

AUSTRALIA / JUDGMENT

Geoff (a pseudonym) [2024] NSWCATGD 19

COURT

NSW Civil and Administrative Tribunal

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Source record**NSW Civil and Administrative Tribunal****New South Wales****Medium Neutral Citation: Geoff (a pseudonym) [2024] NSWCATGD 19****Hearing dates: 29 November 2024****Date of orders: 29 November 2024****Decision date: 29 November 2024****Jurisdiction: Guardianship Division****Before: A Britton, Deputy President****Associate Professor M C N Cigolini, Senior Member (Professional)****P A Rutledge AM, General Member (Community)****Decision: Guardianship**

- 1. A guardianship order is made for Geoff.**
- 2. Lisa, of [address removed for publication], is appointed as the guardian.**
- 3. This is a continuing guardianship order for a period of 12 months from 29 November 2024.**
- 4. This is a limited guardianship order giving the guardian(s) custody of Geoff to the extent necessary to carry out the functions below.**

FUNCTIONS:**5. The guardian has the following functions:****a) Accommodation**

To decide where Geoff may reside.

b) The guardian may authorise others including members of NSW Police and the Ambulance Service of NSW to:**i) take Geoff to a place approved by the guardian.****ii) keep him at that place.****iii) return him to that place should he leave it.****c) Health care**

To decide what health care Geoff may receive.

d) Medical/Dental consent

To make substitute decisions about proposed minor or major medical or dental treatment, where Geoff is not capable of giving a valid consent.

e) Services

To make decisions about services to be provided to Geoff.

CONDITION:

6. The condition of this order is:

a) Standard Condition

In exercising this role the guardian shall take all reasonable steps to bring Geoff to an understanding of the issues and to obtain and consider his views before making significant decisions.

Financial Management

1. The estate of Geoff is subject to management under the NSW Trustee and Guardian Act 2009 (NSW).

2. Lisa, of [address removed for publication], is appointed as the financial manager of the estate.

NOTE: The financial manager is not authorised to deal with the estate (other than to protect the assets) until he/she has obtained all necessary authorities from the NSW Trustee and Guardian.

Catchwords: GUARDIANSHIP – 87-year-old subject person in hospital awaiting discharge – subject person assessed to be a hoarder – application for a guardianship order – consideration of adjournment – subject person opposed to the making of a guardianship order – consideration of whether separated partner constituted a spouse for the purposes of s 14(2)(a)(ii) of the Guardianship Act 1987 (NSW) – whether relationship is close and continuing – concern that subject person will resist accommodation decisions made upon discharge from hospital – authorise others function granted – private guardian appointed – order made

FINANCIAL MANAGEMENT – application for a financial management order – whether subject person is capable of managing their own affairs – allegations of financial exploitation and vulnerability – subject person unable to manage his own finances – private manager appointed – order made

Legislation Cited: Civil and Administrative Tribunal Act 2013 (NSW)

Guardianship Act 1987 (NSW), ss 3(1)-(2), 4, 14(2), 14(2)(a)(ii), 17(1), 17(1)(c), 25G, 25G(a)

Cases Cited: P v NSW Trustee and Guardian [2015] NSWSC 579

ZKF v ZKG [2019] NSWCATAP 64

Category: Principal judgment

Parties: 001: Guardianship Application

Pseudonym (Geoff) (the person)

Central Coast Local Health District (applicant)

Pseudonym (Lisa) (joined party)

Public Guardian

Pseudonym (Marina) (spouse)

002: Financial Management Application

Geoff (the person)

Central Coast Local Health District (applicant)

Lisa (joined party, proposed financial manager)

NSW Trustee and Guardian

Marina (spouse)

File Number(s): NCAT 2024/00410614

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to be a publication or broadcasting of an official report of the proceedings.

