



REASONS FOR ORDER

Mental Health Ordinance (Cap. 136)¹

BETWEEN

Mr N

Applicant²

and

Mr C

Subject³

The Director of Social Welfare⁴

Madam W

Party added⁵

Members of Guardianship Board constituted

Chairperson of the Board: Mr Charles CHIU Chung-yee

Member referred to in section 59J (3) (b): Mr FONG Cheung-fat, JP

Member referred to in section 59J (3) (c): Ms Cindy Cat LEE Cheung-pui

Date of Reasons for order: the 6th 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

⁵ S2 of Mental Health Guardianship Board Rules and S59N(3)(b) of Mental Health Ordinance

BOARD'S ORDER

1. These Reasons for Decision are for the Board's Order made on 6 November 2018 concerning Mr C ("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.

REASONING OF THE BOARD

Background

2. The application for the appointment of a guardian for the subject, under Part IVB of the Ordinance, dated 20 June 2018, was registered as received by the Board on 20 June 2018. The applicant is Mr N, medical social worker. The evidence shows that the subject is 85 years of age, man, with vascular dementia. The subject was unable to handle finances and was incapable of consenting to treatment.
3. The Emergency guardianship order granted on 10 August 2018. [The Party Added was absent at hearing due to her compulsory hospitalization at psychiatric ward of K Hospital.]

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 (of Emergency Guardianship Order) on 10 August 2018

5. **Mr N**, the applicant and medical social worker, says being probed in respect of paragraph 5 of his Case Summary on 25 July 2018, he called Madam W on her mobile telephone regarding the subject's condition. She suddenly mentioned about bringing Mr C (the subject) to get money from bank for making the abode better for home restoration. She mentioned about withdrawing a few tens of thousands. He has warned her not to do so.
6. On 1st home visit on 27 July 2018, Madam W told him and social enquiry report maker Miss H of the withdrawals of money twice at AB Bank, totalled at \$390,000. She mentioned the first withdrawal was of \$90,000 in June 2018 (the same month of discharge) and then \$300,000 in July 2018. The social enquiry report maker Miss H agrees with Applicant's version just given.
7. **Miss H**, medical social worker and the maker of social enquiry report, on behalf of the Director of Social Welfare, says, regarding paragraph 22 of the social enquiry report, alleging subject's assets at \$20,000,000, it was told by Madam W to the applicant. [**Applicant** said it took place during subject's hospitalisation at hospital in June 2018.]

Summary of evidence adduced at hearing on 6 November 2018

8. **Ms T**, representative of the applicant and medical social worker, says she agrees to a grant of Guardianship Order appointing Director of Social Welfare as the legal guardian.
9. **Madam W**, the Party Added and friend of the subject, says she agrees to grant a Guardianship Order with Director of Social Welfare as legal guardian.

10. As to whether she has, at the 1st home visits by social workers (27 July 2018), concealed the actual amounts withdrawn (i.e. \$790,000), she denies it and states that she was just forgetful. She then says the remaining cash is with her. [She then counts the cash taken out from her bag in the presence of the Board.]

Recess

11. She confirms the cash on hand is \$111,200 (“said sum”).

Further recess

12. She hands up a deposit slip showing the said sum was duly deposited into subject’s CD Bank account.

13. The Board, in view of the apparent discrepancy of amounts to be returned, directs the public guardian to further enquire with the alleged balance of \$213,853.30 (paragraphs 18 to 20 and Appendix 20 of the Supplementary social enquiry report), and if thought fit, to report to Police to investigate if any crime has been committed.

14. The Board points out to her that all the three counts of withdrawals from subject’s bank account (between 28 June to 24 July 2018) were inappropriate and wrongful. She insists that it was the subject’s wish to return home or even to die at home. The Board points out to her while fully realizing that Guardianship Order was in progress at that time and subject was mentally incapacitated, she still chose to withdraw the suspicious amounts from the subject bank account in question is wrong.

15. She confirms that the property is now vacant.

16. She hands up a set of keys of the abode and the password codes to the public guardian. She says there is another set of keys placed inside the abode.

17. She also hopes the subject be moved up a better quality care home.
18. She asks to show photos to the Board in order to show her past relationship with the subject. The Board replies that her version of relations has been reported in the social enquiry reports.
19. **Mrs F**, the sister-in-law of the subject, says, they are grateful for Director of Social Welfare to take care of the subject and hope the public guardianship can continue. They hope the subject be changed to a better quality care home and a personal care worker be employed to help subject's daily care. The subject told them it was his wish to obtain back the keys of his abode. He also hopes to know how has his belongings at home been dealt with. He says some dealings of his assets was done in ways unbeknown to him. The Board advises them to seek independent legal advice to obtain an urgent Part II order before they leave Hong Kong. For this type of interim receivership orders, the public guardian can be appointed as the appointee/receiver pending a full Committee Order. [**Mr F**, the younger brother of the subject, agreed.]
20. **Miss H**, medical social worker and the maker of social enquiry report, on behalf of the Director of Social Welfare, says she has nothing to add.
21. The Board would like to thank Miss H for her reports.

Issues and Reasoning

Reasoning for receiving the subject into guardianship

22. This case is a clear case of financial abuse and must be reported to the elder abuse registry of the Social Welfare Department.

