IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2021] SGHCF 19

District Court Appeal No 52 of 2020

Between

(1) ULP
(2) ULQ
(3) ULR

… *Appellants*

And

ULS

… *Respondent*

JUDGMENT

[Mental Disorders and Treatment] — [Legal capacity]

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ULP and others
v
ULS

[2021] SGHCF 19

General Division of the High Court (Family Division) — District Court Appeal No 52 of 2020
Choo Han Teck J
19 February, 16, 29 March, 10 May, 5 July 2021

6 July 2021 Judgment reserved.

Choo Han Teck J:

1 "P" is a 64-year-old retired Tamil Language teacher. She executed a Lasting Power of Attorney ("LPA") on 30 June 2015, when she was 58. She appointed her son as the donee (the "respondent"). P's husband and their two daughters (the "appellants") applied to revoke the LPA on the basis that P lacked capacity under the Mental Capacity Act (Cap 177A, 2010 Rev Ed) (the "MCA"). The District Judge (the "DJ") dismissed the application, and the appellants now appeal against his decision.

2 P and the first appellant, who was also formerly a Tamil Language teacher, married in October 1980. The first appellant is 65 this year. Besides the respondent, they have two daughters, the second and third appellants. The second appellant is 34 years old and is a teacher for special needs students. The third appellant is 28 years old and lives in Australia. She is unemployed. The

respondent is 38 years old and is a doctor in general practice. The parties do not dispute that P lacked mental capacity by the time the proceedings below commenced. It was thus not open to P to execute a new LPA.

3 The affidavits filed in the proceedings below reveal a complex family relationship, full of conflict and intense acrimony between the respondent and his father. In a long, vitriolic email to his father dated 5 November 2012, the respondent blamed the father for preventing him from studying liberal arts overseas, and forcing him to study medicine in Singapore instead:

> Now I feel utterly cheated of all the experience that has been robbed from me. And for what. A Third rate local uni my parents didn't even pay for or do a damn thing about when they found out …
>
> Against the odds, despite me asking for money, I beat a record 7500 applications for 750 seats and was one of the 4 singaporeans admitted into a top liberal arts college in the US. They were even willing to pay up to half my fees.
>
> I begged and pleaded with you … [y]ou yelled at me, insulting my integrity and honor and basically implied you couldn't trust me to pay off the loan and that the house would be seized instead.
>
> You said the maximum you were willing to pay was 10K a year. And that was it …

The respondent continued:

> I have an IQ of 160-180. I am statistically smarter than 99.9999951684% of everyone. To explain that to you, in the current population of 7 billion, there are only 340-350 people as smart or smarter than me. Allowing for random geographical distribution, almost half of them will be born in third world circumstances and have no access to resources that will nurture that intelligence …
>
> I have known before medical school, in medical school, early years as a doctor and even now in private practice – That I would be far more successful and happier doing something I loved instead of something just for the money. Instead of working and teaching at a top Internationally-renown university, I am a no-name Dr in Singapore.

Version No 1: 06 Jul 2021 (12:30 hrs)

4 Finally, he expressed his rage at finding out his father had taken a loan for his medical education in Singapore and expected him to pay it back:

> Do you think this would be my CHOICE if I had known you were making me pay for my school. Considering you signed the CPF loan and I signed the Medical school bond – Am I supposed to know the terms and consitions (*sic*) of the CPF loan or are you? Did I ask you to settle the school fees with CPF rather than cash? I didn't have a damn say in it. I naively believed my parents are supporting me and that I had to do my best …
>
> You destroyed all my hopes and dreams, made me repeatedly settle for less and less, drove me to a psychiatrist, are largely the cause of 10 yrs of misery – the worse form where you think there is hope; and -400-500K expenses …
>
> You didn't just deny me a future. You denied the world someone truly gifted. I wouldn't curse a father like you on anyone …

5 The respondent had also sent a long text message to the second appellant on the evening of 4 November 2012, saying:

> …I never expected you to take sides but if want to. So be it. Your parents have paid for your poly, university – a private one at that. And will be bearing the costs of your wedding. Mine have not done so. Have loaded me with crippling debt to boot …

6 In a Facebook message to the third appellant on 18 November 2013, the respondent said:

> I have very strong valid reasons to hate your parents, they made me live like a pauper, pay for my own uni. Make money off me while I pay off my tuition loan and financially crippled me by steering me into medicine. All the while giving me a shit university and shit job which I'm still stuck with otherwise I'd never be financially able to leave home or afford anything from a car to supporting even a relationship.

