.

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