EDITORIAL NOTE: NAMES AND/OR DETAILS IN THIS JUDGMENT HAVE BEEN ANONYMISED.

NOTE: PURSUANT TO S 80 OF THE PROTECTION OF PERSONAL AND PROPERTY RIGHTS ACT 1988, ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B TO 11D OF THE FAMILY COURTS ACT 1980. FOR FURTHER INFORMATION, PLEASE SEE HTTP://WWW.JUSTICE.GOVT.NZ/COURTS/FAMILY-COURT/LEGISLATION/RESTRICTIONS-ON-PUBLICATIONS.

IN THE FAMILY COURT
AT AUCKLAND

FAM-2001-004-003034
[2016] NZFC 3786

IN THE MATTER OF	THE PROTECTION OF PERSONAL AND PROPERTY RIGHTS ACT 1988
BETWEEN	NA Applicant
AND	PUBLIC TRUST Applicant
AND	FA PERSON IN RESPECT OF WHOM THE APPLICATION IS ABOUT

Hearing: 10 May 2016

Appearances: A Cook for the Applicant
K Hayes for the Public Trust (by telephone)
EL (Welfare Guardian) in person
RG (Care Giver) in person
JN (Care Giver) in person
N Elliot for the Subject Person

Judgment: 31 May 2016

RESERVED JUDGMENT OF JUDGE B R PIDWELL
(Application to discharge order appointing a property manager and for personal order s10(e) contact)

---

[1] FA has been the subject of orders under the Protection of Personal and Property Rights Act 1988 (PPPRA) since 2003.

[2] In 2012, the Court confirmed Ms EL's continuing appointment as FA's welfare guardian and commenced its judgment by stating:

> *"This case continues to be the longest single running case in the Auckland Family Court*".[1]

[3] The issues for the Court to determine in this judgment are:

(a) Should the order appointing the Public Trust as FA's property manager be discharged?

(b) Should the Court make an order that FA's mother have contact with her, and if so, on what terms?

[4] The following is not in issue:

(a) That FA lacks capacity pursuant to s 6 of the PPPRA.

(b) That FA has no assets or income above the threshold to require the ongoing need for a property management order under s 31.

(c) That FA should remain living with her current caregivers, the Care Team, comprising -RG and JN with whom she has lived since October 2005.

Should the order appointing the Public Trust as FA's property manager be discharged?

[5] The Public Trust was appointed as a property manager for FA on 17 August 2012 for a period of three years with a review due on 17 August 2015. They have now filed an application for a final review and discharge of that order on the basis

[1] [2012] NZFC 9480 per Judge Burns

that FA does not own any assets and her income level is so low that she has no funds to manage.

[6] FA is solely in receipt of a WINZ benefit. This benefit is paid to a bank account which her current caregivers are able to manage on her behalf. The Public Trust has no funds to administer or manage, and the reporting provisions required by a s 31 order are prohibitive in the sense that the Public Trust is using funds that FA simply does not have in order to comply with the legal reporting requirements.

[7] In terms of assets, FA holds less than one dollar in the bank account administered by the Public Trust.

[8] Mrs NA, FA's mother, opposes the discharge of the order and wants the Public Trust to continue to have oversight of FA's benefit, however concedes that it may be more appropriately administered under a s 11 order, if the appropriate person could be found to undertake that role.

[9] Mr Elliot has acted for FA for many many years. He raised a concern that a void may be left if the s 31 property manager order was discharged without replacing it with some other oversight of FA's finances. He conceded that it was appropriate for the order to be discharged but submitted that a s 11 order could replace it, unless FA's benefit could be administered without it.

[10] I directed Mr Elliot to make further enquiries as to whether FA's WINZ benefit could be utilised for her care needs without the formal oversight of any PPPR order. In his memorandum to the Court dated 20 May 2016, he advised that FA's benefit could be administered by her caregivers (as is being done now in a de facto way) once the current property manager signs an Appointment of Agent form. That authority will enable her income to offset her care expenses and the current arrangement to continue without the administrative expense of a property manager order.

