

VUW and others v VUT and another and other appeals

[2021] SGHCF 41

- Case Number** : District Court Appeals (Family Division) Nos 49, 50, 52 and 53 of 2021 and Registrar's Appeal from the Family Justice Courts No 14 of 2021
- Decision Date** : 29 December 2021
- Tribunal/Court** : General Division of the High Court (Family Division)
- Coram** : Debbie Ong J
- Counsel Name(s)** : Lim Poh Choo and Lee Wan Sim (Alan Shankar & Lim LLC) for the appellants in HCF/DCA 52/2021 and HCF/DCA 53/2021, and the respondents in HCF/RAS 14/2021, HCF/DCA 49/2021 and HCF/DCA 50/2021; Yam Wen Ee Benjamin (Ray Louis Law Corporation) for the 1st appellant in HCF/DCA 49/2021, HCF/DCA 50/2021 and HCF/RAS 14/2021, and the 1st respondent in HCF/DCA 52/2021 and HCF/DCA 53/2021; Lee Ee Yang, Lua Wei Liang Wilbur and Tan Jia Jun James (Covenant Chambers LLC) for the 2nd, 3rd and 4th appellants in HCF/DCA 49/2021, HCF/DCA 50/2021 and HCF/RAS 14/2021, and the 2nd, 3rd and 4th respondents in HCF/DCA 52/2021 and HCF/DCA 53/2021.
- Parties** : VUW — VUX — VUY — VUZ — VUT — VUU

Mental Disorders and Treatment – Legal capacity

Mental Disorders and Treatment – Management of patients' property and affairs – Appointment of deputies – Mental Capacity Act (Cap 177A, 2010 Rev Ed)

29 December 2021

Debbie Ong J:

Introduction

1 I adopt the references to the parties used by the District Judge (“DJ”) in his Grounds of Decision (“GD”): “For ease of reference, the Plaintiffs in OSM 226/2019 will be referred to as ‘Plaintiffs’ and the 2nd to 5th Defendants in OSM 226/2019 will be referred to as ‘Defendants’. The 1st Defendant in OSM 226/2019 will be referred to as ‘P’.” (GD at [5]).

2 P is a 71-year-old widow. She has no children. The Plaintiffs were the friends of P who applied to be appointed P’s Deputies in FC/OSM 226/2019. The Defendants were the relatives of P who applied to be appointed P’s Deputies in FC/OSM 500/2019.

3 The Defendants were the appellants in HCF/RAS 14/2021, HCF/DCA 49/2021 and HCF/DCA 50/2021, and the Plaintiffs were the appellants in HCF/DCA 52/2021 and HCF/DCA 53/2021.

4 The DJ decided to appoint one of the Plaintiffs (VUT) and one of the Defendants (VUY) to be the Deputies for P. He said (GD at [35] and [39]):

35 ... [A]fter considering the evidence and submissions of counsel, I formed the view that neither side was a particularly ideal choice for appointment as Deputies. We had one side with unanswered questions about financial matters and we had the other side which had demonstrated that they were more than willing to disregard Court Orders and, if they were willing to disregard Court Orders on a simple matter as allowing the Plaintiffs to see P, would they be willing to disregard Court Orders when it came to other matters concerning Ps welfare and property and affairs? Unfortunately, although appointing someone else as Deputy might have been ideal, there

did not appear to be any viable third party option given the facts and nature of the case. ...

39 I had explained to both counsel that I intended to appoint one person from each side as Deputy and the Plaintiff's Counsel suggested the 1st Plaintiff while the Defendant's Counsel suggested the 4th Defendant. I agreed with their views as these two appeared to have taken the most interest in the proceedings and I therefore ordered that the 1st Plaintiff and 4th Defendant were to be appointed as Deputies for P.

5 The DJ also ordered that the Deputies were to act jointly and severally where it was potentially necessary to make urgent or emergency decisions for P, *eg* medical treatment, and similarly, where a power would be rendered useless by one Deputy obstructing the other, *eg* obtaining information about P's accounts from financial institutions. However, where the above considerations did not apply and where it would be in P's best interests to ensure that neither side could unilaterally do something behind the other side's back, *eg* withdrawal of monies from a bank account, the DJ ordered that the Deputies were to act jointly (GD at [41]).

6 As for P's living arrangements, the DJ noted the Plaintiffs' proposal for P to stay with the 1st Plaintiff on an alternate week basis, *ie* one week at her own flat with the 2nd Defendant and one week with the 1st Plaintiff. The DJ said that if he did not accede to the Plaintiffs' proposal, the Defendants would simply prevent the Plaintiffs from seeing P, and hence he ordered that P was to live with the 1st Plaintiff on alternate weeks (GD at [43]–[44]). This arrangement would allow the Plaintiffs and P's friends to have time with P, while also allowing the Defendants to have time with P; having P stay at her own home and having the Plaintiffs visit was not a long-term solution given the conflicts between both sides (GD at [45]). This arrangement was to commence only when Singapore returned to Phase 3 in terms of allowable activities in order to minimise exposing P to going out and travelling around; until then, P's contact with the Plaintiffs and P's other friends was to be limited to video calls (GD at [46]). The DJ also made orders in regard to the 1st Plaintiff bringing P for her Covid-19 vaccination since the 1st Plaintiff had registered P for this, but was informed by counsel that one or more of the Defendants had prevented the 1st Plaintiff from bringing P for her vaccination (GD at [47]).

