

**CITATION:** *MLB* [2015] QCAT 22

**PARTIES:** MLB

**APPLICATION NUMBER:** GAA10477-14; GAA10478-14;<sup>1</sup> GAA10484-14;  
GAA10485-14; GAA522-15; GAA523-15;  
GAA524-15; GAA525-15

**MATTER TYPE:** Guardianship and administration matters for adults

**HEARING DATE:** 19 January 2015

**HEARD AT:** Brisbane

**DECISION OF:** **Member Casey**

**DELIVERED ON:** 19 January 2015

**DELIVERED AT:** Brisbane

**ORDERS MADE:**

1. **The Public Guardian is appointed as guardian for MLB for decisions about the following personal matters:**
  - a) **with whom MLB has contact and/or visits.**
2. **This appointment remains current until further order of the Tribunal. The appointment is reviewable and is to be reviewed in 2 years.**
3. **The Public Trustee of Queensland is appointed as administrator for MLB for all financial matters.**
4. **The administrator is to provide a financial management plan to the Tribunal within 3 months.**
5. **The Tribunal directs the administrator to provide accounts to the Tribunal when requested.**
6. **This appointment remains current until further order of the Tribunal. The appointment is reviewable and is to be reviewed in 2 years.**
7. **Before 19 April 2015 the administrator must:**
  - a) **Search the records of the Registrar of**

- Titles to identify any property registered in the adult's name.**
- (b) Give the Registrar of Titles a notice on their prescribed form and a copy of this decision advising the Registrar that any interest in property held by the adult is subject to this order.**
- (c) Give to the Tribunal:**
- (i) a copy of the "Lodgement Summary Form" from the Titles registry confirming the notice has been lodged for each property held by the adult; and**
- (ii) a copy of the current title searches.**
- 8. If the ownership of any property of the adult changes in any way or the adult acquires an interest in another property the administrator must, within 14 days of such changes:**
- (a) give a copy of this order to the Registrar of Titles and**
- (b) give a notice to the Registrar about the changes or the adult's interest in another property.**

**CATCHWORDS:**

Guardianship and administration matters for adults – capacity of adult – need for guardian and administrator – appropriateness of appointees

*Powers of Attorney Act 1998 (Qld)*

*Guardianship and Administration Act 2000 (Qld)*

**APPEARANCES and REPRESENTATION (if any):**

The following parties attended the hearing:

MLB	adult
GKM	advocate for adult from Queensland Aged and Disability Advocacy, (QADA)
YDG	applicant and partner/friend
WA	support for YDG (Carers Queensland)
WCJ	applicant and sister
BSM	applicant and sister (attended by telephone)
SP	applicant and friend
MLM	applicant and friend (attended by telephone)
WP	brother in law
BL	brother in law (attended by telephone)
DN	observer, (QADA)

## REASONS FOR DECISION

### History of the Application

- [1] MLB (the adult), is a 69 year old woman who lives alone in her home in a northern Brisbane suburb, having returned to her residence after being hospitalized due to a cerebro-vascular accident (CVA / 'stroke') in October 2014.
- [2] On 19 November 2014 the Tribunal received an application from YDG, the adult's partner/friend, seeking the joint appointments of SP and MLM, friends of the adult and YDG, as guardians and administrators for the adult, whilst also submitting formal decision-makers were not required. In subsequent correspondence to the Tribunal YDG stated the proposed appointments were not warranted and that he did not want the matter to proceed to hearing.
- On 19 November 2014 the Tribunal also received an application from WCJ and BSM, the adult's sisters, seeking their joint appointments as guardians and administrators for the adult. In subsequent correspondence to the Tribunal WCJ and BSM submitted they were no longer seeking appointment and were, instead, proposing the appointments of the Public Guardian as guardian and the Public Trustee of Queensland as administrator for the adult.
- [3] On 14 January 2015 the Tribunal received separate applications from SP and MLM seeking their joint appointments as guardians and administrators for the adult.
- [4] The matters were heard on 19 January 2015.

### The Legislation

- [5] The issues for the Tribunal, based upon the legislation, are:
- a) Does MLB have capacity to make personal and/or financial decisions?
  - b) Is there a need for a guardian to be appointed? If so, who is the most appropriate person for appointment?
  - c) Is there a need for an administrator to be appointed? If so, who is the most appropriate person for appointment?
- [6] The Tribunal is required to determine capacity as at the date of hearing in accordance with section 12 of the *Guardianship and Administration Act 2000* (GAA Act) as the Tribunal must be satisfied that the adult has impaired capacity before it can further consider the applications for the appointment of a guardian and administrator for the adult.
- [7] MLB is presumed to have capacity in accordance with section 7 of the GAA Act and General Principle 1 of Schedule 1 under the GAA Act.