[11] I do not have an application for a s 11 order before me. FA's finances are extremely limited, and her income is wholly used to offset the costs of her care. I am

satisfied that her current caregivers are the appropriate people to act as agent as proposed by Mr Elliot.

Should the Court make an order that NA have contact with FA, and if so on what terms?

[12] On 8 April 2014 Mrs NA filed an application seeking an order under s 10(1)(e) of the PPPRA that she have contact with FA each week.

[13] She also filed an application pursuant to s 65 of the Act for the appointment of a new counsel for FA but that has been considered by both Judge Clarkson and Judge McHardy who determined the matter and confirmed Mr Elliot's continuing appointment.[2]

[14] Mrs NA seeks contact with FA at a venue in Auckland central or in Parnell, with The Care Team bringing FA to those locations from her home in [location deleted]. Mrs NA wants to have a meaningful relationship with her daughter and acknowledges that needs to be rebuilt given the passage of time and the lack of contact over the recent years.

[15] Mrs NA is currently aged 76 and in good health. She occasionally uses a walking frame but says she is able to push FA in a wheelchair. She would also like to take FA to [name of country deleted] to visit family. Although she has not seen FA for some time, indeed since 2011 apart from Court days and FA's father's funeral in November 2015, she says this is because the welfare guardian and caregivers have made contact very difficult. They have required her contact to be supervised by them, and for her to pay for the costs of them attending contact.

[16] She says at [14] of her affidavit in support:

> [14] The fact that Marion is charging for her time and unless that is paid my contact does not take place is one of the reasons why I filed this application.

[2] Minute of Judge McHardy 3 November 2015

> [15] Marion requests payments from me to cover Marion's cost. I do not believe such a payment is appropriate. I question why I should have to pay to see my daughter.

[17] She says there have been attempts to arrange contact, but to no avail. She is concerned that FA is forgetting things that used to be important to her, including her knowledge of [name of language deleted]. She has no knowledge of how FA spends her days.

[18] She would like to see FA in a central venue, namely [location deleted] as she is able to transport herself there without difficulty (she doesn't drive). She would like to see her regularly, for a period of five hours each week and further time for the relationship to rebuild.

[19] She relies on the findings of Judge Burns in his decision of 2008, when he ordered that Ms EL should be FA's welfare guardian, when he stated:[3]

> [65]…I see no valid reason why Mrs NA should not be able to visit FA on a regular basis; daily or twice daily if she wished and I accept the evidence given by Marion Peka that their door is open. I do not consider I need to make any specific orders relating to contact. I think Mrs FA is more than capable of making direct arrangements with Mrs EL as to when she visits FA and for how long. It is simply up to her to do so. I see no justification for imposing any condition that another person be present. I do not think that NA needs to have another person present, and with this case now being resolved and put to bed, there should be no reason why allegations are being made against Mrs NA. As a result of this case FA will not be returning to Mrs NA's day to day care. Her role in her life will be as her mother and as any other 26 year old who has left home to see a daughter on a reasonably regular basis but no longer to live with her.

What is the welfare guardian's position?

[20] Ms EL is FA's long standing welfare guardian. She accepts that she has never had an easy relationship with Mrs NA. She highlights that FA has been with the same caregivers for ten years now and is happy and settled. The caregivers provide FA with 24/7 support due to FA's complex high needs. She highlights the fact that

[3] Above at 1.

the caregivers provide approximately 180 hours per week of non-funded care. She says the level of care that the caregivers provide to FA is exceptional.

[21] She highlights that FA's needs are high, and FA is entitled to and requires a high level of support by people who are competent, familiar to her, and who can provide safe care. She says that FA is not comfortable in her mother's company and hasn't been for many years.

[22] Ms EL appropriately acknowledged the role of Mrs NA as FA's mother and the importance of that role. However, she and the caregivers have been trying to facilitate contact with FA's best interests at heart but this has been thwarted by Ms EL on an ongoing basis.