The animosity between the respondent and his parents, especially his father, is thus obvious. Under cross-examination in the proceedings below on 2 September 2019, when asked about his angry email to his father, the respondent explained:

Version No 1: 06 Jul 2021 (12:30 hrs)

> …Um, I didn't even expect them to truly pay the money, I just wanted them to acknowledge that they have hurt me this badly and that compared to other people, uh, compared to my peers, I'll be starting, um, financially behind everybody else …
>
> [The email] reflects an inability to be heard by anyone who'll actually would have given enough of a damn to ask…

7 I now turn to P's medical history. The respondent says he first noticed P starting to be forgetful sometime in 2009. He brought her to see Dr Nagaendran Kandiah ("Dr Nagaendran"), a consultant neurologist at the National Neuroscience Institute, in early 2010. P continued seeing Dr Nagaendran from February 2010 until her last appointment with him on 14 April 2015, about two to three times a year. At the last session, Dr Nagaendran recorded that P had a mental impairment, *ie* "moderate stage dementia of the Alzheimer's type".

8 The respondent was unhappy with how the appellants cared for P. In his affidavit dated 4 July 2017, he said that the appellants would leave P alone at home with no one to cook for her and would often lose their patience with her. The respondent was informed by one of his paternal aunts on 25 June 2015 that the first appellant intended to obtain an LPA for P. The respondent said this was not consistent with P's wishes that he (the respondent) cares for her. In a WhatsApp conversation with his aunt, the respondent said that he wanted to "get my house and I'm out the door with my mum." His aunt replied that they would not "fight" against him obtaining an LPA but "[a]ll we need from you is a legal undertaking from you that you will not dump her back to my brother [*ie* the first appellant] later on."

9 On 30 June 2015, the respondent brought P to see Dr Joshua Kua ("Dr Kua"), the LPA certificate issuer. Dr Kua certified that P had mental capacity to sign the LPA. P used her thumbprint to "sign" the LPA. This was witnessed by the respondent's then-girlfriend, now his wife. It is not known

Version No 1: 06 Jul 2021 (12:30 hrs)

whether P regularly used her thumbprint, or whether she had previously used a signed signature, and, if so, when she changed to using her thumbprint. The LPA was registered with the Office of the Public Guardian ("OPG") on 4 September 2015. The first appellant says the respondent forcibly removed P from his home on 19 September 2015. This was, of course, the matrimonial home of the first appellant and P.

10 The respondent says that in October 2015, the first appellant would harass P by incessantly calling her, which made her symptoms worse. He eventually changed P's phone number. On 22 October 2015, the first appellant commenced divorce proceedings against P, citing P's unreasonable behaviour in granting the LPA to the respondent. According to the second appellant, on 4 November 2015, the respondent allowed her and her sister to bring P out for Deepavali. However, their subsequent messages from November and December 2015 show that the respondent had repeatedly denied his sisters' requests to bring P out and told them to speak to his lawyers. The respondent says he could not trust his sisters after learning that they brought P to see the first appellant on 4 November 2015.

11 On 18 November 2015, the respondent filed FC/SUM 3669/2015 for him to be appointed as P's litigation representative in the divorce proceedings. In his affidavit dated 19 January 2016, he said he had been taking care of P solely since 19 September 2015, and, while he was initially upset at both his parents, he "was able to reconcile with [P] after many heart-to-heart conversations with her" and "their relationship has fully mended since end 2014". The first appellant says the respondent had treated P with disdain for almost four years and only had a "change of heart" when he realised "he may be denied testamentary gifts given his behaviour". According to the first

Version No 1: 06 Jul 2021 (12:30 hrs)

appellant and the second appellant, the respondent had stopped talking to both his parents towards the end of 2010/start of 2011.

12 From December 2015 until early 2016, the respondent attended interviews at the OPG in response to complaints made against him. On 16 March 2016, the first appellant discontinued the divorce proceedings. On 23 March 2017, the appellants filed FC/OSM 95/2017 ("OSM 95") to challenge the validity of the LPA. As the DJ noted (GD at [8]), there were differing views within the family. The first appellant's mother, one of his (the first appellant's) sisters, as well as one of P's sisters, filed affidavits supporting the respondent. In an affidavit dated 6 November 2017 by one of the respondent's paternal aunts, she said the appellants filed OSM 95 "out of spite" and that the respondent takes good care of P.