The Tribunal will consider the medical evidence and submissions from the parties to determine if the presumption of capacity has been rebutted for the adult.

[8] The GAA Act defines capacity as follows:

Capacity for a person for a matter, means the person is capable of-

- (a) understanding the nature and effect of decisions about a matter; and
- (b) freely and voluntarily making decisions about the matter: and
- (c) communicating the decisions in some way.

[9] The Tribunal, when considering the appointment of a guardian or administrator, must be satisfied not only in regard to capacity, but also of the other matters set out in section 12 of the GAA Act.

[10] If the Tribunal determines that there is a need for the appointment of a guardian and/or administrator for MLB, the Tribunal, in deciding who to appoint in those roles, will, in accordance with subsection 14(1)(c) of the GAA Act, have regard to the appropriateness considerations set out in section 15 of the GAA Act.

### **The evidence**

[11] In addition to written material contained on the Tribunal's file, all of the parties attending the hearing were given the opportunity to express their views. The views, where specifically relied upon by the Tribunal, are outlined below.

### **Does MLB have capacity to make personal and/or financial decisions?**

[12] The Tribunal had the benefit of medical evidence dated 18 November 2014, when the adult was in Royal Brisbane and Women's Hospital (RBWH) in the acute phase of her recovery from the CVA, to the recent evidence dated 16 January 2015 by Dr Catherine Yelland, Consultant Geriatrician and Director of Medicine and Older Persons Unit at Redcliffe Hospital.

[13] In his report dated 18 November 2014, Dr Neil Raffelt, a resident medical officer at RBWH, who last saw the adult on 17 November 2014, states that the adult sustained a haemorrhagic CVA on 27 October 2014 that resulted in receptive and expressive dysphasia, rendering the adult able to communicate by '*looks and gazes only*'. The adult was unable to understand relevant information or appreciate the consequences of decision making for lifestyle and accommodation choices, and was unable to make all financial decisions. Dr Raffelt states the adult was unable to understand the criteria necessary to make an Enduring Power of Attorney and was incapable of making decisions freely and voluntarily.

[14] In her report dated 16 January 2015 Dr Catherine Yelland, who had reviewed the adult one day earlier, stated the adult communicates using speech with gestures, however severe receptive and expressive aphasia

persists. Dr Yelland provided the opinion that while the adult is able to make simple personal and financial decisions, she is not capable of making complex personal and financial decisions due to the severity of the aphasia. Similarly, Dr Yelland did not consider the adult able to understand the criteria necessary to make an Enduring Power of Attorney.

- [15] In a letter dated 16 January 2015 to Dr Penny McBride, the adult's general practitioner, Dr Yelland provides details of the adult's inpatient treatment, subsequent transfer to a rehabilitation facility and the adult's current living arrangements having been discharged to return to her own home in late December 2014. The letter includes recent information, dated 12 January 2015, from Amy Manteit, a speech pathologist, including that the adult has severe expressive and comprehension language difficulties, presenting with *'fluent but relatively empty speech and can inconsistently name object/pictures at about 40% accuracy'*. She uses *'non-specific phrases to communicate but requires increased support to communicate basic daily needs. She has severe difficulty comprehending yes/no questions and does not have a consistent yes/no answer'*. She further states the adult recently achieved 10% accuracy on recognizing single spoken words, and that the adult has *'difficulty comprehending all spoken language'*. Dr Yelland writes that, due to the aphasia, the adult is not able to describe her routine household expenses and income, is *'unable to do very simple arithmetic and could not read except at the occasional single word level'*. Dr Yelland provides the opinion that the adult *'needs a financial administrator appointed'*.
- [16] In her evidence to the Tribunal MLB stated *'I live in my own home', 'I do a lot myself', 'I've done an awful lot'* and *'easy'*. Her utterances were stereotypical and repetitive, despite varied closed- and open-ended questioning in relation to her personal and financial matters. She did, however, shake her head, frown and attempt to verbalise a response when asked to provide her views in relation to contact with family members.
- [17] GKM, an advocate for the adult, submitted that the adult is happy with the assistance of YDG, whom the adult describes as *'a very good friend'*, and that MLB does not want a guardian or administrator.
- [18] When asked about the adult's decision-making and communicative ability, YDG provided inconsistent and contradictory evidence to the Tribunal. He submitted the adult could make her own decisions, given sufficient time for discussion. He gave an example of the adult deciding to pay a rates bill on her property, after two days of discussion with him. He stated this method of decision-making had also occurred in relation to the repair of hail damage to both her vehicle and her home, by the adult asking how he was going to fix the items. Similarly, YDG stated the adult had made a decision about a holiday by asking him when they were going to have a holiday together.
- [19] The Tribunal asked YDG if he had any information regarding the adult's email to the Tribunal dated 17 November 2014. The email consists of

