

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: CC [2020] QCAT 367
PARTIES: In applications about matters concerning CC
APPLICATION NO/S: GAA5782-20 and GAA5784-20
MATTER TYPE: Guardianship and administration matters for adults
DELIVERED ON: 18 September 2020
HEARING DATE: 31 July 2020
HEARD AT: Brisbane
DECISION OF: Member Allen
ORDERS: **GUARDIANSHIP**

1. **The guardianship order made by the Tribunal on 1 August 2018 is changed by appointing the Public Guardian as guardian for CC for the following personal matters:**
 - (a) **Accommodation;**
 - (b) **With whom CC has contact and/or visits;**
 - (c) **Health care; and**
 - (d) **Provision of services, including in relation to the National Disability Insurance Scheme.**
2. **This appointment remains current until further order of the Tribunal. The appointment is reviewable and is to be reviewed in five (5) years.**

ADMINISTRATION

3. **The appointment of the Public Trustee of Queensland as administrator for CC for all financial matters is continued.**
4. **The financial management plan dated 3 June 2020 is approved.**
5. **The Tribunal directs the administrator to provide accounts to the Tribunal when requested.**
6. **This appointment of the Public Trustee of Queensland remains current until further order of the Tribunal.**

CATCHWORDS: HEALTH LAW – GUARDIANSHIP, MANAGEMENT AND ADMINISTRATION OF PROPERTY OF PERSONS WITH IMPAIRED CAPACITY –

ADMINISTRATION AND FINANCIAL MANAGEMENT – where current appointment of guardian and administrator subject to review – family member nominates for appointment of guardian – whether adult has capacity for decisions about persona and financial matters – whether there is a need for decisions requiring appointment of a decision maker – whether current appointees remain competent – whether family member more appropriate than independent guardian.

Guardianship and Administration Act 2000 (Qld), s 12, s 15, s 31

Human Rights Act 2019 (Qld), s 13, s 19, s 24, s 25, s 37

**APPEARANCES &
REPRESENTATION:**

Adult:	CC
Applicant/s:	LMP – sister
Proposed Guardian/s:	LMP
Proposed Administrator/s:	LMP
Current Guardian/s:	Public Guardian - KA
Current Administrator/s:	Public Trustee of Queensland - PS
Interested Person/s:	CG – sister
	EC – sister
	TK – sister
	CJ – brother
	LB – nephew
	WA – advocate for LMP
	PT – advocate for CC
	BA – niece
	VS – niece

REASONS FOR DECISION

- [1] CC is 54 years old and resides in the community supported by a service provider. He comes from a large rural family and until the passing of his father he resided on the family farm with him and his brother, CJ. CC's sister LMP has been very involved in his life and at the time of the review of the appointment of his current guardian, the Public Guardian, and current administrator, the Public Trustee of Queensland, has nominated herself in the roles.
- [2] A review of the appointment of decision-makers for CC is conducted in accordance with s 31 of the *Guardianship and Administration Act 2000 (Qld)* (GA Act). In

accordance with s 31(2) of the GA Act at the end of a review the Tribunal must revoke the appointments unless it is satisfied it would make an appointment if a new application for appointment were to be made.

- [3] This references s 12 of the GA Act which sets out the matters the Tribunal must be satisfied of before it may make an appointment of a guardian or administrator. That is that:
- (a) CC has impaired capacity for decisions about personal and financial matters;
 - (b) there is a need for a decision in relation to personal and financial matters or CC is likely to do something in relation to personal and financial matters that involves, or is likely to involve, unreasonable risk to his health, welfare or property; and
 - (c) without an appointment:
 - (i) CC's needs will not be adequately met; or
 - (ii) His interests will not be adequately protected.
- [4] If I am satisfied of the matters listed above s 31(4) of the GA Act requires that I may make an order removing the current appointees only if I consider they are no longer competent or there is another person more appropriate for appointment. LMP has asserted that she is more appropriate for appointment as guardian. LMP acknowledged at the hearing that she did not want to be considered for the role of administrator. When considering appropriateness for appointment I am required to have regard to the appropriateness considerations set out in s 15 of the GA Act.
- [5] The Tribunal is also subject to the *Human Rights Act 2019* (Qld) and any limitation I place on CC's human rights as defined in that, such as his right to make accommodation¹ and health care decisions² or property rights,³ may be subject only to reasonable limitations⁴ and in particular having regard to the purpose of the limitation and whether there are any less restrictive ways of achieving the purpose.

