



REASONS FOR ORDER

Mental Health Ordinance (Cap. 136)¹

BETWEEN

The Director of Social Welfare

Applicant²

and

Madam KCY

Subject³

Madam SK (represented by counsel)

Party Added

Members of Guardianship Board duly constituted

Date of Reasons for order: the 15th day of December 2016.

Background

1. The emergency guardianship application and normal guardianship application for the appointment of a guardian for the subject, under Part IVB of the Ordinance, both dated 3 October 2016, was registered as received by the Board on 3 October 2016. The applicant is Mr CTL, social worker of Integrated Family Services Centre. The evidence shows that the subject is 83 years of age, woman, with vascular dementia. The subject was unable to handle finances and was incapable of consenting to treatment.

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

2. The Board adjourned the hearing on 9 November 2016.

The Law

3. Section 59O (3) of the Ordinance provides that, in considering whether or not to make a guardianship order, the Guardianship Board must be satisfied that the person, the subject of the application, is in fact a mentally incapacitated person in need of a guardian, having considered the merits of the application and observed the principles and criteria set out in sections 59K (2) and 59O (3) (a) to (d) of the Ordinance respectively.

Issues and Reasoning

Reasoning for receiving the subject into guardian and appointing Director of Social Welfare as the legal guardian

4. This is serious financial abuse case.
5. The Board has no hesitation to receive the subject into public guardianship. The Board so orders. As Guardianship Order is granted today, the Board dismisses the emergency guardianship application for purpose of good record.
6. The Board's decision is guided by the following observations and rulings.
7. The surrounding circumstances leading to the rescue of the subject into HQ Hospital on 29 September 2016 and the uncovering of the financial abuses (as the bank transaction records later revealed) have been quite extraordinary.

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

These circumstances point towards one and the only abuser identified, namely, Madam SK, the Party Added, who used to be the private-nurse/healthcare assistant in recent years.

8. These unusual circumstances include insulating the subject from her connections or relatives, controlling all her financial affairs and major bank accounts and assets, refusing access by the nephew Mr SJ (finally and owing to his persistent efforts to involve the case social worker/applicant and police and the ambulance, the subject was ushered to HQ Hospital mentioned above, as warranted by the subject's apparent frailed conditions as found upon entry into the abode, including being put on a Ryles' tube). Mr SJ's simultaneous efforts in collecting and providing some key financial information also revealed more unusually serious and alarming matters including the death of the subject's elder sister Madam RC (whom the subject lived with) ("R") back on 17 August 2013, under whose will the subject should have received a huge estate as the sole beneficiary. By now, it was found out, among others, that the real estate property inherited i.e. Flat E, 7th Floor, King's Road ("Property") (used to be abode of R and her) was mysteriously transferred to the Party Added by way of a Deed of Gift dated 25 March 2014. Mr SJ also found out that (and so did the social enquiry report maker) the subject has now possessed far less than the legacy she should have received. Later in August 2014, as admitted, there was a change of the will of the subject with the Party Added and the 2nd niece as the new major beneficiaries. All these happenings bear the hallmarks of a serious financial case.
9. Before delving further, the Board hastens to point out that elder abuse is a serious social problem and it happens not only to mentally incapacitated elders. It happens to elders generally and particularly to those advanced in age and in frail health or declining cognitive conditions, as they are more

vulnerable to resist, more susceptible to undue influence or being coaxed and have no one to turn to.

