

Teo Choo Him and Another v Teo Leng Hui
[2005] SGHC 97

Case Number : OS 133/2005
Decision Date : 16 May 2005
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : Tan Jing Poi and Loo Ee Lin (Lim Ang John and Tan LLC) for the applicants; Allan Chan (C H Chan and Co) for the respondent's husband
Parties : Teo Choo Him; Chua Ah Bee — Teo Leng Hui

Mental Disorders and Treatment – Management of patients' property and affairs – Whether patient's parents or husband should be appointed committee of the person and estate of the patient

16 May 2005

Tay Yong Kwang J:

1 It is always sad to see relatives having to come to court to resolve their differences. It is particularly painful when they engage in a “tug-of-love” over someone they all seem to love dearly and who is unfortunately incapable, by reason of brain damage, of articulating her feelings. I now set out the background leading to this legal tussle between a married woman’s parents and her husband as to who should be appointed the committee for her person and estate.

The case for the applicants

2 The applicants are the natural parents of the respondent, whom I shall refer to as “the patient” (in the sense used in O 76 r 1 of the Rules of Court (Cap 322, R 5, 2004 Rev Ed)) as she is not really a party to these proceedings. This case started out as a typical application under the Mental Disorders and Treatment Act (Cap 178, 1985 Rev Ed) (“the Act”) by the parents for an order that they be appointed the committee of the patient’s person and estate (“the committee”) by reason of her unsoundness of mind and for other incidental orders. The patient was born on 22 April 1975 and is now 30 years old. She is the eldest among the applicants’ three children. The other two children are a 25-year-old daughter, who is working, and a 21-year-old son, an undergraduate in a university.

3 The patient married Tan Choon Leong (“Tan”) on 29 September 1999. Tan is a regular non-commissioned officer in the Singapore Armed Forces. At the time of the marriage, the patient was 24 years old and working as a bank officer in a local bank. After the marriage, she lived with Tan, his parents and his sister in a maisonette in the public housing estate at Pasir Ris (“the matrimonial home”).

4 On 18 July 2001, some 22 months into the marriage, the patient underwent an elective Caesarean section to deliver her first child. The operation was performed under general anaesthesia and a baby boy was delivered without complications.

5 However, the next day, when a nurse was helping the patient to change her sarong in bed, the patient suddenly tilted her head upwards with her eyes rolled up. She had to be resuscitated. She suffered severe brain damage as a result of a massive pulmonary embolism and was comatose for many days.

6 The patient was transferred to Mount Elizabeth Hospital where she received intensive rehabilitation treatment from 19 July 2001 to 22 September 2001. On 22 September 2001, she was discharged and was moved to her parents' home, a detached house in Sommerville Walk. She has been cared for since then primarily by her mother with the help of two maids, with her father and her siblings helping out at times.

7 Dr Tang Kok Foo, a consultant neurologist and physician practising at the Mount Elizabeth Medical Centre, stated in his medical report dated 31 May 2004 that:

From a cognitive point of view [the patient] is severely disabled and for legal purposes must be considered to be of unsound mind. In my professional opinion, this is permanent and irreversible.

After examining the patient again on 15 February 2005 at her parents' home, he submitted another medical report on 26 February 2005. He noted that she remained wheelchair-bound and could say a few words with prompting but her speech was slurred and poorly co-ordinated and she was unable to speak a short sentence. He concluded that:

[The patient] remains as severely disabled as in May 2004. In my professional opinion she is of unsound mind. This is permanent and irreversible. She will require life-long nursing and medical treatment.

These findings were not disputed by Tan.

8 The applicants claim that Tan is not able to look after the patient at the matrimonial home as he is a career soldier and has neither the time nor the financial means to provide the care she needs. They believe that Tan and the patient's son is brought over to Tan's grandparents' home to be cared for by them during the day when Tan is at work.

9 The applicants submit that they are the best persons to be appointed as the committee for the following reasons:

(a) The patient lived with them for 24 years until her marriage. At the time the tragedy befell her, she had been married and living with Tan and his family for less than two years.

(b) The applicants are the patient's parents and have been caring for her since July 2001. They claim that the patient was brought to their home with the knowledge and acquiescence of Tan. The patient's mother has received the necessary training to care for her special needs and knows her daily routine and her medical, dietary and physical needs.

