

CITATION: CJT [2016] QCAT 42

PARTIES: CJT

APPLICATION NUMBER: GAA337-16

MATTER TYPE: Guardianship and administration matters for adults

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: **Senior Member Endicott**

DELIVERED ON: 20 January 2016

DELIVERED AT: Brisbane

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

CATCHWORDS: GUARDIANSHIP – where adult had been placed into an aged care facility – where the adult could not adequately care for himself at home – where bond payable and additional fees while bond was unpaid

INTERIM ORDER – where interim appointment of an administrator sought – where allegations that adult was at risk of being asked to leave the aged care facility as fees not paid – where allegations that adult may not be able to afford additional fees associated with unpaid bond and ongoing fees on a long term basis – whether immediate risk of harm to adult

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).

REASONS FOR DECISION

- [1] CJT is 89 years of age. As he was unable to adequately care for himself at home, CJT was hospitalised in late 2015. He was placed into an aged care facility on 18 December 2015.

- [2] His brother, CB, applied for the appointment of a guardian and administrator for CJT. The evidence filed in the Tribunal revealed that CJT had experienced cognitive decline and that he lacked insight into the impact that the cognitive decline had on his ability to care for himself and to manage his finances.
- [3] QCAT can make appointments of substituted decision-makers under the *Guardianship and Administration Act 2000* if satisfied that the adult in question has impaired decision making capacity, that there are decisions that need to be made and in the absence of an appointment, that the decision making needs of the adult will not be adequately met.¹ Appointments are made after a hearing by the tribunal, which usually takes place some three or four months after the application is received by the tribunal.
- [4] CB applied for an interim 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(1) of the Act 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 because of the risk of abuse, exploitation or neglect of the adult.
- [5] CB submitted that a bond of \$380,000 was payable to secure the placement in the aged care facility. Until such time as the bond is paid, CJT will incur fees of \$133.09 per day. Working on the assumption that an administrator would not be appointed in the normal course of events until mid March 2016, the bond would not be paid until some time after the appointment and possibly not until mid April 2016. CB submitted that fees of some \$15,000 will be incurred during that period. If an administrator were to be appointed on an interim basis, he submitted that the bond could be paid at an earlier time and some of those fees could be avoided.
- [6] CB submitted that he was concerned that the aged care facility could ask CJT to leave if the fees were not settled. He also argued that CJT may be unable to pay for his accommodation on a long term basis if he had to also pay the additional fees arising from the unpaid bond. CB submitted that CJT had nowhere else to go if he had to leave the aged care facility. He argued that CJT's financial affairs were at an extreme risk should he be released from the aged care facility due to non-payment of fees or alternatively at risk if he could not afford to pay for the fees long term.
- [7] There was no evidence from the aged care facility that CJT was at risk of being asked to leave that facility. Documents relating to placement into the facility were provided to the Tribunal. A reasonable inference that could be drawn from those documents was that CJT had tenure in the facility and was not there on a temporary or respite basis. Once a person is accepted permanently into a care facility, the facility management cannot terminate that placement without good reason. A reasonable

¹ *Guardianship and Administration Act 2000* – section 12 (1)

inference could be drawn that it is unlikely that a termination of tenure would occur while a QCAT hearing was pending.

- [8] According to the evidence given to QCAT, CJT had cash funds of \$232,000 and owned a house with an estimated value of \$250,000. He has sufficient funds to pay the bond and the additional fees that would be incurred while the bond remained unpaid. While it would be to his advantage to avoid the additional fees associated with the unpaid bond, the evidence was not sufficient to establish that he was at an immediate risk of harm as a result of additional fees being incurred. The evidence about his financial position did not support the assertion that he could not afford to pay both the additional fees of some \$15,000 associated with the unpaid bond and the ongoing aged care fees on a long term basis.
- [9] Not satisfied that CJT was at an immediate risk of harm, the basis for making an interim order had not been established. As a result, the application for an interim order was dismissed.