



REASONS FOR ORDER

Mental Health Ordinance (Cap. 136)¹

(Section 59O)

BETWEEN

Madam SK

Applicant²

and

Mr HB

Subject³

Mr CL

Party Added⁴

The Director of Social Welfare⁵

Members of Guardianship Board duly constituted

Date of Reasons for Order: 28th June 2012.

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 and S59N(3)(a) of Mental Health Ordinance

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

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

Background

1. Mr HB (“the subject”) was a 71-year-old man suffering from Parkinson disease with dementia. He was the eldest son of eight children in the family. Due to the fair relationship with parents, he left his family in his early teens and lived with a male close friend, Mr CL, over forty years. The subject maintained occasional contacts with his parents and siblings. During the past years, he sometimes joined family gatherings together with Mr CL. The subject used to be a tailor and had run garment business. Before he retired in 1997, he worked as a security guard.
2. The subject has been suffering from heart disease and required continuing blood tests as well as attending follow ups at hospital. Since 5 years ago, the subject started deterioration in mental conditions. He was looked after by Mr CL. Yet, by the end of 2011, Mr CL required to receive chemotherapy for his lung cancer. The subject was arranged to have respite services including meal delivery service, escort for medical follow-up, bathing and physiotherapy etc and the siblings took turns to take care of the subject while Mr CL was away for treatments. One of the siblings also approached a social worker of NGO to assess the subject and place subject to waitlist for a care and attention home.
3. Unfortunately, in early 2012, the subject had a fall and was admitted to hospital for treatments. During this period, one of the subject’s younger brothers died suddenly. The other siblings would like to tell the subject about the funeral matters. The younger sister of subject then called Mr CL. Mr CL shouted to her and said the subject has died and become ashes already. But the siblings finally found out that the subject has been admitted to an old age home on discharge from hospital in mid February 2012 as arranged by Mr CL.

4. When the siblings visited the subject at the old age home, they saw Mr CL feeding the subject with sandwiches inappropriately and shouted at him to open the mouth widely and swallow quickly. The staff of old age home warned Mr CL not to give solid food to subject. The staff also told the younger sisters of the subject that Mr CL has tried to put some dim sums to subject once. One of the younger sisters Madam SK, on advice of the social worker of NGO, filed an application for Guardianship Order to protect the best interests of subject.

5. In March 2012, the subject was re-admitted to hospital due to low blood sugar and urine infection. When visited the subject at ward, the siblings witnessed that Mr CL had rubbed the subject's face and eyes harshly. The ward nurse told siblings that Mr CL claimed he was a cousin of subject. For the past few months, Mr CL adopted a very hostile attitude towards the siblings. He blamed the siblings for not caring the subject enough and he spoke foul language to them at times. The siblings were concerned on Mr CL's possessive attitude and his inappropriate caring method to subject. The siblings were afraid that Mr CL would cause harm to the subject and felt very insecure to let Mr CL arrange subject's welfare plan. The applicant filed a 10-page long statement in Chinese to the Board stating the circumstances between the subject, Mr CL and the siblings.

6. Mr CL strongly opposed the guardianship application and objected the younger sister of subject Madam SK as the proposed guardian. He considered that the applicant was a trouble maker who tried to make a fuss only. To avoid direct contact with each other, Mr CL used to visit the subject at noons while the younger siblings of subject visited the subject in the evenings. Mr CL also denied that he was suffered from cancer. He claimed that he only had heart disease and intestinal problem. He was not prepared to be the guardian and agreed Director of Social Welfare to be the

future the guardian and the proposed welfare plan of report maker, i.e. to received residential care after subject's discharge from hospital.

Mental and health conditions

7. The subject was suffering from heart disease for years and requiring to attend follow-ups at hospital. According to clinical records, the patient had cognitive impairment and Parkinson features since 2007. He cannot recognise his way home. His MMSE score in 2007 was 13/30. In early 2012, the siblings of subject discovered that the subject had urinary incontinence. After repeated falls at home, the subject complained that he could not stand up on 27 January 2012. The carer, Mr CL, pressed the personal emergency alarm for assistance. The subject was sent to hospital for treatment. After discharge from hospital, due to low blood sugar, the subject required to re-admit to hospital again in March 2012. Currently, the subject was bedbound, dependent and non-communicable.

Views of the Director of Social Welfare

8. The maker of social enquiry report stated:

“Either Mr CL or applicant (on behalf of her siblings) is keen to secure a residential placement for the subject when he is medically fit for discharge. However, it is anticipated that they may not compromise with each other without the intervention of an independent body to help mediate their conflict and resolve their divergent view towards the welfare plan of the subject. To safeguard and promote the welfare interest of the subject, it is recommended that the Director of Social Welfare to be appointed as his public guardian”

Summary of evidence adduced at hearing on 18 June 2012

9. Madam SK, the applicant, proposed guardian and younger sister of the subject, said subject was not suitable to be returned home for care by Mr CL. Due to various physical illnesses and bedsores, the subject should better, as advised by doctors, be cared at an aged home. The siblings had viewed various old age homes. As the subject was not yet fit for discharge, they had not paid a deposit. The subject's sacral sore was of the size of a bowl with smelly discharges.
10. She did not know much about the role of an independent public guardian. After explanations, she still cannot make up her mind as to whether she agrees or welcomes the appointment of a public guardian. The Board granted her a short adjournment to discuss with her siblings. After the short recess, she confirmed, for the best interests of the subject, the siblings all agreed to have Director of Social Welfare appointed. They will only oppose an appointment in favor of Mr CL.
11. Mr CL, the friend of the subject and party added, said the subject had a placement kept at present nursing home which urged if the placement should be further kept. The home called him again yesterday. He agreed to discharge the subject to a residential care home for elderly in the meantime. He agreed to appoint Director of Social Welfare as guardian. He feels confident on this arrangement.
12. He agreed to pass the bankbook and ATM card of the subject's account to the Director of Social Welfare in future.
13. Two younger sisters and the younger brother at the hearing said they had nothing to add.

14. Mrs PY, medical social worker and the maker of social enquiry report, on behalf of the Director of Social Welfare, said she has nothing to add.
15. The Board would thank Mrs PY for her very informative reports.

Issues and Reasoning

Reasoning for receiving the subject into guardianship

16. The evidence showed clearly that the subject's siblings had great discord with Mr CL, the party added, the long-time friend and co-habitant of the subject over the subject's daily care and future placement. Accordingly, the Board received and adopted the views of the two medical doctors as contained in the two supporting medical reports as well as the social enquiry report and supplementary information and the views and reasoning for recommending Guardianship Order as contained therein and accordingly decided to receive the subject into guardianship in order to protect and promote the interests of welfare of subject.

Reasoning for choosing the legal guardian

17. The parties all agreed to the appointment of Director of Social Welfare as the legal guardian. Accordingly, the Board accepted and adopted the view of the social enquiry report maker who recommended, as contained in the supplementary information, the Director of Social Welfare to be appointed as the guardian of the subject in this case.

DECISION

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

- (a) That the subject, as a result of Parkinson's disease with 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 lacked capacity to make decisions on accommodation, his own welfare plan, treatment plan and finances, which had resulted in causing conflict between family members and the party added in making decisions for subject's welfare or accommodation;

In this case, the predominant needs of the subject remained to be satisfied were, namely, decision to be made on discharge from hospital, future welfare plan and future accommodation;

- (d) The Board concluded that it was in the interests of the welfare of the subject that the subject should be received into guardianship.

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

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