

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2022] SGHCF 32

District Court Appeal No 44 of 2022

Between

WEW

... Appellant

And

WEX

... Respondent

Registrar's Appeal from the Family Justice Courts No 7 of 2022

Between

WEW

... Appellant

And

WEX

... Respondent

JUDGMENT

[Mental Disorders and Treatment — Legal capacity]
[Family Law — Costs]

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WEW
v
WEX and another appeal

[2022] SGHCF 32

General Division of the High Court (Family Division) — District Court
Appeal No 44 of 2022 and Registrar's Appeal from the Family Justice Courts
No 7 of 2022

Choo Han Teck J

8, 28 November 2022, 19 December 2022

30 December 2022

Judgment reserved.

Choo Han Teck J:

1 “P” is 94 years old. His wife, “K”, who is the intervener in this matter, is 89. P and K have a son, “WEX”, who is 62, and a daughter, “WEW”, who is 60. P executed a lasting power of attorney (“LPA”) on 22 January 2021 in favour of WEX as the donee. The LPA was subsequently accepted and registered by the Office of the Public Guardian. On 2 March 2021, WEW filed FC/OSM 78/2021 (“OSM 78”) in the family courts for an order declaring that P is incapable of managing his affairs, and that she be made a deputy to make decisions on his behalf in relation to his personal welfare and property. She then discovered that P had executed the LPA in favour of WEX. She therefore filed FC/OSM 202/2021 (“OSM 202”) to have P declared mentally unfit when he executed the LPA and that the LPA be revoked.

2 OSM 202 was heard over four days, with witnesses subjected to lengthy cross-examination. At the end of the hearing, the District Judge (“DJ”) dismissed WEW’s application in OSM 202 and awarded \$65,000 in costs to WEX, and \$20,000 to K. HCF/DCA 44/2022 (“DCA 44”) is WEW’s appeal against the DJ’s orders and HCF/RAS 7/2022 (“RAS 7”) is WEW’s appeal against the DJ’s orders on costs. By the time these appeals were heard, P had become physically and mentally incapacitated. K, on the other hand, was mentally alert, and although not frail, has difficulty walking. OSM 78 has been adjourned pending the outcome of the appeals against the orders made in OSM 202.

3 P was a businessman who had a trading company that he named “RR” — after the names of his son and daughter — a reminder that there once was a happy family. RR carried out various trading activities, including the trading of motor vehicles. Initially, after RR was incorporated in 1968, WEX was granted 50,000 shares, and WEW was granted 30,000 shares. The court below heard evidence concerning the transfer of WEW’s shares to WEX at one point. Nonetheless, WEX later took over the management of RR, and continues to do so to this day. WEW claims to have been the company secretary between 2007 and 2013, and was a director from 1996, until she was removed from her position in 2013. WEX’s version is that WEW was only added as a nominee director up till 2013 and did not do any substantial work while she held that appointment. Subsequently, she had minimal involvement in RR, and only assisted P with simple administrative tasks.

4 WEX was made the managing director of RR in January 2019 and two months later, P and K both ceased to be directors of the company. By WEW’s own account, her involvement in the company also ended in 2019.

5 WEW has a son, “D”, who was also involved in the many family disputes, several of which ended in courts high and low. References to those disputes probably taxed the patience of the DJ since the only relevance was to show the growing bitterness in the siblings’ relationship, a bitterness too deep and too intense for rescue. Right now, the question that I have to decide is whether the DJ was right in dismissing WEW’s application in OSM 202 and the consequent order on costs.

6 Parliament in legislating the Mental Capacity Act (Cap 177A, 2010 Rev Ed) (“MCA”) ensured the commonsense assumption that everyone is of sound mind unless proven otherwise. If WEW wants the court to find that P did not have the mental capacity to execute the LPA in January 2021, she must prove that to the court’s satisfaction. It was not disputed that P was examined by a psychiatrist, Dr [D], who, after examining P on 2 December 2020 and 22 January 2021, certified P sufficiently sound to execute an LPA. The DJ also took into account the evidence of a general practice doctor who examined P on 20 November 2020 and after having P take the Abbreviated Mental Test (“AMT”), scored him 6 out of 10. In her opinion, P had some cognitive impairment that may require specialist psychiatric assessment. That assessment was done by Dr [D].

7 Dr [D] was subjected to an intense cross-examination in the proceedings below. Counsel for WEW even suggested that Dr [D] had concocted evidence to the effect that he was aware of the AMT score. I am of the view that Dr [D]’s evidence is, as the DJ found, clear and direct, and it addressed the question of whether P was sufficiently capable of executing an LPA under the MCA. Dr [D]’s unequivocal evidence was, despite the barrage of questions from counsel, not impugned. There is no contrary evidence nor reasonable cause to hold that the DJ’s findings were wrong. The DJ, like Dr [D], recognizes that a

93-year-old man may have all kinds of mental impairment such as loss of attention and loss of memory, but that is a general fact of life. The nature and extent of a person's mental capacity is completely subjective, and the examining doctor must make his assessment based on the patient before him. In this regard, although Dr [D] was aware that P had difficulty recalling names and was slow in making arithmetic calculations, he was nonetheless professionally satisfied that P was fit to execute the LPA.

