



REASONS FOR ORDER

Mental Health Ordinance (Cap. 136)¹

(Section 59O)

BETWEEN

Mr H

1st Applicant²

Mr B

2nd Applicant

and

Madam CK

Subject³

The Director of Social Welfare⁴

Members of Guardianship Board constituted

Chairperson of the Board: Mr Charles CHIU Chung-yee

Member referred to in section 59J (3) (b): Ms CHAN Kit-ling

Member referred to in section 59J (3) (c): Ms LEUNG Shuet-wan

Date of Reasons for Order: 28th August 2014.

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

BOARD'S ORDER

1. These Reasons for Decision are for the Board's Order made on 28 August 2014 concerning Madam CK ("the subject"). The Board appointed the Director of Social Welfare as the guardian of the subject, for a period of one year, with powers to make decisions on the subject's behalf, as set out in the Board's Order, and subject to the conditions referred to therein.

THE HEARING ON 28 AUGUST 2014

2. The following persons gave evidence to the Board: -
 - (a) Mr H, the 1st applicant and proposed guardian;
 - (b) Mr B, the 2nd applicant and proposed guardian;
 - (c) Ms WM, a public officer, on behalf of the Director of Social Welfare.
3. The subject did not attend the hearing, and was not interviewed in advance by a Board member, as due to the subject's health it was not practicable to interview the subject or to have the subject attending the hearing.

Background

4. The 1st application for the appointment of a guardian for the subject, under Part IVB of the Ordinance, dated 20 March 2014, was registered as received by the Board on 26 March 2014. The 2nd application for the appointment of a guardian for the subject, under Part IVB of the Ordinance, dated 25 March 2014, was registered as received by the Board on 28 March 2014. The applicants are Mr H, husband and Mr B, younger brother of the subject respectively. The evidence shows that the subject is 64 years of age, woman,

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

with cerebral vascular accident, staying at a hospital. The subject is unable to handle finances and was incapable of consenting to treatment. The subject has around \$80,000 in her bank accounts.

The Law

5. 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.

Summary of evidence adduced at hearing

6. **Mr H**, the 1st applicant, proposed guardian and husband of the subject (A1), says he likes to have a Guardianship Order granted over the subject today. He still likes to be appointed the guardian of the subject. On prompting, he says he once intended to withdraw the application only because of the possible post-mortem on the subject if she dies during guardianship. Since this may be a legal requirement irrespective who is to become the guardian, he now intends to proceed with his application to become the subject's guardian.
7. He provides his reasons in support of his suitability as the legal guardian: -
 - i. He asserts that he and the subject lived together as husband and wife for a long period closing to 30 years. Their marriage was with their parents' consents and celebrated in a customary dinner reception. He shoulders all family expenses all along. The subject actually lived with him all

along and she has never lived separately from him at her own public housing unit. He has never paid for the rent for that housing unit.

- ii. On 14 April 2013 he helped the subject to obtain necessary and timely treatment at CM Hospital. Due to his telephone call the next morning, it was then discovered that subject was in critical conditions. Upon his attendance and due to his pursuits, the subject was rushed to WH Hospital for surgery. He notified all subject's siblings except Mr B, the other applicant herein (A2), to whom he could not reach. He then narrates his strenuous efforts ensuring timely treatment to the subject who was in critical post-operation conditions at WH Hospital. He also narrates his efforts to alert ward staff on subject's critical conditions due to pneumonia at TS Hospital on 2 August 2014. He says he saved the life of the subject three times. Further during this year or so, he kept doing massages and exercises to the subject who therefore suffers no muscle contracture or squint. Due to his efforts, the subject was then referred for eye specialist clinic at CM Hospital for medical appointment.
 - iii. The subject's HKID is kept by A2. He thus has problem with medical follow-ups of the subject. If he becomes guardian, he can conveniently handle the subject's medical follow-ups.
8. **Mr B**, the 2nd applicant, proposed guardian and younger brother of the subject (A2), says A1 has no qualification to be appointed as the guardian. He says the followings: -
- i. A1 has never paid for the livelihood or maintenance of the subject in the past at all. Instead, the subject gave A1 \$500,000 and also his father did pay for the down-payment of a flat purchased in the names of A1 and his own nephew. The down-payment was a few tens of thousands of dollars

at that time. However, A1 gave nothing to the subject after sale of the property.