13 In the proceedings below, the DJ said there was nothing to suggest that Dr Kua's evidence was untrue and that the appellants had failed to prove that Dr Kua's opinion that there had been no undue pressure on P was wrong (GD at [45], [52]). The DJ took the view that greater weight should be given to Dr Kua's evidence in relation to mental capacity to execute the LPA as compared to Dr Nagaendran's evidence, given that Dr Nagaendran last saw P about two months prior to the execution of the LPA and was not specifically assessing her capacity to execute the LPA (GD at [73]).

14 On appeal before me, counsel for the appellants, Mr Damodara, submits that the DJ failed to place sufficient weight to the evidence of P's relationship with the appellants and the respondent. Second, the DJ erred in elevating the opinions of the certificate issuer to that of a presumption. The DJ should have been slow to accept Dr Kua's evidence, and Dr Nagaendran's evidence should be accorded more weight as he had been P's doctor for almost five years. Third,

Version No 1: 06 Jul 2021 (12:30 hrs)

the DJ erred in applying an extremely broad-brush approach in construing P's mental capacity, and it cannot be said that P could understand, retain, use/weigh information and communicate her views on the various aspects involved in a decision to execute an LPA. The DJ should also have taken into account Dr Nagaendran's assessment of P's mental capacity in relation to her Home Protection Scheme ("HPS") claim, and evidence of past behaviour, such as the respondent's position that P needed a litigation representative in November 2015. Finally, the respondent had failed to act in P's best interests by refusing to allow the appellants to visit her. In his further submissions in April and June 2021, Mr Damodara submits that Dr Kua's evidence cannot be relied on as he did not comply with the Singapore Medical Council Ethical Code and Ethical Guidelines 2016 ("Guidelines") and the MCA Code of Practice. I consider this more fully at [37] below.

15 The respondent's counsel, Mr Rai, submits that P did not sign the LPA under undue pressure and that the DJ had considered the issue of potential undue influence on P. Second, the DJ had not said that a certificate issuer's opinion creates a presumption. Third, P possessed mental capacity when she executed the LPA, based on Dr Kua's evidence, and the respondent had acted in P's best interests in denying his family access to P because allowing the appellants to see P would worsen her condition. In his further submissions in April and June 2021, Mr Rai submits that Dr Nagaendran never sought to assess P's mental capacity, and there was "no connection" between the appellants' criticisms of Dr Kua's reports and the argument that P executed the LPA under undue pressure or without mental capacity.

16 At the hearing before me on 19 February 2021, I ordered that Dr Kua and Dr Nagaendran were to file affidavits to exhibit all of P's clinical notes. On 16 March 2021, I granted leave to the respondent to file a subpoena to produce

Version No 1: 06 Jul 2021 (12:30 hrs)

Dr Kua's clinical notes. The parties also confirmed that after P had seen Dr Kua on 30 June 2015, she subsequently did not see Dr Nagaendran. On 29 March 2021, I gave directions for the filing of submissions. As Dr Nagaendran's handwritten clinical notes were illegible — even to the respondent and Mr Rai — I ordered counsel to have Dr Nagaendran furnish a transcribed copy, and for final submissions filed by 17 June 2021.

17 Several questions arise for my determination. First, did P have mental capacity to execute the LPA on 30 June 2015? Second, did P execute the LPA under undue pressure? Third, has the respondent acted against P's best interests?

18 I turn to the first question of P's mental capacity. If this requirement was not met, the court must direct the Public Guardian to cancel the registration of the relevant instrument (Section 17(2)(*a*) MCA, Paragraph 17(*a*) of the First Schedule to the MCA). P must be assumed to have mental capacity unless it is established that she lacks capacity (Section 3(2) of the MCA). The burden of proof is on the appellants to show that P did not have mental capacity on 30 June 2015 under Section 4(1) of the MCA. In this regard, I note that in *Re BKR* [2015] 4 SLR 81 (*"Re BKR"*) (at [134]), the Court of Appeal held that the test for capacity has a clinical component, for which the court requires the assistance of expert evidence, and a functional component, *ie* whether P's mental functioning had been compromised, which is a matter for the court to decide.

19 Based on the medical reports, P had dementia on 30 June 2015. The clinical component of *Re BKR* is thus satisfied. I now consider whether P was unable to make her decision on the LPA because of her dementia. Under Section 41(6) of the MCA, the court must take into account the MCA Code of Practice ("Code"). Paragraph 4.2 of the Code provides that conditions such as dementia may cause a lack of mental capacity, but it must not be assumed that

Version No 1: 06 Jul 2021 (12:30 hrs)

a person who suffers from such a condition necessarily lacks mental capacity. Thus, although P had dementia on 30 June 2015, lack of mental capacity must be proved. On the evidence before me, I find that P had mental capacity on 30 June 2015 to execute the LPA. My reasons are as follows.