REASONS FOR DECISION

1. These reasons are about 87-year-old Geoff. Geoff is a fictitious name. In these reasons to protect his privacy we have not used Geoff's real name.
2. Geoff was admitted to a Hospital on the Central Coast of NSW on 19 September 2024 after being found lying on the floor of his home, apparently for a couple of days. On admission he presented with pneumonia, cellulitis in his left leg and delirium, most likely due to infection. Before admission, Geoff had been living alone in a property on the Central Coast of NSW where he has lived for the past 35 years.
3. In an application made to the Guardianship Division of the NSW Civil and Administrative Tribunal (NCAT), an NSW Local Health District (the Local Health District) requested the Tribunal to make guardianship and financial management orders in respect of Geoff (the Application).
4. Geoff strongly opposes the Application and contends that he is capable of making decisions about his personal and financial affairs. He said that he would like to return to live at home and to be cared for by his neighbour, Catherine. [1]
5. Geoff's daughter, Lisa [2] and former wife, Marina [3] support the Application.
6. For the reasons given below, we made a guardianship and financial management order in respect of Geoff and appointed Lisa as her father's guardian and financial manager.

Request for an adjournment

1. The day before the hearing, Geoff rang NCAT and requested an adjournment. He said he had been diagnosed with COVID-19 and was unable to travel to Sydney to participate in the hearing.
2. Geoff repeated that request at the commencement of the hearing, where he participated by audio visual link from hospital. He said that he was "in the dark about the application" and wanted to get a qualified person to represent him in the proceedings.
3. Dr Balendran has had the care of Geoff for the past month and works with Dr Mei Teng Toh. She opposed Geoff's request for an adjournment. She contended that it is not in Geoff's interest that the determination of the Application be delayed and claimed that hospital staff reported that Geoff was being visited by people who were requesting him to sign documents, which, in her opinion, he did not have the capacity to understand. According to Dr Balendran, Geoff is ready for discharge but lacks capacity to make reasoned decisions about his finances and post-hospital accommodation.

4. Marina, Lisa and the Hospital Social Worker also opposed an adjournment being granted.

Consideration

1. In exercising the power to grant an adjournment we must have regard to the guiding principles of the Civil and Administrative Tribunal Act 2013 (NSW). Those principles require that we facilitate the just, quick and cheap resolution of the real issues in the proceedings. In addition, we must have regard to the principles in the Guardianship Act 1987 (NSW) (the section 4 principles), which require, among other things, that we give paramount consideration to Geoff's welfare and interests and have regard to his views.
2. Undoubtedly, exercising the discretion to grant an adjournment would not promote the quick and cheap resolution of the real issues in the proceedings. However, would it give effect to the just resolution of those issues? In answering that question, we considered the following factors to be relevant.
3. First, there was no medical evidence and nothing in his presentation to suggest that Geoff was unwell, or, that his ability to participate in the proceedings was impeded because of COVID-19. Nor did Geoff make that claim. In Dr Balendran's opinion, Geoff was asymptomatic of COVID-19.
4. Second, while because of COVID-19, Geoff was unable to travel to Sydney to participate in the hearing in person, nonetheless he was able to participate in the hearing remotely by audio visual link. The only person who participated in the hearing in person was Catherine. Geoff's responses to our questions together with his presentation throughout the hearing, did not tend to suggest that he was unable to participate in the hearing, or was disadvantaged as a result of participating remotely. In reaching that conclusion we note that Geoff is hard of hearing. Nonetheless, at the commencement of the hearing after adjustments were made to the sound, it was apparent that Geoff was able to hear what was said.
5. Third, Geoff had adequate notice of the hearing. He was sent a notice of hearing on 11 November 2024. We accept as certified by the Hospital Social Worker in the Application, that she gave Geoff a copy of the Application on or before 4 November 2024.
6. Fourth, despite saying that one of the reasons he wanted an adjournment was to obtain legal advice, by the time of the hearing he had taken no steps to do so and had no plans to do so. We concluded that if an adjournment was granted it was unlikely that Geoff would seek to obtain legal advice.
7. Fifth, Geoff did not identify any material he considered relevant that had not been provided to the Tribunal.

8. Sixth, on the available evidence we could not be satisfied as apprehended by Dr Balendran, that Geoff had been coerced to sign documents which he does not understand. Nonetheless, we accept that Geoff's impaired cognition together with his confusion surrounding his financial affairs, favours the Application being determined expeditiously. We note that the Guardianship Division's hearing schedule indicates that if the hearing were adjourned, it could not be listed for hearing within the next 28 days.
9. We are not persuaded that if we were to refuse to grant the application for an adjournment Geoff would be denied a reasonable opportunity to be heard in these proceedings. Nor are we persuaded that to proceed to determine the Application would be unjust.
10. For these reasons we decided to refuse to grant Geoff's application for an adjournment.