Capacity

- [6] CC underwent a capacity assessment in 2014 by a psychologist. The report notes that CC had been diagnosed with schizophrenia at the age of 15 years and he had had several hospital admissions as a result, the most recent at that time in 2012. Collateral history was provided by LMP who said CC had had a normal upbringing with no major delays in his development. and he left school in year 9 as a result of severe bullying. The report notes that it was unclear whether CC had been gainfully employed. He had assisted around the family farm and used machinery though he had never obtained required licences. The 2012 hospitalisation was around the time of the passing of CC's mother, who had been the care giver for CC. At the same time CC's father was hospitalised for a knee reconstruction. CC was not compliant with medication and had symptoms of auditory hallucinations, disorganised mental state and expression of suicidal thoughts. This resulted in the 2012 hospitalisation after which CC was relocated to Brisbane, apparently without family consent. CC

¹ Section 19 of the Human Rights Act 2019.

² Section 37 of the Human Rights Act 2019.

³ Section 24 of the Human Rights Act 2019.

⁴ Section 13 of the Human Rights Act 2019.

was returned home after LMP went to Brisbane. At the time of the report CC was subject to an involuntary authority with fortnightly injections of medication. CC has other physical illnesses including diabetes, gout, continence issues, hypertension and high cholesterol. At the time CC's medication was monitored by a support service twice a week and he had once a week community access visits with another service provider. LMP and another sister CG also provided some support. It was also noted that the Public Trustee were appointed to manage CC's finances as he had a history of spending his allowance in one outing, mainly junk food and then binge eating it.

- [7] The report notes that department files show that CC has a diagnosis of intellectual impairment as well as schizophrenia. When his IQ was assessed in 1992 it was in the range of extremely low. An intelligence test, the Weschler Adult Intelligence Scale Fourth Edition (WAIS-IV) was performed on CC as well as the Adaptive Behaviour Assessment Second Edition (ABAS – II). The results suggested that CC's cognitive abilities were extremely limited. He was functioning in the extremely low range of intelligence (FSIQ – 54-62). His score on the ABAS General Adaptive Composite fell within the extremely low range which indicated that CC is currently functioning better than 1% of his peers on measurements of his adaptive skills. CC displayed a significant strength in self care skills. These scores were said to be consistent with those of 1992. The recommendations were that CC was likely to struggle greatly with a wide range of day to day activities, including medication adherence. Given the level at which CC is currently it is highly unlikely he will be able to manage tasks required with day to day living without an ongoing collaborative effort from a wide range of stake holders including disability services, Queensland Health, Public Trustee and his family members.
- [8] There were two other more recent reports including one dated 11 June 2020 from CC's treating general practitioner. Both of these reports confirmed that CC had a diagnosis of intellectual impairment and schizophrenia and that he would not be able to make complex decisions in regard to any matters.
- [9] At the hearing LMP and those associated with her indicated that CC was able to make many decisions and noted in particular that he had attended a normal school and he drove a lot of machinery on the farm. Other family members confirmed the reports mentioned above.
- [10] Having regard to the medical evidence, I am satisfied that as a result of the effects of CC's intellectual disability and his diagnosis of schizophrenia that he has impaired capacity for both personal and financial matters.

Guardianship

- [11] The Public Guardian is CC's current guardian and was appointed for decisions in regard to contact, health care and service provision. The Public Guardian provided a report to the Tribunal setting out the decisions made by the Public Guardian since the last review of their appointment and what further decisions may need to be made in the future. The report also provides the views of stakeholders about the continuing need for appointment of a guardian. The report noted that contact with CC occurred when his input was required in relation to decisions and that otherwise contact about CC's guardianship matters is via stakeholders and LMP. CC's stakeholders have weekly to fortnightly contact with the Public Guardian. The Public Guardian has participated in fortnightly teleconferences with CC's advocate, NDIS supports coordinator and Public Trustee to ensure open communication to minimise impacts

of LMP's unreasonable behaviour on his supports and address her concerns that are appropriate.

