

SUPREME COURT OF YUKON

Citation: *Re P. (Guardianship of)*, 2014 YKSC 71

Date: 20141114
S.C. No: 14-B0052
14-B0053
Registry: Whitehorse

IN THE MATTER OF THE APPLICATIONS FOR GUARDIANSHIP

OF

D.P. and A.J.H.P.

Before the Honourable Mr. Justice R. S. Veale

Appearances:

Violet Oakley

Colleen Virginia Bujak and

Deborah DeVos

Tracy McPhee

Appearing on her own behalf as an Applicant

Appearing for the Applicant Colleen Bujak

Counsel for the Public Guardian and Trustee

REASONS FOR JUDGMENT

[1] VEALE J. (Oral): This is an application for guardianship of A.J.H.P. and his wife, D.P. A.J.H.P. is 81 and D.P. is 82, I believe.

[2] There are competing applications. Violet Oakley, 67 years old, a long-time family friend, resides in Haines Junction, is one of the applicants. The other applicants are the daughters of A.J.H.P. and D.P., namely Colleen Bujak, 59 years old, and Deborah DeVos, 60 years old, who reside in Surrey and Mission, B.C.

[3] The application of Colleen and Deborah is opposed by their brother Shane and sister Linda, neither of whom reside in the Yukon.

[4] The interest of this Court is solely for the best interests and safety of A.J.H.P. and D.P. Although there have been some hard feelings and distrust between the proposed guardians, I am of the view that they all have the best interests of A.J.H.P. and D.P. in mind.

[5] A.J.H.P. and D.P. are life partners who have lived in the Yukon for approximately 40 years. They are presently residing at the Thomson Centre in Whitehorse in the couple's room since April 1, 2013. The Thomson Centre is a Yukon Government-run elder care facility located next to the Whitehorse General Hospital. It provides care to adults that no longer have the capacity to fully care for themselves. Both A.J.H.P. and D.P. suffer from dementia. A.J.H.P. is an extrovert, who still has a lot of capacity to dress himself and participate in Thomson Centre activities, but D.P. is somewhat introverted and does not mix or make friends as easily. D.P. is obviously very dependent on A.J.H.P.

[6] D.P. has declined considerably and needs 24-hour care in the facility. A.J.H.P., however, can still navigate around the facility and if he gets lost, he can ask questions and find his way home.

[7] I am satisfied, from the incapability assessment reports of Joy Vall dated September 5, 2014, that both A.J.H.P. and D.P. are incapable of managing their financial, legal, health, and personal care, that they need the care and assistance and protection of a guardian, and that less intrusive forms of support and assistance have been carefully considered in the past.

[8] Dr. Passmore, a geriatric psychiatrist who visits Whitehorse every three months, has diagnosed A.J.H.P. with dementia of a mixed vascular Alzheimer type, who has been experiencing cognitive decline since at least 2011. A.J.H.P. has also been diagnosed with congestive heart failure, coronary heart disease, atrial fibrillation with a pacemaker, gout, Type 2 diabetes, and a previous stroke.

[9] Dr. Passmore has diagnosed D.P. with dementia, Alzheimer's type, of a moderate to severe degree, on May 15 and September 5, 2013. However, her cognitive assessment indicated severe dementia, which corresponds with the view of Janice Wood, her social worker, and Sharon Specht, the program manager at the Thomson Centre.

[10] Colleen and Deborah have had a long-distance relationship with their parents since A.J.H.P. and D.P. moved to the Yukon in the 1970s. They have found it difficult to fly to the Yukon -- difficult and expensive to fly to the Yukon and to visit.

[11] They have also not had a good relationship with their brother Shane, who is the youngest child, and apparently the favourite of A.J.H.P. and D.P. Unfortunately, it appears that Shane has taken some financial advantage of his parents, as they co-signed a house loan for him and, as a result, a \$250,000 lien has been placed on properties belonging to A.J.H.P. and D.P.