Guardianship application

Can a guardianship order be made for Geoff?

1. The discretion to make a guardianship order can only be exercised if we are satisfied that Geoff is a "person in need of a guardian", that is, a "person who because of a disability is totally or partially incapable of managing his or her person": Guardianship Act, ss 3(1), 14(1). A person with a disability includes a person who is physically and/or psychologically disabled and by virtue of that fact is restricted in one or more major life activities to such an extent that they require supervision or social habilitation [support to live in the community]: Guardianship Act, s 3(2).

Medical evidence

1. Geoff has been under the care of the Hospital's general registrar, Dr Mei Teng Toh, since he was admitted to hospital on 19 September 2024. In a report prepared for these proceedings dated 29 October 2024, Dr Toh wrote that on 8 October 2024 Geoff scored 16/30 on a Montreal Cognitive Assessment (the MoCA test) and the results revealed impairment affecting a majority of domains (visual spatial/executive 2/5; naming 3/3; attention 3/6; abstraction 2/2; delayed recall 3/5; orientation 3/6). In Dr Toh's opinion these results indicated a moderate cognitive impairment.
2. Dr Toh recorded that the cellulitis and lower leg swelling Geoff presented with on admission was likely the result of uncontrolled diabetes, dependent oedema, and fluid retention.
3. Dr Toh reported that Geoff's treating team were concerned about his ability to function at home alone. While in hospital Geoff's mobility improved, in Dr Toh's opinion it remains "limited by his cognition". Dr Toh noted Geoff had been assessed by physiotherapists who identified a "new baseline" which indicated that he required a four-wheel walker (4WW) and 24-hour supervision, because he was a high falls risk "secondary to impaired cognition".

4. Commenting on the photographs of Geoff's home tended in these proceedings by Marina, which showed objects strewn over the floor and stacked up (the tendered photographs), Dr Toh said that the state of the home posed a safety risk to Geoff.
5. Dr Toh recorded that an occupational therapy assessment revealed that Geoff failed to understand his care requirements and how he would manage at home, including paying bills, making meals and maintaining his own hygiene and that of his home. Dr Toh concluded that Geoff lacks insight into his personal care needs and this impacts on his capacity to make informed decisions about accommodation, medical treatment and finances.
6. Dr Balendran said that that Geoff appears to have vascular dementia although no formal diagnosis has been made. Dr Balendran considered it significant that the results of testing on MOCA revealed global impairment across all domains. When questioned about the reliability of those tests given Geoff's co-morbidities, Dr Balendran said that when the initial test was undertaken Geoff's pneumonia and delirium had resolved. The results of a more recent test were consistent with the results of the initial test.

Geoff's General Practitioner

1. Dr Chris Lloyd has been Geoff's GP since 2013. In a medical certificate dated 28 November 2024 Dr Lloyd said that he had been approached by Geoff's wife and friend, Catherine to prepare a report for these proceedings. Dr Lloyd wrote that despite cognitive decline and hearing loss before admission to hospital in September 2024 Geoff functioned "quite independently in the community". He went on to write:

"[C]ertainly he made some choices regarding how he lived that many of us would not share including being a hoarder and not choosing to wash daily. However, he rarely missed appointments with me, took his medications as prescribed and performed investigations if he was asked such as blood pathology.

His social network is a little complex within an estranged wife living locally (they share a daughter) and a number of friends in the community whose opinion on what is best do not always (or currently) align. I am quite sure [Geoff] [will] choose to continue to live independently if possible but I'm unsure of his current capabilities and capacity following this hospital admission."

Geoff

1. In these proceedings in answer to questions from the Tribunal, Geoff said that the reason he was in hospital was so that he be medically fit for discharge and in "a clean frame of mind". He said he understood that he was admitted to hospital following a fall but could not recall the circumstances of the fall.

2. Geoff claimed that before his current hospital admission he was completely independent but conceded that if he were to return to live at home, he would need assistance. According to Geoff, his neighbour, Catherine was willing to provide that assistance. When asked to comment on the tendered photographs, Geoff said that his home, while messy, was not usually that messy. He said that a person with a key, probably his wife, had entered the house and thrown things around.

