

CITATION: WDC [2018] QCAT 86

PARTIES: WDC

APPLICATION NUMBER: GAA760-18

MATTER TYPE: Guardianship and administration matters for adults

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: **Member Goodman**

DELIVERED ON: 23 February 2018

DELIVERED AT: Brisbane

ORDERS MADE: **On 18 January 2018 the following order was made:**

- 1. The Public Trustee of Queensland is appointed administrator for WDC 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. The 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.**

CATCHWORDS: GUARDIANS, COMMITTEES, ADMINISTRATORS, RECEIVERS AND MANAGERS – APPOINTMENT – where interim order sought – where possible claim against the estate of the adult’s late father – where Public Trustee of Queensland appointed

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

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] WDC is a 20 year old man with a diagnosis of autistic spectrum disorder. His long term general practitioner provided evidence to the Tribunal that WDC has very limited ability to understand and act on information relevant for decision making, or to appreciate the consequences of decisions or lack of decisions in relation to personal health care. The doctor states that WDC *“requires constant direction for simple tasks such as dental hygiene, bathing and dressing”*, and is unable to make simple or complex decisions regarding lifestyle and accommodation choices, or financial affairs.
- [2] On 17 January 2018 CMS, WDC’s mother, lodged applications seeking appointment as WDC’s guardian and administrator. Those applications are yet to be determined.
- [3] This Tribunal appoints guardians and administrators after a hearing has been held and only if the Tribunal is satisfied that the requirements of s 12(1) of the *Guardianship and Administration Act 2000* (Qld) (GAA) have been met. The Tribunal must 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 ensure that the adult’s needs are adequately met or their interests adequately protected. The applications will be considered in due course.
- [4] CMS also lodged an application for an interim order which I determined on 18 January 2018. These are my reasons for that decision.
- [5] Appointments of a decision maker can be made on an interim basis, and prior to determination of the substantive applications, if the Tribunal is satisfied that the requirements of s 129 of the GAA are met.
- [6] Section 129 provides that if the Tribunal is satisfied, on reasonable grounds, there is an immediate risk to the health, welfare or property of the adult, the Tribunal may make an interim order in the proceeding without hearing and deciding the proceeding or otherwise complying with the requirements of the Act, including the notice requirements. The interim order is for a maximum of three months.
- [7] CMS stated in her application for an interim order *“WDC’s father passed away on the 25/10/2017 at that time he was still paying maintenance... As his death was sudden he did not get a chance to provide for this support to be ongoing so we need to contest his estate.”* CMS states that WDC’s two sisters agree with the proposed interim order.
- [8] CMS’s application revealed that WDC had very limited income (pension and mobility allowance) and \$82 in the bank.
- [9] Tribunal staff sought clarification of the application from CMS. CMS advised that she had lodged an application with the superannuation fund

held by WDC's late father and that if the claim was successful she would not contest the provisions of his will. She was unsure of timeframes for the processing of the superannuation fund claim, or time frames for contesting the will. She understood that all assets including the superannuation policy were to be left to the current wife of WDC's late father, and that after the death of that person some provision would be made for WDC.

- [10] For the purposes of the interim order, I accepted the medical evidence that WDC demonstrated impaired cognitive functioning.
- [11] In relation to the application for the interim appointment, CMS stated that she sought appointment as guardian and administrator. The application itself raises only financial issues and so was treated as an application for the appointment of an administrator.
- [12] When considering the application for the interim appointment of an administrator, I was satisfied that there was sufficient evidence of immediate risk to WDC's finances. WDC had a low income and few financial resources. A possible claim against the estate and superannuation fund of his late father had been identified. Making and managing such a claim is complex, and the consequences of missing deadlines can be significant.
- [13] There was no evidence that CMS had informed herself as to deadlines for possible claims. There was no evidence that CMS had taken independent advice regarding a possible claim by WDC against his father's estate, or had informed herself as to the extent of that estate. There was no evidence that CMS was aware that the beneficiary of the estate was able to change her own will at any time, and that the promise that WDC would eventually benefit under the will may well be unreliable. These issues needed to be investigated and considered.
- [14] Additionally, there was a potential conflict of interest arising out of any claim against the superannuation fund or other assets of WDC's late father. That is because a successful claim would reduce assets potentially available for a claim lodged by other members of WDC's family.
- [15] A financial decision maker was needed pending the hearing of the substantive applications. The Public Trustee of Queensland is available as a substituted decision maker. The Public Trustee of Queensland is experienced, competent and independent.
- [16] I considered that the Public Trustee of Queensland was the more appropriate appointee under an interim order, pending the hearing of the substantive applications.