

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *WJE* [2019] QCAT 231
PARTIES: **In applications about matters concerning WJE**
APPLICATION NO/S: GAA6207-19; GAA6208-19
MATTER TYPE: Guardianship and administration matters for adults
DELIVERED ON: 9 August 2019
HEARING DATE: 15 July 2019
HEARD AT: Townsville
DECISION OF: Member Pennell
ORDERS: **GUARDIANSHIP**

- 1. The application by ME for the appointment of a guardian for WJE is dismissed.**
- 2. The application by WS for the appointment of a guardian for WJE is dismissed.**

ADMINISTRATION

- 3. The application by ME for the appointment of an administrator for WJE is dismissed.**
- 4. The application by WS for the appointment of an administrator for WJE is dismissed.**

CATCHWORDS: HEALTH LAW – GUARDIANSHIP, MANAGEMENT AND ADMINISTRATION OF PROPERTY OF PERSONS WITH IMPAIRED CAPACITY – ADMINISTRATION AND FINANCIAL MANAGEMENT – capacity – presumption of capacity – whether there is a requirement for a decision-maker to be appointed – satisfaction of unreasonable risk to adult – whether the finding of impaired capacity requires the appointment of a decision-maker

Acts Interpretation Act 1954 (Qld), Schedule 1.

Guardianship and Administration Act 2000 (Qld), s 6, s 7, s 12(1)(a), s 12(1)(b), s 12(1)(c), s 14, s 15, s 16, Schedule 1, Schedule 2 and Schedule 4.

PL v PT & Ors [2018] QCATA 114

**APPEARANCES &
REPRESENTATION:**

The Adult: WJE (the adult), WS and BR
 The Applicants: Dr AS and SL for the application of ME.
 WS and BR for the application of WS.
 The Public Guardian: AA, Delegate of The Public Guardian

REASONS FOR DECISION

Introduction

- [1] There were two applications made seeking the appointments of a guardian and an administrator for WJE ('the adult'). Those applications were from ME who was the adult's mental health case manager, and WS who is the adult's mother. Both applications were individually seeking the appointment of a guardian for decisions about personal matters for the adult, in particular decisions about where the adult should live, along with health care decisions and decisions relating to the provision of services for the adult. ME proposed that The Public Guardian should be appointed for those decisions and WS proposed that she is the most appropriate appointment as the adult's guardian.
- [2] In regard to the appointment of an administrator for decisions about the adult's finances, ME proposed that the Public Trustee of Queensland should be appointed as the adult's administrator and WS proposed herself as being the most appropriate appointment.

ME's application

- [3] In support of ME's application, Dr AS provided a Health Professional Report ('HPR').¹ Dr AS has known and administered treatment to the adult since September 2018. Dr AS's assessment of the adult's current medical condition was that she suffers from paranoid schizophrenia,² post-traumatic stress disorder,³ and a mixed personality disorder.⁴ That diagnosis differs somewhat from an earlier 2016 assessment that found that the adult suffered schizophrenia, autism, an intellectual disability, along with depression and anxiety.
- [4] The varying assessments provided in 2016 and the 2019 were explained by Dr AS as resulting from the adult undertaking multiple psychological assessments, including several IQ tests with significantly varying results. In the past it was thought that the adult had autistic spectrum disorder and a learning disability, however this diagnosis has been revised to severe regression, which is a symptom of her trauma and personality disorder.

¹ A Psychiatric Registrar.

² Since 1993.

³ Since 2016.

⁴ Since 2018.