complex vocabulary and sophisticated grammatical structure, at a time when Dr Raffelt from the RBWH had assessed the adult as being able to communicate by looks and gazes only. For example, the email contains language '*please be advised that I most definitely do not approve of this application under any circumstances*' and '*I hereby request the application for administration / guardianship by WCJ be rejected forthwith*'. In response, YDG submitted the adult '*compiled*' the email '*over days*' during weekend leave from the rehabilitation facility, after having been transferred from RBWH, and that, therefore, the electronic date on the email would have been incorrect.

- [20] YDG acknowledged he has been providing much assistance to the adult both within her home and in the community. He stated he had organized for an emergency response system to be installed within the adult's home along with a speed dial on a telephone. He has assisted the adult with banking, shopping, bill-paying and attending appointments. He had organized a re-assessment of the adult by the Aged Care Assessment Team (ACAT), which took place after hospital discharge, which resulted in the adult being assessed as eligible to receive support from service providers within her home and to access the community.
- [21] He told the Tribunal he had re-instated the adult's bank accounts, after they had been '*frozen*' without his or the adult's knowledge, by transporting the adult to her local banks, where she was well-known, and initiating '*pay wave*' cards with monetary limits for single purchases, reducing the risk of the adult inadvertently spending larger sums of money as a consequence of her aphasia.
- [22] He submitted that, despite the level of support and assistance he currently provides to the adult, MLB is making her own decisions and therefore does not require a guardian or an administrator. In his correspondence to the Tribunal dated 13 November 2014 YDG stated the '*primary reason*' he submitted the application to QCAT was '*to prevent (the adult's) oldest sister*' (WCJ) '*from exercising her control agenda*'.
- [23] BSM and WCJ confirmed their view the adult required a guardian and an administrator. They stated they were unaware of the details of the adult's current communicative ability as they had not spoken with the adult since November and December respectively, in accordance with the adult's wishes.
- [24] SP supported the submissions of YDG, providing the opinion that MLB is able to make decisions '*over time*', and that, as the adult no longer works, she has the time available to her to make her decisions. Conversely SP submitted YDG '*looks after everyday things that (the adult) can't*' and gave an example of YDG attending to the adult's rates notice.
- [25] MLM submitted that some decisions '*cannot wait*' and that YDG presently makes these decisions.

## Conclusion

- [26] The Tribunal finds that while YDG believes the adult has the ability to make decisions and construct complex written language, the recent evidence of Dr Catherine Yelland, (a consultant geriatrician), that had regard to the adult's current communicative status as described by a speech pathologist, does not, on any reasonable or objective basis, justify such a belief. The evidence is that MLB has significant persistent communicative deficits in the form of severe expressive and receptive aphasia as a consequence of a CVA sustained in October 2014.
- [27] MLB has severe difficulty comprehending spoken language. Due to the severity of her impaired auditory and reading comprehension she is unable to understand the nature and effect of decisions in relation to personal and financial matters.
- [28] Whilst her verbal expression is fluent, the adult's significantly impaired naming ability adversely impacts on the content of her utterances, creating '*empty*' speech. Due to the severity of the adult's expressive language deficits she is unable to communicate decisions about her personal and financial matters.
- [29] Having regard to the medical and oral evidence the Tribunal is satisfied that the presumption contained in the GAA Act that MLB has capacity for personal and financial matters is rebutted. The Tribunal concludes that MLB, due to her severe deficits in comprehension and expression, cannot understand the nature and effect of decisions about her personal matters and financial matters and is unable to communicate decisions in relation to her personal and financial matters.

### **Is there a need for a guardian to be appointed?**

- [30] The evidence pertaining to the adult's personal circumstances follows.
- [31] In the absence of a formal decision-maker the adult has engaged with her medical and allied health teams to receive in-patient treatment, and has transferred from RBWH to the rehabilitation facility to be ultimately discharged to her own home in December 2014. She stays with YDG at his home for a period of some days during most weeks.
- [32] MLB has been receiving extensive informal support and assistance from YDG, along with formal support from Burnie Brae, a non-government organisation, to attend to domestic tasks and to access the community. She has accessed medical care by attending appointments with support, and has received allied health services within her own home. The adult has been referred to outpatient speech pathology and occupational therapy at a north Brisbane Queensland Health facility. YDG is the adult's Statutory Health Attorney.
- [33] The Tribunal determines the current informal decision-making arrangements in relation to the adult's accommodation and provision of

services are appropriate as the adult's needs are being met and her interests are being protected.

