



REASONS FOR ORDER

Mental Health Ordinance (Cap. 136)¹

(Section 59O)

BETWEEN

K

Applicant²

and

L

Subject³

P

Party added⁴

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): Dr LIU Kin-wah

Member referred to in section 59J (3) (c): Ms LEUNG Tsui-han

Date of Reasons for Order: 15th April 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

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

Board's Order

1. These Reasons for Decision are for the Board's Order made on 15 April 2014 concerning L ("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.

Background

2. The application for the appointment of a guardian for the subject, under Part IVB of the Ordinance, dated 20 July 2013, was registered as received by the Board on 22 July 2013. The applicant is K, son. The evidence shows that the subject is 81 years of age, woman, with mixed-type dementia. The subject was unable to handle finances and was incapable of consenting to treatment.

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.

Summary of evidence adduced at hearing

4. L, the subject, says she is 82. She has two sons and correctly gives their names. She positively identifies all her three daughters and husband at the

hearing room and recalls the daughters' names. She recalls she was selling fish at market before. She further says she has some money at her home but she has very little money at bank. She recalls she has a flat in an old building without lift. Now, she lives at a flat on 24th floor but she cannot give details of it. She has no physical discomfort but suffers from poor memory as she soon forgets things. She now lives with the applicant and the second daughter.

5. She says her children do not have quarrels. Her money can be trusted upon the applicant for management.
6. **K**, the applicant, proposed guardian and a son of the subject, says he made the guardianship application because there were many complaints received against him and relating investigations were carried out. These were very troublesome to him. Subject might not be happy because strangers like police and social workers have made inquires upon her. Also, there were disagreements at the subject's discharge from P Hospital (on 29 September 2012). At that time, the doctors could not make decision for the subject. Somehow, the subject finally made the decision of staying with him. If that difficult situation happens again, much time will be wasted if there is no guardian to make the decision.
7. He confirms there was no physical attempt of the Party Added ever to take the subject away from T Centre flat (the current abode) since 29 September 2012. But for once, someone did call the police, which seemed happened around end of 2012 or early 2013. He was not present at that incident. He guesses that it was perhaps because the Party Added was not satisfied with the care given to the subject.

8. Subject's wish is to live with him. With the help of his 2nd sister and the Indonesian maid, the subject will continue to stay at the present flat at T Centre. His 2nd sister will be there from Saturdays to Mondays, during that interim he will be away to Shenzhen where he will stay for one or two days every week. Subject attends a day centre on every Tuesdays and Fridays.
9. He agrees, as recorded in the supplementary report, that the Party Added smoothly visited the subject every Saturdays in evening time for about an hour. He agrees this arrangement to continue.
10. He has been paying for subject's expenses and in future he agrees to those expenses be paid by subject's two joint accounts and one sole name account.
11. He still likes to have the Guardianship Order granted today. He likes to be appointed as the guardian. Knowing the opposition to his appointment by the Party Added, he says all complaints laid by the Party Added were totally unfounded and never substantiated. He likes to keep the subject with him.
12. He admits that the Indonesian maid also helped with the overall household cleaning and prepared his breakfasts and washing his clothes. He is the employer of the said maid in the employment contract.
13. Should the subject be received into guardianship, the Board would require an apportionment of the maid's expenses, household expenses, utilities and rent of the present abode at T Centre flat be properly apportioned between the occupants in future. The Board also explains to the applicant that his claim for reimbursement will not be authorized as there is no apparent surplus from the monthly permitted sum and disability allowances after paying subject's monthly expenses.

14. The subject is not on diapers.
15. **CF**, a daughter of the subject, says she did not notice any conflict with the Party Added at the subject's discharge at the end of July 2012 from K Hospital. But she remembers at a subsequent medical follow-up at K Hospital, the Party Added scolded her and her husband at the main entrance of the hospital. At that time, the subject was staying with her at her home.
16. It is better to have Guardianship Order granted with applicant appointed as the guardian. She agrees with the applicant's welfare plan for the subject.
17. **ICF**, a daughter of the subject, says she agrees with the views of her elder sister CF. There were two police incidents. One was at about 11:00 a.m. when the police came up. That incident was due to the Party Added's complaints made to the police, Social Welfare Department and the Chief Executive. She did not pay any visit to subject at K Hospital in July 2012. She started to visit the subject at the latter's second hospitalization in August 2012. She noticed that the subject has deteriorated a bit. [On the Board's prompts on whether the subject has ever experienced a sudden drastic deterioration between July and August 2012, ICF says the subject's deteriorations were only gradual in those three months.]
18. **ICK**, 4th son of the subject, says he agrees the applicant as guardian because it is the subject's wish. He is quite sure of subject's wish and applicant's ability.
19. With much explanations and urges by the Board, ICK still shows no readiness at all to sign an undertaking regarding the subject's joint account with him at H Bank (now holding \$1,998,060.37) in order to afford the subject to use the money therein for future maintenance and to remove any

