

CANADA / JUDGMENT

Cho (Re)

2023 BCSC 1068

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Supreme Court of British Columbia

DECIDED

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2023 BCSC 1068 Cho (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Cho (Re),

2023 BCSC 1068

Date: 20230529

Docket: S225581; S237599

Registry: New Westminster

In the Matter of the Patients Property Act,

R.S.B.C. 1996, c. 349 and Amendments Thereto

and In the Matter of Hyun Re Cho

Before: The Honourable Justice G.C. Weatherill

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioner, Jim Cho, in the New Westminster Registry Action S225581:

D.H. Goodwin

Natalie Nobert, the Respondent in the New Westminster Registry Action S225581 and the Petitioner in the New Westminster Registry Action S237599, appearing in person:

N. Nobert

Counsel for the Attendee, Public Guardian and Trustee of BC:

S.J. Watson

Andrew Cho and Davis Cho, the Respondents in the New Westminster Registry Actions S225581 and S237599, appearing in person:

A. Cho

D. Cho

Place and Dates of Hearing:

Port Coquitlam, B.C.

May 11, 12, 29, 2023

Place and Date of Judgment:

Port Coquitlam, B.C.

May 29, 2023

[1] THE COURT: This proceeding involves a dispute between and among siblings regarding the care and committeeship of their elderly mother, Hyun Re Cho ("Hyun"), who suffers from chronic schizophrenia and major neurocognitive disorder due to Alzheimer's disease.

[2] The dispute has been the subject of two previous court applications. The first application was heard and decided by Justice Riley on April 23, 2020. His reasons for judgment are indexed at 2020 BCSC 689 (the "Riley judgment"). Justice Riley's order was entered on April 29, 2020 (the "Riley order").

[3] The Riley order provided, in part, as follows:

THIS COURT ORDERS that:

1. An interim declaration is made under s. 6 of the Patients Property Act that Hyun Re Cho is incapable of managing her person and affairs.

2 On an interim basis, Natalie Nobert is appointed committee over the person and affairs of Hyun Re Cho, subject to the following conditions:

[]

- b. With respect to medical treatment and decision making, Natalie Nobert shall take reasonable steps to ensure that Hyun Re Cho takes all medications prescribed to her by her treating physician or health care team, [].
- c. In the event that Jim Cho disagrees with any changes in [sic] to Hyun Re Cho's doctor, or medical treatment, or Natalie Nobert is unable to obtain consensus with respect to any changes, that party will be at liberty to apply to the Court for directions on that matter, on two business days' notice to the other party and Hyun Re Cho.

- [4] The second application was heard by Justice Harvey on April 28 and May 28, 2021. He was asked by one of the siblings, Jim Cho ("Jim"), to vary the Riley order by appointing him as the interim committee in place of his sister, Natalie Nobert ("Natalie"), or, alternatively, to compel Natalie to comply with the medication provisions of the Riley order. The application was opposed by Natalie, as well as by her brothers, Davis Cho ("Davis") and Andrew Cho ("Andrew").
- [5] Justice Harvey pronounced his reasons for judgment on June 3, 2021 (the "Harvey judgment"). He concluded it was not in the best interests of the patient to vary the committee appointment, but acceded to the alternative relief that Jim sought. He stated:
- [51] I accede to the alternative relief sought in paragraph 2. Specifically, the respondent, Natalie Norbert, is to comply with the order of Mr. Justice Riley, including giving [Hyun] her medications prescribed by her medical practitioner and providing Jim with evidence daily of the administration of the dosages, morning and night, as I understand it, such can be done through video, sent through text.
- [6] Inexplicably, no order has yet been entered with respect to the Harvey judgment.
- [7] Natalie admits that, after complying with the Harvey judgment for one-and-a-half years by sending videos to Jim of her administration of daily dosages to Hyun, she ceased sending video texts of Hyun taking her medication to Jim commencing November 19, 2022.
- [8] Her explanation to the Court was that the direction in the Harvey judgment was made in the context of an understanding that the application for permanent committeehip would be heard relatively soon afterwards and that, after one-and-a-half years, continuing to provide daily videos became "demoralizing". Natalie stated that she had already spent approximately \$200,000 in legal fees and did not wish to incur more fees by applying to vary Harvey J.'s ruling. She stated, "Why bother going to court if everything is fine".
- [9] Jim now applies for the following orders:
- a) a declaration that Natalie is in contempt of the Harvey judgment;
 - b) that the Riley order appointing Natalie as committee be rescinded;
 - c) that he be appointed committee of Hyun's estate and person, without bond; and
 - d) special costs.
- [10] In January 2023, Natalie communicated with one or more of her siblings, both directly and through her then counsel, that she was "giving Committee to Jim Cho".

