

IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2024] SGCA 4

Civil Appeal No 27 of 2014 (Summons No 36 of 2023)

Between

- (1) AUR
- (2) CY

... Appellants

And

- (1) AUT
- (2) AI
- (3) BKR

... Respondents

JUDGMENT

[Mental Disorders and Treatment — Management of patients' property and affairs]

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Re Estate of BKR, deceased

[2024] SGCA 4

Court of Appeal — Civil Appeal No 27 of 2014 (Summons No 36 of 2023)
Sundaresh Menon CJ, Belinda Ang Saw Ean JCA and Andrew Phang Boon
Leong SJ
14 February 2024

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Belinda Ang Saw Ean JCA (delivering the judgment of the court):

1 The present application, CA/SUM 36/2023 (“SUM 36”), follows from an earlier decision of this court in *Re BKR* [2015] 4 SLR 81 that deputies should be appointed to make decisions on behalf of one BKR in relation to her property and affairs because she lacked the mental capacity to make these decisions herself. By CA/ORC 21/2016, this court appointed three professional deputies, namely Ms Chee Ai Lien Eunice, Mr Tam Chee Chong and Mr Wong Yuen Weng Ernest (the “Deputies”) for this purpose. By CA/ORC 20/2016, Ms Marina Chin Li Yuen SC was appointed as the independent legal advisor to the Deputies (the “ILA”).

2 Further, this court ordered that the Deputies were entitled to reasonable remuneration for their work and were authorised to pay the ILA’s fees and expenses. Such remuneration, fees and expenses would be paid out of the assets of BKR.

3 BKR passed away on 25 May 2023. Following her demise, the Deputies filed SUM 36 to seek the following orders:

(a) The discharge of the appointments of the Deputies and the ILA (the “Discharge Order”).

(b) Notwithstanding BKR’s demise, the Deputies continue to be authorised to approve the payment out of BKR’s property of the ILA’s fees and disbursements in relation to:

(i) work done from 1 January 2023 until 25 May 2023 in relation to their role as Deputies (which has not yet been billed);

and

(ii) any work done after 25 May 2023 in relation to the role of the Deputies (the “Authorisation Order”).

(c) The Deputies continue to be entitled to reasonable remuneration in respect of their role for the period following BKR’s demise, on the same terms previously granted by this court (the “Remuneration Order”).

4 While we have no difficulty granting the Discharge Order, the same cannot be said for the Authorisation Order and the Remuneration Order. We are of the view that the court does not have the jurisdiction to grant these latter orders under the Mental Capacity Act 2008 (2020 Rev Ed) (“MCA”) after the demise of BKR. Instead, the proper avenue is for the Deputies and the ILA to claim their respective remuneration, fees and expenses from the executors of BKR’s estate. We now elaborate on our reasons.

5 We begin with the purpose of the MCA, which is to provide a statutory framework for permitting qualified persons to act and make decisions on behalf of adults who lack the mental capacity to make decisions for themselves. This framework was described in the second reading of the Mental Capacity Bill (Bill No 13/2008) as one for *proxy* decision making: see Singapore Parl Debates; Vol 85, Sitting No 1; Col 109; [15 September 2008] (Vivian Balakrishnan, Minister for Community Development, Youth and Sports). The MCA is based on the idea that all adults have the right to make their own decisions about their lives, including the decisions about their welfare, care, support, property, and personal affairs. Whenever possible, they should be helped and supported to make their own decisions. The MCA’s special provenance and features, and the implications as to its meaning gleaned from the provisions, show that the MCA operates and is applicable during the lifetime of the person who lacks mental capacity. To illustrate, s 4(1) of the MCA defines a person as lacking capacity “in relation to a matter if at the material time the person is unable to make a decision for himself or herself because of an impairment of, or a disturbance in the functioning of, the mind or brain”. The words “in relation to a matter” and “at the material time” make it clear that lack of capacity is both decision-specific and time-specific.