(c) The family's physician, Dr Rodney Lim, who makes regular house-calls on the patient to change her feeding tube once every 21 to 30 days, has commended the parents for their "admirable dedication" which resulted in the patient's "appreciable and significant recovery". He has also stated that he is certain that the patient's family members are the most suitable candidates to take care of her and he would not recommend "to change such a winning formula".

(d) The applicants have been instrumental in seeking out specialist and alternative medical treatment (such as acupuncture, "qi gong" and "tui-na" or Chinese massage) for the patient which has led to an improvement in her general condition.

(e) They have the necessary resources, financial and otherwise, to better care for her in the long term. The patient's mother is not working and is caring for her full-time. They live in a spacious house. The patient lives in a bedroom on the ground level which has an area of about 600 sq ft and has an attached bathroom. Her mother and the two maids sleep in that bedroom in order to care for the patient through the night. The bedroom is equipped with facilities for the patient's daily care, such as a hospital bed and an anti-bedsores mattress with air pump.

10 On the other hand, the applicants object to Tan being appointed the committee despite his status as the patient's husband as they have serious doubts about his capability and character. Their grounds of objection are:

(a) Tan has not shown his willingness to participate in the care of the patient, whether by visiting her regularly or by contributing financially towards her care. He has conveniently left the applicants to take care of the patient and her expenses, paying only for the deposit for the hospital, some medical expenses, two amounts of \$500 each in November and December 2001 and the second maid's monthly levy (that is, the one serving in the applicants' home). He used to visit the patient every day after work and would bring their son along on weekends. One of his parents would accompany him sometimes. However, from around June 2002, his visits became less frequent and stopped altogether after 22 August 2004. The applicants produced a detailed two-page record of his visits from 24 December 2001 to 17 March 2005 (a copy of which is annexed to this judgment).

(b) The applicants deny Tan's allegation that he curtailed his visits because of their unfriendly and unpleasant attitude whenever he and his parents were at the applicants' home. The applicants claim that they have never refused entry to Tan or his family members and have in fact accorded him and the patient privacy during his visits by sitting quietly on one side of the living room or staying out of the patient's bedroom.

(c) Tan does not understand the enormity of the task involved in caring for the patient day and night and appears to be concerned only with stretching every dollar to make her funds last for as long as possible.

(d) Tan does not believe in any of the specialist or alternative treatments procured by the applicants for the patient since he believes that her condition is permanent and irreversible.

(e) It would be detrimental to the patient's health if she were to be moved suddenly to a new environment with caregivers who are neither trained nor familiar with her special needs.

(f) Tan's reasons for wanting to care for the patient appear to centre on his convenience and on allowing him and his son greater access to the patient. While acknowledging that these are valid concerns, the applicants say that the patient's interests and welfare override them.

(g) At a time when funds were required to pay for the patient's expenses, Tan deliberately withheld money received by him by stating, in October 2001, that he had received only \$120,000 on the patient's insurance policies when the amount was actually about \$236,000. In addition, Tan was spending money using the supplementary credit card given to him by the patient and was not paying his bills. The bills included expenditure in karaoke lounges.

The case for the husband, Tan

11 Tan was permitted by the court to intervene in this application after his counsel attended the

first hearing thereof. He was born in 1978 and is therefore some three years younger than the patient. He states that he knew the patient for one year before they decided to register their marriage in September 1999, when he was 21. In October 2000, with the blessings of their parents, they held the traditional Chinese wedding celebrations.

12 Tan states that he and the patient were on very good terms and she was happy living with his family in the matrimonial home. The patient also got along very well with Tan's parents. This was evidenced by the fact that she agreed to own the matrimonial home jointly with Tan and his parents in equal shares.

13 After she was found to be pregnant in November 2000, he accompanied her for her medical check-ups and attended pre-natal classes with her.

14 He was at the hospital when the tragic event happened to his wife. While he was still devastated by the news about her, the applicants proceeded to make arrangements for the patient to be brought back to their home without having first obtained his consent. He was in no state of mind to object to what was being planned.