- [11] Now, she takes the position that Jim is "not the right person" due to his "controlling behaviour", his inclination not to communicate with his siblings, his refusal to agree to a mediation of the dispute, and his tendency to "totally be on his own". Natalie advised that she changed her view as soon as she heard that Jim was seeking medical records regarding Hyun and that he had accused her of violating the court order.
- [12] Jim's notice of application also seeks a final declaration pursuant to s. 6 of the Patients Property Act, R.S.B.C. 1996, c. 349 that Hyun is incapable of managing herself and her estate. However, his counsel agreed with the submission of counsel for the Public Guardian and Trustee of BC ("PGT") made at the outset of the hearing that the declaration set out in the Riley order is effective as a final declaration, hence, no further declaration is necessary.
- [13] Jim's application is opposed by each of Natalie, Davis, and Andrew.
- [14] On April 19, 2021, Natalie filed her own petition (the New Westminster Registry Action S237599) (the "Natalie petition"), seeking inter alia orders:
- a) that the Natalie's petition be heard at the same time as the hearing of this petition;
 - b) declaring that Hyun is incapable of managing herself and her estate; and
 - c) appointing Natalie as committee of Hyun's estate and person.
- [15] Justice Harvey ordered that the Natalie's petition be heard at the same time as this petition. Natalie served her notice of hearing of petition on May 28, 2021, and again on May 17, 2023.

Background

- [16] The background to the dispute is largely set out in both the Riley judgment and the Harvey judgment and it will not be repeated again here.
- [17] Hyun was born on April 30, 1936, and is currently 87 years of age. Her husband, Hokeun, died on January 14, 2018.
- [18] Hyun's current annual net income is approximately \$39,000, which is derived from various pensions. The capital of her estate as of March 10, 2020 was approximately \$783,000. Unfortunately, the capital has been and will continue to be eroded significantly by the legal fees incurred by the siblings in respect of this and the two previous applications. The parties agreed at the outset of this hearing that the quantum of legal fees payable by the estate will be determined upon reference to the Registrar of the court.
- [19] As already stated, Hyun suffers from various health afflictions. In 1969, she was diagnosed with schizophrenia which was accompanied by bipolar disorder. More recently, she has been diagnosed with dementia, a hyperthyroid condition, and high blood pressure.

- [20] After her husband's death, Hyun lived with Jim and his wife in their home in Pitt Meadows, BC. In November 2018, Hyun moved to a seniors' independent living facility called Amenida in Surrey, BC.
- [21] In June 2019, Natalie took Hyun from Amenida to her (Natalie's) home near Parksville on Vancouver Island, but returned Hyun to Amenida approximately eight days later.
- [22] On June 10, 2019, Natalie advised her siblings that she had signed a lease for Hyun to live at a facility in Nanaimo. She did so without notice to Jim. Jim caused the lease agreement to be cancelled.
- [23] On June 11, 2019, Natalie again took Hyun to Vancouver Island without Jim's knowledge or consent. The evidence shows that, by this time, concerns had been raised by social workers regarding Hyun's ability to seek support and assistance, as well as a risk that Natalie was restricting Hyun's access to medical care and medications. Jim contacted Hyun's social workers as well as the police who, in turn, communicated with Natalie that she was required to return Hyun to Amenida immediately.
- [24] Natalie explained to the Court that she was told by one of the caregivers at Amenida that she could take her mother away as long as she returned her to Amenida for an appointment on June 14, 2019.
- [25] Upon her return to Amenida, Hyun was taken directly to Surrey Memorial Hospital for assessment. A document dated June 18, 2019 that was not in evidence during the hearings before Riley J. and Harvey J. was put in evidence by Jim on this application. It is a report prepared by a social worker at the Surrey Memorial Hospital pursuant to s. 46 of the Adult Guardianship Act, R.S.B.C. 1996, c. 6. The report concluded that there was emotional and psychological abuse and neglect of Hyun at the hands of Natalie.
- [26] On June 21, 2019, all of the siblings signed an agreement that Hyun would remain at Amenida. However, on July 10, 2019, despite this agreement, Natalie again removed Hyun from Amenida, took her to Vancouver Island, and signed an agreement at a retirement residence there with a plan for Hyun to move in on July 26, 2019. Jim contacted the facility and cancelled the agreement.
- [27] In August 2019, Natalie departed for a six-month world tour. She stated to the Court that she needed a break from the stress and drama of the past several months. She returned from her trip in late February 2020.
- [28] In March 2020, Davis removed Hyun from Amenida, without authorization, to live with him in Nanaimo, apparently due to concerns related to the COVID-19 pandemic.
- [29] In May 2020, Davis moved with Hyun into a duplex in Nanaimo, the other side of which was occupied by Natalie and her husband. On June 30, 2020, Davis and Natalie signed an agreement stipulating that Hyun would pay monthly rent of \$2,300 plus utilities and Davis would pay for all of the groceries.

