



REASONS FOR ORDER

Mental Health Ordinance (Cap. 136)¹

BETWEEN

Ms L

Applicant²

and

Madam Y

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 CHOW Tsui

Member referred to in section 59J (3) (c): Ms LAI Mee-po

Date of Reasons for order: the 9th day of November 2018.

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)(c) of Mental Health Ordinance

BOARD'S ORDER

1. These Reasons for Decision are for the Board's Order made on 9 November 2018 concerning Madam Y ("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.
2. AND the Board, pursuant to section 59Q, DISMISSES the application for emergency guardianship.

REASONING OF THE BOARD

Background

3. 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 28 August 2018, was registered as received by the Board on 31 August 2018. The applicant is Ms L, social worker of Integrated Family Services. The evidence shows that the subject is 78 years of age, woman, with Alzheimer's disease. The subject was unable to handle finances and was incapable of consenting to treatment.

The Law

4. 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

5. **Ms L**, the applicant and social worker of Integrated Family Services, says since March 2016 she was in charge of the subject's case. She continued home visits for about 5 to 6 times up to August 2018. Subject could not recognise her way to her centre since March 2016 and gradually could not even recognise her or her voice over phone after the first two home visits paid in March and April 2016. She found the subject twice at public parks after paying her home visits in vain. Her last home visit to the subject was this early August 2018.

6. In July 2018, she returned a call to Mr T, a friend of the subject. He asked her for assistance to provide public housing assistance to subject's tenant Mr K at that time as he wished to renovate the flat of the subject but Mr K refused to leave. In the telephone call, he mentioned that subject was already moved up to the roof. He and his son Mr Tt attended her office immediately and continued the discussion.

7. She then paid a visit to the subject about two to three days later up at the roof. She met Mr T and Mr Tt. The roof looked newly fitted and there was CCTV set up. They said CCTV was for monitoring the subject's condition and they claimed to have put some tracking devices in subject's carrying bags. Mr T kept telling her that Mr K planned to adversely possess the property of the subject and he would resort to law in response. He planned to renovate the flat in September (2018) and his son's family of 4 would move in. Mr T himself would remain living at the roof. At that time, Mr T also said the subject has rented the flat to his son. She then asked him about the rental amount and whether written contract was signed. Mr Tt said the rental was a few thousands of dollars. When she went down to the flat, she observed that large items of home furniture have been removed and it looked most items at home was being moved away too. No fitting out works were observed to have started, and subject's room was locked out (the room was where subject used to stayed as she noted during previous home visits, and where most of her belongings and valuables were kept). It looked as if no one was occupying the

flat at that time. Mr Tt asked what measures they could take against the tenant Mr K. She asked again over rental matters, they said the rent was a few thousand dollars and said they used to give the subject a few thousand dollars and they would treat those as rental. They also once said they did pay by bank transfers. She met Mr K on the ground floor after finishing the home visit and was told that he has found other place of abode and would move out soon. On her promptings as to whether they knew Mr T was the subject's godson, both Mr K and the watchman said they did not know of it.

8. After one week, she paid another home visit to subject at the roof and talked to the subject over her personal hygiene.
9. On 7 August 2018, she paid another visit to the subject at the roof. Subject's denture kept falling off while eating. She found the abode was rather not clean as cockroaches were around the fridge. She escorted the subject to hospital and obtained the first medical report in support of Guardianship Order application.
10. Her worries over the subject's welfare interests were due to the following: -
 - (1) The subject needs to walk a flight of stairs up to her present living abode at the roof.
 - (2) The subject never mentioned to her of renting the property out.
 - (3) The subject has memory problem for a long time.
 - (4) The subject was not given adequate care by Mr T, despite the roof was newly fitted out.
 - (5) The subject could not take care of herself and refused residential care all along. They attended the subject at follow-up at hospital in May 2017 and obtained a psychiatric referral to medical centre (for another medical report). She has planned for guardianship application but now it was further triggered by the various actions taken by Mr T.

11. Till today, she does not know of the progress of the fitting-out works at the flat or whether of Mr Tt has moved in.
12. **Mr C**, medical social worker and the maker of social enquiry report, on behalf of the Director of Social Welfare, says on 7 August 2018 the applicant escorted the subject to hospital for medical follow up. On 8 August 2018, the applicant escorted the subject to medical centre requesting for another 2nd medical report for guardianship. The attending doctor then admitted the subject to hospital for such an assessment in preparation for the report.
13. The Board would like to thank Mr C for his very clear reports.
14. [At this point, **Mr Tt**, is invited to enter the hearing room.]
15. [Affirmed in Punti.]
16. **Mr Tt**, the son of Mr T, says he disagrees that he has wrongfully occupied the subject's property. He says he has actually rented the subject's property. He knew the subject for about ten years or more. His father and his family was very familiar with the subject for over 15 years. The subject was a friend of his mother met at dealings of stocks and has become very close friends. His father Mr T has been taking care of the subject for more than 10 years. He insists that his father lives close by the subject.
17. In April 2018 and after the renovation of the roof top finished, his father and him has started to move in to give care to the subject alternatively (sometimes not staying overnight). He says the whole property (the roof and the flat) was rented to him, orally in last July and by June 2018 in writing. He has not brought the tenancy agreement to the hearing today. The renovation work of the flat is about to finish in a few days. Monthly rental is at \$2,300 and the term is 30 years on conditions of his paying \$800,000 to \$1,000,000 for fitting-out works and to give care to the subject till she died.

