

CITATION: MJR [2016] QCAT 303

PARTIES: MJR

APPLICATION NUMBER: GAA7129-16

MATTER TYPE: Guardianship and administration matters for adults

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: **Senior Member Endicott**

DELIVERED ON: 13 July 2016

DELIVERED AT: Brisbane

ORDERS MADE: **The application by MD for an interim order is dismissed.**

CATCHWORDS: GUARDIANSHIP AND ADMINISTRATION – OTHER MATTERS – where adult had appointed an attorney in 2005 – where decisions required for health care – where adult was enrolled in a clinical trial – where decision anticipated that adult may be placed on standard treatment if unable to attend the trial premises as required – where allegations that attorney had tried to cease the adult’s participation in the clinical trial to his detriment – where adult actually continued on the trial – whether interim appointment of a guardian should be made – whether the adult was at an immediate risk of harm

Guardianship and Administration Act 2000 (Qld) ss 12(1), 129

APPEARANCES and REPRESENTATION (if any):

This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act 2009 (Qld)* (QCAT Act).

REASONS FOR DECISION

- [1] MJR has been married to MW since 1992. MJR had a stroke in July 2006 affecting his cognitive capacity and MW has been his full time carer since 2006. MJR has recently been diagnosed with multiple Myeloma and he was admitted to hospital in May 2016 for treatment. He was enrolled as a participant in a clinical trial at a Brisbane hospital and was briefly discharged home. Unfortunately, he sustained fractures of his hip and leg due to weakened bones associated with the Myeloma and he had to be re-admitted to hospital.
- [2] MJR made an Enduring Power of Attorney on 21 September 2005 in which he appointed MW as his attorney for personal, health and financial decisions. An application was filed in QCAT by MJR's daughter, MD, in which she seeks appointment as guardian for her father and the appointment of The Public Trustee of Queensland as his administrator. MD also sought an interim appointment of a guardian to make health care decisions for MJR. There was evidence that MJR had cognitive impairments associated now with dementia.
- [3] In her application for an interim order, MD asserted that MW had attempted to stop treatment for the Myeloma. It was asserted that on 5 July 2016 MW had attended an appointment at the Haematology Department and stated that her husband should cease the clinical trial. It was asserted that MW had asked for a form to cease the participation in the trial by her husband.
- [4] MD stated that the treating team were strongly insistent on treating the Myeloma as it is a cancer of the bone which is painful and frequently results in bone fractures if left untreated. MD asserted that MJR had a very good response to the Myeloma clinical trial.
- [5] MW provided a response to the assertions made in the interim order application. She stated that in mid-June 2016, at a meeting with the Haematologist managing the clinical trial, it was agreed that MJR would stay on the trial while an inpatient in hospital. However, if after he was discharged from hospital, the logistics of having MJR attend at the hospital on a weekly basis became a problem, he could change to standard Myeloma chemotherapy treatment.
- [6] On this basis as discussed with the managing clinician of the trial, MW stated that she informed the clinical trial nurse on the day of MJR's discharge from hospital, that she would not be able to provide transport and support for MJR to attend the weekly clinical trial treatments as an outpatient. MW stated that the nurse was unsure if the hospital could provide the required transport and told MW that she had to sign a form to discontinue the trial so that her husband could change to the standard Myeloma chemotherapy treatment.

- [7] MW stated that she did not make a decision to cease treatment for the Myeloma. She stated that the hospital was in fact able to provide ambulance transport between her husband's interim care facility and the hospital and so his participation in the clinical trial continued. MW stated that she fully supported MJR's continuation on the clinical trial.
- [8] MW also stated that the treating team had recommended that her husband required 24-hour care and it was agreed by the family that MJR would require nursing home care due to his worsening dementia. MW stated that she was currently out of Brisbane but that she continued to provide emotional support through daily telephone calls.
- [9] QCAT was asked by MD to make an interim appointment of a guardian under the *Guardianship and Administration Act 2000* (Qld). Such appointments are designed to provide decision-making support to an adult who has impaired decision-making capacity while a hearing of the substantive applications is pending. The Tribunal has to be satisfied before making an appointment that the decision-making needs of the adult are not being adequately met.¹ In addition, the Tribunal must be satisfied, on reasonable grounds, that there is an immediate risk of harm to the welfare or property of the adult concerned because of the risk of abuse, exploitation or neglect of the adult.²
- [10] MJR had appointed his own decision-maker for when he had impaired capacity through the Enduring Power of Attorney made in 2005. The enduring document set up a regime whereby his wife, MW, would make decisions about his health care when he could not do so. By 2016, that time had come: possibly well before 2016.
- [11] MW made a decision that the Myeloma would be treated: initially through the clinical trial and if that could not continue due to a lack of transport to the trial premises, then the treatment would be standard chemotherapy for this type of cancer. I am satisfied that MJR in fact continued receiving treatment under the clinical trial with the support of decisions made by his attorney.
- [12] I was satisfied that the decision-making needs of MJR were being met through his attorney. I was satisfied that MJR was not at an immediate risk of harm as he was receiving medical treatment as recommended by his treating team. As the requirements of s 129 of the *Guardianship and Administration Act 2000* (Qld) for making an interim order were not established, the application had to be dismissed.

¹ *Guardianship and Administration Act 2000* (Qld) s 12 (1).

² *Ibid* s 129.