15 During Tan's initial frequent visits to his wife at the applicants' home, the applicants were unfriendly and refused to communicate with him about his son for some unknown reason. Tan requested the applicants many times to return his wife into his care so that their son could see his mother every day and he could save on costs and time in not having to travel to the applicants' home for each visit. He was rudely rebuffed each time. In December 2004, the first applicant told Tan that he would rather go to court than let him have his wife back at the matrimonial home. As a result of this coldness towards him, Tan eventually stopped visiting his wife in order to avoid further conflict with the applicants.

16 The applicants deny that Tan made many requests to have the patient returned to his care and state that the first time Tan did so was through his solicitors' letter of 3 May 2004. However, Tan's solicitors' allegations in that letter about Tan's numerous requests to the applicants that he be allowed to take care of the patient were left unchallenged by the applicants' solicitors in their reply. In the correspondence, each party indicated its desire to apply to court to be appointed the committee for the patient. Tan's solicitors' invitation to the applicants for all parties (the applicants and Tan) to be appointed jointly as the committee, with the patient being placed under Tan's care, was met with the applicants' solicitors' reply of 23 September 2004 that "[the applicants] feel that they should be appointed as the committee of [the patient] for the reasons stated in our earlier letters" and that "they will proceed to make the application, and your client will be informed of the hearing so that he can apply to be heard in the proceedings". Tan's solicitors further replied that Tan would also be making such an application but, in the end, only the present application was filed by the applicants.

17 Tan feels he has to respond to the applicants' allegations impugning his financial integrity by raising questions about the way the applicants have spent the patient's money, including the payments from her insurance policies. He thinks it was imprudent of the applicants to have almost completely depleted her funds over the last few years by incurring excessive expenses for all kinds of treatment in the face of the medical opinion that the patient's condition is likely to be permanent and irreversible. However, he wants to focus on the welfare of the patient and not the funds and will not quibble further with the applicants about the funds. With very little funds left, any doubt concerning his ability to manage the finances is of little relevance now. Tan's position is that he is able to take care of the patient financially, even if it may not be up to the level desired by the applicants. He

retorts that the applicants' financial support for the patient's needs ought to be unconditional anyway and should not be dependent on whether they are appointed the committee or not.

18 He also submits that since he and the patient have joint accounts and have shares in the matrimonial home, it would be more practical for him to be appointed the committee. In any event, he says, even if the misconduct alleged against him is true, which he denies vehemently, it does not justify the draconian action of depriving a husband of the care of his wife and depriving their son of his mother.

19 Tan wants his family to be complete. He still loves his wife very much and has not given up on the marriage in spite of her condition. He wants to substitute the expensive alternative treatment with his and the son's love. Tan's mother is no longer working and is willing to devote herself to help care for the patient. The study room on the lower level of the matrimonial home (a maisonette) can be used for the patient to make her movements into and out of the matrimonial home more convenient. Finally, Tan says there will be greater continuity if the care of the patient is given to him because he is much younger than the applicants. When the applicants move on, the younger siblings of the patient are more likely than not to want the patient to be in the care of her husband and their son.

The decision of the court

20 In *See Wan Chon v Chua Ka Bu* [1990] 2 MLJ 460 at 462, Chan Sek Keong J held that a person who lost the use of his mental faculty as a result of accident (*ie*, any unforeseen event) was a person of unsound mind for the purpose of the common law and there was no reason to believe that Parliament, in using the expression "unsound mind" and not defining it, intended to give it a less comprehensive meaning as suggested in arguments, *ie*, that it was only an alternative description of a lunatic. Accordingly, if a person's mental condition was so impaired by his head injuries that he was unable to manage his own affairs, he would be within the scope of the Act for the purpose of an inquiry thereunder. In my view, it must follow, with greater force, that a person whose mental condition is impaired by disease or other bodily infirmity or age is also a person of unsound mind within the meaning of the Act.

21 In *Prem Singh v Kirpal Singh* [1989] 2 MLJ 89, Chao Hick Tin JC (now Chao Hick Tin JA), in refusing to order an inquiry under the Act after having heard further arguments by the parties, held (at 93) that the court's jurisdiction under the Act should only be exercised for the benefit of a mentally disordered person (such as when the patient requires protection by the court) and that the court ought not to sanction a course of procedure which was likely to lead to further distress to the patient on account of the bitter dispute between the parties. The parties in that case were the husband and the children of the patient. The judge took into consideration the comments of the patient's consultant psychiatrist that it was neither necessary nor desirable to put her through an inquiry, as that might subject her to unwanted stress which might cause a flare-up in her symptoms (she was suffering from schizophrenia).