[12] I have not heard from Shane, which is unfortunate, because he may have a different view of this matter, but that is certainly how it appears to me and certainly to Colleen and Deborah today.

[13] There does not appear to be any equity left in the two lots, although I must say it appears from the evidence of Violet Oakley that A.J.H.P. and D.P. wanted their son

Shane to have the properties. Shane apparently lived with his parents and assisted them from time to time in the past. Shane's son now lives in a trailer on the lot rent free.

[14] The one constant person in the lives of A.J.H.P. and D.P. is their friend, Violet Oakley, who has been a friend of both since approximately 1976. She is the person who has consistently cared for A.J.H.P. and D.P. as they have slowly declined to the point of admission to the Thomson Centre in Whitehorse in 2013. She has taken them to doctors' appointments with Dr. Anderson. She has ensured they were taking their medication. She has taken them to Whitehorse for respite visits before they were admitted to the Thomson Centre. She also confirms that Colleen and Deborah have not had a close relationship with their parents, as she was apparently not aware of their existence until this year when visits recommenced.

[15] Violet Oakley acted under an enduring power of attorney since April 19, 2010, when it was signed and witnessed by her MLA, that is the member of the legislative assembly. Unfortunately, it is not valid and that is the reason that we are here today.

[16] The document that Violet thought was a will appears to be a valid living will, which expresses a desire of A.J.H.P. and D.P. to be removed from life support and receive pain medication, so that they can die in a dignified manner.

[17] Violet Oakley has provided the only consistent support for A.J.H.P. and D.P. in their declining years, has driven to see them in Whitehorse on a regular basis at the Thomson Centre, has worked closely with the care team at the Thomson Centre, and ensured that their financial and medical needs have been met. She has a strong relationship with A.J.H.P. and D.P., as well as with the care team at the Thomson Centre.

[18] There are a number of medical issues that Colleen and Deborah have raised involving a nasal drip and an infection for D.P. I am satisfied that those issues have been brought to the attention of Dr. Anderson, their attending physician, and I trust they will be attended to.

[19] There was an unfortunate event in September of 2014, when telephone calls from family members apparently were disturbing and agitating D.P. and A.J.H.P., who have a phone in their room at the Thomson Centre. There was no doubt that something was upsetting them very much, because the staff at the centre reported that D.P. and A.J.H.P. would not come out of their room, and this was very strange behaviour for A.J.H.P. in particular. I also note that the phone is a plug-in variety and A.J.H.P. could unplug it if he so wished.

[20] In any event, Violet felt it was best to stop direct phone calls from Colleen and Deborah, and this has caused a certain rift and a lack of trust between them. Violet, however, has indicated that she is prepared to work with any of the family, so long as she is helping her friends, A.J.H.P. and D.P. Colleen and Deborah still harbour some anger at Violet for preventing them from direct contact with their parents, although they were always able to contact them through a staff person and I do not fault Colleen and Deborah for being upset about that.

[21] Colleen and Deborah are also well acquainted with the Legion and its support of veterans like A.J.H.P., and feel they are better able to access those supports. I do note that Violet, with the assistance of Janice Wood, the social worker for A.J.H.P. and D.P. at the Thomson Centre, did apply to Veterans Affairs and has now received his benefits. A.J.H.P. receives a total monthly sum from a variety of sources in the amount of

\$1,989.16, and D.P. receives \$1,162.15. The monthly cost for each at the Thomson Centre is \$1,050, which I understand to be an extremely economical rate for the quality of support and service that they receive.

[22] The goal of Colleen and Deborah is to eventually have A.J.H.P. and D.P. live in a care home in the Surrey/White Rock area in order to be close to them and their large extended family of daughters, grandchildren, and great-grandchildren. They understand that moves of this nature have to be approached with great care and planning. There is no specific plan at the moment, but in order to consider such a move, this Court would require the following:

- 1) a residential care plan with admission to a particular care home in British Columbia;
- 2) it must consider the issue of any British Columbia residency requirement and the government or private plans or support that can be received from the Legion to support A.J.H.P. and D.P.;
- 3) the financial costs of the proposed care in an affidavit form from the care home;
- 4) the approval of Dr. Anderson or Dr. Passmore, if available; and
- 5) the consent of A.J.H.P. and D.P. is also a factor to be considered, although I appreciate that A.J.H.P. and D.P., not surprisingly, give different answers to different people at different times, but I am concerned that D.P., in particular, appears to be reluctant to travel, and she is also very dependent on A.J.H.P., so they are a team and if there is to be a move or a trip, her health interests have to be given particular attention.

