SUPREME COURT OF YUKON

Citation: *PG (Re Guardianship)* 2025 YKSC 28

Date: 20250226
S.C. No. 24-B0008
Registry: Whitehorse

BETWEEN:

PURSUANT TO THE *DECISION MAKING SUPPORT AND PROTECTION TO ADULTS ACT*, S.Y. 2003, C.21 (the "Act"); specifically SCHEDULE A, *THE ADULT PROTECTION AND DECISION MAKING ACT*, PART 3, COURT APPOINTED GUARDIANS ("Part 3")

IN THE MATTER OF THE APPLICATION FOR GUARDIANSHIP OF P.G.

Before Justice K. Wenckebach

Appearing on his own behalf	A.G. (by telephone)
Appearing on his own behalf	L.G.
Appearing on her own behalf	S.G.

This decision was delivered in the form of Oral Reasons on February 26, 2025. The Reasons have since been edited for publication without changing the substance.

REASONS FOR DECISION

[1] WENCKEBACH J. (Oral): A.G. and his sister, S.G., are applying for guardianship of their father, P.G. They are seeking guardianship over P.G.'s finances, daily activities, health care decisions, and other matters. A.G. and S.G.'s brother, L.G., opposes the application.

[2] For ease of reference, and intending no disrespect, I will refer to the litigants by their first names.

[3] The facts are that P.G. has been unwell for a number of years and has been diagnosed with dementia. All the parties agree that he was showing some signs of dementia before or around 2019. However, in late 2019, his doctors told P.G.'s family that he was not capable of living alone anymore.

[4] As I understand it, around that time, P.G. signed a document in which he stated he was giving enduring Power of Attorney ("POA") to A.G. S.G. and A.G. also then began taking care of their father. They divided the work between them. A.G. was primarily responsible for the finances and S.G. moved in with P.G., taking care of him in his home. She remained there until September 2021, or perhaps later, as he was admitted to the Whistle Bend Place Care Facility in September 2022.

[5] Since P.G. has been in Whistle Bend, S.G. has continued to make health care decisions for him and A.G. has continued to make the financial decisions.

[6] They filed for guardianship on February 16, 2024.

[7] This matter has taken a great deal of time to resolve because I have asked for follow-up evidence from A.G. and S.G. Having received it, I am able to make my decision.

[8] Guardianship gives a person the legal authority to care for, assist, and protect an adult who is unable to do so for themselves. When a court is asked to make a guardianship order, it addresses two questions: first, whether the person the application is being made about is in need of a guardian*;* and second, whether the applicant seeking to be guardian is appropriate.

[9] In this case, A.G., S.G., and L.G. agree that P.G. is unable to make decisions and take care of himself. Having reviewed the incapability assessment report, I also conclude that P.G. is in need of a guardian.

[10] The real issue here is that L.G. does not believe that A.G. and S.G. should be P.G.'s guardian.

[11] Using the language of the *Decision Making, Support and Protection to Adults Act*, SY 2003, c 21, which sets out the requirements for guardianship, L.G.'s position is that A.G. and S.G. are not suitable to be P.G.'s guardians. His concerns are that A.G. should not have been acting under the POA, that A.G. and S.G. have not been handling P.G.'s finances properly, and that he has been prevented from seeing P.G.

[12] I will set out the law about powers of attorney and guardianship, and then I will examine whether A.G. and S.G. are suitable to be guardians.

[13] First, I will explain the law of POA.

[14] An individual who wants to appoint another person to manage their financial affairs may make a POA. The person seeking to have someone else manage their finances is called the donor. The person appointed is called the attorney. There are different kinds of POA. In this case, P.G. signed an enduring POA, which continues if the donor develops incapacity.

[15] For an enduring POA to be valid, it must meet a number of requirements. The donor must have the capacity to understand the nature and effect of the enduring POA at the time they signed it. The POA must meet formal requirements as well. These formal requirements include an acknowledgement in writing by the attorney of their

appointment and that they understand their responsibilities as attorney, and a certificate of legal advice signed by a lawyer.