Lisa

1. Lisa said that her father was a lifelong hoarder. She and her mother moved out of the family home 18 years ago largely because it had become unliveable. When she visited her father, she observed clutter inside and outside the house.
2. She said that over the last two years she has observed that her father has become increasingly confused and aggressive.

Marina

1. Marina agreed with her daughter that Geoff has become increasingly confused and aggressive over the last couple of years. She said since they have separated, they have remained in regular contact. Commenting on the tendered photographs, she said the home had always been cluttered, unsafe and messy. In her opinion "nothing much had changed". She visited him at home once or twice a month.

Consideration

1. The uncontroverted evidence is that Geoff has a cognitive impairment, a disability for the purpose of s 3(2) of the Guardianship Act. Geoff challenges the opinion of the health practitioners who gave evidence in these proceedings that as a consequence of that disability he now needs significant support to live in the community. However, he does not dispute that he now needs some support. We find that because of his disability Geoff is partially incapable of managing his personal affairs and is "a person in need of a guardian".

Should a guardianship order be made?

1. In considering whether to exercise the discretion to make, or not to make, a guardianship order, we must consider the matters listed in s 14(2) of the Guardianship Act, relevantly, the views of Geoff and any spouse, the importance of preserving Geoff's existing family relationships and the practicability of services being provided to Geoff without the making of a guardianship order. In addition, we are required to have regard to the section 4 principles.

Geoff's views

1. In a hearing report dated 21 November 2024, an NCAT officer recorded the following account of their discussion with Geoff about the Application:

"Views of [Geoff]:

On 21 November 2024 this officer spoke to [Geoff] over the phone. When this officer explain[ed] the nature of the applications, [Geoff] expressed that he could manage his own affairs and disagrees with the recommendation of aged care. [Geoff] continued to explain that he would like [Catherine], his carer, to move in with him to support him at home once the house is fixed up. During the conversation [Geoff] was able to express his views and answer this officers questions adequately. This officer confirmed the hearing date and time and advised [Geoff] he could participate via video link from the hospital where he could provide his views further."

1. Geoff said that he does not need a guardian to make decisions for him. He said that he was able to manage his personal and financial affairs and to care for himself. He said that when he returned home he would be assisted by Catherine who he described as his "carer".
2. Geoff was questioned in these proceedings about the statutory declaration dated 18 October 2024 which he apparently filed in these proceedings. In that document Geoff declared and affirmed:

"[Catherine] has permission to live at my address at [address removed for publication] to clean or maintenance to my home to clean inside and outside to be safe for my return [ineligible] move or sell any cars after discussion with me. Change locks and keys to [Lewis] [4] , myself [Geoff] and [Catherine] to act on my behalf for all of my affairs. [Catherine] to be my carer."

1. When questioned in these proceedings about that statutory declaration, Geoff said:

Member: So do you recall preparing a statutory declaration saying that about a month ago?

[Geoff]: Ah, that's, yeah, that's, yeah about a month and a half ago or something, yeah I did sign something with [Catherine]. That she'll be my carer. Yeah, yup.

Member: And why did you sign that document? Why did you prepare this document?

[Geoff]: Why did I prepare? Well of course that's the most sensible thing to do. If you're in the right frame of mind.

Member: And why was it the most sensible thing to do?

[Geoff]: Well [INAUDIBLE] the right thing and the sensible thing and she promised to be truthful.

Member: And do you recall where you were when you made this statutory declaration?

[Geoff]: Where was I?

Member: Yes.

[Geoff]: Yeah. Yeah, I do.

Member: Where were you?

[Geoff]: I was having a coffee and buying dinner, lunch, yes. [INAUDIBLE] to sign something and do something for your own good because [INAUDIBLE] down on me.

Member: And who said to you, you have to sign something for your own good?

[Geoff]: Well that's what you do. You only sign it for your own good.

Member: But who suggested? You said you had coffee and dinner with someone and you signed it. Who were you with when you signed it?

[Geoff]: Ah well it would have been with [Catherine] and [Lewis], no doubt.

Member: If you think about it, can you remember or are you just assuming you're with [Lewis] and [Catherine]?