10. One problem with the present case was the lack of full medical history of the subject. Today, the subject is almost mute and her MMSE score is 0. However, at the hearing, the Party Added disclosed that the subject has recurrent strokes before and thus the CVA suffered by the subject on 15 November 2015 was not the first onset. It is therefore safely presumed that subject's mental ability has been declining for a period of time before that. Also, both the two supporting medical reports stated that the subject mental incapacity was estimated to have started 11 months ago. It would therefore mean that the subject has had this poor mental state roughly since August 2015. The finding is clearly supported by the assessment of the occupational therapist on 17 December 2015, which yielded a very poor MMSE score of 11/30. The Board further relies on two common observations: -

- a. Mental deterioration would not happen overnight and that means there would have a progression of substantial deterioration of months or even years before August or December 2015.
- b. Leading researches in this area have demonstrated that people even with mild cognitive impairment has lost capacity to manage their finances. (*Marson, D C, Sawrie, S M, Snyder, S, McInturff, B, Stalvey, T, Boothe, A,...* Harrell, L E (2000). *Assessing financial capacity in patients with Alzheimer disease: A conceptual model and prototype instrument. Arch Neurol, 57(6), 877-884.*) (*Marson, D C, Ingram, K K, Cody, H A, & Harrell, L E (1995). Assessing the competency of patients with Alzheimer's disease under different legal standards. A prototype instrument. Arch neurol, 52(10), 949-954.*)

11. With incomplete financial information before the Board today, the future Committee would need to apply to Court for authorization to investigate whether the subject was financially abused and exploited in the areas set out below and in that regard, also to investigate into the medical history of the subject, to viz:-

- a. Full medical history of the subject, including the first onset of subject's strokes and mental capacity assessment records.
- b. Upon inheritance from her deceased sister R, the subject has apparently been depleted of significant assets. The prime and only suspect is the Party Added as she was the only person operating and actively managing her finances in recent years. These lost assets include: -
 - (1) Her own assets before collecting the estate of R.
 - (2) Her late husband's (who passed away in 2009) estate, alleged to be around \$4 million.
 - (3) Disappearance of around HK\$2.5 million (see total amount of subject's HK Dollars savings at \$22,254,620 recorded in the Finance and Capacity table as against the total amount of HK Dollars savings at \$24,800,878 shown in the estate papers attached to the Probate of R).
 - (4) Disappearance of US\$272,760 (see estate papers attached to the Probate of R).

- (5) Disappearance of sizeable stocks holdings of well over \$4.7 million of various shares and stocks (see estate papers attached to the Probate of R).
- (6) Disappearance of a large number of personal valuable items (see estate papers attached to the Probate of R).

In respect of items (1) to (5), the Party Added simply replied at the hearing that she did not know of anything, i.e. a flat denial. Regarding item (6), she frankly admitted that the subject gave her at the moment of anger against the 3rd niece who has secretly set up an authorization of internet banking at subject's bank account. (In reply to this accusation, 3rd niece explained that the authorization was set up together with the subject and with her full knowledge in 2010 when she came back to Hong Kong to help manage the estate of the subject's late husband with the full knowledge of the subject.) In all these defences put forth by the Party Added, the Board finds them invariably either unconvincing and/or illogical. As the Party Added has been actively managing and later on almost operating solely the subject's major bank accounts, it was quite impossible that she simply replied to the Board that she did not know of above disappearances of assets. Also, regarding item (6), it was so hard to understand why the subject gave all those valuable personal items from the safe deposit box of R to the Party Added while she got angry yet on another subject matter. To the Board, the Party Added's averments were hardly convincing.

Lastly, the Committee should investigate the exact amount the Party Added has exploited after an account has been taken with regard to some necessary daily expenses of the subject.

