

CITATION: *PJP* [2017] QCAT 127

PARTIES: PJP

APPLICATION NUMBER: GAA3552-16 GAA3553-16

MATTER TYPE: Guardianship and administration matters for adults

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: **Senior Member Endicott**

DELIVERED ON: 5 May 2016

DELIVERED AT: Brisbane

ORDERS MADE:

- 1. The application by PZL for the appointment of an administrator for PJP is dismissed.**
- 2. The application by PZL for the appointment of a guardian for PJP is dismissed.**

CATCHWORDS: GUARDIANS, COMMITTEES, ADMINISTRATORS, RECEIVERS AND MANAGERS – APPOINTMENT – where adult had jointly appointed two daughters as attorneys in 2003 – where adult has been assessed as being able to make simple and complex decisions for personal and financial matters – where one daughter of the adult applied for appointment as a guardian and administrator – where applicant relying on allegations of emotional and financial abuse as the basis for her applications that she should be appointed as the sole decision-maker – where applicant was notified that the applications would be considered for dismissal unless evidence supporting the need for a guardian and administrator was filed – whether the application should be dismissed as lacking in substance

Queensland Civil and Administrative Act 2009 (Qld) s 47.

APPEARANCES:

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] PJP jointly appointed his daughters, PMV and PZL, to be his attorneys for personal, health, and financial matters in an Enduring Power of Attorney made on 18 August 2003. The personal and financial powers are to commence when PJP has been assessed as having impaired capacity for making decisions.
- [2] An application was filed in the Tribunal on 7 April 2016 by PZL seeking appointment as the sole guardian and administrator for LJR. Such appointments are made after a hearing has been held and the Tribunal is satisfied that the factors set out in s 12(1) of the *Guardianship and Administration Act 2000* (Qld) (GAA) have been satisfied. Those factors require the Tribunal to be satisfied that the adult in question has impaired decision-making capacity for the matter, that there are decisions that need to be made, and that appointing a decision-maker is necessary to give adequate support to the adult in the decision-making process.
- [3] The applicant sought to establish that PJP did not have capacity for decision-making and that she should be appointed as sole guardian and administrator. In support of her application, PZL listed instances when PJP had had delusions or been confused. PZL alleged that these characteristics made it difficult to manage his affairs, especially since PJP refused to allow the Enduring Power of Attorney document to take effect.
- [4] The applicant also sought to establish that decision-making was required to monitor PJP's finances to prevent financial abuse. She stated that PJP had been subjected to emotional and financial abuse. She listed what she described as fraudulent, unauthorised and suspect transactions that had occurred from September 2015 to 4 January 2016 along with a statutory declaration from PJP that he had not authorised these transactions. He also explained that the fraudulent activity had been reported to the Queensland Police and that his declaration had been made at the request of his bank's fraud department.
- [5] Evidence was presented to the Tribunal by Dr Nicholas John, a specialist geriatrician, who had had a number of protracted talks with PJP during PJP's admission at the Wesley Hospital. PJP had been admitted on 18 November 2015 with an infected diabetic foot and complicated encephalopathy. A small frontal infarct had been revealed by CT scan. Dr John was satisfied that PJP's capacity to make straightforward decisions was intact and was likely to improve as his encephalopathy improved. He performed a Mini-Mental State Examination assessment in which PJP scored 29 out of 30 on 2 February 2016.

- [6] Evidence was also presented to the Tribunal from Dr Colin Kennett, whose opinion had been sought by Dr John. Dr Kennett stated in his letter dated 4 February 2016 that he broadly agreed with Dr John's findings having regard to PJP's capacity to make health, lifestyle, and financial decisions. Dr Kennett had visited PJP on 2 February 2016 and 3 February 2016. He noted PJP's recent cognitive impairment secondary to encephalopathy but understood that there had been steady improvement over the previous three weeks. He determined that PJP had a score of 15 on the Glasgow Coma Scale which equates with someone who is fully awake. Although there were some occasional repetitive statements, PJP was able to recall conversation elements without any difficulty. During his follow-up, PJP was able to recall Dr Kennett's name and role and their previous conversation.
- [7] Dr Kennett also explained that PJP displayed some evidence of concrete thinking through reasonable interpretations, good concentration, and appropriate and safe problem solving. PJP scored 29 out of 30 on his Mini-Mental State Examination. Dr Kennett stated that PJP spontaneously discussed VitalCall and knew about services that would be available to assist him in his home if required. He also stated that PJP understood his financial situation and the consequences of his choices because he had a reasonable understanding of costs, values, and his assets. He also understood the alternatives to his current Enduring Power of Attorney structure and could justify his choices, and he understood the purpose and nature of a will and that of an Enduring Power of Attorney.
- [8] Both Dr John and Dr Kennett recognised the family disputes that were occurring. Dr John stated that PJP tended to change his mind depending on which daughter was in his company. Dr Kennett also understood that there was some dispute between PJP and PZL regarding his capacity to make decisions. Both doctors considered that PJP was vulnerable because he is a loving father and did not want to drive a wedge between his daughters.
- [9] QCAT does not have to proceed to a hearing for all applications filed in the Tribunal. Section 47 of the QCAT Act gives the Tribunal power to bring a proceeding to an early end if the Tribunal considers that an application is frivolous, vexatious or misconceived or is lacking in substance or is otherwise an abuse of process. The exercise of this power in an appropriate case is consistent with the statutory objects of the Tribunal to deal with matters in a way that is accessible, fair, just, economical, informal and quick.
- [10] In this case, the Tribunal gave the applicant an opportunity to set out reasons why the applications should not be brought to an end under s 47 of the QCAT Act. The Tribunal informed the applicant in a letter dated 12 April 2016 that her application did not include sufficient information to rebut the presumption of capacity for decision-making. The Tribunal stated that if no additional medical information was provided within three

weeks of the date of that letter, the Tribunal would consider the dismissal of her applications.

- [11] The applicant failed to file any reports from an appropriate medical professional or related health professional that are required by the Tribunal to assist in determining the capacity of PJP for decision-making. The evidence was not capable of rebutting the presumption of capacity.
- [12] The applications of PZL did not reveal a cogent basis for the need to appoint a decision-maker for PJP when the presumption of capacity had not been rebutted.
- [13] The Tribunal determined that the applications lacked substance. In view of that finding, and applying the objects set out in section 3(b) of the QCAT Act, the Tribunal considered that it was appropriate to bring an early end to the proceedings and dismissed the applications under section 47 of the QCAT Act.