[Geoff]: No. I remember everything. And I see her many times a week. I remember everything, what she does for me because she's an honest helper and good neighbour. And [Lewis] I've known him for 40 odd years, 50 years. And he's a good man.

1. Catherine explained that she had been Geoff's neighbour for about eight years. She said that she was at the hospital when Geoff prepared the statutory declaration. She said she understood the reason he prepared that document was so that she "would not get into trouble with the ex-wife".
2. Catherine said that she had agreed to act as Geoff's carer. She described him as a good friend who had helped her out over the years. When asked whether in her opinion Geoff was forgetful, she replied "no ... he is about the same". She said that he was a bit slack around the hygiene. She said the house was currently unliveable and when it was fixed she was prepared to live in it and to care for Geoff.

Is Marina, Geoff's spouse?

1. The Guardianship Act requires that in considering whether or not to exercise the discretion to make a guardianship order in respect of Geoff, we shall have regard to the views of Geoff's spouse, if the relationship between Geoff and the spouse is "close and continuing". Section 3 defines spouse to include "the person to whom a person is legally married (including the husband or wife of a person)".
2. Geoff and Marina separated about 20 years and are not divorced. The house in which Geoff was living is jointly owned by Geoff and Marina.
3. Marina claims that the reason she and Geoff separated was because Geoff's hoarding behaviour impacted on her mental health and that of her daughter. Nonetheless she claims that since they separated she and Geoff have had a close and continuing relationship. She claims that she visited Geoff at home once or twice a month and shortly before his fall, they

had lunch together. Three years ago, when Geoff had a stroke she prepared meals for him and laundered his clothes. She said she and her sister were prepared to care for him on his discharge from hospital.

4. Geoff disagrees that his relationship with Marina can be characterised as close and continuing. He accused Marina of stealing his bank card after he was admitted to hospital and "attacking him left right and centre". He said he has no relationship with Marina "she just takes".
5. Lisa agrees with her mother's claim that the relationship between her parents is close and continuing. She said that despite the challenges in their relationship, since separating her parents have remained in regular contact and her mother has supported her father, citing as an example, the care she provided after he suffered a stroke a few years ago.
6. The Hospital Social Worker said that Marina and her sister had been regular visitors since Geoff's admission.

Consideration

1. A difficulty with assessing whether the relationship between Geoff and Marina is close and continuing is that each appear to apprehend that the answer to that question will be determinative of whether Geoff will be able to return to live at home and to be cared for by Catherine. They have opposing views about this issue. Neither are independent witnesses.
2. We note that the question of whether the relationship between Geoff and Marina is close and continuing is only relevant because, if the answer to the question is yes, we must have regard to the views of Marina: Guardianship Act, s 14(2)(a)(ii). Marina's views would not be determinative but one of several matters we must take into account.
3. We find that the relationship between the Geoff and Marina is continuing. We accept, as claimed by Marina and supported by Lisa, that Geoff and Marina have been in reasonably regular contact since they separated 17 years ago.
4. The more difficult question is whether the nature of the relationship can be characterised as close. Whether a relationship is close requires an objective and subjective assessment. Geoff is firm in his view that his relationship with Marina is not close. Marina holds the opposite view.
5. Subjectively assessed, the relationship appears to be close, evidenced by the care and support Marina provided her husband after his stroke, the fact that Geoff and Marina have remained in reasonably regular contact since their separation and that Marina has been a regular visitor throughout Geoff's current admission.
6. The evidence is finely balanced. Nonetheless we find the relationship between Geoff and Marina to be close.

7. It follows that we must take Marina's views about whether a guardianship order should be made into account.
8. Marina is of the view that a guardianship order should be made. In her opinion Geoff is unable to manage his personal affairs and to make a reasoned decision about where he is to live on discharge from hospital.

A carer

1. While Geoff describes Catherine as his carer, the evidence does not support a finding that Catherine is a carer within the meaning of s 3D of the Guardianship Act, that is, a person who provided Geoff on a regular basis with, domestic services and support, or arranged for Geoff to be provided with services and support before he was admitted to hospital. While it appears that Catherine provided Geoff with some support before his admission, the available evidence does not support a finding that she provided Geoff with domestic services and support on a regular basis.