[23] I know that Colleen and Deborah have good intentions for their mother and father, but great care must be taken to ensure that the best interests of A.J.H.P. and D.P. are the primary consideration.

[24] In the meantime, the care team at the Thomson Centre is prepared to work with a plan for A.J.H.P. and D.P. to visit family in the Vancouver area and stay with Deborah and Henry DeVos at their residence at Mission, British Columbia. I suggest that this be a two-week trip, and that I am concerned, of course, that A.J.H.P. and D.P. can only be away from their residence at the Thomson Centre for one month, and after that they lose their space, which would be very unfortunate. So any visit has to be of short duration.

[25] A visit will also be a good opportunity to learn the level of care that is required for A.J.H.P. and D.P., and how they react to the travel and to the visit. A.J.H.P. is clearly more adventurous than D.P., and D.P. has some difficulty with large groups of family members, many of whom she will not recognize.

[26] Deborah and Henry DeVos will have to accompany A.J.H.P. and D.P. from Whitehorse to Mission, and from Mission to Whitehorse. The return airfare for A.J.H.P. and D.P. shall be paid from their estate accounts.

[27] The Thomson Centre care team and Dr. Anderson must be satisfied that the mental and physical health of both A.J.H.P. and D.P. is capable of undertaking this proposed visit.

[28] As to the guardianship issue, I am going to appoint Violet Oakley to be the guardian of A.J.H.P. and D.P. I do so because she has been the constant supporter in their lives for the past 40 years. She is on the ground in Haines Junction and

Whitehorse, and on a regular basis is capable of assisting A.J.H.P. and D.P. and their care team. It is also my understanding that she has a good knowledge of their needs and wishes from her experience in the past 40 years. It is also an important factor that she is neutral between family members, and to that extent I would hope that she would be able to deal with both Colleen and Deborah and Shane and Linda, the other children who are opposing the application.

[29] When families are in dispute, it is often my view that a neutral, long-time loyal friend like Violet is in their best interests as a guardian.

[30] I am going to do up a guardianship order, in addition to these reasons, but the guardian shall be given power to make decisions with respect to A.J.H.P. and D.P.'s financial and legal affairs, and including but not limited to the following powers: to pay their bills; to purchase goods and services for them, so that they continue to live consistent with their lifestyle, receiving and depositing their pensions and other incomes into a trust account maintained by the guardian; to obtain other benefits and entitlements that may be available, particularly through Veterans Affairs; to complete and submit tax returns; to make investments for any significant amounts of money that they may possess; to rent their properties; to act for them in any legal proceedings that do not relate to their estate; and to collaborate and cooperate with all the children of A.J.H.P. and D.P.

[31] I just at this point want to indicate that it appears that there is no equity left in their properties. However, I think it would be wise to take one hour of legal advice, if you know a lawyer that can give you that legal advice; it should probably be a family law lawyer, but just to advise you on what can be done, if anything, but you do not want to

invest a great deal of legal fees in that, from my perception of the situation. But it may be that their residence can be rented out, I do not know.

[32] There will be no requirement of an inventory, an account, because I think we have received all the assets in the file at this date.

[33] The guardian shall be given power to make decisions with respect to the health and personal affairs, after consultation with family members, and specifically their living arrangements and their daily living activities, and any restraints if it gets to that point.

[34] I do not wish in any way to discourage Colleen and Deborah from pursuing their long-term plan, and I appoint Deborah DeVos to be the alternate guardian of A.J.H.P. and D.P. while they are visiting in British Columbia, with the power to provide for their mental and physical needs and authorize medical or hospital treatment that may be required.

