

CITATION: GAJ [2015] QCAT 98

PARTIES: GAJ

APPLICATION NUMBER: GAA11008-14; GAA11009-14; GAA1385-15

MATTER TYPE: Guardianship and administration matters for adults

HEARING DATE: 25 February 2015

HEARD AT: Toowoomba

DECISION OF: **Member Joachim**
Member Stone

DELIVERED ON: 2 March 2015

DELIVERED AT: Brisbane

ORDERS MADE:

GUARDIANSHIP

1. The Public Guardian is appointed as guardian for GAJ for all personal matters.
2. This appointment remains current until further order of the Tribunal. The appointment is reviewable and is to be reviewed in five (5) years.

ADMINISTRATION

3. The administration order made by the Tribunal on 21 October 2009 is changed by appointing The Public Trustee of Queensland as administrator for GAJ for all financial matters.
4. The Tribunal dispenses with the requirement for the administrator to provide a financial management plan.
5. The Tribunal directs the administrator to provide accounts to the Tribunal when requested.
6. This appointment of The Public Trustee of Queensland remains current until further order of the Tribunal.

LIMITATION ORDERS

7. The Tribunal orders that pursuant to s 109 of the *Guardianship and Administration Act 2000* the following

documents are confidential and must not be disclosed to any party other than WA, BM, The Public Trustee of Queensland and the Public Guardian:

- a. H51 and attachments;
- b. H52;
- c. H53;
- d. H54;
- e. H60 and attachments;
- f. H62 and attachments;
- g. H63;
- h. H64;
- i. H65.

POSTPONEMENT ORDER

8. The Tribunal orders that the order appointing the Public Guardian as guardian for GAJ and The Public Trustee of Queensland as administrator for GAJ be sent to GAJ 14 days after the date of this order.

DIRECTIONS

9. GAJ's copy of the order is to be sent to BM, TASC advocate.

CATCHWORDS:

GUARDIANSHIP – ADMINISTRATION – CONFIDENTIALITY – POSTPONEMENT ORDER – where applicant mother of adult seeks a confidentiality order on material submitted because of safety concerns – where applicant seeks a guardianship and administration order for her son – where adult is named as on a domestic violence order – where adult refuses assistance in decision making – where adult threatens to cancel Centrelink entitlement if Public Trustee appointed – whether adult has capacity for decision making – whether Tribunal should make a postponement order to delay notice of decision to adult to avoid Tribunal's decision being thwarted

Guardianship and Administration Act 2000 (Qld), s 12, s 31, s 109, s 157, Schedule 4
Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 66

APPEARANCES:

GAJ, Adult by telephone
 GS, Mother
 GA, Father
 MI, Office of Public Guardian
 WA, Carers Qld
 FR, Carers Qld
 BM, TASC, Advocate
 MT, Queensland Police Service
 SA, Public Trustee of Queensland by telephone
 MK, Focal by telephone

REASONS FOR DECISION

- [1] GAJ is 36 years of age and he lives on his parents' property in Queensland.
- [2] He has a number of animals which he tends to on a daily basis and which he enjoys immensely. He also enjoys fishing.
- [3] His mother GS applied to the Tribunal in late 2014 seeking the appointment of the Public Guardian as guardian for GAJ and seeking a review of the appointment of the Public Trustee of Queensland as GAJ's administrator.
- [4] The Public Trustee have been involved in GAJ's life for several years principally to manage funds which were the result of a motor vehicle accident compensation claim. The last order by the former Guardianship and Administration Tribunal was made on 21 October 2008 whereby the Public Trustee was appointed as administrator to manage all of GAJ's finances except his Centrelink payments.
- [5] The applicant is seeking an extension of the current powers of the Public Trustee so that they are appointed to manage all of GAJ's financial affairs.
- [6] GAJ is very much opposed to this application.
- [7] The applicant advised that GAJ is living in squalor in a shack on the family farm resisting all services and attempts at assistance and exhibiting considerable aggression in dealing with people. In this connection she has sought the appointment of the Public Guardian.
- [8] On 5 December 2014 the Tribunal appointed the Public Guardian under an interim order for a period of three months for all personal matters.
- [9] In February 2014 GAJ was subject to a six-month probation order for a serious assault on one of his female relatives. He was also the respondent in a domestic violence application. An order was subsequently put in place from the 30 June 2014 to the 29 June 2016 with his mother as the aggrieved person and other relatives named in the order.

- [10] On 14 July 2014 GAJ pleaded guilty and was fined \$200 to an assault/obstructing police on 26 June 2014.
- [11] In the lead up to the hearing GAJ advised various parties in very aggressive terms that there would be serious consequences should the Public Trustee be appointed to manage his finances.