12. The Board now turns to the acts of abuses as the Board has found them. On basis of the reasoning discussed in paragraph 10 above, the Board rules that since early 2015, subject has mental deteriorations, although the earliest available corroborative medical/assessment record was the occupational therapy assessment made on 17 December 2015.
13. At hearing, the Board referred the Party Added to paragraph 21 of the social enquiry report which has recorded numerous withdrawals of large sums of money from subject's bank accounts in two major banks, ABC Bank (of which the Party Added operated on subject's cheques, ATM card and password) and DEF Bank (of which the Party Added operated with the subject's cheques).
14. Regarding the period between February 2015 to November 2015 (i.e. before subject's (latest) CVA), a total of \$1.37 million was withdrawn from the two banks, mainly by cheques. Party Added admitted that she was given by the subject some of the money for own use. Also, she supplemented that the subject gave some of the money to her to help her purchasing her own flat without a heavy mortgage, so that her burden would be lighter. She could not tell how much were given to her by the subject for her property and she did not wish to say too much about it. To the Board, the Party Added's explanation is evasive and hardly convincing. What she alleged was simply that she received from the subject from time to time personal valuables and even the Property and sums of unquantifiable amounts for her own use from the subject. However, as the Board considers into her position, she was only an employee of the subject. She was not even related to the subject in any sense of a relative or a close friend. Also, having already been given the Property, the Party Added now turned to say that the subject helped her with the purchase of yet another property. The Board declines to accept her explanation.

15. Regarding the succeeding period between December 2015 and September 2016, the Board notes that a total of \$1.079 million were withdrawn. Amongst them, \$660,000 was withdrawn from ABC Bank and \$419,523.30 was withdrawn from DEF Bank. For the latter amount of \$419,523.30 withdrawn in April 2016, the Party Added claimed that she obtained special arrangement from the bank with the support of hospital bills etc, for which she has paid first. However, the transaction record has shown clearly that from December 2015 to April 2016, a total of \$560,000 was already withdrawn from subject's ABC Bank account through ATM card. Clearly, the subject's hospital bill must have settled by this money already (correctly pointed by the 2nd niece). The Party Added's story is totally unbelievable. Indeed, the Board believed that she has used the same set of bills to obtain the like amount from DEF Bank to fill her greed. The fundamental question remaining for her to answer is this: given her unlimited access and use of ATM card to operate the subject's ABC Bank account, why would she need to bother DEF Bank? Finally, being pressed, she admitted the total sum \$660,000 withdrawn from ABC Bank was given to her to pay up her mortgage. To the surprise of the Board, on re-examining her explanations given to report maker during social enquiry stage, Party Added's new defence/claim of subject's assistances to lighten her mortgage burden or paying up her mortgage altogether has never been raised. The Board cannot accept these changing versions and rejects them as lies. The Board holds that the Party Added has financially abused the subject of the sum of HK\$660,000. The Board wishes to register that there is more than sufficient forensic and medical evidence of subject's mental incapacity during this period.
16. Accordingly, the Board concluded that the Party Added has financially abused the subject's money on the above two counts (above paragraphs 14 and 15) refer.

17. The Board receives and adopts the views of the two medical doctors as contained in the two supporting medical reports as well as the social enquiry report and the views and reasoning for recommending Guardianship Order as contained therein and accordingly decides to receive the subject into guardianship in order and appoints the Director of Social Welfare as the legal guardian of subject to protect and promote the interests of welfare of subject. In particular, at any rates, the subject is now certified a mentally incapacitated person without capacity to manage all her affairs, granting a Guardianship Order is unavoidable.
18. On passing, since the Party Added has serious conflict of interests of a financial nature, and likely that she will face recovery proceedings to be instituted by the future Committee, it will not be in the best interests to put the subject under her care in the old abode anymore. Also, returning the subject there under the care of Party Added will waste all the efforts of the nephew (and the nieces), all social workers, police and healthcare professionals to rescue the subject from the hands of the Party Added on 29 September 2016.

DECISION

19. The Guardianship Board is satisfied on the evidence and accordingly finds: -
- (a) That the subject, as a result of vascular dementia, is suffering from a mental disorder within the meaning of section 2 of the Ordinance which warrants the subject's reception into guardianship;
 - (b) The mental disorder limits the subject's capacity to make reasonable decisions in respect of a substantial proportion of the matters which relate 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 are available as the subject lacks capacity to make decisions on accommodation, her own welfare plan, treatment plan and finances, which has resulted the subject being abused financially;

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, future treatment plan and finance;

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

20. 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-yee)
Chairperson of Guardianship Board