



REASONS FOR ORDER

Mental Health Ordinance (Cap. 136)¹

(Section 59O)

BETWEEN

Miss U

Applicant²

and

Madam K

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): Miss Emma CHAN Tak-mun

Member referred to in section 59J (3) (c): Ms Nora LEUNG Yee-ping

Date of Reasons for Order: 20th April 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)(a) of Mental Health Ordinance

Background

1. Madam K (“the subject”) was a 84-year-old widow, who was admitted to the present old age home since 1994. She was born in Singapore. She was married in Hong Kong and gave births to 2 sons and 2 daughters. The elder daughter was very concerned about the caring quality to the subject at the old age home. The elder daughter arranged the subject to be admitted to present old age home under the request of the subject probably because the sworn sister of the subject also lived in the same home. The elder daughter was gradually dissatisfied the care quality of the old age home. She lodged lots of complaints since 2007 when the subject’s health further deteriorated and thus required more intensive care.
2. The elder daughter was the main carer of the subject. She used to visit the subject daily before November 2011. When she visited the subject, she brought diapers, food and health products to the subject. She would also play card games and do handicraft with subject. She even took the subject to restaurant for meals and attended medical appointments. But, the elder daughter did not like her siblings to pay visits to the subject.
3. In October and November 2011, the social workers of old age home noted the elder daughter roughly handled and had even hit the subject. They reported to police of suspected abuse. The police closed their investigations without prosecution even bruises were found at times on the subject. After that, the elder daughter was not allowed to visit the subject but the other children visited the subject more often since. However, the relationship between the elder daughter and old age home grew tense. Due to the poor relationship, the elder daughter transferred the guarantor role to her younger brother.

4. Financially, Madam K relied on CSSA since 1995 and pension from Widows & Orphans Pension Scheme. Her elder daughter was her CSSA appointee after Madam K has been certified as a mentally incapacitated person in November 2011.

Circumstances leading to the present application

5. In December 2011, the social worker of old age home filed a guardianship application concerning the subject's welfare matters. Particularly, the social worker alleged that the bruise marks were found on subject's ankle. Further, the subject told the staff of the old age home that her elder daughter hit her. On the other hand, the daughter denied the allegations of suspected abuse on the subject and complained against the staff of old age home on scolding her and throwing away the food of subject. Regarding the bruise marks, the elder daughter explained that it could be inflicted when she insisted the subject on doing cycling exercise by grasping her feet on the cycling device.
6. The children of subject considered that their mother did not require a Guardianship Order to manage her welfare and finance. They can afford the old age home fees and escort subject to attend medical follow ups when necessary.

Mental and health conditions

7. Madam K was suffered from vascular dementia. Her MMSE score was 12/30. Her speech was irrelevant. Physically, she had hypertension, bone fracture due to traffic accident and fall, cognitive impairment and stomach cancer with bone metastasis. Due to her weak limbs with fall risks, safety restrainer was applied. Madam K could walk with walking frame and feed

herself with chopsticks and spoon.

Views of the Director of Social Welfare

8. The maker of social enquiry report stated:

“In sum, Madam K does depend on others for her welfare arrangement. Yet, her need can be met by her children. It is understandable there is tense relation between the elder daughter and the Elderly Home. The Elderly Home has reached the younger son and he is willing to play an active role in Madam K’s welfare arrangement, to ease the direct conflict between the Elderly Home and the elder daughter. At present stage, there is no concrete information to conclude the need of guardianship on Madam K. Both the elder daughter and the Elderly Home are encouraged for a better cooperation to promote Madam K’s welfare.”

Summary of evidence adduced at hearing on 20 April 2012

9. [Before hearing started, all reports were explained to the elder daughter by the social enquiry report maker in private. Copy reports and the aforementioned statement of grounds filed by the applicant were also given to her.]