6 This underlying premise is also clear from the five statutory principles set out in s 3 of the MCA which, among others, refer to the *treatment* of such persons (ss 3(3) and 3(4) of the MCA) and to the need to minimise any restrictions to the *rights* and *freedom of action* of such persons (s 3(6) of the MCA). Furthermore, s 3(5) of the MCA mandates that acts done and decisions made on behalf of such persons must be done or made in their best interests, as determined under s 6 of the MCA. In determining what is in a person’s best interests, a decision-maker must consider the likelihood of the person regaining capacity at some point (s 6(3) of the MCA) and must, so far as is reasonably

practicable, permit and encourage the person’s participation in acts done or decisions made on his or her behalf (s 6(4) of the MCA). Under s 20(3) of the MCA, the exercise of the court’s powers is subject to the provisions of the MCA, and in particular to ss 3 and 6, *ie*, to the statutory principles and to the person’s best interests.

7 Simply put, the statutory regime envisaged in the MCA is designed to assist incapacitated persons *in their lifetime*; the MCA has no functional role after the death of the person concerned.

8 This premise, as described, is aligned with the traditional position in English law, where what was then known as the court’s lunacy jurisdiction was held to last only so long as the mentally incapacitated person was alive or remained incapacitated: *In re Wheater* [1928] Ch 223 (“*In re Wheater*”) at 228.

9 However, this does not mean that the role of the court and the deputy comes to a complete and abrupt end upon the person’s death. The court continues to possess a limited *residual* jurisdiction for the purpose of concluding or ending the court’s involvement in the person’s affairs. This residual jurisdiction includes, for example, the discharge of any deputy and of any security given by the deputy, as set out in para 59 of the Family Justice Courts Practice Directions.

10 Similarly, a court-appointed deputy for property and affairs will be responsible, on the person’s death, to hand over the estate to the person’s personal representatives: *In re Wheater* at 230. The deputy may further be required by the Public Guardian to provide a final report pursuant to reg 32 of the Mental Capacity Regulations 2010.

11 In our judgment, however, it is *not* within the court’s residual jurisdiction to confer any new powers or authority upon a deputy – that falls squarely within the court’s primary jurisdiction, which ends upon the person’s death.

12 With these principles in mind, we turn to the orders sought by the Deputies.

13 We start with the Discharge Order, which we see no difficulty with. As the Deputies rightly acknowledge, they cease to have any powers and authority to act on behalf of BKR following her demise. It is only appropriate that their appointments, as well as that of the ILA, be discharged.

14 However, for the reasons explained above, the Authorisation Order and Remuneration Order are matters outside of the remit of the MCA. It is for the executors of BKR’s estate to attend to the matter of the remuneration of the Deputies and ILA, including fees and expenses incurred for work done during the periods in question.

15 We note from the affidavit of Ms Chee Ai Lien Eunice filed in support of this application that the executors of BKR’s estate are *not* objecting to the claims of the Deputies and ILA for remuneration, fees and expenses incurred during the periods in question. In the circumstances, the Deputies and ILA ought to have no difficulty submitting their bills to the executors directly for their approval and payment. We trust that the executors would be fair to the Deputies and ILA without their having to seek judicial assistance.

16 We therefore dismiss the application in part and make the following orders:

- (a) Prayer 2 of SUM 36 (*ie*, the Discharge Order) is granted. The appointments of the Deputies and ILA respectively are discharged.
- (b) For prayers 1 and 3 of SUM 36 (*ie*, the Authorisation Order and Remuneration Order), we make no orders.
- (c) Finally, we make no order as to costs, and we hereby release the undertaking for security for costs provided by the Deputies' solicitors.

Sundaresh Menon
Chief Justice

Belinda Ang Saw Ean
Justice of the Court of Appeal

Andrew Phang Boon Leong
Senior Judge

Alcina Lynn Chew Aiping and Teo Su Ning Gillian (Tan Kok Quan Partnership) for the Deputies;
Poh Yee Shing (Shook Lin & Bok LLP) for the first and second appellants (watching brief);
Zhu Ming-Ren Wilson (Rajah & Tann Singapore LLP) for the first and second respondents (watching brief).