22 It follows from this premise that if the court does exercise its jurisdiction under the Act, the protection of the patient and her interests is of paramount importance and the court must sieve and filter out the bitter dross of family conflict in order to arrive at a reasonably good solution for the patient. Since the patient is not capable of deciding for herself or making her wishes known, the court has the unenviable task of being the mind and voice of the patient, a task similar to that in custody disputes concerning very young children.

23 In the present case, the parties are in agreement that this court ought to order an inquiry under the Act and that the patient is indeed of unsound mind and incapable of managing herself and her affairs. There is ample medical evidence about her unfortunate mental state. The only issue is who should be appointed the committee.

24 Under s 4 of the Act, an application for an inquiry "may be made by any person related by blood or marriage to the person alleged to be mentally disordered, or by any public officer nominated by the Minister". Clearly, the parents and the husband of the patient come within the scope of this provision.

25 The applicants refer to the Canadian decision of *Re West and West* (1978) 87 DLR (3d) 192 in which the wife of a man who had suffered a stroke applied to be appointed the committee of his person and estate. Section 5(2) of the Canadian Infirm Persons Act (RSNB 1973, c I-8) applicable in that case states:

The application may be made by the Minister of Justice, by the wife or husband of the alleged mentally incompetent person, by any relative whether by blood or affinity, or in default of such relative by a friend, or by a creditor.

The court there held that it did not follow that a person authorised to make an application under that Act had a special right to be appointed a committee of the estate of the person concerned. It merely restricted the class of persons who might apply.

26 The applicants contend that, similarly, the persons authorised under s 4 of the Act do not automatically have any special right to be appointed the committee. In my view, s 4 of the Act specifies the classes of persons who may apply under the Act without according priority to any particular class, unlike, for instance, the grant of letters of administration on intestacy, where the order of priority is stipulated: see s 18 Probate and Administration Act (Cap 251, 2000 Rev Ed) and O 71 r 19 of the Rules of Court. The court has the discretion to appoint the person who it believes is the most appropriate in the circumstances for the protection and the welfare of the patient.

27 There is no doubt here that the applicants want the very best for their hapless daughter and are willing to try anything that offers some hope of a cure or of improvement in her mental state. That is commendable. Equally, there is no reason for me to doubt that Tan also wants to try his best for his wife. He is at a disadvantage because he cannot claim to have been caring for his wife for the last few years, unlike the applicants. However, one must remember that this is not a case of abandonment by him. It is probably true that he was quite overwhelmed in 2001, when he was only 23 years old, by the birth of his firstborn followed by the mental incapacitation of his wife the next day. He was inexperienced, had hardly any idea what to do and also lacked financial resources then. It was natural that he was relieved that the applicants were willing to take care of his wife as he had to cope with being a first-time father as well.

28 After things had calmed down somewhat, he did ask to bring his wife home but the applicants refused his many requests. Tan's evidence that he has been asking repeatedly for his wife to be returned to their matrimonial home is substantiated by the exchange of solicitors' letters in 2004. I therefore do not think the applicants are on strong legal or moral grounds when they argue that the status quo should not be disturbed.

29 It is true that the patient has been the applicants' daughter for far longer than she has been Tan's wife but that is always the case in every marriage. It is indeed heartbreaking that the tragic

event happened to so young a woman and right after she became a mother but it was not due to Tan's neglect at all.

30 There is substance in Tan's assertions that he stopped visiting the patient at the applicants' home because of the unpleasantness each visit generated. The applicants' attitude towards him could, at best, be described as nonchalant. It may be that the applicants somehow blame Tan for the misfortune that happened to their daughter. Obviously, they have not been very fond of Tan. Perhaps it was because they did not think he would provide financial security for their eldest daughter. After all, he was only 21 when they got married in 1999 and his wife had to get him a supplementary credit card. Another possible reason could be the fact that he is three years younger than their daughter. I take judicial notice that some people may harbour prejudices about a female marrying a man junior in age by several years. The fact that the patient's father attended the solemnisation of her marriage to Tan (as evidenced by the appearance of his name as a witness in their marriage certificate) need not necessarily disprove what I have just stated. Further, I note that the applicants have been keeping meticulous records of Tan's every visit from as early as December 2001, about three months after the patient was discharged. This shows that their distrust and dislike of Tan goes back quite a long way and is probably very deep-seated.