negative implication on him. The Board allows him to consider it till the end of the hearing. The Board makes it absolutely clear to him that as recorded in paragraph 10(ii) of the social enquiry report that he has already made admission that all money in that joint account belongs to the subject. If subject cannot use the money, subject's welfare would be affected.

20. **At the end of the hearing, he still insists not to sign an undertaking even at the risks of criticism by the Board in the written judgment. The Board reminds him one of the Party Added's allegations was financial abuse. To such a reminder, he even says he has not taken any money out and as such he commits no abuse. The Board disagrees.**
21. P, a daughter of the subject and Party Added, says regarding the scolding incident mentioned by ICF, that has happened at the time during the subject's stay with her in Shatin. She just wanted to refuse the taking away of the subject by them for lunch and she wanted to take the subject home immediately.
22. She considers Guardianship Order is needed today. She says she has mentioned this need before to Miss WG (case social worker), who is present at hearing today. She wants to ensure the subject's interests as she does not know (or was not told of) the reason for herbal medicine or many other matters of the subject. She cannot be sure if the present arrangement is good for the subject. In further probing, she clarifies her dissatisfaction as follows:-
- (i) Subject's conditions suddenly and sharply deteriorated after July 2012 and suffered from poor memory. Immediately on her earlier discharge from K Hospital in July 2012, the subject could walk well. She went up to subject's place when she was called upon and found subject's

speech slurred and the subject looked confused. She then called the ambulance and sent subject to A Hospital. The hospital did not record that the subject has suffered from stroke. [Applicant says the subject stayed with his eldest sister for only three days before being sent to Z Hospital. During his visit at ward on the following Monday, the subject was angry at being sent to hospital even when told of her dullness as observed by the Party Added. The Party Added reported to police again at the subsequent discharge from the P Hospital, even when it was agreed that the subject would be sent to the Party Added's place in Shatin. Also, the subject further deteriorated because of her stroke. The Board enquired with the applicant as to how he got that information. The applicant says it was the P Hospital doctor who informed him of subject's stroke. He further says the subject has improvements after receiving traditional Chinese medicine etc. The subject attends acupuncture every week at \$250 each session. Subject's deterioration was also because of herpes zoster and whereas her limbs swelling was at its worst while staying with Party Added at Shatin. The applicant supplements that it was difficult for him to tell the Party Added of the use of herbal medicine and acupuncture because there were far too many complaints lodged by the Party Added at that time.]

- (ii) Subject condition has been static since that time till now.
- (iii) She waited for long time even after a complaint was made to the Chief Executive. She mentions that the police did call her and said they will follow up. In April 2013, after a visit, she found the subject has swollen legs and hands which lasted for a long time and thus she made a complaint to the Police for assistance. After the police enquired at the T Centre flat, she was invited by the police to get into the flat

again and was informed that no elder abuse was identified.

23. To her, Guardianship Order is necessary for the subject. She opposes to the applicant to be appointed as the guardian. If she is not selected as guardian, she would recommend Director of Social Welfare as guardian.
24. On welfare plan, she says the other option for the residence of subject is her home at Shatin. As a trained allied health professional, she is well qualified to give care to the subject, for whom prompt medical attention can be ensured. If this option is not agreed, then she agrees to send the subject to an old age home for rehabilitation, e.g. the XY Care and Attention Home in Shatin. She can visit the subject at an aged home like all her siblings and seek medical information of the subject freely. She says the Supplementary Information dated 14 April 2014 recorded her proposal on the interim measures should subject be returned to her, as her father is now staying with her.
25. **W**, medical social worker and the maker of social enquiry report, on behalf of the Director of Social Welfare, says he has nothing to add.
26. [**WG**, case social worker and **P**, supervisor of an Integrated Family Services Centre, on behalf of the Director of Social Welfare, attending.]