- [30] Later, the four of them moved to a house that Natalie and her husband purchased in Nanaimo. In addition to the main living area, the house contained separate suites where Davis and Hyun were accommodated.
- [31] Throughout this time period, Natalie was expressing concerns about the medications that had been prescribed for Hyun and demonstrated a strong reluctance to follow medical advice relating to Hyun. Natalie took it upon herself to reduce some of the dosages and eliminate others altogether. In her affidavit sworn on March 11, 2021, Natalie deposed at paragraph 8 that
- [8] I refuse to feed my mother medications that she does not need, even if a doctor had prescribed them.
- [32] In his Affidavit # 1 sworn April 12, 2021, Davis deposed:
- 31) Our mother was prescribed to four different medications. Two of them were for her high blood pressure, one was for her thyroid, and the other was for her schizophrenia. On October 11, 2020, our mother had an adverse reaction to her high blood pressure medications. She complained of extreme dizziness and became very agitated. Natalie and I took our mother to the hospital as a precaution. No treatment was required for our mother. The next day, our mother complained again of dizziness after taking her high blood pressure medications. Natalie decided to not give our mother her high blood pressure medications the next day. Our mother did not complain about dizziness. While I did not approve of it, Natalie decided to keep our mother off of her high blood pressure medications. Through proper nutrition and exercise, we were able to eventually lower our mother's blood pressure to safer levels.
- 32) During the first week of November, Natalie decided to discontinue our mother's medication for her schizophrenia. While I did not approve of this, our mother's dizziness and blurry eyes eventually become [sic] less pronounced. She also became more social and talkative than before. However, in late January our mother began to show initial signs of a possible relapse in her schizophrenia. I told Natalie that our mother should go back on her anti-psychotic medication but she was reluctant. Natalie did not believe that our mother was showing signs of a relapse. Our mother's delusional behavior eventually subsided after about 2 weeks and she has not shown any signs of a relapse since then. Our mother does occasionally show signs of her dementia. Natalie mentioned that she is open to our mother going on a different anti-psychotic medication if she does have a relapse.
- [33] In March 2021, Davis moved out of Natalie's house in Nanaimo into a rented two-bedroom condominium located approximately 25 minutes by car from Natalie's home. It appears from the evidence that the move was precipitated by a dispute that Davis had with Natalie over the financial terms involving Hyun's care.