- [5] Dr AS opined that the adult had experienced significant trauma from an early age. There were concerns relating to the adult's mother interfering with her care, as well as concerns about the frequent changing of treating medical practitioners and the adult providing inconsistent accounts about her health to healthcare professionals. An additional concern related to the recent relocation of the adult and her mother from Victoria to Queensland.
- [6] Dr AS also opined that prior to coming to Queensland, the adult had been doing well and was becoming more independent, however her relocation to Queensland led to significant instability and setbacks in regard to her care and treatment. Dr AS was concerned about the adult's mother actively preventing the mental health treating team from engaging with the adult.
- [7] It was Dr AS's view that the adult's ability to understand and act on information relevant to making decisions about her personal health care, lifestyle and accommodation choices and financial matters suggested that she had a history of declining support from mental health services and carer support. The adult is highly changeable, impulsive and easily influenced by others. There was a suggestion that in February 2019, the adult stopped her medication regime because she believed that she was 'better'.
- [8] Dr AS went on to give an opinion that the adult did not understand how to manage her financial resources, and nor did she have any ability to budget for the payment of bills. She even lacked the ability to use a bank account. Dr AS's view was that the adult appeared to be unable to plan for the future or understand the consequences of not paying her bills. It would seem that her mother had previously undertaken all of those financial responsibilities.
- [9] Dr AS also suggested that because the adult had refused mental health support, she was not only herself at risk, but so too were others. This is because of her long history of self-harm and harm towards others. To add to this concern, the adult had expressed a view that if her mother were to pass away, then she would kill herself because she would be unable to care for herself.
- [10] Dr AS was particularly critical of the role that WS played in the life of the adult and there was a suggestion that WS had a negative influence upon her. An example was provided of abrupt withdrawal of the adult from carer support in Victoria so as to facilitate the relocation to Queensland of WS and the adult.
- [11] Furthermore, there was an allegation that WS failed to report her own admission to hospital in December 2018 thus leaving the adult with no support. There was a suggestion that in the period of January to February 2019, WS failed to inform the treating mental health team that she had ceased carer support for the adult.
- [12] Overall, the assessment of Dr AS was that the adult's primary diagnosis was paranoid schizophrenia, complicated by PTSD and mixed personality disorder. There has been a long and complex history of involvement of the adult with psychiatric and disability services since she was an infant. She has an extensive history of self-harm and suicide attempts over a period of many years.
- [13] The adult has an extensive history of risk towards others (predominantly aggression) and in the past she stabbed a boy seven times with a pocketknife. In recent events,

she reported having thoughts of stabbing her neighbour.⁵ There have been numerous admissions to psychiatric hospitals and multiple periods of being detained under the Mental Health Act.

- [14] The adult's most recent thoughts of self-harming occurred in February 2019 when she experienced thoughts of running through a plate glass window to kill herself. Dr AS expressed a view that because of her current diagnosis, the adult did not possess the capacity to make simple or complex decisions about her own personal or financial matters.
- [15] The reasons behind ME's application was because the treating mental health team had specific concerns that WS was interfering with the adult's care and was frequently changing doctors. There is a suggestion that WS negatively influenced the adult's decisions and was providing inadequate support to her. WS was also preventing the mental health team from engaging with the adult.
- [16] In regards to the adult's lifestyle and accommodation choices, the adult is informally cared for and resides with her elderly mother, who herself is frequently admitted to hospital. The adult has clearly indicated to the mental health team that she prefers to live with her mother.

WS's application

- [17] As I alluded to earlier, WS's application proposed that I should appoint her as the adult's guardian and administrator because she is the most appropriate appointee. In support of her application, WS provided very little evidence by way of medical evidence, with the exception of a medical certificate that I will return to later in these reasons. Overall, I was satisfied that although she did not dispute the psychological assessments and medical findings about WJE, she did dispute much of what Dr AS alleged with respect to her impeding the treatment of her daughter.
- [18] Ultimately, the competing interests of both applications can be categorised into two issues. Is there a need for an appointment of a decision maker, and if so, then who.

