



REASONS FOR ORDER

Mental Health Ordinance (Cap. 136)¹

(Section 59O)

BETWEEN

Mr G

1st Applicant²

Madam C

2nd Applicant³

and

Madam K

Subject⁴

The Director of Social Welfare⁵

Members of Guardianship Board constituted

Chairperson of the Board: Mr Charles CHIU Chung-yee

Member referred to in section 59J (3) (b): Ms Kitty CHAU Shuk-king

Member referred to in section 59J (3) (c): Mr Paul CHEUK Ching-tak

Date of Reasons for Order: 14th November 2011.

¹ Sections cited in this Order shall, unless otherwise stated, be under Mental Health Ordinance (Cap. 136) Laws of Hong Kong.

² S2 of Mental Health Guardianship Board Rules

³ S2 of Mental Health Guardianship Board Rules

⁴ S2 of Mental Health Guardianship Board Rules and S59N(3)(a) of Mental Health Ordinance

⁵ S2 of Mental Health Guardianship Board Rules and S59N(3)(a) of Mental Health Ordinance

Background

1. The subject, Madam K, was a 79 year-old woman suffering from vascular dementia. Madam K used to live with the elder daughter's family and took care of the grandchildren even after the elder daughter passed away ten years ago. Madam K and her husband, after their savings exhausted, depended on CSSA since June 2002 and her husband passed away in 2004. The subject moved to live with the family of the younger daughter, Madam C, for about 3 years now. The subject continuously kept contact with and paid visits to the children of the elder daughter.
2. In October 2010, the subject was fallen down twice in younger daughter's abode. The subject was sent to hospital and was assessed to suffer from vascular dementia. In April 2011, after discharged from hospital, the subject was admitted to a private nursing home while waitlisted for subvented placement. The medical social worker requested the younger daughter to be the appointee of subject's CSSA and HDA in order to settle the admission and home fees of the subject. The younger daughter refused. The home staff later requested the younger daughter to remove the subject from the aged home. The younger daughter took the subject back to hospital and requested the hospital to take care of the subject till the offer of subvented home came. Finally, the medical social worker contacted the grandson of subject. The grandson i.e. Mr G, 1st applicant, agreed to be the appointee and settle the fees by using CSSA and HDA of subject. The subject, then, continued to live in the private nursing home.
3. Due to the above incident, the 1st applicant would like to safeguard the subject's welfare plan and accommodation issue. He filed an application to the Board and proposed himself to be the guardian of the subject. The younger daughter did not agree the 1st applicant to be the guardian of

subject. She argued that she has close relationship with the subject and that the 1st applicant did not have time to give care to the subject when compared to her. She thought that the subject should be placed to a better nursing home but she could not find a better one till the present moment. The younger daughter proposed herself to be the guardian and she filed another application to the Board subsequently.

Circumstances leading to the present application

4. The social enquiry report stated that:

“23. After (1st applicant) to be appointee for (the subject), Madam C quarrelled and disturbed (1st applicant) several time and Madam C said that she would take (the subject) to jump from height if (the subject) was still placed in the private nursing home. As (1st) applicant worried that Madam C might do harm to (the subject’s) welfare and safety, he made the application for Guardianship Order in order to protect the safety and welfare of (the subject).” (Brackets supplied.)

5. The younger daughter Madam C admitted to have conflict with the 1st applicant on the accommodation of subject.

Mental and health conditions

6. Due to the subject suffered from vascular dementia, she has poor memory and disoriented to time and place. She was unable to manage her personal affairs. She was wheelchair bound. Her independent activities of daily living totally depended on the assistance of nursing home staff. Her health condition was stable. She needed to attend the medical follow-up at psychogeriatric out-patient department of hospital.

Summary of evidence adduced at hearing on 14 November 2011

7. Mr G, the 1st applicant, proposed guardian and grandson of the subject, said he liked a Guardianship Order to safeguard the subject's present care plan because the 2nd Applicant, Madam C, had a different care plan. As discussed, for simplifying the procedures, although initially he liked to be appointed the guardian, now he agreed the Director of Social Welfare as the guardian.

8. Madam C, the 2nd applicant, proposed guardian and daughter of the subject, said initially she liked to be guardian but now she agreed to simplify the matter by agreeing to the appointment of Director of Social Welfare as the legal guardian of the subject. She liked the subject to receive better care at another aged home. Subject did not look sleeping well at her bed due to a lot of sores and wounds on her body. Subject's body was smelly. Overall, the environment and service of the aged home was not satisfactory. [1st applicant said the sores of the subject have improved a lot. The social enquiry report maker Mr H said he did enquire with the previous medical social worker before and understood that the sores of the subject had improved much. He confirmed that 1st applicant has purchased a ripple mattress for the subject.]

9. Mr H, **the maker of social enquiry report**, on behalf of the Director of Social Welfare, said he would accept public guardianship if the Board assessed it as necessary, although he assessed there might not be a need for a Guardianship Order.

Issues and Reasoning

Reasoning for receiving the subject into guardianship

10. The Board found that the two closest relatives of the subject, being the 1st applicant and the 2nd applicant, held different views of the future care plan of the subject. The 1st applicant liked to keep the subject at the existing aged home which was close to his abode and thus was convenient to pay visits to the subject. The 2nd applicant held the view that the best place for the subject would be a subvented placement and the service quality of the present aged home was poor. She sought to change the subject to another private old age home for better care. Taking into account of the entrenched disagreements between them as well as the tortuous course of the subject's problematic hospital discharge since the end of 2010, the Board believed that the interests of the subject are required to be protected and promoted. Particularly, the Board noted that the 2nd applicant has been very un-cooperative with the hospital during that time and acted irrationally against the advice of the medical social worker (see paragraphs 8 to 11 of the social enquiry report). Therefore, the Board decided to override the recommendation of the Director of Social Welfare. Accordingly, the Board decided to receive the subject into guardianship.

Reasoning for choosing the legal guardian

11. Since the present case was a conflict case between the two family members, an impartial and neutral public officer should be appointed as the legal guardian for obvious good reasons. Fortunately, both applicants gave up their insistence to have themselves so appointed. They further agreed to the proposition advanced by the Board to appoint the Director of Social

Welfare as the legal guardian of the subject. Accordingly, the Board decided to appoint the Director of Social Welfare as the legal guardian of the subject in this case.

DECISION

12. The Guardianship Board was satisfied on the evidence and accordingly finds:-

- (a) That the subject, as a result of vascular dementia, was suffering from a mental disorder within the meaning of section 2 of the Ordinance which warranted the subject's reception into guardianship;
- (b) The mental disorder limited the subject's capacity to make reasonable decisions in respect of a substantial proportion of the matters which related to the subject's personal circumstances;
- (c) The subject's particular needs may only be met or attended to by guardianship, and no other less restrictive or intrusive means were available as the subject lacks capacity to make decisions on accommodation, her own welfare plan, treatment plan and finances, which had caused conflict between family members in making decisions for subject's welfare;

In this case, the predominant needs of the subject remained to be satisfied are, namely, decision to be made on future welfare plan, future accommodation and future treatment plan;

(d) The Board concludes that it is in the interests of the welfare of the subject that the subject should be received into guardianship.

13. The Guardianship Board applies the criteria in section 59S of the Ordinance and is satisfied that the Director of Social Welfare is the only appropriate person to be appointed as guardian of the subject.

(Mr Charles CHIU Chung-ye)
Chairperson of Guardianship Board