- [34] On September 25, 2021, several months after the Harvey reasons were pronounced, Hyun was admitted to Nanaimo General Hospital with a serious infection. Against the medical advice of the treating physician, Natalie wanted Hyun to be discharged and returned to Natalie's home. Jim refused and Hyun remained in hospital for approximately two weeks where she recovered.
- [35] In January 2023, Hyun and Davis moved from Natalie's Nanaimo home to a rented condominium in a complex named "Pacific Shores" just north of Nanoose Bay and Nanaimo and just south of Parksville. Natalie advised that she made the decision to have Davis provide Hyun's full-time care because she had been doing so for approximately two years and that "it was hard" and that it was in Hyun's best interests to live with Davis than in a care facility. Natalie advised that she provided Davis with written instructions regarding Hyun's medications and is "trusting" that Davis is providing them correctly. Davis maintains that he is following Natalie's instructions to the letter.
- [36] On May 14, 2023, Davis and Hyun moved from the Pacific Shores condominium to a two-bedroom, two-bathroom condominium owned by Natalie and her husband in Parksville, which is located in a complex named the "Beach Club". Hyun is paying monthly rent of \$2,300 and Davis is paying for all of their food, cleaning, and is providing the care and meals. Davis ensures that Hyun is receiving all of her medications as prescribed.
- [37] Since Hyun and Davis moved from Natalie's home, Natalie has continued to see Hyun "almost every day" and that "she seems fine". Davis advised the Court that Hyun is doing well and "really is enjoying it here", referencing the Beach Club residence.
- [38] During the course of the second day of the hearing, the Court asked the parties to file updated medical information regarding Hyun, her health, and the prescribing of her medications, dosages, and the reasons for them.
- [39] On May 25, 2023, Natalie provided the Court and the other parties with Hyun's clinical records from her physician, Dr. Angela Barreto, for the period from October 27, 2022 to May 24, 2023. Those same records were put before the Court in the form of Exhibit A to the affidavit of Jim sworn May 28, 2023.
- [40] Dr. Barreto's record of her assessment of Hyun on May 24 2023, reads, in relevant part:
- []
- Active Medications: olanzapine 2.5 mg Oral Tablet [1 Tablet(s) Every day at bedtime X 90 Day(s)]
- []
- presents for health care f/u
- brought in today by her daughter

reports to be doing well, eating well, keeping up with her daily routine and interacting with family

b/p and thyroid have been stable

cont[inue] with baseline memory impairment from alzheimers without any change

well appearing on exam in office today, alert and attentive

can f/u with repeat labs in 6 months as long as she is doing okay and avoid excessive testing

I have received a request for her medical records and will forward these onto them today. I did discuss this with them and they are aware

Analysis

[41] In *Stewart (Re)*, 2014 BCSC 2321, Justice Masuhara set out the applicable law regarding the appointment of a committee for a patient:

[27] The application for an appointment invokes the *parens patriae* jurisdiction of the court and is governed by an assessment of who will serve the patient's best interest.

[28] Section 18 of the Act states that:

A committee must exercise the committee's powers for the benefit of the patient and the patient's family, having regard to the nature and value of the property of the patient and the circumstances and needs of the patient and the patient's family.

[29] As has been observed in other cases, the Act does not prescribe criteria for the selection of an appropriate committee. However, cases have identified various considerations; see for example: *Vranic (Re)*, 2007 BCSC 1949; *Bowman (Re)*, 2009 BCSC 523; *Palamarek (Re)*, 2011 BCSC 563; *Re Matthews*, 2013 BCSC 1045; and *Sangha (Re)*, 2013 BCSC 1965. They include:

- (a) whether the appointment reflects the patient's wishes, obviously when he or she was capable of forming such a wish;
- (b) whether immediate family members are in agreement with the appointment;
- (c) whether there is any conflict between family members or between the family and the patient, and whether the proposed committee would be likely to consult with immediate family members about the appropriate care of the patient;
- (d) the level of previous involvement of the proposed committee with the patient, usually family members are preferred;
- (e) the level of understanding of the proposed committee with the patient's current situation, and will that person be able to cope with future changes of the patient;
- (f) whether the proposed committee will provide love and support to the patient;

- (g) whether the proposed committee is the best person to deal with the financial affairs and ensure the income and estate are used for the patient's benefit;
- (h) whether a proposed committee has breached a fiduciary duty owed to the patient, or engaged in activity which diminishes confidence in that person's abilities to properly handle the patient's affairs;
- (i) who is best to advocate for the patient's medical needs;
- (j) whether the proposed committee has an appropriate plan of care and management for the patient and his or her affairs and is best able to carry it out; and
- (k) whether a division of responsibilities such as between the patient's estate and the patient's person to different persons would serve the best interests of the patient, or would such a division be less than optimal for the patient.

