

HONG KONG / JUDGMENT

RE FCP

COURT

Court of First Instance

DECIDED

27 August 2007

CASE / FILE NUMBER

HCMP947/2007

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bjbj HCMP 947/2007 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE MISCELLANEOUS PROCEEDINGS NO. 947 OF 2007

IN THE MATTER of an alleged mentally incapacitated person FCP and IN THE MATTER of Part II
of the Mental Health Ordinance, Cap. 136 (the Ordinance)

Before: Hon Fung J in Chambers (open to public) Date of Hearing: 17 August 2007 Date of
Judgment: 27 August 2007

J U D G M E N T

Application has been made by the father of FCP to be appointed the Committee of FCP under Part II of the Mental Health Ordinance (Cap. 136) (). I am satisfied that FCP is incapable by reason of mental incapacity of managing and administering his property and affairs. However, I find that the appropriateness of the father of FCP to act as the Committee requires further investigation. The matters is adjourned pending a report by the Official Solicitor. FCP is now 19 years old. He was nearly drowned in a public swimming pool. Damages of \$22 million were recovered upon settlement and paid into court. Under the auspices of the personal injuries action, \$75,000 were paid out to the case manager each month for the maintenance of FCP. Prior to the award, the family resided in a public housing estate. Since then, a house in Fairview Park was rented at \$15,000. Mr. Burke, solicitor for the applicant, frankly admitted that \$75,000 per month out of \$22 million would not see FCP throughout his life expectancy, and the monthly sum also went towards the maintenance of the whole family. In fact, the monthly expenditure did not amount to \$75,000, and the case manager was managed to save up \$500,000 so far. In the draft order of terms and powers of the Committee, Mr. Burke has included comprehensive powers of stock investments and liberty to instruct lawyers, as well as remuneration of the Committee. The

Official Solicitor has queried the necessity of such terms and powers. It is noted that besides the proposed remuneration of the Committee, provision has been made for reimbursement of the parents in looking after FCM. Mr. Burke submitted that the rate of return of investment of the sum in court by the Registrar falls short of the one envisaged as the basis of compensation. Hence, there must be pro-active investment to achieve a higher return. Further, it is envisaged that a property be purchased in due course. The court generally favours the appointment of a close relative as the Committee, if possible, as the interest of the patient is best understood and provided for. FCP's father was a chef. He only had junior high level education in the Mainland. He is now unemployed due to back injury. I doubt whether he appreciates the exigencies of the situation, especially in view of the incidence of investments to be contemplated of the Committee. I also note that the case manager is charging about \$8,000 per month. The present arrangement is not a free ride option. Hence, I direct that the case be referred to the Official Solicitor for further investigation, with the consideration that the Official Solicitor be appointed the Committee. Mr. Burke has not prepared an skeleton bill of costs of the application. He submitted his fees are \$26,000, and disbursement for medical fees \$5,000. I consider those sums reasonable. But the award of costs is deferred until the adjourned hearing. (B. Fung) Judge of the Court of First Instance High Court Mr Patrick BURKE of Messrs Burke, Fung & Li, for Applicant PAGE - 1udk 1udk H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V XUok #Q#l> XUok #Q#l hccw (for Susan Kwan only).dot setup Microsoft Word 9.0 Judiciary Hong Kong Title Microsoft Word Document MSWordDoc Word.Document.8

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