[16] Turning to the law of guardianship that is relevant here, the Court, in deciding whether the applicant for financial guardianship is suitable, will examine whether the applicant can handle the other person's finances in an unbiased manner (*Gronnerud (Litigation Guardian of) v Gronnerud Estate*, 2002 SCC 38 at para. 23).

[17] In looking at guardianship over the person more generally, it seems to me that the Court should assess whether the applicant is able and willing to act in the other's best interests, putting the person's needs first, and providing the person their undivided loyalty.

[18] I will now address each of L.G.'s concerns.

[19] L.G. submits that the POA that P.G. signed is invalid. He also states that, when it was signed, he had concerns that his father was not capable and should not be signing it. He points out that it is not backed up by a lawyer or doctor.

[20] A.G. and S.G. submit that although P.G. was showing signs of memory lapses, they believed that P.G. was capable of signing the power of attorney.

[21] The POA does not comply with legal requirements and is not valid. The most problematic omission is the absence of a legal certificate. Under the *Enduring Power of Attorney Act*, RSY 2002, c 73, ("*EPOAA*") a lawyer must provide a certificate confirming that they explained the effect of signing the POA and the donor appeared to understand the nature and effect of the document. While this does not guarantee that a person without capacity will sign the POA, it provides some comfort that they know what they are signing.

[22] The next question is why the validity of the POA is important.

[23] Underlying L.G.'s submission, in part, is the implication that P.G. did not understand that he was giving control over his financial affairs to A.G., and that A.G. and S.G. did not have P.G.'s best interests in mind when he signed the POA.

[24] There is some reason for concern that P.G. may not have understood the implications of giving over control of his finances to A.G. and S.G. All the parties agree that he was having difficulties with his cognition in 2019. This is confirmed by the incapability assessment report filed in support of A.G. and S.G.'s applications for guardianship. However, knowing that P.G. had a decline in his cognition does not tell me enough to able to find that he was unable to provide control of his finances to A.G. and S.G.

[25] People can have cognitive impairments but still have capacity. Moreover, people can be capable of making decisions in one area but not in another. I know that P.G. had a MoCA score of 19/30 but without expert testimony, I cannot make anything of it.

[26] There is also a presumption that people have capacity. In this case, even knowing that doctors believed that P.G. could not live alone and the other factors, the evidence does not overcome the presumption of capacity. I do not have sufficient evidence that P.G. could not make decisions about whether to hand over his financial interests to someone; and if so, who he should entrust them with.

[27] L.G. has made allegations about his father's capacity but I do not have sufficient proof that he was incapable of deciding that A.G. and S.G. should care for his finances.

[28] I also conclude that A.G. and S.G. were not acting in bad faith in having P.G. sign the POA. Their evidence was that they believed P.G. was able to make the decision to give A.G. POA. I have no reason to question that.

[29] Ultimately, this application is not a review of the POA. What the POA can provide insight on is whether A.G. and S.G. would be appropriate guardians.

[30] On the evidence I have, I have no reason to question their good faith.

[31] The second part of L.G.'s allegations is that A.G. and S.G. have been mismanaging their father's money. A.G. and S.G. submit that they have dealt with their father's funds fairly and have assisted him.

[32] It is a bit difficult to address L.G.'s concerns. L.G. makes a statement that $34,000 has been moved around since his father has moved to Whistle Bend and says this is problematic. However, he has not pointed to any specific expenditures that he is worried about. P.G. still needs to be taken care of and his house paid for. From looking at the materials filed in L.G.'s submissions, I cannot say that there are problematic expenditures. In bringing the guardianship application, A.G. and S.G. were not required to account for all the money they spent on P.G.'s behalf.

[33] Accounting for the transactions occurs under the *EPOAA*, when an application has been brought. This did not occur here. Under the guardianship application to determine whether A.G. and S.G. would be appropriate guardians, I could require them to account for all P.G.'s money they have spent. I decided not to do that, though. A.G. and S.G. have been taking care of P.G. since 2019, and L.G. knew about that. L.G. could have before now asked for an accounting of the money spent but he did not. It

would be at this point a difficult and time-consuming task to take on. This would leave P.G.'s care in limbo. That would not be in P.G.'s best interests.