[30] The above listing is of course non-exhaustive or in any particular order. The inquiry is fact specific and a particular factor may or may not be applicable and may attract different weight depending on the circumstances of a case.

[42] I will deal with each of these considerations below.

Whether the committee appointment reflects the wishes Hyun is capable of expressing?

[43] In 2018, before Hyun lost medical capacity, she expressed a desire to stay in Vancouver closer to Jim, whom she trusted to manage her financial affairs. In his affidavit sworn on May 28, 2023, Jim deposed that:

4. My mother's lifelong wish has been for her first son to care for her.

[44] However, Natalie deposed in her affidavit sworn on May 1, 2023, as follows:

3. Korean Tradition One time in the summer of 2016 at my home, I was discussing with [Jim's wife] Heather about the possibility of my parents moving in with them instead of going into a retirement home. Heather replied, "Korean tradition is that oldest son looks after the parents and gets all the inheritance. Is that what you want"? I looked back at her and said, "I don't care about the money". Later I asked my mother about this Korean tradition and my mother replied "I am not doing the Korean tradition. I have 4 kids".

[45] The evidence is in conflict as to Hyun's wishes regarding the appointment of her committee.

[46] It appears that Jim's application, at least to some extent, is motivated by him being Hyun's eldest son, rather than Hyun's best personal interests. On the other hand, Natalie has a history of acting contrary to the advice of Hyun's various physicians, having been reluctant to provide Hyun with her medications as prescribed, and refusing to obey the decisions of this court.

Whether the immediate family members are in agreement with the appointment?

- [47] There is considerable conflict between and among Hyun's four children regarding who should be her committee. Each of Jim and Natalie has expressed the view that he or she should be the permanent committee. Davis and Andrew oppose Jim's appointment on the basis that Jim is confrontational and, based upon his past conduct, is likely to restrict access by his siblings to see their mother and their respective children to see their grandmother. Davis and Andrew advised the Court that they would like to have Natalie appointed as their mother's permanent committee of her estate and person.
- [48] Davis advised that, in the alternative, he would be prepared to act as Hyun's permanent committee of the person, but with Natalie appointed as her permanent committee of the estate.
- [49] Jim's counsel submits that there is a degree of self-interest tainting the views expressed by Natalie and Davis. Each of them has derived and expects to continue to derive financial benefit from the appointment in the form of payment to them by Hyun in the form of rent. Jim does not.
- [50] Nevertheless, there is historical evidence before me of Jim being confrontational with his siblings, particularly with Natalie, over Hyun's care and their access to her.

Whether the proposed committee would be likely to consult with immediate family members about Hyun's appropriate care?

[51] As was noted in the Riley judgment:

- [25] There is evidence of considerable conflict and disagreement as to who should make decisions on behalf of Hyun Cho, to the point where police, medical officials, government ministry officials and lawyers have been involved. []
- [52] Jim has consistently expressed the view that the recommendations of Hyun's medical practitioners should be followed. Davis is an active proponent of naturopathic medications and Natalie has consistently advocated for the reduction or discontinuance of Hyun's doctors' prescribed medications, at least some of them.
- [53] Moreover, Natalie has demonstrated a history of unwillingness or refusal to honour agreements, court pronouncements, medical advice, and to communicate or consult with Jim regarding Hyun's care and administration of her medications.
- [54] Ms. Watson, counsel for the PGT, pointed out that the issues that led to Natalie not following the medical advice regarding administration of Hyun's medications related entirely to the anti-psychotic medication that caused dizziness, and that the issue has now been fully resolved. She also pointed out that the PGT has no concerns regarding Hyun's current care and that there have been no concerns for many months.

The level of previous involvement of the proposed committee with Hyun

[55] Although each of Jim, Davis, and Natalie has had significant involvement in the caring for and looking after the affairs of Hyun, it is Davis and Natalie who have had the most recent and pertinent involvement.

The level of understanding of the proposed committee with Hyun's current situation and ability to cope with future changes in Hyun's condition

[56] There is no suggestion that Jim fails to understand Hyun's needs or will be unable to cope with future changes in Hyun's condition. However, there is compelling evidence before me that Hyun is very comfortable and, indeed, is thriving in her current living arrangement (Peach Club). There is also no suggestion that either Davis or Natalie fails to understand Hyun's needs or would be unable to cope with the future changes in her condition.