20 First, I agree with the DJ's view that the certificate issuer's opinion, though not conclusive, must be given weight (GD at [39]). In my view, the DJ was not elevating the opinion of a certificate issuer to the level of a "rebuttable presumption" or that of a "striking out application". I also do not see why the DJ should have been "slow to accept" Dr Kua's evidence, as Mr Damodara argues. The formalities under Paragraph 2(1) of the First Schedule of the MCA, including the role of the certificate issuer, are intended to prevent an abuse of the LPA, and the court should not assume that the certificate issuer acted with improper motives. As always, there must be proof.

21 Second, I find that Dr Nagaendran's sessions with P were not for the purpose of assessing whether she had mental capacity to execute an LPA. Rather, these were for the purpose of assessing whether P had dementia (or some other cognitive impairment) and monitoring the progress of her condition.

22 I first summarise Dr Nagaendran's clinical notes. In a visit to Dr Nagaendran on 17 February 2010 with the respondent, Dr Nagaendran noted that P "complained of short/long term memory loss for few months" and was "upset with husband for making a big deal of her memory problem". At this date, her Mini-Mental State Examination ("MMSE") score was 26/30 and her Montreal Cognitive Assessment ("MoCA") score was 22/30.

23 The subsequent notes indicate that P was accompanied by the respondent, the first appellant, and the second appellant on different visits. The

Version No 1: 06 Jul 2021 (12:30 hrs)

notes show that P's condition was worsening, as she progressed from mood swings and fighting with her children (30 June 2010), to Dr Nagaendran recording his impression of "mild dementia" (14 August 2012) and subsequently a diagnosis of "Alzheimer's Dementia" (27 November 2012), to noting that P "[c]annot manage finances" and "[n]ot able to decide on property matter" (7 October 2014). In a session with P on 4 November 2014, Dr Nagaendran wrote:

> Accompanied by husband and daughter ([second appellant])
>
> - Spoken to patient, husband & daughter
> - Need to assess mental capacity
> - Husband reported -> lost bank book, does not know bank balances, unable to pay even for food
> - Daughter -> says cannot handle financial transactions, cannot manage medications, cannot even use seatbelt, gets confused.
> - Patient- can say that she owns a flat and condo. Does not know the quantum of ownership. Does not know purchase price or current price of property. Does not know -PTO
> - What is current rental
> - Patient agrees that she has difficulty thinking and needs help from family member to assist with financial and medical matters.
> - Patient does not have intact judgement ability to manage her personal, financial or healthcare matters.

24 In P's last session on 14 April 2015, Dr Nagaendran wrote that, according to the first appellant, P was "same as last checkup" and "[c]annot go out alone anymore". He recorded an MMSE score of 11/30 and a MoCA score of 4/30.

25 Although counsel informed me that P had not gone back to see Dr Nagaendran after 30 June 2015, they adduce two memorandums from Dr Nagaendran dated 7 and 13 July 2015. Briefly, these state that P is under his

Version No 1: 06 Jul 2021 (12:30 hrs)

follow-up for management of Alzheimer's Disease and has impaired memory. Lastly, Dr Nagaendran states in his medical report dated 22 January 2019 that, by 14 April 2015, P had "a mental impairment, i.e. moderate stage dementia of the Alzheimer's type. The effect of this impairment is severely impaired memory, executive function and language abilities."

26 I now turn to Dr Kua's clinical notes dated 30 June 2015. The salient parts are as follows:

> […] Pt wants to appoint son as donee but hd wants to be donee and a dg wants to hd be donee too
>
> Pt seen alone
>
> Pri sch teacher in the past
>
> stopped teaching in 2011. boarded out in 2011
>
> says she intends to have son only as her donee. Says son has always been taking care of her. Says hd used to tease her or make fun of her n didnt take care of her when she was in pain. Says hd i sok (*sic*) but not as caring as her son. Denies hd will harm her
>
> wants son to be donee for both person and financial/property affairs […]
>
> says now she seeks son for advice re some decision but she can make deciosn (*sic*) eg appointing son as donee and what clothes to wear.
>
> Undertsand (*sic*) in future if her condition worsens n cannot make decision, son can make decision for her.