7 Finally, the DJ granted an order authorising the Deputies to obtain information about P's financial affairs. He declined to grant an order for the Defendants to have the power to commence legal action for P and to file complaints to professional bodies (GD at [48]–[49]).

HCF/RAS 14/2021

8 HCF/RAS 14/2021 was an appeal against the DJ's decision in respect of FC/SUM 3697/2019, which "was an application by the Defendants to administer interrogatories. The questions were generally in relation to P's financial affairs" (GD at [50]). The DJ took this approach on FC/SUM 3697/2019 (GD at [54]):

... I felt that the best way to balance the competing interests was to defer the Summons hearing temporarily as it was not immediately necessary for a determination of the issues in this case and, as the case developed and more information came to the fore, the way forward on the Summons might become clearer.

9 The DJ eventually proceeded to deal with the main applications in FC/OSM 226/2019 and FC/OSM 500/2019, by which time he "realized that it would not be possible to grant the orders sought [in respect of FC/SUM 3679/2019]" (GD at [59]):

... Rule 487 of the [Family Justice Rules 2014] specifies that interrogatories may not be administered if they are not necessary for disposing fairly of the matter or for saving costs. As the hearing of the Originating Summons had, by then, been concluded, these interrogatories no longer fell within the ambit of rule 487.

10 In my view, FC/SUM 3697/2019 should have been heard and determined before the conclusion of the main applications. It was for the DJ to determine whether to dismiss the summons or decide which requests in the summons would be allowed and which would not. I thought the content involved in FC/SUM 3697/2019 was relevant to the main applications. Nevertheless, I was of the view that FC/SUM 3697/2019 would not affect my decision in respect of the DCA appeals (*ie* HCF/DCA 49/2021, HCF/DCA 50/2021, HCF/DCA 52/2021 and HCF/DCA 53/2021) and I proceeded to determine the appeals without further interrogatories.

The DCA appeals: HCF/DCA 49/2021, HCF/DCA 50/2021, HCF/DCA 52/2021 and HCF/DCA 53/2021

11 HCF/DCA 49/2021 and HCF/DCA 50/2021 were the Defendants' appeals against the DJ's decision in FC/OSM 226/2019 and FC/OSM 500/2019 respectively, while HCF/DCA 52/2021 and HCF/DCA 53/2021 were the Plaintiffs' appeals against the DJ's decision in FC/OSM 226/2019 and FC/OSM 500/2019 respectively.

12 I did not think it appropriate or practical for one Plaintiff (VUT) and one Defendant (VUY) to be appointed Deputies for P. The Plaintiffs and Defendants have a difficult relationship where trust is very much lacking. This will negatively impact the welfare of P. Further, I was concerned with the arrangement of P being cared for in alternate weeks by each Deputy (see [6] above). P has dementia. It would be in her welfare to have a consistent physical care arrangement where her primary residence and caregivers are constant.

13 The present matter is different from that in applications for custody, and care and control of children. In those cases, both parties are the parents of the child with parental responsibility for the child; it is in the child's welfare that she continues to maintain and deepen her parent-child bond with both parents and be raised cooperatively by both parents. Shared care and control of a child may involve the child staying with each parent on alternate weeks; even then, such arrangements are not common, for dual residences take much cooperation, effort and support, in addition to ensuring that those particular arrangements suit the particular child.

14 The present matter concerned applications under the Mental Capacity Act (Cap 177A, 2010 Rev Ed). It was not disputed by the parties that P lacked mental capacity and that Deputies should be appointed. P lives with her "adoptive father" (VUW) in her own home. The Defendants informed the court that P was raised by VUW and his wife, who is the sister of P's late biological father. VUW has no other children; he has relatives, some of whom are the Defendants, who are willing to care for P. P and her husband, when he was alive, lived in Hong Kong and Singapore over the years. It was not disputed that P has lived in Singapore from 2017 in her own home with VUW.

15 I accepted that P was first diagnosed with dementia in August 2016 and that her condition continued to deteriorate over time. In 2017, P continued to be reviewed by doctors in respect of her dementia. By 2019, P was diagnosed as suffering from moderate to severe dementia. The parties did not dispute that presently, P lacks mental capacity.