- [12] The Public Guardian noted that they had received 1,017 emails from LMP during the period of the current order, that there is a communication protocol in place with LMP which she often ignores and the delegate guardian has a weekly phone call with LMP so she can raise her concerns and the delegate guardian can action genuine guardianship matters. Contact with other family members was ad hoc and usually occurs when the Public Guardian is obtaining views.
- [13] There were several health care decisions made on behalf of CC and numerous service provision decisions. It was noted that LMP who had previously been CC's NDIS plan nominee, but had been removed by the NDIA (a decision she was appealing to the AAT), had attempted to change CC's service providers on three occasions. It was noted that she had also disrupted stakeholder meetings when she and CG had been in conflict with other family members. The Public Guardian had initially allowed LMP to accompany CC to his medical appointments. This had been stopped because LMP did not pass vital information about changed or newly made appointments to service providers so that support workers were aware of changed arrangements and CC missed some appointments. LMP changed general practitioners often and was providing inaccurate information to these practitioners and misconstruing their information back to providers. LMP was also said to have provided CC's health information inappropriately to multiple parties and that she had disregarded these concerns when raised with her.
- [14] The Public Guardian advised that there was an urgent NDIS plan review for CC due to CC's crisis circumstance relating to the unreasonable behaviour of LMP. CC had been given five weeks to leave his tenancy and so would require alternate accommodation and one of his two key service providers had provided notice they were going to withdraw services.
- [15] The Public Guardian advised in relation to any further decisions required that as above CC's services are not stable and that there are no alternate service providers prepared to support him due to the unreasonable behaviours of LMP. The Public Guardian stated that LMP has excessive contact in person and by email escalating her concerns or desired outcomes that are often malicious, disproportionate and based on her views rather than CC's desires and needs or best interests. The Public Guardian stated that CC has multiple chronic health conditions that require close monitoring and treatment. There are said to be concerns that CC's health care needs are not being adequately met. LMP has strong negative views about Mental Health Services. She is currently obstructing CC's access to appropriate mental health care. LMP is said to continually want to manage CC's health care needs and therefore it is anticipated that future health care decisions will be required. CC resides in rental property and this accommodation is not stable. The supports coordinator recently negotiated an extension of CC's lease after he was issued a notice to leave and no alternative accommodation was sourced. Part of that negotiation included a communications protocol to assist the real estate agent to manage the impacts of LMP's unreasonable behaviour on their agency. The current lease expires in December 2020. The Public Guardian noted that LMP had said CC could live in a house on her farm. Future accommodation decisions will be required.
- [16] The Public Guardian observed that CC had a strong bond with LMP, but he indicated he struggled with some of the interactions with LMP and his older

siblings. CC also identified he would like further contact with his younger siblings. A behaviour support plan was developed to help CC manage these social interactions. It was anticipated that decisions in relation to contact and/or visits would assist service providers to implement the behaviour support plan.

- [17] The Public Guardian sought CC's views about having a guardian and he said that his sister wanted to be his guardian. CC attended the hearing for a short time and repeated that his sister wanted to be his guardian. TK, one of his CC's sisters, when asked about her views stated that she and her brothers, CJ and AC, would be writing to the Tribunal opposing LMP as a prospective guardian for CC and citing her appointment as being detrimental to CC's health and well being. JC, brother, said that he did not think CC can make decisions for himself with regard to care. He stated that LMP was not a good choice as a guardian for CC. He said he and her family were out of control and that CC needs stability and routine. CC would not get that with them and he needs professional people to look after him without family influences and that there was too much conflict with our families and LMP and her family will make it worse for CC. LMP when asked her views by the Public Guardian stated she would like to be CC's guardian and would have his best interests at heart and that she had told her mum she would always look after CC, and she wasn't going to let her mum and dad down. LMP talked about the problems with some service providers. She said that Blue Care told her that she does a wonderful job and asked if she would be supports coordinator.
- [18] The views of other stakeholders were also sought. A representative from one of CC's service providers advised they will have to cease services provision if LMP was appointed guardian. Representatives from other service providers all confirmed the need for a guardian and that the Public Guardian should continue in the role. In particular a representative of Mackay Lifestyle Services (MLC) stated that in a choice between the Public Guardian and LMP it would have to be the Public Guardian, because they have to choose CC's best interests. That LMP is all over the place, noting that she contacts everybody with emails, makes appointments for CC outside the hours of MLC support; and if she doesn't like what you say 'she writes all these notes to everyone', 'she'll crucify you to the Prime Minister and everyone'. That MLC likes to help families but she goes overboard, stating that she has called him at 9:30pm and at 7:00am, she texts all day, we are not on call 24/7 and she calls staff on their personal mobiles telling them she has spoken to him or his partner. He noted that she has a thing for Mental Health and said 'she was going into medical appointments and saying CC was fine, she was sugar coating everything to the doctors and she was telling stories that were not true at all'. That 'our duty of care was with the client' but 'LMP was all over the place' and 'that's why he was going with you (Public Guardian)'.
- [19] The Public Guardian's representative confirmed the report at the hearing.
- [20] CC's siblings TK, CJ, CA and EC, as was mentioned in the Public Guardian's report, filed a letter in the Tribunal. They stated that "LMP does not and has not acted in the best interests of CC since the passing of their parents. She does her best to isolate CC from all family members apart from CG and LMP's direct family. They stated that CC thrives when he has access to all family members. That LMP has harassed and bullied carers to the point that they opt not to care for CC even though CC has a public guardian. That LMP seems to find a way of overriding the Public Guardian to get her way. That her decisions regarding CC do not focus on CC's health and wellbeing. They were not sure what the focus was. LMP has