27 There are also two medical reports from Dr Kua dated 22 February 2016 ("Dr Kua's First Medical Report") and 25 February 2019 ("Dr Kua's Second Medical Report"). In Dr Kua's First Medical Report, he wrote that P "was able to understand the nature of LPA and the purpose of doing the LPA" and "said she only want to have her son []as the sole donee". He concluded that P "has mental capacity on 30 June 2015 to sign her LPA despite being diagnosed with dementia". In Dr Kua's Second Medical Report, he wrote that MMSE and

Version No 1: 06 Jul 2021 (12:30 hrs)

MoCA "are not designed to assess mental capacity clinically" and are "used as screen tool for cognitive impairment and for monitoring the progress of the disease". He noted that there "is also no specific universally or locally accepted cut-off score of the MMSE or MoCA which would imply a lack of mental capacity". Finally, he said that in his assessment of P, he had followed the "Darzins" six-step capacity assessment process.

28 In my judgment, Dr Nagaendran's clinical notes and his evidence under cross-examination in the proceedings below show that his sessions with P were not for the purpose of assessing her mental capacity to execute an LPA. For example, in his notes from 4 November 2014, Dr Nagaendran wrote that there is a "need to assess mental capacity". This shows that he was not actually assessing P's mental capacity at the time. The rest of his clinical notes show that he was tracking the progress of P's condition to manage her care and treatment plans. At no point did he certify that P had or did not have mental capacity; he only recorded P's symptoms, *eg* her paranoia and hoarding behaviour, and diagnosed P with Alzheimer's Disease. As I said at [19] above, just because someone has dementia or some other cognitive impairment does not mean that they lack mental capacity. Consistent with his notes, Dr Nagaendran testified in the proceedings below that the approach he had used in his sessions with P, such as the MMSE and MoCA, were not designed to assess mental capacity, nor was he attempting to do so.

29 However, Dr Nagaendran also testified that, while it would be dangerous to draw inferences about someone's capacity using the MMSE scores alone, there had been a severe drop in P's MMSE scores from 2010 to 2015, and this suggested she may have lacked capacity at the material time. He explained:

> … [W]hat I want to highlight here is we have a longitudinal, which means repeated measures. So what at a single time

Version No 1: 06 Jul 2021 (12:30 hrs)

> point, the Mini-Mental State cannot tell us about the person's ability to think rationally but the point that I want to make in my report is I have done many mental state examinations right from 2010 and all the way to 2015, and they are looking at the intraindividual change … So I want to highlight is an intraindividual change that tell us a lot about someone's thinking ability …

30 In my view, although Dr Nagaendran's clinical notes do show this decline in P's MMSE scores, this does not show that P lacked mental capacity to execute the LPA on 30 June 2015. There must still be an assessment of P's capacity at the material time, when she made the decision on the LPA (see Paragraph 4.3.1 of the Code). As Dr Kua testified:

> …[The drop in MMSE scores] shows that there is deterioration whether fast or slow. But in it itself, the change of it or the absolute score during in which you do the mental state assessment does not in itself determine whether the person has or has not got capacity. That gives you an inference, perhaps you can think about it, but you still have to ask the specific question if it's decision specific…

31 I thus agree with the DJ that the decline in P's scores could indicate her deterioration over time, but the decline alone does not prove that P lacked mental capacity to execute the LPA on 30 June 2015 (GD at [72]).

32 Mr Damodara argues that Dr Nagaendran had assessed P's mental capacity on 4 November 2014 and found that she did not have "judgement ability to manage her personal, financial and healthcare matters". He submits that greater reliance ought to be placed on this record. As I said at [28] above, I do not think this note means that Dr Nagaendran assessed P's mental capacity in that session. Second, the fact that P may not have been able to manage her own affairs from November 2014 does not mean that she lacked mental capacity to execute an LPA. Paragraph 4.3.1 of the Code states that a person may have capacity to make some decisions but not others, *eg* a person may be able to go to the market and buy food but not be able to handle large sums of money or

Version No 1: 06 Jul 2021 (12:30 hrs)

make investment decisions. Thus, even if P may have lacked capacity to manage her personal affairs in November 2014, she could still have capacity to understand she needed someone to look after her and that an LPA would achieve this purpose. In fact, Dr Nagaendran noted that P agreed she had "difficulty thinking" and needed "help from family members to assist her with financial and medical matters". Finally, as I will return to shortly, this was not the material time at which P's capacity was to be assessed.

33 With regards to Dr Nagaendran's two memorandums dated 7 July and 30 July 2015, I understand from counsel that P did not return to see him after she saw Dr Kua. I therefore do not rely on these memorandums because they were not based on a contemporaneous clinical assessment of P.