The general principles

- [19] The *Guardianship and Administration Act 2000* ('the Act') seeks to strike an appropriate balance between the rights of an adult with impaired capacity to the greatest possible degree of autonomy in decision-making, and the rights of the adult to have adequate and appropriate support in decision-making.⁶ The ways that this can be achieved includes the encouragement of the involvement of members of the adult's existing support network in any decision-making.⁷
- [20] For consideration to whether an appointment of a decision-maker should be made, I am of the view that there are a number of steps that should be considered before any consideration is given to appointing either a guardian or an administrator.

⁵ In 2007.

⁶ *Guardianship and Administration Act 2000* (Qld), s 6.

⁷ *Guardianship and Administration Act 2000* (Qld), s 7.

- [21] The starting point, or the *first step*, relates to a determination about the adult's capacity. The Act provides a presumption that an adult⁸ has the capacity for the making of their own decisions about personal matters and financial affairs.⁹ Furthermore, an adult is presumed to be capable of understanding the nature and effect of decisions about a matter; and to be able to freely and voluntarily make that decision; and be able to communicate that decision in some way.¹⁰
- [22] The presumption of capacity remains until the tribunal is satisfied that the presumption has been rebutted. By applying the law, the tribunal can rebut that presumption and make a determination on the available evidence that a person has an impaired decision-making capacity.¹¹ If the presumption is rebutted, then it is open to the tribunal's discretion to consider an appointment of a decision-maker for the adult.¹² The exercise of that discretion to appoint a decision-maker should only be undertaken if the evidence supports the making of an appointment. Mere speculation that there may be a requirement for a decision-maker at an undeterminable time in the future is not a sufficient basis for any appointment.
- [23] Even if the presumption of capacity is rebutted, this does not automatically invoke the necessity for the tribunal to appoint a decision-maker. Notwithstanding any rebuttal of presumption, the *second step* for the tribunal's consideration is whether there is a likelihood that the adult will do something that involves, or is likely to involve, an unreasonable risk to their health, welfare or property.¹³ Again, there is a requirement for the tribunal to be satisfied on the available evidence of any risk. That risk can be caused by the adult's own actions, or the actions of others. It is only when the tribunal is satisfied of those features that any consideration may be given to moving to the next step.
- [24] If the tribunal is sufficiently satisfied that an unreasonable risk does exist, then the *third step* to consider is whether, in the absence of an appointment of a decision-maker, the needs of the adult will be adequately met and the adult's interests will be adequately protected.¹⁴
- [25] It is only when the conditions of all the first three steps are fulfilled that the tribunal could be completely satisfied of the requirement to appoint a decision-maker.
- [26] If after being satisfied that the appointment of a decision-maker is necessary, the *fourth step* for the tribunal is to exercise its discretion to make the appointment on the terms that the tribunal considers to be appropriate.¹⁵ Those terms should be applied according to the available evidence.
- [27] The *fifth step* is the consideration the tribunal must give to whether or not a nominated appointee as the adult's guardian and/or administrator is eligible¹⁶ and

⁸ The *Acts Interpretation Act 1954* (Qld), Schedule 1. An adult means an individual who is aged 18 or more.

⁹ *Guardianship and Administration Act 2000* (Qld), Schedule 1 – a general principle.

¹⁰ *Guardianship and Administration Act 2000* (Qld), Schedule 4 – 'the presumption of capacity'.

¹¹ *PL v PT & Ors* [2018] QCATA 114, [3] (Senior Member Howard and Member Endicott.)

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

¹³ *Guardianship and Administration Act 2000* (Qld), s 12(1)(b).

¹⁴ *Guardianship and Administration Act 2000* (Qld), s 12(1)(c).

¹⁵ *Guardianship and Administration Act 2000* (Qld), Schedule 2, section 2 where a personal matter for an adult, is a matter relating to the adult's care, including the adult's health care, or welfare.