- [34] The Tribunal also determines the Statutory Health Attorney regime, (i.e. for decisions in relation to health care matters), is working in the adult's best interests and is promoting and maintaining the adult's health and wellbeing, whilst being the least restrictive option. The Tribunal determines the Statutory Health Attorney regime is appropriate in the current circumstances.
- [35] In the period prior to the adult's hospitalization, the adult enjoyed contact with WCJ, BSM and their families, however the adult appears to have changed her view in relation to contact with family members during and since her hospitalization. Members of the adult's family are seeking contact with the adult and to resume their relationships with her. Their recent efforts have been unsuccessful, due to the adult's expressed wishes to discontinue contact, along with the interventions of YDG that have included conversations, text messages and threats of initiating a '*protection order*'.
- [36] The Tribunal determines there is a need for an appointed decision-maker in relation to with whom the adult has contact and/or visits, particularly with reference to decisions about contact with family members who have previously enjoyed regular forms of contact and positive supportive relationships with the adult in the period prior to the adult's CVA.

## **Conclusion**

- [37] Pursuant to s 12 of the GAA Act the Tribunal is satisfied that in relation to accommodation, provision of services and health care, the adult's needs are being met and her interests are being protected without the appointment of a guardian.
- [38] Furthermore, the Tribunal concludes there is a need for decisions about with whom the adult has contact and/or visits. There must be an adequate and effective decision-making regime in place for MLB in relation to contact decisions, as otherwise her needs will not be met and her interests will not be protected.

## **Who is the most appropriate person for appointment as guardian?**

- [39] The options for appointment as the adult's guardians are SP and MLM or the Public Guardian. YDG is not seeking appointment.
- [40] WCJ and BSM maintained their view an independent guardian should be appointed, and confirmed they sought the appointment of the Public Guardian.
- [41] In their evidence to the Tribunal SP and MLM stated they had known the adult and YDG for over 30 years. SP described herself and MLM as friends of the adult and YDG, being '*the standard people you always*



*invite* and that *'we always get invited to their functions'*. She stated there was a *'level of rapport and trust'* between themselves, the adult and YDG. Neither SP nor MLM enjoys a similar relationship with members of the adult's family.

- [42] MLM confirmed her application to be appointed with SP as the adult's guardian.
- [43] SP submitted she has qualifications in counselling and that she and MLM *'could step in to stop disruption'* between the adult and her family members. She suggested this would be done by email.
- [44] In their applications to the Tribunal SP and MLM made allegations about recent actions of the adult's family members towards the adult. The submissions of the proposed appointees echo those of YDG. In their individual applications the proposed appointees raised unsubstantiated allegations that WCJ *'wants to sell her house and put her in an old people's home so she can use the money herself'*.
- [45] In deciding if someone is appropriate for appointment as a guardian for the adult the Tribunal must consider the appropriateness considerations provided in section 15 of the GAA Act.
- [46] Section 15(1)(c) provides the Tribunal must consider the extent to which the adult's and person's interests are likely to conflict. Section 15(1)(a) provides the Tribunal must consider the likelihood of proposed appointees applying the General Principles. General Principle 8 contained within Schedule 1 of the GAA Act provides that the importance of maintaining an adult's existing supportive relationships must be taken into account by decision-makers.
- [47] The evidence is there has been conflict and poor communication processes between the adult's family members and YDG in relation to with whom the adult has contact and/or visits. In contrast, YDG enjoys a long-standing friendship with SP and MLM. The appropriateness considerations set out in section 15(1)(c) of the *Guardianship and Administration Act 2000* provide that the Tribunal must consider the extent to which the adult's interests are likely to conflict with those of a proposed guardian and/or administrator. Having regard to the appropriateness considerations the Tribunal is not satisfied SP and MLM would effectively consult with members of the adult's family and objectively determine the nature and extent of contact and/or visits the adult would have with members of her family without a conflict of interest, due to their long-standing friendship with YDG and against a background of their recently expressed allegations directed towards the members of the adult's family with whom they do not have a comparable long-standing friendship.
- [48] On balance, the Tribunal does not consider SP and MLM would be able to discharge decision making for the adult in a way that was consistent with the legislative requirements, including the General Principles. The Tribunal is therefore not satisfied SP and MLM are appropriate

appointees in relation to section 15 of the GAA Act.