- ii. The subject told him before that despite her requests for maintenance, A1 refused and said he could give his life to her but not money. Therefore, the subject had to work as a security guard for 12 hours a day to support herself.
 - iii. He cannot be sure if the subject did live with A1 during the last 30 years. He never addressed him as a brother-in-law. Nor did he ever attend gatherings with him in the past. It may be fair to say that the subject lived in both places, i.e. in her own housing unit and at A1's place(s).
9. Mr B agrees the Director of Social Welfare to act as the subject's legal guardian. Regarding welfare planning and treatment, he respects and trusts the doctors and does not believe in A1, who always put up a show. If doctors assess the subject as fit for discharge, he will agree to it. He agrees discharging the subject to a private old age home, if needed.
 10. [A1 then showed two letters in support of his appointment signed by an elder sister of subject Madam SK, now living in Mainland.]
 11. [A2 then retorted by asking why A1 did not obtain written support from another elder sister Madam YK who lives in New territories, Hong Kong. He further says that the elder sister did chase after A1 at hospital and accusing him of cheating the subject \$1 million.]
 12. **Ms WM**, medical social worker and the maker of social enquiry report, on behalf of the Director of Social Welfare, says she has nothing to add.

Issues and Reasoning

Reasoning for receiving the subject into guardianship

13. 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 to protect and promote the interests of welfare of subject.

Reasoning for choosing the legal guardian

14. The Board upon hearing from the parties and considering the evidence (including the reports filed), comes into a view that the two close significant persons of the subject, i.e. the 1st Applicant and the 2nd Applicant have developed serious mistrusts and conflicts between one another. There have been strong accusations by the 2nd Applicant (A2) against the 1st Applicant (A1) over money matters (see evidence above) and challenges against the latter's credibility and genuineness.

15. Despite A1's narratives over his long-standing relationship with the subject and his strenuous efforts to enhance the survival and treatment opportunities of the subject during hospitalizations, A2 insisted that A1 has all along, i.e. in the long past, not been making any provisions of maintenance to the subject at all. Besides, they hold different views over the question of discharge of the subject from the present hospital. In result, A2 strongly opposed to the appointment of A1 as guardian and preferred Director of Social Welfare to be appointed.

16. In one way, appointing a private guardian in this peculiar situation will, in the assessment of Board, result in more complications as the private guardian's decision will always be very likely challenged by the other side. Also, a complaint against the private guardian made by the other side will not be perceived to be fairly, openly and properly investigated or dealt with. The situation will likely be that the conflicts between the parties will also be escalated in result, ended up in further jeopardy of the interests of the subject. In a nutshell, a private guardian will be difficult to act in his roles and duties timely and efficiently, due to conflicting relationships, for the best interests of the subject.

17. The Board holds the view that in conflict situation of this kind, the most prudent choice is to appoint the neutral public officer, Director of Social Welfare, as the legal public guardian of the subject in order to safeguard her interests of welfare. This approach is correctly put forward by the social enquiry report maker Ms WM in her reports. To her recommendations and reasons as stated therein, the Board is pleased to accept and adopt. The Board so orders.

18. The Board would thank Ms WM for her clear reports submitted in this case.

DECISION

19. The Guardianship Board is satisfied on the evidence and accordingly finds: -

- (a) That the subject, as a result of cerebral vascular accident, 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 caused conflict between family members in making decisions for her welfare and finance;

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-ye)
Chairperson of Guardianship Board