forcefully pushed for the choice of carers, going to extreme lengths to accuse the carers she does not like of abuse and administering unprescribed drugs. After investigation, all allegations were proven false, but she got her way because the expense and stress to clear the allegations took their toll. A service provider walked away from CC's care which was very upsetting for us because the carers had a genuine relationship with CC. On the rare occasion we have been invited to carers' meetings LMP has been extremely aggressive by bullying the meeting organisers, arguing, and walking out. Ideal Placements said that was one of the better meetings. Another example of LMP causing chaos. Not a good choice of sole guardian and administrator. They concluded that they were opposed to LMP being CC's guardian. CC needs to be supported by all family members. CC needs calm, positive decisions about his care focusing on what is best for his health and well being. CJ also provided further information to the Tribunal supporting his view that LMP should not be appointed as CC's guardian. They believed that LMP does not offer that. The family members confirmed these views at the hearing".

- [21] CC's NDIS support coordinator filed a submission in the Tribunal. They had been working with CC since June 2019 and were supportive of the Public Guardian and recommended that they be appointed for CC's service provision including NDIS, mental health, medical, contact, employment and accommodation matters. This was based on their professional observations dealing with the Public Guardian and LMP over a thirteen month period. They found that the decisions of the Public Guardian had been sound, objective and in the best interests of CC, and with his safety and wellbeing being highly considered. They noted the amount of progress made over the last six months with CC. It was noted that a service provider had been sourced with medical knowledge due to the family's concern about CC's diabetes of which his father passed away.
- [22] The coordinator explained in regard to accommodation that they had to do a lot of work to secure CC's accommodation and she was told by the real estate agent that the reason he had received a notice to leave was that the agency had been subject to harassment by LMP and an onslaught of demands made by her for maintenance to the property. She was advised by the agent that if LMP was appointed guardian the lease would not be renewed. The supports coordinator noted that LMP had said she would take CC out to live on her farm. The farm is 50 minutes out of town and the NDIS funding would not currently cover the travel time out of town. There was also concern that LMP may deny access to service providers and she had already stated that if she were reinstated as the plan nominee she would cease service bookings with agencies she has expressed contempt with. It was noted that LMP was contradictory on one hand saying that CC must be respected at all times and then stating that he should not be allowed to shop in certain places or buy CDs, despite what the supports coordinator says is his love of music. She observed that a lot of these forceful commands are based around LMP's personal opinions on what she sees as value, not CC's sense of value in life.
- [23] The supports coordinator notes that LMP had sent in excess of 350 emails to her, and additional emails sent to staff in her organisation. The onslaught of emails they had been receiving had been excessively time consuming and negatively impacting CC due to the time this took up. These emails include abuse, being called a bully, told she was in the wrong career and is uncaring and lacking compassion, and all began after she failed to go against the decisions of the Public Guardian and side with LMP in the choice of support service to work with CC, despite explaining that