Confidentiality Order

- [12] In February 2015 the applicant applied to the Tribunal for a confidentiality order to be made in relation to documents that she and others had provided to the Tribunal.
- [13] Confidentiality orders can be made by the Tribunal under s 109 of the *Guardianship and Administration Act 2000* (Qld) ('GA Act') and under s 66 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) ('QCAT Act').
- [14] The GA Act provides that a confidentiality order is able to be made in relation to documents prior to a hearing. In the event this is done the parties have an opportunity to be heard at the hearing in relation to the confidentiality order.
- [15] The Tribunal did not make a confidentiality order prior to the hearing.
- [16] At the commencement of the hearing the applicant requested that a confidentiality order be made on a variety of documents which she and others had submitted to the Tribunal.
- [17] The exception that she conceded was that the documents could however be made available to the Public Trustee, the Public Guardian, WA from Carers Queensland who was assisting her with the application and BM an advocate from TASC who was supporting her son GAJ in the application process.
- [18] The basis of the application for a confidentiality order was that it was necessary to avoid serious harm including significant health detriment to the applicant and to people she knew as well as avoid endangering the physical or mental health or safety of herself, her husband and others that she knew.
- [19] There were no submissions made by others in relation to the application.
- [20] The Tribunal was satisfied that a range of documents which are outlined in the order should be made subject to a confidentiality order to avoid GAJ having access to material which would likely cause him considerable agitation and which could result given the history, in his harming persons or endangering the safety of persons.
- [21] The Tribunal was satisfied that the adult's previous behaviours as outlined above were sufficient grounds to grant the confidentiality order.

[22] There were no objections to the order being made.

The Substantive Applications

[23] The application for the appointment of the Public Guardian as guardian is an application under s 12 of the GA Act. The application to review the appointment of an administrator is an application under s 31 of the GA Act.

[24] In both matters the Tribunal needs to consider GAJ's capacity for, in the first instance, personal matters and secondly financial matters.

[25] GAJ has had an intellectual disability from birth. There is evidence in the written material before the Tribunal that he is impulsive in decision-making and does not appreciate the consequences of his decisions.

[26] He is said to have poor short-term memory and lacks insight into his limitations. He is unable to plan his finances according to the evidence on the Tribunal file.

[27] He has also suffered an acquired brain injury from a motor accident. He has difficulty understanding and remembering health matters and his behaviour has estranged him from his family.

[28] He has very poor literacy skills.

[29] GAJ denies the acquired brain injury from a motor vehicle accident. He acknowledges that he had headaches for a couple of weeks but not an acquired brain injury. He acknowledges that he had a head injury.

[30] His advocate BM referred to GAJ having a problem with his short-term memory and not being able to understand consequences.

[31] He indicated that many people in GAJ's life have attempted to assist him to have a successful life but he does not understand their goodwill.

[32] He advised the Tribunal that as a result of GAJ's impulsivity, GAJ lived beyond his means and was unable to service debts thereby putting pressure on himself which led to escalating behaviours. He advised GAJ seeks funds from others and can't repay the debt. He subsequently takes on more animals to get additional funds. The debts referred to are detailed later.

[33] BM also advised the Tribunal that GAJ has made threats of self-harm if his pension is taken away.

[34] GAJ indicated that he does not want the Public Trustee touching his pension as he has been doing it for so long.

[35] Capacity is defined in Schedule 4 of the GA Act. To have capacity a person needs to be able to understand the nature and effect of decisions,

communicate those decisions freely and voluntarily and to communicate the decision in some way.

- [36] On the evidence before the Tribunal, the Tribunal is satisfied that the presumption of capacity for both personal and financial matters is rebutted. In other words the Tribunal is satisfied that GAJ does not have the capacity to make decisions about his personal and his financial matters.
- [37] The Tribunal makes this finding because it cannot be satisfied that GAJ understands the nature and effect of decisions before him.

Is there a Need to Appoint a Guardian?