[34] Moreover, there is evidence that A.G. has been managing P.G.'s funds well. A.G. and S.G. testified during the hearing that P.G.'s finances are better now than they were when A.G. took them over. This is demonstrated in the financial documents A.G. and S.G. filed. P.G.'s credit card, on which he owed $27,000 in 2019, was paid off and then cancelled. His line of credit is also closed, and he has more money in his bank account now than he did when A.G. took over dealing with P.G.'s financial affairs. I therefore do not share L.G.'s concerns that A.G. and S.G. have mismanaged P.G.'s money.

[35] Having said that, I do agree with L.G. that it is important to be able to account for the money spent out of P.G.'s funds. It is important for A.G. and S.G. to be able to show how they have spent P.G.'s money if they are required to do so. I expect they will handle P.G.'s finances in a way that is transparent if they are appointed guardians.

[36] It is also important that P.G.'s money and assets be used for his best interests. It may be that keeping the truck is useful for when P.G. visits the home. However, it should be carefully considered whether it would be better to sell it. As well, whether or not P.G.'s home is sold now, the guardian should start looking forward to what to do with P.G.'s home in the long run.

[37] I finally turn to L.G.'s allegations that he has been prevented from seeing P.G.

[38] L.G. filed an affidavit in which he stated that his family prevented him from seeing P.G. while P.G. was in the hospital. P.G. was in the hospital when COVID restrictions were in place. Texts that were filed between A.G. and L.G.'s spouse show that L.G. and his spouse were unable to visit P.G. because they were unvaccinated. A.G. spoke with

P.G.'s doctors on L.G.'s behalf and L.G. was able to visit. At Whistle Bend, the staff do seek S.G.'s approval when L.G. wants to visit P.G. S.G. testified that this is because she has been making decisions on P.G.'s behalf.

[39] I have no credible evidence that A.G. and S.G. have prevented L.G. from visiting P.G. A.G. and S.G. are also agreeable that a term of the order be that they do not need to be contacted by Whistle Bend for L.G. to visit P.G.

[40] I will therefore order that A.G. and S.G. be P.G.'s guardians.

[41] The terms of the order are that A.G. and S.G. shall be appointed as joint guardians of the adult.

[42] They will be given the power to make decisions respecting the following:

- the adult's living arrangements;
- whether the adult should apply for any licence, permit, approval, or other consent or authorization required by law that does not relate to the adult's estate;
- in accordance with the *Care Consent Act*, Schedule B of SY 2003, c. 21, the provision of care to the adult, the adult's daily living activities, including decisions about the adult's hygiene, diet and dress, social activities, and companions, except as follows:
    - upon confirming with family members the adult's availability, and subject to the rules and requirements of the facility in which the adult is living, L.G. shall be at liberty to visit the adult without requiring the guardians' consent;
    - the restraint of the adult;

- the adult's medical needs;
- the adult's financial affairs, including but not limited to settling the adult's liabilities, paying the adult's bills, including property, taxes, and loan and mortgage payments, purchasing goods and services for the adult for day-to-day living that are consistent with the adult's means and lifestyle, receiving and depositing the adult's pensions, income, and other money into a trust account maintained by the guardian;

- obtaining benefits or entitlements for the adult, including financial entitlements;
- completing and submitting the adult's tax returns for current and past years;
- making investments;
- granting or accepting leases of rent or personal property on behalf of the adult, including for a period of longer than three years.

[43] The guardians are excused from filing the Form 8 – Inventory Account and Subsequent Guardianship Plan.

[44] The guardianship order shall be reviewed within 24 months after the pronouncement of this order.

[45] The guardians shall be reimbursed for the cost of this application.

[46] The guardians shall be reimbursed from the adult's income and assets for reasonable expenses properly incurred in performing the duties or exercising the authority given under this order.

[47] Filed copies of the order shall be served on the persons who were served with the guardianship application. So, you will be getting a copy of the order, L.G.

[48] The requirement for the parties to sign this order is waived.

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WENCKEBACH J.