34 Third, I said at [30] above that mental capacity must be assessed at the material time, which in this case is 30 June 2015. Since Dr Kua assessed P on 30 June 2015, I agree with the DJ that greater weight should be given to his opinion (GD at [73]). I now turn to assess his evidence.

35 In my judgment, Dr Kua's clinical notes on 30 June 2015 show that the test under Section 5(1) of the MCA was satisfied. First, P was able to understand the information relevant to her decision to appoint the respondent as her donee, as he had "always been taking care of her" and was therefore best placed to continue to care for her. She also understood that in the future, if her condition worsens and she is unable to make a decision, her son could make decisions for her, which is the essence of an LPA. Second, P was able to retain that information long enough to tell Dr Kua she wanted to execute the LPA in favour of the respondent. Third, P was able to use or weigh the relevant information as part of the process of making her decision, as she explained that her husband (supported by one of her daughters) wanted to be her donee, but P did not desire

Version No 1: 06 Jul 2021 (12:30 hrs)

this as the husband "used to tease her" or did not "take care of her when she was in pain". She was able to evaluate her family relationships before making her decision. Finally, P was able to communicate her decision to Dr Kua by telling him she wanted the respondent to be the only donee. Dr Kua's clinical notes are consistent with his two medical reports.

36 Mr Damodara argues in his written submissions dated 20 April 2021 that the Darzin's Test, which Dr Kua said he had applied, was only mentioned in Dr Kua's Second Medical Report but not in his clinical notes or Dr Kua's First Medical Report, and this raises serious issues as to whether Dr Kua had complied with the standards required by the Guidelines and Code. While I accept that the Darzin's Test was not mentioned in Dr Kua's clinical notes from the session on 30 June 2015 or Dr Kua's First Medical Report, I hesitate to infer that this means Dr Kua had not actually applied the test and had "embellished" his report. The DJ found that Dr Kua was a truthful witness (GD at [45]), and Dr Kua had given oral evidence on his application of the Darzin's Test, even if he had not recorded this in the clinical notes and Dr Kua's First Medical Report. I do not have sufficient evidence before me to overturn the DJ's finding on Dr Kua's credibility.

37 Mr Damodara submits that Dr Kua did not comply with the Guidelines or the Code as he did not provide sufficient detail in his clinical notes. In particular, he says Dr Kua did not explain how he helped P understand the information presented to her, or how he framed his questions to help P "understand better and avoid confusion". The lack of details in his clinical notes and Dr Kua's First Medical Report contravenes Paragraph 6.6 of the Code, which requires medical professionals to keep "clear and detailed records of all decisions" and "steps leading up to decisions made in relation to persons who lack capacity".

Version No 1: 06 Jul 2021 (12:30 hrs)

38 Unlike the Code, there is no provision in the MCA that requires the court to take the Guidelines into account in MCA-related decisions, although it would, nonetheless, be sensible for doctors to comply with these Guidelines. As for Paragraph 6.6 of the Code, I accept that it would be prudent for doctors to keep contemporaneous, detailed records of their discussions with patients, including the questions that they asked. However, I do not agree with the appellants that Dr Kua's clinical notes have insufficient detail and contravene Paragraph 6.6 of the Code. As I explained at [35] above, I think Dr Kua's clinical notes, though brief, are clear so far as the basis for his assessment is concerned.

39 The appellants also take issue with the allegedly short length of time (45 minutes) that Dr Kua had taken to help P make her decision. However, I do not think that the duration of the session alone may be relied upon to impugn Dr Kua's assessment. The time required to assess a patient's mental capacity may differ from person to person. A longer assessment is probably, but not necessarily, a better one.

40 I now turn to Mr Damodara's submission that the DJ did not place sufficient weight on P's relationships with her family members. In my view, this submission is better addressed in relation to undue pressure, and I will return to this at [44] below. Next, Mr Damodara submits that the court should have placed reliance on Dr Nagaendran's 2016 medical report for P to make a claim under the HPS. This report recorded Dr Nagaendran's opinion that P was "mentally incapacitated from ever continuing in any employment". However, I agree with the DJ that this assessment was in relation to P's employment, and not execution of an LPA. A person can be unable to work, but still be able to execute an LPA (GD at [77]). Lastly, Mr Damodara submits that the DJ erred in not giving sufficient weight to evidence of past behaviour, citing the respondent's application in November 2015 to be P's litigation representative.