16 In the present case, it was of concern that P had made a will in June 2017 which could potentially benefit the Plaintiffs. This was after P was diagnosed with dementia in 2016. Both Plaintiffs

were the executor and trustees named in her will, under which half of her estate was to be entrusted to the Plaintiffs to be distributed to beneficiaries of the Plaintiffs' choosing (including the Plaintiffs themselves). Further, there was no dispute that the 2nd Plaintiff had been nominated as the sole beneficiary of a few of P's insurance policies; the nominations took place in February 2019. The Defendants also claimed that a sum of S\$250,000 had been withdrawn by way of cheque from P's HSBC Singapore bank account on 18 February 2019; and there was a mortgage of P's properties in Hong Kong on 7 December 2017 for a loan of HK\$8,500,000.00. The Defendants had sought information from the Plaintiffs regarding the execution of the will and other financial transactions in FC/SUM 3697/2019. Given the *undisputed* facts concerning transactions that occurred *after* the initial diagnosis of dementia in 2016, such as the content of the will potentially benefitting the Plaintiffs and the nomination of the 2nd Plaintiff as the beneficiary of P's insurance policies, there was sufficient cause for concern such that a court should be cautious about placing the Plaintiffs in the position of Deputies for P.

17 For the purposes of deciding the present question of who should be appointed Deputies for P, there was no need for a specific finding on whether or not P had the mental capacity at the relevant point in time to execute the will or in making the nomination for the insurance policies. Having considered the relevant context and evidence, I was of the view that the Plaintiffs were *not* the more suitable Deputies in the circumstances of this case.

18 The Defendants submitted in their written submissions that:

134 ... [T]he Plaintiffs' own evidence is that [the 1st Plaintiff] was not really close to P before 2016, and only met P on special occasions socially. Yet, after she learnt about P's dementia, she became a constant presence in P's life.

135 This might have been completely innocuous if [the 1st Plaintiff] only took on a caregiver role, without more. However, [the 1st Plaintiff] also took control of P's finances. As we have shown above, there are questionable transactions and a *prima facie* case of undue influence for at least some of the transactions made in P's name.

19 I accepted that this was a fairly reflective snapshot of the context and concerns in this case. By accepting this, I did not make any findings of wrongdoing. I also did not make findings on whether P had the mental capacity to execute the will in 2017 or carry out other financial transactions from 2017.

20 Much was said by the Plaintiffs about how P was closer to them, and how they had supported her in managing her financial affairs and even in helping her relocate from Hong Kong to Singapore.

21 Friends socialise in different ways from family and relatives. A teenager may think herself "closer" to her teenage friends than her parents, even sharing about how her parents do not understand her love for her boyfriend. A 65-year-old lady may enjoy spending time with friends who are closer to her in age in regular social activities; it will be understandable that her younger relatives may not spend time playing twice-weekly tennis with her or having lunch or tea every week with her. Having close friends is normal and indeed healthy for the teenager and the 65-year-old lady. But friends do not occupy the same position as family and relatives. The Defendants reflected this in their submissions:

164 The Plaintiffs also do not have the *capacity* to give P the full-time care and attention that she needs. The caregivers in the Plaintiffs' Group [being the Plaintiffs and 7 other persons whom the Plaintiffs say have been involved in P's care as P's caregivers between 2016 to 2019] have

their own day jobs and their own families to take care of. ...

172 Most importantly, the Defendants' caregivers will *always* be there for P, even when her condition continues to deteriorate, because they regard her as family. As family, they also have [VUW's] full trust, and will be able to take care of [VUW] and P at the same time, in the way P wants to. P will never be separated from [VUW] against her wishes.

[emphasis in original]

22 This is not to say that interactions with friends are not important, of course. Indeed, it is common enough knowledge that social interactions and activities are especially important for the health and wellbeing of those with dementia. Anyone who is caring for P should endeavour to support her in having connections with friends, family and relatives.

23 The DJ weighed the concerns in respect of both groups of parties. He concluded that neither side was a particularly ideal choice for appointment as Deputies, and appointed one Plaintiff and one Defendant (GD at [35]–[39]). With respect, I was of the view that the concerns in appointing the Plaintiffs as Deputies weighed much more heavily than the concerns in appointing the Defendants. I have stated my concerns with respect to appointing the Plaintiffs as Deputies at [16] above. As for the Defendants, I do not condone breaches of court orders, but I was able to believe that once they were appointed Deputies, they would feel more secure that P's interests were protected and would be supportive of P's access to her friends (such as the Plaintiffs) should P wish to spend time with them.

Conclusion and costs

24 I allowed the Defendants' appeals in HCF/DCA 49/2021 and HCF/DCA 50/2021, and dismissed the Plaintiffs' appeals in HCF/DCA 52/2021 and HCF/DCA 53/2021. While I agreed with the Defendants' case in HCF/RAS 14/2021, there was no necessity to determine FC/SUM 3697/2019 itself, and I hence made no order as to HCF/RAS 14/2021.

25 I appointed VUX and VUY as P's Deputies, and VUZ as the successor Deputy. The Deputies were to act jointly and severally. The appointed Deputies were granted the powers and duties in clause 6 of FC/OSM 500/2019, including clause 6(b)(i) and (ii) (which the DJ had disallowed: GD at [49]), and in clauses 5 and 7 to 12.

26 I ordered that the costs of these appeals were to be agreed between the parties. If there was no agreement, the parties may write to court with their submissions on costs.