Issues and Reasoning

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

27. The five children of the subject have themselves divided into two sides: the Party Added alone of the one side as against the rest four under the lead of

the applicant. The family cleavage emerged alongside with the subject's overall deteriorations as evidenced by ten hospitalizations since July 2012. The disagreements over the subject's accommodation and daily care came to the open since July 2012. Three hospital discharges of the subject are worth noting, to viz: -

- (i) The 1st discharge was from K Hospital to the home of the eldest daughter CF in Tai Po on 27 July 2012. ("1st discharge")
- (ii) The 2nd discharge was from P Hospital to the home of the Party Added in Shatin on 13 August 2012. ("2nd discharge")
- (iii) The 3rd discharge was from S Hospital to the home of the applicant at T Centre flat on 29 September 2012. ("3rd discharge")

28. As can be seen readily, the tension is self-evident by the swift changing overs of places of accommodation of the subject during the short span of time of the abovementioned three hospital discharges. After a short stay with the eldest daughter in late July 2012, the subject was taken to hospital and then discharged to the home of the Party Added on 13 August 2012; but was soon again sent to the hospital, after which the subject was taken to the home of the applicant on 29 September 2012 till now.

29. The disagreements between the two sides were further intensified since the Party Added started a series of written complaints to various Government machineries including the Social Welfare Department and Hong Kong Police. In sum, grave allegations of financial abuse and use of unauthorized drug (or chemical restraints) on the subject were alleged by the Party Added against the other side. (Details see the annexure numbered 19 to 25 to the social enquiry report.)

30. As of today, the applicant's side insists that the subject should remain staying under the care of the applicant at T Centre flat with the assistance of the Indonesian maid and the 2nd daughter ICF and that the applicant should be appointed as guardian. However, of the other hand, the Party Added strongly opposed the applicant to be appointed as guardian and suggests to receive the subject to her care and proposes herself as guardian. As clarified at the hearing, the Party Added submits that she was kept at dark of the medical conditions and the use of traditional Chinese medicine of the subject. All she is worried of is that the subject's conditions remained unimproved since the 3rd discharge, while under the care of the applicant's side. She filed with the Board a very detail statement of 15 pages on 14 April 2014 explaining her views of this case and particularly that the subject has not been under proper care and rehabilitation.
31. As the disagreements between the two sides are vivid and unsettled despite a long lapse of time since the 3rd discharge, the Board, upon considering the reports and evidence given by the parties and witnesses at the hearing, decides that a Guardianship Order is necessary to be granted in order that a legal guardian can make the final decision over the accommodation and daily care of the subject. Neither side is against the grant of a Guardianship Order in this case.
32. The second matter that the Board has to deal with is the appointment of guardian. Again, each side has asked to be appointed as guardian of the subject and to make accommodation decision for the latter. Due to the live and strong disagreements and mistrust between the two sides, it is impossible to appoint any of them to be the private guardian.

33. One of the main reasons is that a decision made by a private guardian in such circumstances will unlikely be supported by the other side and the implementation of the decision will be difficult.
34. Secondly, when challenged, the private guardian cannot be perceived or seen to be properly, fairly and impartially dealing with the complaints, including investigating into the same and making a judgment and taking consequential actions. There is actually such a challenge on-going over the ultimate decision of the accommodation of the subject as of now. Regarding such a challenge or conflict, both the applicant and the Party Added are plainly the most salient parties to and key players of it.
35. In sum, due to the acute family conflict situation, the Board assesses that neither the applicant nor the Party Added will be able to carry out the roles and duties of the legal guardian.
36. Thirdly, against the applicant's side, though not strongly canvassed at the hearing, the Party Added has held the accusation that the other side has abused or controlled all the money and assets of the subject. Needless to emphasize again, the 4th son ICK, despite repeated efforts of the social enquiry report maker W and the Chairperson of the Board, respectively before and at the hearing, refused categorically to sign an undertaking to confirm the subject's ownership of her joint account with him at H Bank, despite his earlier admission of subject's sole ownership to the social enquiry report maker W during the social enquiry stage (see paragraph 10(ii) of social enquiry report). That poses a fundamental problem to an appointment of the applicant as guardian as there is an apparent conflict of interests of a financial nature between a main supporter of the applicant and the subject.

37. Accordingly, 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 supplementary information and the views and reasoning for recommending guardianship order. The Board, however, for the reasons stated, decides to override the recommendation of the social enquiry report maker W who has recommended the appointment of the applicant as guardian. In sum, the Board decides to receive the subject into public guardianship with the Director of Social Welfare appointed as the legal guardian. The Board so orders.

DECISION

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

- (a) That the subject, as a result of mixed-type 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 caused conflict between family members in making decisions for subject's welfare or 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.

39. 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