The importance of preserving Geoff's existing family relationships

1. The making of a guardianship order is likely to place the relationship between Geoff and Marina under further strain. This is because Geoff currently blames his former wife and daughter for the prospect that a guardianship order might be made. If that order is made, Geoff's feelings of animosity towards his former wife and daughter are likely to intensify. This consideration weighs against the making of a guardianship order.

The importance of preserving Geoff's cultural and linguistic environment

1. In our view exercising the discretion to make or not make a guardianship order is unlikely to have any material impact on Geoff's linguistic and cultural environments.

Practicalities of services being provided without a guardianship order

1. Before being admitted to hospital Geoff was not receiving any services from external care providers.
2. We find that given the extent of his cognitive impairment Geoff would be unable to make and to implement decisions about services. This consideration favours the exercise of the discretion to make a guardianship order.

Findings and conclusions

1. The task of deciding whether to exercise the discretion to make, or not to make, a guardianship order, requires that we balance several considerations. On the one hand, we must observe the principle that Geoff must be protected from neglect, abuse, and exploitation. On the other hand, we must restrict Geoff's freedom of decision-making and action as little as possible and take into consideration his views. At all times, the paramount consideration is Geoff's welfare and interests.
2. Weighing against the exercise of the discretion to make a guardianship order is Geoff's strong opposition to the proposed order, his firmly held belief that he is capable of managing his personal affairs together with the fact that a guardianship order will undoubtedly operate to restrict Geoff's freedom of decision-making and action. The making of a guardianship order, and decisions made by the guardian with which he disagrees, is likely to cause Geoff significant distress. These factors weigh heavily against the making of a guardianship order.
3. Weighing against those considerations is the evidence that Geoff now lacks capacity to decide where he is to live on discharge from hospital, and, if he were to return home, the supports and services which will enable him to do so. The evidence reveals that Geoff lacks insight into the extent of his impaired functional capacity and current care needs. The objective evidence indicates that Geoff's pre-admission and current functional capacity is significantly lower than his self-assessment. By way of example, the social work report cites a report given by Lisa of when her father visited her home several months before his admission. Geoff was unable to get off the couch to go to the toilet, refused her assistance, crawled to the toilet and was incontinent.
4. In assessing the expert evidence about Geoff's capacity to make decisions about where he is to live and the services he is to receive on discharge, we have taken into account, as observed by Dr Lloyd, that Geoff has led an unorthodox lifestyle and made lifestyle choices with which many people may disagree. It is possible that those choices may have influenced, consciously or otherwise, the opinions expressed by those health practitioners who gave evidence in these proceedings about Geoff's capacity to make decisions about his personal affairs.
5. Geoff's solution to the difficulties the experts have identified to him returning home to live is simple. Catherine will move into his home and care for him. He has failed to identify what this will entail, for example, whether Catherine will be required to be available 24/7, the type of care she will provide, whether she will be paid for her services. In addition, Geoff appears not to have turned his mind to the possibility that the proposed arrangement might not work out, and, if so, the available alternatives.
6. The Hospital Social Worker and the hospital team who have been caring for Geoff have concerns about Catherine's motivation for agreeing to act as Geoff's carer. That concern is shared by Marina and her daughter. The Hospital Social Worker reports for example that

Catherine has been squatting in Geoff's home and asking for his keycard. She points to the statutory declaration made by Geoff as evidence that Catherine has sought to take advantage of Geoff and to cement her residence in his home. Catherine on the other hand gives an innocent account of the circumstances surrounding the signing of that document and claims it was initiated by Geoff to protect her from Marina. She claims that her sole motivation is a genuine desire to assist an old friend, who has assisted her in the past. The allegations made about Catherine are based on untested hearsay accounts. On the available evidence it is not possible to make a reliable finding about those allegations. Nonetheless, it is apparent that Geoff now lacks the capacity to evaluate any risks posed by the proposed arrangement and to make and implement decisions if that arrangement does not work out.

7. While the considerations are finely balanced, we have decided to make a guardianship order in respect of Geoff. That decision gives paramount consideration to Geoff's welfare and interests.

Term of the guardianship order

1. We decided to make a guardianship order for a term of 12 months.

What functions should the guardian be given?

