

CITATION: CT [2017] QCAT 14

PARTIES: CT

APPLICATION NUMBER: GAA280-17

MATTER TYPE: Guardianship and administration matters for adults

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Senior Member Endicott

DELIVERED ON: 10 January 2017

DELIVERED AT: Brisbane

ORDERS MADE:

1. The Public Trustee of Queensland is appointed administrator for CT for all financial matters.
2. The Tribunal directs the administrator to provide a written account of their actions as administrator to the Tribunal no later than three (3) working days prior to the hearing.
3. This administration appointment remains current for three (3) months or, if the Tribunal makes a further order in this matter, until the date of the further order, whichever is the sooner.
4. That before 7 February 2017 the administrator must:
 - (a) Search the records of the Registrar of Titles to identify any property registered in the adult's name;
 - (b) Give the registrar of titles a copy of this order and a notice to the registrar advising that any interest in property held by the adult is subject to this order;
 - (c) Give to the Tribunal:
 - (i) a copy of the "Lodgement Summary Form" from the Titles registry confirming the notice has been lodged for each property held by the adult; and

(ii) a copy of the current title searches.

5. If the ownership of any property of the adult changes in any way or the adult acquires an interest in another property, the administrator must, within fourteen (14) days of such changes:
- (a) Give a copy of this order to the Registrar of Titles; and
 - (b) Give a notice to the Registrar about the changes or the adult's interest in another property.

CATCHWORDS:

GUARDIANS, COMMITTEES, ADMINISTRATORS, RECEIVERS AND MANAGERS – APPOINTMENT – where an adult has a long-standing mental illness and is unwell at present – where the adult has been involved in litigation and has costs orders against him from the Court of Appeal and the Planning and Environment Court for a significant amount – where a bankruptcy notice has been served based on the unpaid costs orders – where an appointment of an administrator sought so instructions can be given to lawyers to act for the adult – where adult's mother sought appointment so she can instruct lawyers about setting aside a costs order in the Magistrates Court

INTERIM APPOINTMENT - whether the adult is at an immediate risk of harm – whether an interim appointment of a decision-maker is required – whether the adult's mother is appropriate as an interim decision-maker given her lack of appreciation of the potentially serious impact of the served bankruptcy notice

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

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] CT has been involved in court proceedings with a regional City Council. According to evidence filed at QCAT, on 4 August 2016 an order was made in the Court of Appeal requiring CT to pay \$27,432.68 in costs to the Council following a judgment by the Court of Appeal on 4 December 2015. On the same day, 4 August 2016, an order was made by the Planning and Environment Court that CT pay \$139,753.68 in costs to the regional Council following an order of that Court made on 27 October 2014.
- [2] The Council issued a bankruptcy notice against CT over the outstanding costs orders (and interest) totalling \$171,363.73 on 5 December 2016. ST, the mother of CT, has filed an application in QCAT seeking to be appointed as the administrator for CT. ST stated that CT has a psychiatric disability and is very unwell at the present time.
- [3] ST states that CT owns a house worth \$350,000, although he currently lives with ST in rented accommodation. ST states that CT makes financial decisions with her assistance. She is, however, seeking a formal appointment as an administrator because she has engaged a legal team to assist with a matter before a Magistrates Court against the regional Council and the legal team has asked that she apply for appointment so that she is able to speak with them on his behalf and assist with the Magistrates Court matter.
- [4] ST did not provide any information about the Magistrates Court matter. ST describes the matter as having been brought against CT by the Council and that costs have been awarded against CT for the sum of \$20,000. ST states that she is seeking to have the costs order overturned. The application does not refer to the bankruptcy notice based on costs orders made against CT by courts other than the Magistrates Court.
- [5] QCAT can make an appointment of an administrator under the *Guardianship and Administration Act 2000* (Qld) (GAA) 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, and that the decision-making needs of the adult will not be adequately met.¹ Appointments are made after a hearing when all the evidence can be considered to determine the issues on which appointments are based.
- [6] ST has applied for an appointment to be made on an interim basis prior to a hearing being conducted. QCAT can make an appointment of a decision-maker on an interim basis for up to three months under s 129(1) of the GAA 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.

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

- [7] In support of the application for an interim order, ST submitted that there are legal matters before the Magistrates Court to do with her son's property. ST repeated assertions made in her application for the appointment of an administrator that she had engaged a legal team to represent her son and an interim appointment would allow her to speak on his behalf with the legal team.
- [8] ST did not rely in her application on the costs orders made in August 2016 for about \$170,000 which are now the subject of a bankruptcy notice. She did not demonstrate any appreciation of the consequences of non-payment of the costs orders made in August 2016. She did not demonstrate an awareness that the issuing of a bankruptcy notice based on an unpaid amount of more than \$170,000 is more serious to her son's immediate financial position than seeking to set aside a costs order of \$20,000 made in the Magistrates Court. Should her son be made bankrupt, he would have very limited scope to continue with proceedings in the Magistrates Court unless he had support from his trustee in bankruptcy. I am satisfied that CT is at an immediate risk of harm to his financial position due to two or perhaps three unpaid costs orders and due to the served bankruptcy notice.
- [9] The evidence given to QCAT about CT's decision-making capacity is very scant. Reports from a psychiatrist reveal that CT has been diagnosed with schizoaffective disorder since 2000 and that he has been under treatment since that time. On 19 September 2016, his doctor reported that CT was extremely anxious due to situational stressors and that he may need to be hospitalised if his condition deteriorated.
- [10] It is not necessary for QCAT to make a finding that CT has impaired decision-making capacity before making an interim appointment of an administrator if the Tribunal is satisfied that CT is at an immediate risk of harm.² The evidence of long-standing mental illness and the report of the treating psychiatrist in September 2016 would provide the basis for a reasonable inference that CT continues to experience extreme anxiety in the context of his schizoaffective disorder and in the context of ST's assertions that CT is very unwell at the present time. A reasonable inference could be made that CT is not at present in a position where he could instruct lawyers to act for him or otherwise to take effective steps to protect his financial position.
- [11] I was satisfied that an administrator should be appointed on an interim basis to make financial and legal decisions for CT until such time as the Tribunal could determine the substantive application made by ST for the ongoing appointment of an administrator. However, I was not satisfied that ST would be an appropriate person to appoint as CT's administrator on an interim basis.
- [12] ST did not demonstrate an understanding of the gravity of CT's financial and legal problems in the evidence she presented to QCAT. Despite filing

² *Ibid.* s 129(2).

the costs orders and a copy of the bankruptcy notice with her applications, she did not refer to the impact that those documents would have on CT. She did not demonstrate an understanding of the steps that should be taken, or not taken, given these developments in his financial and legal position.

- [13] CT may need legal advice and to take legal action. He should have a decision-maker who has experience in dealing with complex legal and financial matters. I was satisfied that The Public Trustee of Queensland would be appropriate to appoint as an administrator for CT on an interim basis so that immediate and effective advice could be sought on behalf of CT. There may be little utility in using scarce funds of CT in trying to set aside a costs order made in the Magistrates Court when such an action will have no effect on CT's proposed bankruptcy.
- [14] The Public Trustee of Queensland will have experience in deciding what, if any, legal action should be taken in view of the limited financial resources of CT. Such an administrator may be able to negotiate a delay in the bankruptcy proceedings to allow alternative strategies to be considered to address the outstanding costs orders. ST will have an opportunity to put forward her submissions in favour of her appointment when the hearing of the substantive application is held. In the meantime, The Public Trustee of Queensland can act to protect CT's position and to reduce the risk of harm to his financial and legal position as best as possible while a hearing is pending.