31 I have also not seen evidence of the applicants' concern for their now almost four-year-old grandson. They appear rather indifferent towards him and do not seem concerned that mother and son are physically apart. They say they did not know the boy's name had been changed by Tan because Tan did not inform them about it but this merely confirms their relationship with Tan is truly a very strained one. Their only concern, as shown in the affidavits, is for their daughter and her alone, treating her as though she were unmarried and apparently oblivious to the fact that her life is inextricably linked to those of her husband and their young son.

32 To maintain the status quo here is to force a husband and his wife to remain apart. It would also be tantamount to depriving a mother and her son the opportunity to be together. Who knows – the young child might one day be the miracle cure for the patient that the applicants have been seeking assiduously these past few years. Whatever the applicants may feel about the worthiness of Tan, he is the man their adult daughter chose to marry and whose child she gave birth to. There is no suggestion that he has been violent towards the patient at any time in the past and therefore there can be no allegation that the patient needs to be protected from him. The applicants' actions, I am sorry to say, suggest that they want to reclaim their married daughter and to cut all ties with Tan and his family, including even his son. Their love for their daughter is strong. However, love sometimes includes having to let go, painful though the decision may be.

33 Tan's flat may not be as spacious as the applicants' house but it is the home chosen by the patient and, but for the life-altering event of 19 July 2001, she would have been living in it with her husband and their son.

34 The cross-accusations about each party's mismanagement of the patient's funds are, in my view, a consequence of their mutual distrust, and perhaps disdain, for each other. As there is now not a significant amount of money left, and no more insurance money to claim, the issue loses much of its relevance. Tan cannot be accused of wanting his wife back in order to benefit financially from her bank accounts or the insurance payments.

35 I am sure Dr Rodney Lim's assessment and recommendation is an honest one. However, he has not had a chance to see whether Tan will be as dedicated as the applicants in caring for the patient.

36 Having considered all the circumstances, I am of the view that the patient's interests will be best served by having her return to the matrimonial home to be cared for by her husband and his mother and to be with her young child and by letting her finances be taken care of by the man she trusted and wished to spend her life with while she was in a position to make her own choices. I therefore appoint Tan the committee of her person and estate. Hoping to minimise the possibility of conflict and to help the patient re-adjust to her own home, I also make certain consequential orders as listed below. For the sake of not exacerbating the strained relationship between the applicants and Tan, each party should bear its own costs for these proceedings.

37 The orders I make are:

- (a) the attendance in court of the patient and her doctors be dispensed with;
- (b) the patient be declared to be of unsound mind and incapable of managing herself and her affairs;
- (c) Tan is appointed the committee of the person and estate of the patient;
- (d) Tan is to make all necessary arrangements for the patient to be transferred from the applicants' home to the matrimonial home, including arranging for an ambulance and for the patient's family doctor, Dr Rodney Lim, to be present if he is available;
- (e) the transfer is to take place on Saturday, 14 May 2005, starting from 1.00pm;
- (f) one solicitor for each party may be present throughout the transfer;
- (g) all bedding equipment, wheelchair and other medical accessories which are currently being used by the patient are to be transferred together with the patient;
- (h) Tan is to take vacation leave from Monday, 16 May 2005, to Friday, 20 May 2005, to help the patient adjust to her new surroundings;
- (i) Tan is to ensure that his mother will not be engaging in any part-time or full-time employment so that she can help take care of the patient;
- (j) Tan is to employ a domestic helper to assist in taking care of the patient;
- (k) the parents and siblings of the patient are to be allowed to visit the patient at the matrimonial home at reasonable times upon advance notice of one hour;
- (l) the applicants are to hand over the patient's personal documents, including bank books and insurance policies, to Tan at the time of transfer;
- (m) the parties are given liberty to apply to court;
- (n) each party is to bear its own costs for these proceedings; and
- (o) there is to be no stay of the above orders pending appeal as the situation was brought about by the unjustifiable intransigence of the applicants in the first place.

Respondent's husband appointed committee of person and estate of respondent.

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