Issues and Reasoning

Reasoning for receiving the subject into guardianship

18. The Board finds as a fact that the property of the subject was wrongfully occupied by the so-called friend Mr T and his son Tt as trespassers (the latter appeared at the hearing today.) Upon listening carefully to the oral evidence of the applicant, it is plain that the subject has suffered from serious cognitive impairment since March 2016 and she was actually diagnosed suffering from dementia on 25 April 2018. Being males and at the most friends, the Ts even claimed that they gave daily or personal care (and would continue to do so) to the subject who is a female. The Board found it rather unusual. Accepting the applicant's view, the Board does not find the care, if any, given by the Ts were adequate and the so-called care is doubtful in quality. The Ts have been avoiding social investigation and the social enquiry report maker could not reach them for an indepth interview at all despite numerous and diligent attempts. Mr Tt turned up at the hearing and his version given is, in the view of the Board, nothing but a pack of lies and totally incredible. He even could not produce any written proof of a purported tenancy. The whole story is thus considered as fabricated, illogical and unconvincing. An unusually long tenancy term of 30 years is highly doubtful, as worse as the alleged uncommonly low rental. The so-called conditions of the tenancy as averred was nothing but hallmarks of a financial abuse. Instead of alleging against Mr K in adversely possessing the subject's property, the Ts are actually embarking this route as perpetrators. The Board believes that the deteriorating mental state and social isolation of the subject have prompted these abusers to advance in the pre-meditated exploitations of the subject's assets.
19. 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 (particularly paragraph 37) 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

20. The Board accepts and adopts the view of the social enquiry report maker who recommended, as contained in the report (particularly paragraph 37), the proposed guardian the Director of Social Welfare to be appointed as the guardian of the subject in this case.

DECISION

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

- (a) That the subject, as a result of Alzheimer's disease, 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.

22. 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.

Directions

23. The public guardian must report the matter of Mr T and Mr Tt and their family being suspected to have illegally occupied the properties of subject as trespassers to the police for investigation (see paragraphs 25 to 28 of social enquiry report dated 2 October 2018 and paragraphs 14 to 16 of supplementary information dated 6 November 2018) on ground of financial abuse. The Police should also ascertain if any personal belongings and valuables of the subject kept at her own bedroom be stolen.
24. This case is a clear case of financial abuse. The public guardian must report this case to the Central Information System on Elder Abuse Cases of Social Welfare Department.

Part II recommendation

25. This is a serious case of elder financial abuse. It is obvious that various suspicious characters were present around the subject and have been illegally occupying the subject's properties as trespassers (see paragraphs 25 to 28 of social enquiry report dated 2 October 2018 and paragraphs 14 to 16 of supplementary information dated 6 November 2018). As well, according to the oral evidence of the applicant, the Committee need to ascertain if any personal belongings and valuables of the subject kept at her own bedroom be stolen. The Board does strongly recommend the public guardian to immediately instruct the Department of Justice for an urgent or interim committee or receiver order to salvage the assets and properties of the subject under Sections 10D and 10E, Mental Health Ordinance (Cap 136).

26. As the subject has landed property which the Board does not have jurisdiction over, the Board recommends that, if thought fit, the guardian, or a relative should apply to the Court of First Instance under Part II of the Mental Health Ordinance for a Committee order immediately to manage the property and financial affairs of the subject. The guardian is required to submit an interim report on the progress of the application within 6 months from today. As the Board takes the view that the welfare plan of the subject has not been settled, the Director of Social Welfare is requested to instruct her legal representatives to apply to Court, during the Part II proceedings, for a standing order of disclosure authorising the future Committee to provide updated financial information of the subject to the Guardianship Board and Director of Social Welfare on request. In submitting the grounds for obtaining such a disclosure order, the legal representative of the Director of Social Welfare should inform the Court that the Guardianship Board has powers under s. 10 of Mental Health Guardianship Board Rules (Cap. 136 sub. leg. E) to restrict further disclosure of such information on appropriate grounds.

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