10. The applicant said regarding the pocket money problem, which was one of the three matters of concern raised by her in her statement dated 18 April 2012, the younger son has helped to buy necessities. Regarding the second matter of concern, she said that the dates of medical follow-ups

remain unclear and were not provided by the elder daughter. The situation remained unsatisfactory as the younger son was too busy to help out on this matter. Regarding the third matter of concern on the drugs replenishment, she used to leave a telephone message with the elder daughter, but the drugs were used to arrive with some time gap. [The elder daughter said that the dates of follow-ups were not given (to the aged home) every time on the escorts of the subject back because there might not be appropriate staff receiving the subject. The follow-ups at hospital (for subject's previous stomach cancer and orthopedic problems) were only yearly. Only vitamins, appetite stimulating drugs as well as painkillers were prescribed. In this respect, the Board noted that the prescriptions were ordinary medications and supplements.]

11. It was only since the break of relationship last year (2011) with the elder daughter that she (the applicant) came to know from the CGAT that the subject has medical follow-ups at hospital. She agreed that it was the pattern of leaving all the medical affairs with the elder daughter for all the past years since 1994. She explained that subject's placement was in situ with change from home section to continuous care placement in 2007. The CGAT did continuously prescribe medications for the subject.
12. The elder daughter of the subject said subject's body easily got bruises e.g. serious bruises were found during bath at hospital in 2011. Subject needed more frequent meals as she could not eat much each time. She then narrated how careful she has been caring for the subject, including personal care and providing nutritious soups and supplements. The aged home's report to police on 3 November 2011 alleging physical abuse by

her on the subject was totally ungrounded and she was not even required by the police to give a statement. She felt very frustrated as the aged home had no evidence on hand to make the police report. The Board queried if she had ever pushed or hit the subject while handling the personal care or forcing upon the subject to do physical exercises in all these years. She flatly denied.

13. She (the elder daughter) has not seen the subject since the aged home's report to the police in November 2011. She first saw the subject again on 24 March 2012 and brought the subject to bank on the request of the aged home. It was due to stoppage of auto-payment of home fees upon freezing of bank account. The manager allowed one opportunity to withdraw \$3,400 to pay the outstanding expenses of the subject. A few days later, she made a request to see the subject and was replied that she could bring subject out but not to get into the aged home. [The applicant explained that recently after a case conference, the elder daughter was welcomed to visit the subject inside the home on observing some principles like visitation hours. She had also invited the elder daughter to enter the aged home to collect the subject for day leaves, but the latter chose not to do.]
14. The elder daughter still thought there was no need for a Guardianship Order, even after the Board explained of the possibility of permanent freezing of subject's bank account. [The applicant said the subject was brought outside by the elder daughter and was returned the same day in March and April this year.]

15. The maker of social enquiry report said she has nothing to add.

Reasoning of the Guardianship Board

16. The Board agreed that the tense and less than cordial relationship between the aged home and the subject's elder daughter, as found from evidence, has not escalated to a degree that warrants intervention by guardianship. Further, had there been any physical abuse on the subject, the aged home has already taken the effective measure, as it knew well, to stop the suspected abuser to enter into the aged home, which was a private property. On the question of the conflict between the aged home and the elder daughter and the three matters of concern mentioned in the evidence, it was noted that the younger son has helped improving the situation. The Board further noted that the subject's current medical needs were well taken care of by the Community Geriatric Service. Regarding the yearly medical follow-ups at hospital and the medications, the Board took the view that they were less important issues with a historic background and should be resolved at operational level. In conclusion, the Board found that there was no outstanding particular need of the subject that must be satisfied by way of a guardianship order. 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 the views and reasoning for not recommending Guardianship Order as contained therein.
17. The Guardianship Board can only exercise its powers under section 59O to make an order if it was satisfied on certain criteria.

18. To conclude, the Guardianship Board was NOT satisfied that the subject's particular needs may only be met or attended to by guardianship, and no other less restrictive or intrusive means are available.

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