¹⁶ *Guardianship and Administration Act 2000* (Qld), s 14.

satisfies the considerations to be applied as to their appropriateness for that appointment.¹⁷ There is also a mandated responsibility imposed upon the person nominated as the adult's guardian and/or administrator to advise the tribunal of the existence of any disqualifying features, or whether there is an existence of any likely conflict with regard to their appointment in either of those roles.¹⁸

The Hearing

- [28] The adult and WS were present at the hearing along with Dr AS, SL who is the team leader from the Homeless Health Outreach Team, AA who represented The Public Guardian. BR, who was from Mercy Community Services attended to provided support to the adult and WS.
- [29] An agreed feature of this matter was that the adult had an impaired capacity. The underlying dispute was whether the adult was likely to do something that involved an unreasonable risk to her health, welfare or property, and whether at this time her needs were being adequately met and her interests being adequately protected.

Personal issues

- [30] A further agreed feature of this matter was that the adult lived with her mother, and the adult's mother has her own difficulties with respect to her physical health. She requires mobilised assistance to get around. Notwithstanding this, I was otherwise of the view that the adult's mother was capable of processing the relevant information for her daughter, and was able to provide some guidance to her. Clearly, the adult and the adult's mother have a close bond and live together; this close bond appears to meet the emotional needs of the adult.
- [31] The tribunal was told that there was a current NDIS plan in place for the adult, and that plan provided for home support for the adult, along with community access and other services such as occupational therapy. That plan is not due for a review until 2020.
- [32] The adult herself, although having an impaired capacity, was able to tell the Tribunal in quite strong terms that she did not support ME's application regarding the appointment of a guardian and an administrator.
- [33] There were concerns raised by Dr AS with regard to the adult not accessing medical assistance. The adult disputed this and provided a medical certificate to the tribunal.¹⁹ That medical certificate showed that for the months of May, June and July of 2019, the adult consulted with that medical practice on a twice-a-month basis. Three of those consultations involved a depot injection. That in itself is an indication that the adult is either herself able to attend upon that medical practice, or that she is ably assisted by those that are supporting her.
- [34] In regards to any suggestion that the adult was vulnerable in regard to her physical and psychological condition, I am satisfied that there are appropriate processes currently in place to the support the adult in respect to her receiving assistance from

¹⁷ *Guardianship and Administration Act 2000* (Qld), s 15.

¹⁸ *Guardianship and Administration Act 2000* (Qld), s 16.

¹⁹ Dated 12 July 2019 under the hand of Dr BM, who is a medical practitioner with the Northern Beaches GP Superclinic.

her NDIS service provider. I am also satisfied that those services which are in place negate any concerns that arise with this particular issue.

Financial issues

- [35] The applicant suggested that in regard to the adult's financial position, her mother was acting informally as the financial decision-maker for the adult. Dr AS felt that this arrangement was not appropriate and it was unclear whether the adult's best interests were currently being met.
- [36] I saw no evidence of the adult being vulnerable to financial exploitation by her mother or any other person. The adult's current financial situation can be described as uncomplicated in that her only source of income is her disability support pension. Her main expenses are rent and food. No evidence was presented at the hearing to suggest that the adult is not capable of managing the uncomplicated financial situation that she is currently in. I am satisfied that there are no complex financial decisions which the adult is required to undertake, and, notwithstanding her impaired capacity, she is able to understand the consequences of making simple financial decisions.

Conclusion

- [37] I am satisfied that the adult has an impaired capacity. Notwithstanding that, I am also satisfied that she is afforded support in the community through her support network, her NDIS service provider, and her mother. That is sufficient enough for it to be accepted that the adult's needs are currently being adequately met and there are sufficient safeguards in place to adequately protect her interests.
- [38] I am not satisfied that, given the level of support provided to the adult, there is an unreasonable risk to her health, welfare a property under the current circumstances.
- [39] Therefore, the only appropriate order to make is to dismiss both applications.

Decision

- [40] The Tribunal orders that:

GUARDIANSHIP

1. The applications made by ME and WS for the appointment of a guardian for WJE are dismissed.

ADMINISTRATION

2. The applications made by ME and WS for the appointment of an administrator for WJE are dismissed.