

QCAT

Queensland Civil and Administrative Tribunal

CITATION: TEG [2016] QCAT 41

PARTIES: TEG

APPLICATION NUMBER: GAA11752-15

MATTER TYPE: Guardianship and administration matters for adults

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: **Senior Member Endicott**

DELIVERED ON: 4 January 2016

DELIVERED AT: Brisbane

ORDERS MADE: The application by TSS for an interim order is dismissed

CATCHWORDS: GUARDIANSHIP – where adult had made an Enduring Power of Attorney appointing several persons as her attorney – where adult later revoked that Enduring Power of Attorney and appointed one of the former attorneys as her current attorney – where allegations that adult lacked capacity to revoke and make an Enduring Power of Attorney

INTERIM ORDER – where allegations that attorney was not acting in the best interests of the adult – where attorney denied those allegations – where attorney asserted that she had taken steps to secure the assets of the adult in her best interests – whether adult’s finances were at immediate risk of harm

Guardianship and Administration Act 2000 – s129

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).

REPRESENTATIVES:

APPLICANT: TSS represented by Linda Quinn of Hallett

Legal Pty Ltd

REASONS FOR DECISION

- [1] TEG is 84 years old. She has two children, TND and TNS. She has two stepchildren, TSS and TSD. TEG had made an Enduring Power of Attorney on 30 July 2015 appointing TSS, TSD and TND as her joint attorneys for personal, health and financial matters.
- [2] TEG revoked that Enduring Power of Attorney on 2 November 2015 and made a new Enduring Power of Attorney appointing TND as her sole attorney. TSS applied to QCAT for the appointment of a guardian and administrator as he disputed that the latest Enduring Power of Attorney was validly made.
- [3] Evidence as to TEG's decision-making capacity was provided to QCAT. Dr Matthew Tatkovic is a GP who has known TEG since May 2014 and he last saw TEG on 20 November 2015. He stated that TEG has been diagnosed with dementia and depression. He referred to a Mini Mental State Examination conducted in June 2015 which resulted in a score of 25 out of 30. Dr Tatkovic was of the opinion that TEG could not understand information about her health care or her financial affairs but he did not specifically comment on her ability to understand information about lifestyle and accommodation decisions. He was of the opinion that TEG could not make decisions freely and voluntarily. Dr Tatkovic was of the opinion that TEG could not understand information relevant to the making of an Enduring Power of Attorney and that she could not make any complex decisions due to dementia.
- [4] The Tribunal had obtained evidence from the witness who had certified that TEG could understand what she was doing on 2 November 2015 when she revoked the Enduring Power of Attorney dated 30 July 2015 and then made a new Enduring Power of Attorney on 2 November 2015.
- [5] TSS applied for an interim order for the appointment of an administrator. QCAT can make an appointment of a decision maker on an interim basis for up to three months under section 129 of the *Guardianship and Administration Act 2000* without holding a hearing. Before an interim order can be made, 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 which would require the appointment of a decision-maker.
- [6] TSS made submissions in support of the application for an interim order. He stated that he was concerned about TEG being influenced by TND who he alleges does not have the best interests of TEG in mind. When he was a joint attorney with TND, he had asked to be kept informed about the sale proceeds of a property that had been owned by TEG with her late husband and about the funds in joint bank accounts with her late husband. TSS submitted that when he asked for an account of those funds, the Enduring Power of Attorney was revoked contrary to previous discussions

he had had with TEG about her own concerns about her daughter's intentions.

- [7] The registry staff at the tribunal obtained comments from TND about the applications made by TSS. TND stated that TEG had told her that she did not want TSS or TSD to handle her affairs. TND denied that she had misappropriated funds of TEG and stated that the funds had been invested into secure bank accounts in the name of TEG.
- [8] TND stated that some withdrawals had been made from the previous joint bank account that she had not authorised as attorney and some related to a car and caravan that were not in the possession of TEG. TND indicated that she intended to apply for her own appointment as a guardian and administrator for TEG. TND set out some actions she has been taking as attorney to follow up financial interests that TEG would have following the death of her husband as evidence that she had been acting in the best interests of her mother.
- [9] TND stated that some of the decisions made by TSS were not appropriate and that she and her husband are the persons who have been providing day to day care since the death of TEG's husband last year. TND stated that TEG had been upset by telephone calls from TSS although she could not later recall what had been discussed in the calls.
- [10] TND opposed any orders being made that would appoint TSS as a decision maker for her mother.
- [11] It is clear that the validity of the Enduring Powers of Attorney made in July and November 2015 will have to be considered at the final hearing of the applications for the appointment of decision makers for TEG. However the prima facie evidence provided to the tribunal from the certifying witness was that he had been satisfied about the capacity of TEG to make the new grant on 2 November 2015. It is not necessary to make any finding about the validity of that grant of powers when considering the application for an interim order.
- [12] What I had to be satisfied about in order to make an interim order was that TEG was at an immediate risk of harm. The submissions made by TSS of some immediate risk of harm to the financial position of TEG were not supported by sufficient evidence to satisfy me that his assertions of harm had been established. To the contrary, the evidence from TND was that she had invested securely the funds of her mother and that she had been working to improve her mother's financial position by seeking access to any superannuation entitlements of her late husband.
- [13] In the absence of evidence that TEG was at an immediate risk of harm, the application for an interim order could not be made. There was evidence that there was in place adequate support for decision-making for TEG. There was no cogent evidence that her financial affairs were not being managed for her benefit.

[14] The application for an interim order was dismissed.