Version No 1: 06 Jul 2021 (12:30 hrs)

That application was made after P signed the LPA in June 2015 and therefore does not concern P's mental capacity at the material time. In any event, the respondent's application does not prove that P lacked mental capacity.

41 I therefore hold that the DJ was entitled to find that P had mental capacity on 30 June 2015 to execute the LPA, and thus I need not require the Public Guardian to revoke the registration of the LPA under the First Schedule.

42 I next consider whether the appellants have shown that P had executed the LPA under undue pressure. If so, the court may revoke the LPA (Section 17(3)(*a*), 17(4)(*b*) MCA), and must then direct the Public Guardian to cancel the registration of the relevant instrument (Paragraph 17(*c*) of the First Schedule to the MCA). Dr Kua stated in the LPA form that, in his opinion, no fraud or undue pressure had been used to induce P into creating the LPA (Paragraph 2(1)(*e*)(ii) of the First Schedule to the MCA).

43 According to the DJ, the certificate issuer requirement "serves as a significant safeguard against undue pressure in the creation of an LPA" (GD at [36]). In his view, the appellants had not proven there had been undue pressure. While the respondent had not told Dr Kua certain things about P, the appellants had not shown that Dr Kua would have reached a different opinion on undue pressure if such information had been given to him (GD at [45]–[46]). And, although P was potentially susceptible to undue pressure, there was insufficient evidence to prove there actually had been undue pressure on P (GD at [55]).

44 Given the intense acrimony between the respondent and his parents beginning about 2010, I doubt that the respondent had resolved his problems with P in 2014 as he claims, especially when P was already showing signs of

Version No 1: 06 Jul 2021 (12:30 hrs)

cognitive impairment at that time. It is also odd that the respondent insisted on caring for P at this juncture. In this regard, there is a text message from the first appellant dated 3 October 2014 where he (the first appellant) tells P's sister:

> [The respondent] was talking to [P] for the past few weeks…Yesterday she told me that he wants to take care of her and wants her to move out with him…I told her not to trust him. But surprisingly, she told him that he cannot take [care] of her like me, as she needs to be brought to many hosp appt and cater to her special meal needs. Her sense of self preservation is still good. After she gently refused his 'offer', he got angry with her and stopped talking to her since the last 5 days. Sigh!!

45 In my view, this message is consistent with the other affidavit evidence of the respondent's complex and conflicted relationship with his family. Although it is evidence of P's personal thinking, it does not rule out the possibility that her mind had been suborned by undue influence or duress. It also indicates that P had not always wanted the respondent to take care of her, as he claims.

46 Second, Dr Kua's clinical notes record that he had been told the relevant information about P's relationship with her husband and son while the son was absent from the room (he wrote "Pt seen alone"). Dr Kua testified that this was his "usual practice" when he assessed a patient's mental capacity. However, as Dr Nagaendran testified, just because the respondent was "[s]itting outside the room does not mean there's no undue influence".

47 Dr Kua's testimony was that he would have asked P more questions about her relationship with her son had he known the details of the family conflict that were presented later at the trial:

> A: …[C]ertainly, I would ask [P] a few more questions about, "So if your relationship with your son is so strained, do you still think that you still want to appoint

Version No 1: 06 Jul 2021 (12:30 hrs)

> him as your done[e]?" and if she say "yes", then I think it is her prerogative…
>
> […]
>
> Q: …[A]re you aware…that at the end of October 2014…according to [the respondent], he have exchanges with [P] where, according to him, she had come to terms with her misdeeds and apologised for her conduct as a parent?
>
> A: No.
>
> Q: Yes. Would that have made a difference for purposes of your questioning on the 30th of June 2015 if that came to your attention?
>
> A: Certainly, I will ask her a bit – a bit more about that, yes.
>
> […]
>
> Q: But the bottom line is you didn't have an opportunity to ask any of these of questions because –
>
> A: Yes.
>
> Q: you didn't know, correct?
>
> A: Yes. I didn't know the details of that.
>
> […]
>
> Q: …[W]ould you be doing your test differently now that you have known all this information –
>
> A: Yes.
>
> Q: objectively?
>
> A: Of course. I mean uh, to the extent that I have information then I would ask more accordingly.
>
> Q: No, would you have done the test differently now –
>
> A: Differently.
>
> Q: if you have all this information?
>
> A: Yes, I would – I would have asked her a bit more about the situation between her and her son. Yes.