the Tribunal order stipulated she could not go outside of the directions given by the Public Guardian. It has only been in the very recent weeks that the level of emails has dissipated, with the introduction of the contact and communications protocol being implemented to all providers. It was noted that LMP opposes any engagement with Mental Health for CC, and that LMP has stated she would change CC's GP if a referral were to be made and would lodge complaints due to her beliefs that mental health and a psychologist for CC are the reason she has lost control over guardianship and administrator, and holds all mental health services as useless and with ulterior motives. The supports coordinator stated that "CC has schizophrenia and has previous ITOs in place to engage with the community mental health team". She believed that CC would greatly benefit from having intervention with a psychologist to help manage his mental health and discuss the anxieties and stresses he feels. LMP is said to become almost aggressive in her language when this is discussed and if appointed guardian she suspects LMP would follow through with her threats and ensure CC does not have choice and control to access mental health at all. The supports coordinator noted that as a result of the ongoing nature of LMP's emails her service had notified the Public Guardian of their intention to cease services for CC. There were also two service providers for CC who had expressed to the supports coordinator that they would cease services for the same reason. It was expressed that CC's wellbeing and safety is the driving factor for her company continuing to provide support and service to him. They have grave concerns over what will happen with CC if LMP is appointed guardian. They believed that LMP would take immediate steps in ceasing their service along with another service provider if appointed; if she did not, they would likely make the decision not to continue working with CC, purely due to LMP's involvement.

- [24] One of CC's service providers advised that they had been bombarded with numerous emails by CC's sister which bordered on defamation about their service, the Public Guardian and other services but this had stopped in recent months. They advised that they had considered withdrawing their services but feel that CC would suffer if they were to do so.
- [25] LT, LMP's daughter, supported her appointment as guardian stating that LMP was very dedicated to caring for her brother CC, she attends all medical appointments for CC, supporting him in every way she can. She visits him regularly and is basically on call 24 hours a day. She listens to him and does her best to help him at all times. That she has shown much concern over the years about his care and well-being and is always looking out for him and standing up for him to ensure he receives the care he deserves. She believed she would be the best person for this role. There was also a letter of support for LMP from her son LB, who again mentions CC using farm equipment. He stated that there was never a need for a guardian when LMP was there. He believed that the current guardian was incompetent to look after CC's needs and that CC has felt scared in his own home, drugged and missed medical appointments. He also made comments about the number of support workers and the NDIS system. He did note that there were good carers for CC who took him for drives.
- [26] LMP forwarded an email to the Tribunal which she had sent to the Public Guardian expressing her concern about the signing of a lease for CC saying that the delegate guardian should have known that the lease had been signed. She said that CC's best interests were not being met, everyone needs to know they have a roof over their heads. There was a whole series of emails provided in regard to the accommodation.

- [27] LMP provided a series of emails in regard to a physiotherapist for CC and the purchase of knee support. LMP had arranged the physiotherapist and this was apparently outside of the NDIS plan and CC had to pay for the appointments himself. He also had to pay for the knee support and it was purchased without approval.
- [28] LMP provided to the Tribunal a copy of a complaint outcome from an NDIS Commission where she had made complaints about one of CC's service providers in regard to ongoing abuse of CC and the use of chemical restraint. Of all of the complaints only one instance of an unauthorised use of a PRN medication was unsubstantiated and the file was closed after the service provider took remedial training action. It was noted that the service provider was ceasing their services to CC there were a number of complaints that occurred prior to the NDIS and while they were considered they were unable to be addressed.
- [29] CG provided an email in support of LMP in particular in relation to her assistance to CC with medical appointments and his desire that she attend them with him. She was also concerned that the Public Guardian believes that CC does not have the capacity to make decisions for himself, citing the example of CC driving farm equipment.
- [30] LMP provided character references from various people including doctors and politicians.
- [31] LMP provided submissions noting that she was the older sister of CC and had been his guardian and informal decision maker previously and that she believed that it was in CC's best interests for her to be appointed as his guardian. She has maintained a close and loving relationship with him. She has continued to visit him regularly. There were numerous changes to the Public Guardian staff and the appointed guardians had limited physical contact with CC. There had been a number of issues in regard to CC's care since the Public Guardian had been appointed which were set out above in the NDIS Commission report. She stated that the Public Guardian were not prepared to include her and CG in meetings in respect of CC and this has deprived CC of the input that they are able to provide for CC as caring siblings who are both close to CC and know him well and are aware of his family history, needs and importantly his wishes.
- [32] At the hearing LMP and her supports submitted that all of the interventions that LMP had been involved in on behalf of CC showed that she was appropriate and that without her his needs would not be met in his best interests. She denied that she exhibited unreasonable behaviour and said all of her efforts were to ensure the best outcomes for CC.