Whether the proposed committee will provide love and support for Hyun?

[57] There is no question that each of Jim and Natalie loves and supports their mother and has her best interests at heart. The same holds true for both Andrew and Davis. The fundamental difference between and among them is whether the advice of Hyun's medical practitioners should have been strictly followed.

[58] Jim advocates for the conventional medical treatments that have been prescribed by Hyun's family doctor and specialist. Natalie and Davis advocate for less traditional naturopathic treatment.

[59] During the hearing on May 29, 2023, Natalie acknowledged that she has made mistakes regarding her mother's care and stated:

I know it is wrong to go against doctors' recommendations, but various doctors recommended inconsistent prescriptions.

She advised that, whereas Dr. Choong recommended against clozapine because it caused dizziness, Dr. Green, the psychiatrist, recommended it for Hyun's psychosis, and Dr. Ochoa advised that it was a "family decision".

Whether the proposed committee is the best person to deal with Hyun's financial affairs?

[60] In 2018, Hyun appointed Jim as her power of attorney for financial matters. There is no evidence that he did not handle her financial affairs appropriately. However, there is also no evidence that Natalie has abused Hyun's financial affairs since being appointed interim committee.

Whether the proposed committee has breached a fiduciary duty owed to Hyun or engaged in activity which diminishes confidence in his or her ability to properly handle Hyun's affairs?

- [61] There is no suggestion that any of Hyun's children has breached any duty owed to her or engaged in any conduct that would tend to diminish confidence in their ability to handle Hyun's personal and financial affairs.

Who is the best advocate for Hyun's medical needs?

- [62] I agree with counsel for Jim that Natalie has, in the past, demonstrated poor judgment regarding Hyun's medical needs. She has resisted the recommendations of Hyun's doctors and has decided for herself what is medically best for her mother, often without any consultation with Jim.
- [63] However, I am not persuaded that Natalie's past conduct disqualifies her from consideration as the best advocate for Hyun's medical needs as prescribed by her physicians. The evidence demonstrates that the medical advice differed regarding clozapine. Moreover, while in Natalie's care, Hyun is flourishing despite her Alzheimer's and other medical issues.

Whether the proposed committee has an appropriate plan of care and management for Hyun and her affairs and is best able to carry it out?

- [64] The current plan of care for Hyun is somewhat of an unstructured hodgepodge. Natalie has turned over Hyun's primary day-to-day care to Davis. Nevertheless, Andrew, who lives in Victoria, advised the Court that Hyun's current living arrangements are "ideal". She is getting the nutrition, medication, and exercise she needs and that she is thriving in her environment.
- [65] Jim and his wife own a three-bedroom home in Pitt Meadows with which Hyun was familiar five years ago, having lived there from January to November 2018. They have a backyard garden that Hyun would be able to enjoy. Jim's wife, Heather, speaks Korean and would be able to communicate with Hyun in her native language. However, I am deeply concerned that a wholesale change in Hyun's surroundings would result in her suffering extreme anxiety and stress.
- [66] Jim's plan is for Hyun to live at his home rent-free for the foreseeable future, where he would ensure Hyun is administered her prescribed medications. Jim undertakes to keep his siblings fully informed regarding Hyun's well-being and says that he will allow any of them to visit her at his home "as they please" and take her for outings, including lunches and dinners. He advised the Court that he will allow his siblings to take Hyun on extended visits to their homes on Vancouver Island, provided he has some assurance that her medications will be administered to her as prescribed. Again, I am concerned that this plan will only increase Hyun's anxiety and stress.

- [67] Davis and Natalie pointed to emails from 2018 and 2019 which they say demonstrate that Jim restricted their access to Hyun then and he is, therefore, unlikely to be a man of his word in the future. Although the events referred to in those emails are dated and more in the context of both the recent death of their father and new arrangements for Hyun's living in the seniors' facility, they, nevertheless, demonstrate Jim's controlling personality.
- [68] Davis advised the Court that he and Natalie have recently developed a plan whereby Hyun's estate, or what is left of it after legal fees, would purchase a house and pay all of the tax and other expenses associated with it. Davis would live with Hyun in the house and would pay for the food and utilities, and would ensure that Hyun's prescribed medications are administered to her. He advised that Jim would be permitted to visit Hyun in the house and take her on outings.