8 Dr [D]'s assessment of P's mental capacity must be based only on his training and competence as a psychiatrist, and his professional opinion must also satisfy the conditions set out in the MCA. The duty of the examining doctor is to determine whether the patient is capable of making the decision to execute the LPA. Significantly, the patient must understand what his or her decision entails and that in making that decision, he or she satisfies the doctor that it was a rationally considered decision. When it came to this with regard to P, Dr [D] was unequivocal in his assessment, and certified that P was mentally capable of executing his LPA.

9 Against this, WEW called Dr [F] to support her claim that P was mentally incapable of executing the LPA. There are times, of course, when an expert can be helpful to the court even though he might not have examined the patient in question, but this is not such a case. Without having examined P, and without having much to say about dementia or any specific mental issues that might require the court to look at the evidence differently, Dr [F]'s evidence was of no assistance to the DJ, who found that Dr [F] had based his opinion only on what WEW told him. Dr [F] admitted in the proceedings below that he had misunderstood the nature of his appointment by WEW.

10 We are thus left with a stack of evidence in the form of the claims and accusations by WEW that she had noted P's declining mental health, and what she regarded as suspicious circumstances under which WEX brought P to execute the LPA. Counsel for WEW submitted that the evidence proved fraud and undue influence. It suffices to say is that the DJ examined that evidence and was unable to find that WEX had defrauded or unduly influenced P. I can find nothing in the evidence nor counsel's submissions before me to hold otherwise. Furthermore, a claim for undue influence cannot succeed without P's wife, K, supporting it or being named a co-defendant. On the contrary, K not only refuted WEW's claims, but is of the view that WEW was the cause of the disharmony in the home. It has been ascertained that K is not only mentally fit, but she was also close to her husband, P.

11 It is baffling to think what WEW might stand to gain from these proceedings. Her counsel submitted that WEW has no interest in the company, RR, in which she had long given up all her shares and appointments. She is also not interested in managing P's legal and financial affairs; she is content to leave that to WEX. Her parents, P and K, had drawn up mutual wills as long ago as 1986, and WEW concedes that she stands to gain nothing from the wills. All she wants now is to be able to look after P's physical well-being. As far as anti-climaxes go, this may rank in the year's top ten. P is now physically and mentally frail. By the time of the appeal, P was no longer able to recognize WEW. P currently lives with his wife, K, his son WEX, and two domestic helpers in their household. What is the point of this appeal notwithstanding the abject absence of any merit in law or fact?

12 Of course, one cannot rule out the perseverance of pure love, such as the kind in which a person would willingly look after an infirmed person close to her heart, for no reason other than love. It might also be possible that WEW is

such a person, but I doubt it. The background story to a person giving her time and attention to an infirmed friend or relative is a story of affability and self-sacrifice. This is not such a story. Until WEW commenced the action to be appointed as P's deputy, and shortly thereafter, her application to revoke P's LPA, she had been living with P. If, as she now says, all she wanted was to look after him, she could have done so.

13 But, WEW could not do all that because she did not have a good relationship with her mother, and contrary to what WEW says, her loving relationship with her father was exaggerated. As far as her only sibling is concerned, their relationship was one of a long war with no peace. The video recordings (all adduced by WEW) do not help her case — they only reveal instances of the irreparable acrimony between WEX and herself. The aggressive behaviour by WEX against WEW in some of the videos were likely to have arisen from the culmination of WEX's frustration towards WEW, and are not proof of fraud or undue influence. Even if true, they are just that — evidence of the broken relationship between the siblings. I find no merit in DCA 44 and dismiss it.

14 As to the question of costs in RAS 7, The DJ ordered WEW to pay \$65,000 to WEX, and \$20,000 to K. The DJ mentioned two factors that influenced her award. The first was that WEX's pre-trial costs estimate was \$127,000. No mention was made of WEW's pre-trial costs estimate. The second was that much time was spent cross-examining Dr [D]. The DJ was not pleased with what she perceived as an excessive attack on Dr [D] by counsel. A costs award is discretionary. A litigant's approach and behaviour may tip an award towards the higher range. Circumstances that elucidate sympathy from the court may find expression by the court awarding a lower set of costs. In my view, the time and effort involved in this case alone justifies the DJ's award. A litigant

who wages a long battle must constantly keep track of the costs — and not wait until the last bullet is spent before counting the cost of the fight.

15 So far as the costs of this appeal is concerned, costs must naturally follow the event given my decision above. None of the counsel have addressed me on the costs of this appeal, but I will order costs of \$12,000 and \$5,000 to be paid by WEW to WEX and K respectively. The court may in appropriate cases such as this, order what it thinks to be fair in the circumstances. Further arguments over the costs of this appeal will serve no purpose other than to further increase costs.

- Sgd -
Choo Han Teck
Judge of the High Court

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