1. We decided to give the guardian the functions of accommodation, services, health care, and authority to consent to medical and dental treatment. It is likely that decisions about each of these matters may be required to be made during the term of the order.
2. In addition, notwithstanding its coercive nature, we decided to give the guardian authority to authorise NSW Police, the Ambulance Service of NSW and others to take, keep and return Geoff to a place approved by the guardian. In reaching that decision we took into account the evidence which tends to suggest that if a decision is made about his accommodation with which he disagrees, there is a material risk that Geoff will resist that decision being implemented.

Who should be appointed as Geoff's guardian?

1. Lisa nominated herself to be appointed as her father's guardian. Her mother supported and her father opposed that nomination.
2. To appoint Lisa as guardian, we must be satisfied that she meets the criteria in s 17(1) of the Guardianship Act:

17 Guardians

- (1) A person shall not be appointed as the guardian of a person under guardianship unless the Tribunal is satisfied that:
 - (a) the personality of the proposed guardian is generally compatible with that of the person under guardianship,

- (b) there is no undue conflict between the interests (particularly, the financial interests) of the proposed guardian and those of the person under guardianship, and
 - (c) the proposed guardian is both willing and able to exercise the functions conferred or imposed by the proposed guardianship order.
1. A guardian must observe the section, which includes to take into account the views of the subject person in making decisions on behalf of that person.

Personality generally compatible

1. Lisa claimed that before his current hospital admission she and her father had a reasonably good relationship. They were in regular contact. Geoff does not dispute that claim but it was evident that he now feels aggrieved by his daughter who he considers is opposed to his choice to return to live at home with and be cared for by Catherine.
2. While apparent that Geoff is currently annoyed with his daughter, we are satisfied nonetheless they have a personality which is generally compatible. They have remained in reasonably regular contact since Lisa left the family home in 2011, which tends to support that the two "get on".

Undue conflict of interest

1. Lisa claimed that she does not hold any property, assets or income with her father. Marina supported that claim. Geoff does not suggest otherwise.
2. We are satisfied that there is no undue conflict between the interests (particularly, the financial interests) of Lisa and her father.

Willing and able to exercise to act as guardian

1. At the hearing, Lisa said that she acknowledged that at times it would be difficult to perform the role of guardian, especially if she were to make a decision that her father opposed. Nonetheless, she said she was willing to take on that role.
2. In addition to being satisfied that Lisa is willing to act as guardian, we must be satisfied that she is "able" to exercise the functions conferred under the guardianship order. Section 17(1)(c) of the Guardianship Act requires us to make an evaluative judgment about whether Lisa is "able" to exercise the functions conferred under the guardianship order. This requires consideration not only of whether she possesses the necessary skill and experience to be able to exercise those functions, but also whether she has the personal attributes, such as judgment and integrity, required to exercise those functions. In addition, we must consider whether she is able to make those decisions in a manner consistent with the section 4 principles: ZKF v ZKG [2019] NSWCATAP 64 at [31].

3. We accept Lisa's claim that she has the technical competence to make and implement decisions on behalf of her father. She is employed in the Army and impressed us as an intelligent young woman who had a genuine concern for her father's interests and welfare.
4. In considering whether Lisa is able to act as guardian we considered whether as required by the section 4 principles, she would endeavour to exercise the functions conferred by the guardianship order in a way that gave effect to her father's wishes and impeded his freedom of decision making and action as little as possible. Her answer to questions in these proceedings persuaded us that she understood that as guardian she was obliged to not only make decisions that promoted her father's welfare and interests but was obliged to take into account his views and, as far as practicable, promote his autonomy.
5. We find that Lisa is willing and able to exercise the functions conferred under the guardianship order.

Consideration

1. We are satisfied that Lisa meets the criteria in s 17 of the Guardianship Act. We appoint her as guardian for Geoff.

Financial Management application

1. Section 25G of the Guardianship Act provides that the power to make a financial management order in respect of Geoff can only be exercised if we have considered his capability to manage his financial affairs and are satisfied of three matters:
 1. that Geoff is not capable of managing his affairs;
 2. that there is a need for a person to manage those affairs on behalf of Geoff; and
 3. that it is in Geoff's best interests that the order be made.

Is Geoff not capable of managing his affairs?