- [49] The Tribunal is of the view that an independent guardian is the only entity capable of complying with the General Principles, and would therefore be better placed to liaise with all interested parties, assess the relative merits of options for decisions on personal matters and make decisions that best meet the adult's needs. In this respect, as the Adult Guardian is an independent decision maker with extensive skills and experience.

### **Conclusion**

- [50] The Tribunal is satisfied the Public Guardian is the most appropriate appointee and appoints the Public Guardian as guardian for MLB to make decisions about the following matters: with whom the adult has contact and/or visits.
- [51] This appointment remains current until further order of the Tribunal. The appointment is reviewable and is to be reviewed in 2 years.

### **Is there a need for an administrator to be appointed?**

- [52] In his evidence to the Tribunal YDG provided information in relation to the adult's financial circumstances.
- [53] MLB's assets include a residential property in Banyo, superannuation with Sunsuper, and cash assets held solely in accounts in the adult's name at two banks. Other assets include house contents, a vehicle and personal items.
- [54] The adult's income consists of a part-pension, regular income from Sunsuper and a small income from her Avon business.
- [55] Expenditure includes outgoings on the Banyo property and the vehicle, along with medical and living expenses.
- [56] The adult has two credit cards, one from each bank. YDG stated the adult has no liabilities. He provided inconsistent evidence in relation to the new 'pay wave' function being in relation to debit or credit accounts.

### **Conclusion**

- [57] MLB has income, assets (including real property) and expenditure that require management.
- [58] Pursuant to s 12 of the GAA Act the Tribunal is satisfied there is a need for decisions in relation to financial matters. There must be an adequate and effective decision making regime in place for MLB as otherwise her needs will not be met and her interests will not be protected.

### **Who is the most appropriate person for appointment as administrator?**

- [59] The options for appointment as the adult's administrators are SP and MLM or the Public Trustee of Queensland. YDG is not seeking appointment.
- [60] WCJ and BSM confirmed they sought the appointment of the Public Trustee of Queensland as an independent administrator for the adult.
- [61] SP and MLM submitted they were appropriate to manage the adult's assets as they have a long-standing relationship with adult and YDG that included a *'level of rapport and trust'* and because MLM has financial qualifications and experience. They submitted their appointment would serve as a *'safeguard'* and provide *'security'* to the adult's financial interests in light of their stated beliefs in their separate applications that *'her sister is trying to sell her house from underneath her and keep the money for herself'*. These allegations have not been substantiated.
- [62] SP acknowledged the adult receives extensive support and assistance with financial decisions from YDG at the present time. She acknowledged that, should she and MLM be successful in their applications, they would predominantly refer to YDG, due to the extent of support and assistance he provides to the adult. In contrast to these submissions, YDG stated he wanted to continue to informally support and assist the adult in her financial decision-making and that he and the adult were opposed to the appointment of an administrator for the adult.
- [63] The Tribunal must have regard to the appropriateness considerations provided in s 15 of the GAA Act when deciding if a person is appropriate for appointment. The Tribunal is of the view SP and MLM would be unable to make decisions in relation to the adult's financial matters without a conflict of interest, due to their long-standing friendship with YDG contrasted with an absence of a similar relationship with members of the adult's family.
- [64] The Tribunal is also of the view that the proposed appointees would be unable to effectively consult with all stakeholders, (including members of the adult's family), assess the relative merits of options for decisions on financial matters, and make decisions that best meet the adult's needs in accordance with the General Principles in light of the allegations they have expressed against members of the adult's family.
- [65] Consequently, the Tribunal is not satisfied SP and MLM would be able to perform functions and exercise power as administrators for MLB under the GAA Act in a way that would be consistent with the legislative requirements, including the General Principles. The Tribunal determines that SP and MLM are not appropriate for appointment as administrators for MLB with regard to the provisions of s 15 of the GAA Act.
- [66] The Tribunal concludes that an independent administrator, free from any potential conflict of interest, would be better placed to liaise with all interested parties, assess the relative merits of options for decisions on

financial matters, and make decisions that best meet the adult's needs in accordance with the General Principles. In this respect, the Public Trustee of Queensland is an independent decision maker with extensive skills and experience.

- [67] The Tribunal determines, pursuant to s 15 of the GAA Act, that the Public Trustee of Queensland is appropriate for appointment as administrator for the adult for all financial matters to ensure the adult's financial needs are met and her financial interests are protected.

### **Conclusion**

- [68] The Tribunal is satisfied the Public Trustee of Queensland is the most appropriate appointee and appoints the Public Trustee of Queensland as administrator for MLB to make decisions about all financial matters.
- [69] This appointment remains current until further order of the Tribunal. The appointment is reviewable and is to be reviewed in 2 years.