- [38] The Public Guardian provided a report to the Tribunal. A representative from the Public Guardian advised that GAJ was visited at his home in late January and there has been subsequent telephone contact.
- [39] GAJ did not give a view to the Public Guardian as to whether he sees a need for a guardian to make decisions on his behalf. He reiterated to the Public Guardian he did not want his money touched and he wanted to live on a property by himself with his animals.
- [40] In the Public Guardian's report the applicant is quoted as saying that her son was becoming a major difficulty in the community and that he is living in an old dairy building on the family property which is not suitable because there are no shower or laundry facilities or any functional kitchen area.
- [41] She stated that she has had difficulties in dealing with her son's behaviours which include verbal threats, property damage to the family home and threatening family members with physical violence. As the applicant she considered it would be appropriate for a decision maker to be appointed.
- [42] GAJ receives services from Focal Incorporated. The manager of that service considered that GAJ would benefit from having a guardian appointed to make decisions on his behalf.
- [43] The senior guardian concluded that GAJ is currently physically and verbally abusing all members of his immediate family and concerns have been raised that he is neglecting and abusing his medication.
- [44] It is clear to the Tribunal that the relationship between GAJ and his parents has become extremely strained as it has with other members of the family. It is not possible for GAJ to continue living in squalid conditions on the family property. Alternative accommodation must be sourced.
- [45] The Public Guardian is also attempting to obtain a full medical review from a general practitioner and GAJ's psychiatrist.

- [46] The Tribunal is satisfied that there is a need for decisions about personal matters and without an appointment GAJ's needs will not be adequately met nor his interests adequately protected.
- [47] GAJ has had trouble with the law in the past and there is a current domestic violence order in place.
- [48] Given that there may have to be changes in GAJ's life which could necessitate the need for some additional services the Tribunal is minded to make a plenary order and will appoint the Public Guardian as guardian for GAJ for all personal matters. This appointment is reviewable and is to be reviewed in five years.

Is there a Need to Appoint an Administrator?

- [49] The Public Trustee hold no funds for GAJ. The funds as a result of the motor vehicle accident have all been exhausted. One reason for this is that the Public Trustee of Queensland paid off a loan of over \$4,000 which GAJ borrowed from the Heritage Building Society around 2008.
- [50] GAJ receives a disability support pension and says he has approximately \$1,000 in a bank. He has a personal loan of approximately \$3,000 and of which he pays \$60 per fortnight in repayments. He also has a debt of \$300 to \$400 to his father which he says he will repay if the arguments stop at home.
- [51] He makes no contribution to any expenses on the property. He does not pay rent. He accesses his funds through an atm.
- [52] In the past he has owed Lockyer Farm Machinery approximately \$400 but this has been written off by the company to quieten down a dispute with his cousin.
- [53] He returned a visa card to the bank and he was unsure if he owed any money on this card.
- [54] The loan of \$3,000 was used to purchase a second hand bike not under warranty whilst a new bike was receiving some minor repairs which were to be completed within a couple of days.
- [55] The new bike is not registered whereas it is under warranty.
- [56] It is evident to the Tribunal that the adult's impulsivity has got him into financial difficulties and he is unable to find adequate solutions to these challenges.
- [57] There is no satisfactory informal method by which the adult's management of debt can be suitably arranged.
- [58] The Tribunal is satisfied that there is a need for an appointment of an administrator and without an appointment GAJ's needs will not be adequately met nor his interests adequately protected.

[59] The only option available to the Tribunal is the Public Trustee and the Public Trustee will be appointed for all financial matters until further order.

Postponement Order

[60] Under s 157 of the GA Act the Tribunal is able to make an order postponing the giving to the adult the Tribunal's order.

[61] Section 157(2) provides:

(2) The tribunal may make a postponement order only if the tribunal is satisfied, on reasonable grounds, that making the order is necessary to avoid—

(a) serious harm to a person; or

(b) the effect of the decision being defeated.

[62] The Tribunal is concerned that GAJ would thwart the operation of the Tribunal's order in relation to the appointment of the Public Trustee.

[63] During the hearing he advised the Tribunal that if the Public Trustee were appointed he would immediately go to Centrelink and cancel his pension. He also advised the Tribunal that he would commit suicide.

[64] In relation to the former if GAJ took this action it would mean that the Public Trustee would be frustrated in their attempts to manage his finances in an orderly fashion during the early part of their administration, and the effect of the Tribunal's decision would be defeated.

[65] Because of GAJ's threat of self-harm the Tribunal considered it appropriate that his advocate BM receive GAJ's copy of the order. GAJ agreed to this.

[66] This was done so that BM would be able to talk face to face with GAJ about the order in a timely manner to assist in GAJ not escalating emotionally when he is advised of the Tribunal's decision.

[67] The Tribunal made an order therefore that the order appointing the Public Guardian as guardian for GAJ and the Public Trustee of Queensland as his administrator be sent to him 14 days after the date of this order.

[68] This will allow the Public Trustee to take whatever steps are required to secure GAJ's pension and to avoid being thwarted in their endeavours.