1. In *P v NSW Trustee and Guardian* [2015] NSWSC 579 commenting on one of the preconditions to making a financial management order — that the Tribunal is satisfied that the person is not capable of managing their affairs (s 25G(a) of the Guardianship Act) — Lindsay J said at [307]-[308] that the question posed was:

"Is a person reasonably able to manage his or her own affairs in a reasonably competent fashion, without the intervention of a [financial manager] charged with a duty to protect his or her welfare and interests?

...

[A] focus for attention is whether the person is able to deal with (making and implementing decisions about) his or her own affairs (person and property, capital and income) in a reasonable, rational and orderly way, with due regard to his or her present and prospective wants and needs, and those of family and friends, without undue risk of neglect, abuse or exploitation."

1. Whether Geoff is not capable of managing his finances requires consideration of the nature of his estate.
2. The available evidence indicates that Geoff receives the Age Pension. He owns his home jointly with Marina.
3. Marina says that shortly after Geoff was admitted to hospital she visited the home and found multiple unpaid bills – \$2365 (water rates), hospital\$1500 (Council rates), \$1082 (gas) — which she has now paid. When questioned in these proceedings about that claim Geoff said:

"My understanding is and I've told them that and I've told the authorities, the gas and all that people ... that if you're over three weeks, they cut everything off, water gas, whatever, and four days before I came to hospital, I went I cleared everything and I didn't owe everybody a cent. So that's all ..."

1. When admitted to hospital Geoff had debts totalling about \$5000 owed to the Local Council and utility providers. It is evident given the size of those debts that they have been outstanding for some time.
2. When questioned about his income and expenditure Geoff said that he received the "normal pension" and had sufficient money to buy "proper food". When pressed he was unable to provide further particulars.
3. Lisa said when her father was admitted to hospital and concerns were raised about him giving his bankcard to other people, at her request his bank put a 15-day "duty of care" hold on her father's account. She claimed that the bank refused to extend that claim.
4. Geoff's failure to acknowledge the extent of his indebtedness and his inability to explain how he would deal with his debts, indicates that notwithstanding the relatively simple nature of his financial affairs, Geoff is not able to manage those affairs in a reasonably prudent fashion.

Is there a need for a person to manage Geoff's affairs?

1. In circumstances where Geoff is unable to manage his financial affairs, there is uncertainty and confusion about whether he has given his bankcard to others and who has access to his bank account, we find there is a need for a person to manage Geoff's finances.

2. The allegations made by the Hospital Social Worker about Catherine taking Geoff's bank card are unproven. Nonetheless because of his cognitive impairment Geoff is now unable to access and to monitor his bank account. Reasonably prudent financial management requires that a person be able to monitor their finances, or, have a person who can be entrusted to do so, irrespective of whether there is cogent evidence of financial exploitation.
3. We find there is a need for a person to manage Geoff's financial affairs.

Is it in Geoff's best interests that a financial management order be made?

1. In circumstances where Geoff is unable to manage his finances and there is a need for a person to manage his financial affairs, it is in his best interests that a financial management order be made notwithstanding his strong opposition to such order being made.
2. We decided to make a financial management order, because to do so is consistent with the statutory instruction to give paramount consideration to Geoff's welfare and interests.

Who should be appointed to manage Geoff's estate?

1. Lisa nominated herself to act as manager of Geoff's estate. We find that Lisa has the technical skills to manage her father's finances and understands and will comply with the fiduciary obligations of the role of manager. In addition, we find that Lisa will endeavour to discharge those obligations in manner which conforms with the section 4 principles.
2. We find that she is suitable person to appoint as financial manager of her father's estate. We decided to appoint Lisa to manage her father's finances despite the fact that he opposed that appointment.

Endnotes

1. Catherine is a fictitious name. In these reasons to protect her privacy we have not used Catherine's real name.
2. Lisa is a fictitious name. In these reasons to protect her privacy we have not used Lisa's real name.
3. Marina is a fictitious name. In these reasons to protect her privacy we have not used Marina's real name.
4. Lewis is a fictitious name. In these reasons to protect his privacy we have not used Lewis' real name.

I hereby certify that this is a true and accurate record of the reasons for decision of the Civil and Administrative Tribunal of New South Wales.

Registrar

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