Whether a division of responsibility such as between Hyun's estate and her person to different persons would serve Hyun's best interests or would such a division be less than optimal for her?

- [69] There is a long history of conflict between and among Hyun's children over her medical care. There has also been a history of conflict between Natalie and Davis over the management of Hyun's pension, with Davis seeking compensation for his caring of her. Jim does not seek compensation for the care of his mother. Hyun's pension income is more than sufficient to cover her day-to-day living expenses.
- [70] However, I agree with Ms. Watson that a division of responsibilities in this case would not be optimal because of the history of disagreement among the siblings and because Hyun's care is intertwined with her finances.

Conclusion

- [71] Based on all of the foregoing, I am satisfied, on a balance of probabilities, that it is in Hyun's best interests to maintain the status quo and to appoint Natalie as the permanent committee of Hyun's estate and person. There will be an order accordingly.
- [72] I am not satisfied that I have jurisdiction to make an order that Natalie is in contempt of court for two reasons:
- 1) I was not provided with any authority for the proposition that such a finding can be made in the absence of an entered court order; and
 - 2) most importantly, Justice Harvey's ruling was that Natalie was to provide Jim with evidence daily of the administration of dosages, morning and night, and that such could be done through video sent through text. The mere fact that Natalie decided to cease sending the videos falls short of demonstrating that she did not provide Jim with evidence daily.
- [73] Accordingly, I am dismissing Jim's application for an order finding that Natalie is in contempt of court order.

Costs

- [74] The parties are entitled to their costs payable by Hyun's estate. The quantum of legal fees payable by the estate will be determined by reference to the Registrar.
- [75] All right, are there any questions? Mr. Goodwin?
- [76] CNSL D. GOODWIN: A question with respect to the payment of costs out of Hyun's estate, are we talking special costs as is ordinarily the case?
- [77] THE COURT: Is that ordinarily the case, Ms. Watson?
- [78] CNSL S. WATSON: Yes, special costs are typically awarded on the basis that the petitions are brought in the interests of the adult, as opposed to personal benefit. I have cited a few cases in the response where certainly the court has wide discretion to depart from that order under s. 27 of the Patients Property Act, and there are examples of situations involving very hotly contested committee ships where the courts determine that, you know, in some cases that the estate will not be able to bear the costs of the legal fees, and so has declined to make such an award or where they have done it on scale, made an award on scale, and I can walk you through those a little bit if you'd like to hear some further submissions.
- [79] THE COURT: Well, I think this is an appropriate order for costs on the scale. Any submissions?
- [80] CNSL D. GOODWIN: The only submission I would make is that Jim Cho has, throughout this proceeding, I think conducted himself in his mother's best interests and has certainly advocated for her, such that he ought not to have to bear those costs himself. An order on the scale would be substantially less than his actual legal fees.
- [81] THE COURT: Any further submissions on costs?
- [82] NATALIE NOBERT: Well, the very first hearing, Nicholas Davies represented all three of us -- myself, Davis, and Andrew -- so the cost of Nicholas Davies' fees were for the three of us and that's why the costs were so high.
- [83] THE COURT: I do not know what the costs were and whether they were high or not, but that is not what I am asking you.
- [84] NATALIE NOBERT: Oh, okay.
- [85] THE COURT: Are there any more submissions about the costs of the hearings before me? All right.
- [86] NATALIE NOBERT: No.
- [87] THE COURT: Shaking your head, no. All right, I am persuaded that there should be costs on an indemnity basis. All right, so there will be an order accordingly, to be determined by the Registrar. Thank you all and good luck with it.

- [88] CNSL D. GOODWIN: My Lord, would we be able to dispense with Natalie, Davis's, and Andrew's signature on the order?
- [89] THE COURT: Well, I would like someone to deal with the order.
- [90] CNSL D. GOODWIN: Yes.
- [91] THE COURT: Unlike the Harvey J. situation. Yes, I am content that the signatures of the self-represented litigants can be dispensed with, but I will review it to ensure it properly reflects my ruling.
- [92] CNSL D. GOODWIN: Certainly, thank you.
- "G.C. Weatherill J."

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