[35] There is a cheque in the amount of approximately \$35,000 from Veterans Affairs in the name of A.J.H.P., which was apparently received in July and has been held in the safe at the Thomson Centre in trust for A.J.H.P. I appreciate that interest rates these days are sometimes so insignificant that it costs you to put money in the bank, but nevertheless I order the guardian, Violet Oakley, to place the cheque in the Toronto Dominion Bank in Whitehorse. For the moment, I recommend a daily interest savings account, in trust for A.J.H.P., until it is determined whether it will be needed for any unforeseen circumstances in the future. At some point, it may be placed in a longer-term interest-bearing deposit of one or two years, if there is no immediate need for the funds.

[36] I order that Violet Oakley shall be reimbursed in the amount \$3,200 for the cost of Joy Vall's two incapability assessment reports and \$140 for court fees.

[37] I do not know whether I need to order this, but I order that Violet Oakley give the telephone number of A.J.H.P. and D.P. to Colleen and Deborah, and I recommend that calls be made between 6:30 and 7:00 p.m. each day by the children as they wish.

[38] I order that Violet give her email address to both Deborah and Colleen, and that she respond to their reasonable requests in a reasonable timeframe.

[39] Where contentious issues arise, I am prepared to decide those issues for the parties, and that can be done by a telephone application, so that, you know, you might file affidavits, but we can arrange telephone applications. Now that I know you, and I am looking at Colleen and Deborah and Violet, I can hear you over the phone. But it is -- obviously, if you can be here, it is better, but we do a lot of applications by phone and you can call the -- you can arrange dates and call the trial coordinator at 667-3442, and sometimes we can do what I call case management, where smaller disputes arise and we can just talk them through and get a resolution, and I would hope that someone from the Thomson Centre, like Janice Wood, would attend those as well to assist everyone.

[40] So in conclusion, you know, I want to give words of encouragement to Violet to continue, to Colleen and Deborah in their pursuit as well. It is a difficult stage in everyone's life and A.J.H.P. and D.P. are fortunate to have you all interested in their care. I hope that this can be worked out and resolved to everybody's satisfaction.

[41] Are there any other matters that need to be addressed?

[42] MS. DeVOS: Our concern is by you giving her guardianship, if she chooses to not let them come after this first visit, she can do that, so --

[43] THE COURT: Well, no, but I am offering you the right to return to court any time. If you have a successful visit, and I have some real concerns about that.

[44] MS. DeVOS: Oh, and I -- and we do too.

[45] THE COURT: You know, and you do too, I am sure, but --

[46] MS. DeVOS: But --

[47] THE COURT: But if you have a successful visit and you want to have another visit and the care team is, you know, all behind you and stuff, she cannot stand in your way.

[48] MS. DeVOS: Okay, and -- and --

[49] THE COURT: Okay, you can just -- you can just call that number.

[50] MS. DeVOS: You did -- okay.

[51] THE COURT: Get a hearing and we will deal with it.

[52] MS. DeVOS: And you did mention about how you encouraged us to pursue looking into facilities down in B.C. for them, so if she says no, then we can't proceed?

[53] THE COURT: Well, I guess what I am saying in my reasons is that that is a very complex issue, okay, for the permanent move.

[54] MS. DeVOS: Yes, yes, I understand.

[55] THE COURT: But -- but I think it is important that, one, we know that there is a place.

[56] MS. DeVOS: Oh, absolutely.

[57] THE COURT: I am concerned about residency requirements. We have this all the time, bringing parents up here. You have to have a one-year residency requirement. I think that is right, is it not? I am looking at all the Yukoners there. You know, and that --

[58] MS. BUJAK: I think it's three months in B.C.

[59] MS. DeVOS: It's three months in B.C.

[60] MS. BUJAK: B.C.

[61] THE COURT: Yes, so there are delays like that.

VEALE J.