

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *HAC* [2022] QCAT 104

PARTIES: **In an application about matters concerning HAC**

APPLICATION NO/S: GAA15511-21

MATTER TYPE: Guardianship and administration matters for adults

DELIVERED ON: 3 February 2022

REASONS
DELIVERED: 28 March 2022

HEARD AT: Brisbane

DECISION OF: A/Senior Member Traves

ORDERS: **On 3 February 2022:**
IT IS THE DECISION OF THE TRIBUNAL THAT:
The application by WC for an interim order is dismissed.

CATCHWORDS: GUARDIANSHIP AND ADMINISTRATION –
INTERIM ORDER – whether Tribunal satisfied on
reasonable grounds that there is an immediate risk of
harm to the health, welfare or property of the adult
Guardianship and Administration Act 2000 (Qld), s 129
Human Rights Act 2019 (Qld), s 9

APPEARANCES: This matter was heard and determined on the papers
pursuant to s 32 of the *Queensland Civil and
Administrative Tribunal Act 2009 (Qld)*

REASONS FOR DECISION

- [1] On 21 December 2021 an application for the appointment of a guardian and administrator for HAC was made by her son, WC. The application includes completion of an appropriateness and competence advice signed by Mr C and states that he agrees to the proposed nomination as administrator. In relation to who is proposed as guardian the application states that Mr C and “someone else” are proposed as guardians, acting jointly. There is no completed appropriateness and competence advice by any other proposed guardian.
- [2] The application also states that decisions are currently being made by attorneys under an enduring power of attorney. The Tribunal was not provided with a copy of the current enduring power of attorney.

- [3] The application lists the following persons as attorneys: JG; BG and WC.
- [4] On 21 December 2021 Mr C also filed an application for an interim order seeking the appointment of an administrator and guardian for HAC. In that application, by way of an explanation as to why an interim order is necessary, it is stated:

There is neglect of HAC's care and exploitation of property.

- [5] No evidence of a lack of care or exploitation of HAC's property has been provided. It is also not clear against whom these accusations are levelled.
- [6] Before the Tribunal can make an order appointing a guardian for a personal matter or an administrator for a financial matter, the Tribunal must be satisfied of the elements in s 12 of the *Guardianship and Administration Act 2000* (Qld) (the Act), namely:
- (a) the adult has impaired capacity for the matter;
 - (b) there is a need for a decision in relation to the matter or the adult is likely to do something in relation to the matter that involves, or is likely to involve, unreasonable risk to the adult's health, welfare or property; and
 - (c) without an appointment, the adult's needs will not be adequately met; or the adult's interests will not be adequately protected.
- [7] Section 129 of the Act gives power to the Tribunal to make an interim order in the proceeding without hearing and deciding the proceeding or otherwise complying with the Act, but only if the Tribunal is satisfied, on reasonable grounds, that there is an immediate risk of harm to the health, welfare or property of the adult concerned in an application, including because of the risk of abuse, exploitation or neglect of, or self-neglect by, the adult. The maximum period that may be specified in an interim order is three months.
- [8] On 3 February 2022 I dismissed the application for an interim order. Mr C has requested reasons for that decision. These are my reasons.

Consideration

- [9] I am not satisfied that there is an immediate risk of harm to the health, welfare or property of the adult concerned.
- [10] HAC currently resides in a Nursing Home at Carina. There is no evidence that she is not well cared for there or that she is at immediate risk of harm in that respect.
- [11] It appears from the application that HAC has a current enduring power of attorney appointing Mr C (HAC's son) and BG (HAC's niece) as attorneys. Again, there is no evidence that the attorneys were not validly appointed or that they are not acting appropriately.
- [12] The reference in the application to a former attorney, JG (HAC's daughter) allegedly not accepting revocation of her appointment as attorney, provides some insight as to the basis for the making of the application.
- [13] In my view, the issue of the enduring power of attorney and whether a former attorney's appointment was validly revoked, is properly the subject of a hearing. There is certainly no evidence before the Tribunal which would satisfy me that an

interim order is required, overtaking any enduring power of attorney, on the basis HAC is at immediate risk of harm.

- [14] The appointment of an administrator or guardian on an interim basis is a serious incursion on a person's human rights. I accept that the Tribunal is subject to the *Human Rights Act 2019* (Qld) when it makes a decision to appoint an administrator or guardian under the Act, being, in the course of making that decision, a 'public entity' acting in an 'administrative capacity'.¹ The appointment of an administrator with unlimited powers is a serious step to take because it transfers complete and exclusive control of a person's estate to the administrator. The same can be said for the appointment of a guardian. It is particularly so when the appointment is made on an interim basis because the usual legal protections and rights of adults with impaired capacity do not apply. For example, the adult is not required to be given notice of the application, has no opportunity to be heard, and is not given a fair hearing.
- [15] Accordingly, for the above reasons, I am not satisfied that reasonable grounds exist for the making of an interim order under s 129 of the Act. Accordingly, the application for an interim order is dismissed.

¹ *Human Rights Act 2019* (Qld), s 9(4)(b); *PJB v Melbourne Health* (2011) 39 VR 373.