



## **PRESS RELEASE - FOR IMMEDIATE RELEASE**

**5 May 2020**

### **COURT ORDERS DYING WOMAN TO BE REUNITED WITH HER FAMILY**

The Court of Protection ordered that an elderly woman ('AO') with terminal cancer should be allowed to leave a care home to live with her daughter for the last weeks of her life. The care home was not allowing any visitors, except for a single, short, end of life visit to "say goodbye", due to the government guidance issued for care homes under the coronavirus emergency.

AO had a large and loving family that lived about an hour away. Her daughter, VE, applied to the Court of Protection because she wanted her mother to live with her. She feared that her mother would die alone and afraid in the care home. AO, who was originally from Nigeria, spoke very little English and found it difficult to communicate with her carers. The Royal Borough of Greenwich – the local authority funding AO's care – opposed the application to Court and wanted AO to stay in the care home for her own safety, despite concerns expressed by the family that she could contract coronavirus in the care home which could further shorten her life.

Greenwich had placed AO in the care home in 2010. Although the Court of Protection, in 2010, had approved the decision to place her there, Greenwich provided no evidence in the recent case that they had reviewed AO's mental capacity or her placement in the intervening ten years. Such placements should be reviewed, under the Deprivation of Liberty Safeguards, at least every year.

AO's daughter, VE, refused to allow her mother to return to the care home after she had visited the family home over Christmas, when she noticed that AO had a very large swelling in her abdomen. AO's daughter arranged for her to be seen by a GP and then a specialist. She was admitted to hospital and diagnosed with stage 4 cancer. A dispute arose between Greenwich and AO's daughter about whether AO should return to the care home or be allowed to spend her final weeks with her daughter. She was returned to the care home, following an initial hearing in the Court of Protection, before the case was transferred to be heard before a High Court Judge.

The Court of Protection makes decisions for people who have been found to lack mental capacity to make decisions for themselves. Despite the current lockdown, the Court of Protection is still having to make difficult and urgent decisions. It is mainly operating through remote hearings.

The final hearing of AO's case was before a High Court Judge over Zoom on 20 April 2020. The Judge made an order that AO should be allowed to leave the care home immediately. Her family, who cannot be named for legal reasons, went to pick her up and take her home as soon as the hearing finished.

In her written judgment following the hearing, Mrs Justice Lieven said: "The ability to die with one's family and loved ones seems to me to be one of the most fundamental parts of any right to private or family life...it would seem to me self-evident that such a decision by the state that prevents someone with a terminal disease from living with their family, must require a particularly high degree of justification under article 8(2) [of the European Convention on Human Rights]."

Two days after returning to her family AO died surrounded by her daughter and grandchildren.

VE, AO's daughter, said: "Although I am very distressed at the loss of my mother, it gives me some comfort to know that she could see the family at the end of her life. She was surrounded by our love when she died. I should not have had to fight so hard for this basic human right"

Monica Kreel, the solicitor for VE, said: “Residents of care homes and their families are dealing with traumatic circumstances under the current coronavirus emergency. Visits to care homes have been stopped at a time when residents are very anxious and need support from their families to stay safe. For each and every care home resident, it is vitally important that their human rights, including their right to have adequate family contact, are upheld. This is particularly important for residents at the end of their lives. If face-to-face contact is stopped, it should be justified in each case.”

#### **NOTE TO EDITORS:**

1. VE, the applicant in the case is represented by solicitor Monica Kreel of TV Edwards LLP (0203 440 8173 or [monica.kreel@tvedwards.com](mailto:monica.kreel@tvedwards.com)) and by barrister Alev Giz of 1GC Family Law .
2. Under an injunction from the Court of Protection, the identity of AO, VE or other family members, or any information that would lead to their identities being known, must not be disclosed.
3. Guidance issued by the Department of Health and Social Care on 2 April 2020 asked care homes to accept patients discharged from hospital to free up hospital beds as quickly as possible. It stated that a negative test result for coronavirus was not required prior to the discharge of a patient into a care home. The same guidance states that family and friends should be advised not to visit care homes, except “next of kin in exceptional situations such as end of life”. The care home in this case made it clear that they would allow only one family member to have one short visit close to the point of death.
4. Government guidance of 19 March 2020 for care homes stated that “new PPE must be used for each episode of care.” However, care homes are reporting that they do not have adequate PPE to ensure that this happens.

5. Between 10 April and 24 April, the Care Quality Commission recorded 4,343 deaths involving Covid-19 in care homes in England.

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