48 This line of questioning was not put to P since Dr Kua did not know this information at the time — P was not asked to affirm whether she wanted to

Version No 1: 06 Jul 2021 (12:30 hrs)

appoint her son as her donee despite having a strained relationship with him. Had Dr Kua asked P those questions, there is a reasonable possibility that Dr Kua may have reached a different opinion on whether P was under undue pressure at the time, depending on P's answers.

49 Third, the respondent's testimony contributed to my impression that he had placed P under undue pressure. Under cross-examination, he agreed that the "catalyst" for him obtaining the LPA was the 25 June 2015 message from his paternal aunt saying that his father intended to obtain an LPA for P, as he (the respondent) did not want his father to take over his mother's affairs. He brought his mother to see Dr Kua just five days after that message. In those five days, the respondent testified that he was the "only one" who spoke to his mother about the LPA and he did not believe that "anyone else was speaking to her about the LPA". He explained that his aunt asked him on 28 June for his lawyer's name as soon as possible, as they (presumably, his father and sisters) wanted to "contest [the respondent's] objection to the [first appellant's] [intended] Power of Attorney". After seeking advice from a friend who was a lawyer, the respondent shortlisted some candidates to assess P's capacity for the LPA; he said he "had to go private because [the respondent] needed [the LPA] urgently". He chose Dr Kua because "[i]t just happened that Dr Kua was the earliest appointment" and "his qualifications were suitable enough". Considering all the evidence, it seems this rush to execute the LPA was motivated less by concern for P's welfare than the animosity towards his family, and suggests that the respondent had pressured P into her decision. The respondent also testified:

> I didn't facilitate that my mother seeing a doctor and I wanted her to tell the doctor who ever you wanted to take care of. I said if it wasn't going to be me, then I have to leave without her.

Version No 1: 06 Jul 2021 (12:30 hrs)

It is not entirely clear what the respondent meant by telling P he would have to "leave without her" if she did not tell Dr Kua that she wanted the respondent to care for her, or when he had said that to her. Mr Damodara says this was in the context of the respondent's plan to move out of the family home with P. If the respondent had told P this in the context of the 30 June 2015 visit to Dr Kua, there is a reasonable possibility that this could have operated on P's mind to induce her into signing the LPA; as P "didn't know how to go herself to see a doctor", P would likely have felt pressured to appoint the respondent as her donee, lest the respondent "leave" her at the clinic with no way of going home. Either way, I accept that this indicates the respondent had probably put pressure on P when she signed the LPA.

50 Considering the entirety of the evidence — the history of acrimony between the respondent and his family, the respondent and P's sudden purported reconciliation towards the end of 2014, when P was already on a cognitive decline, the various text messages showing the heated disputes over who should care for P, and the respondent's conduct in the days before the execution of the LPA — I find the respondent's insistence on becoming P's primary caregiver and denying the rest of the family access to P to be a matter that requires closer examination. The respondent has an intense revulsion of his father and sisters, and it also seems to me that P was a person with a frail and malleable mind at the material time. The convergence of these facts and circumstances taken together as a whole, I am of the view that the respondent had probably exerted undue pressure on P to execute the LPA. On this basis, I would exercise my discretion to revoke the LPA and thus direct the Public Guardian to cancel the registration of the relevant instrument. Given that frailty of mind, it is not safe to permit one party sole control over P without supervision or participation from the other parties.

Version No 1: 06 Jul 2021 (12:30 hrs)

51 In these circumstances, and since all parties agree that P now lacks mental capacity, I am of the view that the parties should apply to the court under Section 20 of the MCA to appoint a deputy for P. If none of the parties are found to be suitable deputies, I note that a professional deputy may be appointed by the court (Section 24(1)(*b*)(ii) of the MCA). Since I allow the appeal based on the ground of undue pressure, it is not necessary for me to make a finding on whether the respondent has engaged in conduct that is not in P's best interests (Section 17(3)(*b*)(ii), Section 17(4)(*b*) of the MCA). That is an issue that is best ventilated in the application for a deputy for P.

52 In conclusion, I allow the appeal on the ground that P was under undue pressure, and I order that the LPA be revoked. I will hear parties on costs at a later date.

- Sgd -
Choo Han Teck
Judge of the High Court

Suresh s/o Damodara, S.M. Sukhmit Singh, Ong Ziying Clement, Ning Jie and Lim Dao Yuan Keith (Damodara Ong LLC) for the appellants;
Ashok Kumar Rai and Kang Yu Hsien Derek (Cairnhill Law LLC) for the respondent.

Version No 1: 06 Jul 2021 (12:30 hrs)