Discussion

- [33] CC has ongoing needs in regard to the provision of services with the NDIS as he has service provision funded through the NDIS. He is also on a short lease and there will be an accommodation decision required at the end of the lease. CC also requires some predictability in regard to his visitors as he gets agitated when people visit unexpectedly and this according to his supports coordinator includes his family. For that reason a behaviour support plan has been drawn and part of this requires that contact be regulated. CC also has ongoing health care needs which require management. Many of these decisions could be made informally if there was an appropriate family member. That is not the case here and I am satisfied that there is

no less restrictive way of making decisions on behalf of CC without the formal appointment of a guardian for the purposes of the Human Rights Act. It is clear that LMP, and I accept the evidence from the Public Guardian and other independent parties, who is the family member most involved in CC's life has intervened to his detriment in regard to his healthcare, his accommodation and service provision. Due to tactics of making malicious complaints and sending large numbers of emails she has alienated service providers, supports coordinators (putting CC's supports at risk) and also his real estate agent (putting his accommodation at risk). While LMP is supported by one of her sisters and her immediate family she is not supported by her other siblings nor any of the independent providers in CC's life. Even in regard to health care which the Public Guardian allowed her to get involved in after their appointment she gave inaccurate information to the doctors and did not tell service providers of appointments. For these reasons there needs to be formal appointment of decisionmakers so that LMP is not able to act informally as I do not consider that she is appropriate. While I accept that she has a strong desire for the best outcomes for her brother her methods and tactics only alienate the people she deals with on behalf of CC and that cannot be in his best interests in particular where it puts his support services and accommodation at risk. There is then a need for a guardian for decisions about accommodation, with whom CC has contact and/or visits, health care and provision of services with the National Disability Insurance Scheme.

- [34] I am required to continue the appointment of the current guardian unless I am satisfied that they are no longer competent. The Public Guardian is supported by the service providers and family members apart from LMP and her supporters. I am satisfied that the Public Guardian has carried out their duties as guardian for CC competently having regard to all the material before me they have ensured that appropriate decisions are made for him over the period of their appointment. While LMP considers that she is more appropriate than the Public Guardian as a family member to act in CC's best interests. She has demonstrated that she is divisive and that she puts CC's position at risk in regard to service provision and accommodation. I am not satisfied that she is more appropriate than the Public Guardian.
- [35] I continue the appointment of the Public Guardian as guardian for CC for the above matters for five years.

Administration

- [36] The Public Trustee of Queensland has been administrator for CC for some years. The Public Trustee provided reports to the Tribunal confirming that they currently managed assets for CC including a cash account of \$7,352; term investment account of \$66,000 and growth trust of \$55,140. There is also superannuation of \$104,505 and CC has two bank accounts for his personal use with nominal values. CC also has household furniture of \$13,200. It is clear then that CC has substantial assets. There is also a further interest in his late father's estate which has not yet been finalised. The Public Trustee also collects CC's income in the form of the disability support payment and pays for his expenses and provides him with an allowance for his personal expenses.
- [37] Where someone has impaired capacity, unless finances are jointly held with a spouse, informal arrangements are not sufficient to meet their financial needs as institutions such as banks and Centrelink will only recognise a formal order appointing an administrator. So where as here there are assets to be managed and

income to be collected and expenses to be paid there is no less restrictive way of dealing with the matter and the appointment of an administrator is a reasonable limitation having regard to the Human Rights Act 2019.

- [38] I am satisfied that there is a need for an administrator and the Public Trustee of Queensland is competent to act in the role, was supported at the hearing to continue in the role as administrator and there is no one else proposing themselves in the role.
- [39] I continue the appointment of the Public Trustee of Queensland as administrator for CC in accordance with the order.