23. The Party Added is the abuser so found by the Board. According to the paragraph 3 of case summary dated 9 August 2018 submitted by the Applicant, the relationship of the Party Added with the subject is obscure.
24. Today, there is no issue as to whether Guardianship Order should be granted. Both sides agree to and the social enquiry report maker recommends for a Guardianship Order with Director of Social Welfare as the legal guardian. It is plain that substantial amounts subject's money (\$790,000) was withdrawn on divers by the abuser with full knowledge that the guardianship application was in process, i.e. after medical reports having certified the subject as mentally incapacitated.
25. In respect of the substantial withdrawals, the Board noted paragraph 4 of the Case Summary of the applicant dated 9 August 2018: -

“Family Conference on 9 June 2018

Subsequent to the Psychiatrist's certification on Mr. C as an MIP, a joint interview with Ms. W, his friend, Ms. G, his cousin and Ms. X, his niece was conducted on 9 June 2018 to discuss about Mr. C's welfare plan including post-discharge care arrangement. A mutual agreement was made where I would put up application of Guardianship Order (GO) to follow-up with Mr. C's long-term welfare arrangement. In the meanwhile, Mr. C would be arranged to be cared under a respite residential care placement and continue to stay in the same aged home until GO was granted. In order to safeguard Mr. C's welfare, they were unanimously agreed to apply CSSA for Mr. C and not to withdraw money from his account or mobilize his asset in the interim. Subsequently, Mr. C agreed with the plan and was discharged to Nursing Home on 27 June 2018.”

[Underlining supplied.]

26. Regarding the Party Added's assertion that it was the subject who insisted on the questionable bank withdrawals, the Board also noted paragraph 31 of the Supplementary Social Enquiry Report dated 1 November 2018: -

".....When being told that he had withdrawn a total sum of \$790,000 from bank under escort by Madam W in June and July 2018, Mr C appeared to be a bit surprised as he thought that it was only several ten thousand dollars....."

27. Also, the Board's interview report dated 7 August 2018 recorded the following:-

"6. He could not recall, despite strong hints and prompts, he had been to banks with Madam W to withdraw monies in these recent two weeks. He said "I don't know". Finally, he said he gave a few thousands of dollars to Madam W and said he was not that stupid."

28. Now that only \$111,200 is in restitution. The Board therefore continues to rely on the grounds set out in the Emergency Guardianship Order as reasons for granting the present Guardianship Order. To recap: -

"The case summary dated 3 August 2018 as amended on 9 August 2018 provided by the applicant stated that the alleged girlfriend of the subject, Madam W ("Madam W") has escorted the subject to withdraw money from AB Bank. Madam W only admitted that she escorted the subject to withdraw \$390,000 for decoration of the subject's property and other expenses. The applicant suspected, inter alia, that the subject was financially abused by Madam W and therefore filed the emergency guardianship application on 2 August 2018 under section 59Q of the Mental Health Ordinance. According to the transaction records of AB Bank obtained on 8 August 2018 by issuance of witness summonses, there were three withdrawals,

namely, \$90,000, \$400,000 and \$300,000 on 28 June 2018, 6 July 2018 and 24 July 2018 respectively.

Further, in the morning of 2 August 2018, the old age home staff informed the applicant that Madam W escorted the subject back to his home against the objection of staff of old age home. Worse still, all the subject's medication was left at the old age home. The applicant reported the incident to the police for assistance and conducted 2 home visits on the same day. Madam W strongly refused to send the subject back to the old age home. She became very emotional and threatened to commit suicide by respectively showing a rope hanging on the ceiling and putting a cutter in front of her neck if the subject ever left his home. Eventually, the subject and Madam W were sent to hospitals by police and ambulance."

29. The Board must point out the production of various receipts by the Party Added does not absolve her liability in mishandling the money of subject. It only, all the more, shows that, to an extent, substantial sums were wasted and/or spent unreasonably. Had those so-called security measures at home been so much needed, the subject would have done it well in advance while he was sound in mind and well before hospitalisation. Further, the welfare plan to stay in a care facility was well arranged and agreed upon by all sides at the hospital conference on 9 June 2018.

30. In addition, there were highly doubtful claims of expenses without receipts e.g. the diapers expenses of \$8,000, cleaning fees, drainage clearance fees, Chinese medical tonics etc (Appendix 20 of the supplementary social enquiry report) and the verbal averment of \$25,000 monthly maintenance in June and(or) July 2018 payable to the Party Added (paragraph 20 of the supplementary social enquiry report).

31. In respect the Party Added's claim of \$25,000 as maintenance, the Board also noted paragraph 31 of the Supplementary Social Enquiry Report dated 1 November 2018: -

“.....For the monthly maintenance to Madam W, Mr C said that the updated monthly maintenance to her was \$5,000 as far as he remembered.....”

32. 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 paragraphs 48 to 50) 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

33. The Board accepts and adopts the view of the social enquiry report maker who recommended, as contained in the report (particularly paragraphs 48 to 50), the proposed guardian the Director of Social Welfare to be appointed as the guardian of the subject in this case.

34. A copy of the Guardianship Order and Reasons for Order be released to the subject's younger brother Mr F by the public guardian.

DECISION

35. 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, his 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.

36. 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

- 37. The Board, in view of the apparent discrepancy of amounts to be returned by the Party Added, directs the public guardian to further enquire with the alleged balance of \$213,853.30 (paragraphs 18 to 20 and Appendix 20 of the Supplementary social enquiry report), and if thought fit, to report to Police to investigate if any crime has been committed.
- 38. This case is a clear case of financial abuse. The case social worker must report this case to the Central Information System on Elder Abuse Cases of Social Welfare Department.

Part II recommendation

39. As the subject has landed property, huge savings and (according to the evidence available) the recovery actions for sum abused (paragraphs 18 to 20 of the supplementary social enquiry report) 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. The Board felt that with full financial power, the subject could be move up to a better quality resident care facility. In such a way, the qualify of life of subject can be enhanced.

Recommendation to Director of Social Welfare

40. As the subject has some collections (including collections, calligraphy, vase and seal etc) at home, the public guardian is recommended to keep possession of all such assets of the subject in the interim period before a Committee Order is granted.

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