[23] She does not accept that Mrs NA's proposal for contact is in FA's best interests and welfare. Indeed she says FA is unlikely to cope with the contact and it is potentially unsafe for her. She does not oppose contact per se, but says it needs to be safe and supervised with a third person being present who is familiar with FA's current needs. She says that FA needs to have a caregiver with her at all times and that Mrs NA is not able to perform the care required.

[24] She indicates her dismay at these matters once again being brought before the Court.

What is the caregivers' position?

[25] The caregivers do not oppose Mrs NA having contact with FA but are disappointed to be in Court again. They say that Mrs NA has been offered many options for contact, but that they have not occurred for various reasons. They say Mrs NA remains a difficult person to deal with, that she is unreasonable and unrealistic in her demands. They propose:

> [23] "It has been many years since NA has spent any time with FA. I propose that FA and I meet with NA once every three months. If NA can show consistency and access visits flow without incidents then we can reassess the frequency".[4]

[4] Affidavit of Marion Peka 10 November 2015

What are the legal requirements?

[26] Section 10 of the PPPRA provides the Court with a discretion to make an order that a person be provided with specific living arrangements.[5] The Court is unable to make a personal order against a person who is not a party to the proceedings. [6]

[27] In this case, both the welfare guardian and the caregivers have been served with the application and have been given an opportunity to be heard. Each filed affidavits and addressed me during the hearing. Accordingly they are considered to be parties for the purpose of these proceedings.[7]

[28] The term 'living arrangements' encompasses all aspects of a person's environment including who cares for them, where they live day to day, and who they have contact with. It is wide enough to encompass the Court making a contact order.[8]

[29] Any determination must be guided by the principles of the PPPRA, in particular the primary objective to make the least restrictive intervention possible in the life of the subject person.[9] Any power exercised or decision made by a welfare guardian must be done to promote and protect the welfare and best interests of the subject person.[10]

[30] A hearing took place between 2006 and 2008 before His Honour Judge Burns which included consideration of the issue of Mrs NA's contact with FA at that time. He declined to make a contact order, anticipating that the arrangements could and would be agreed upon between the welfare guardian and Mrs NA. The caregivers were open to contact occurring, having an open door policy.

---

[5] PPPR Act s10(e)
[6] PPPR Act s 10(2)
[7] *CCS Disability Action (Wellington) Branch Inc v JCE* [2011] NZFLR 696
[8] *T – E v B* [Contact] [2009] NZFLR 844 (HC)
[9] PPPR Act s8
[10] PPPR Act s18(3)

[31] In a later decision in 2012, upon reviewing the appointment of Ms EL as welfare guardian, Judge Burns noted;[11]

> [4(vii)] The only issue raised by Mrs NA of relevance that the Court needs to address is her ongoing contact with FA and being informed of guardianship issues. I accept the evidence of Mrs EL that all has been done and will continue to be done to inform and involve Mrs NA in FA's life. The difficulties are Mrs NA's and not the care team or Ms EL. I do not think there is any order or any thing the Court can do about two issues other than request that Mrs EL and the care team continue to do their best to involve and engage with Mrs NA. I consider that a concrete way of doing that is for Mrs NA to nominate a go-between person. This person would be somebody that she has faith in and can communicate with. He could then communicate with Mrs EL and the care team".

[32] On behalf of FA, Mr Elliott submits that given the history of the matter, and the determinations of Judge Burns, it is questionable whether an order is likely to have the effect of bringing about regular contact. He questions whether a contact order should be made, given the long period of lack of contact between mother and daughter and FA's apparent resistance to being with her mother.

[33] In addition there is the issue of costs. He submits that the costs of the caregivers being available for contact, and to transport FA to and from contact could be directed to be paid under s 21(2) of the Act, noting that Judge McCormick directed the costs of FA's father's contact to be paid out of a consolidation fund pursuant to that section.[12]

[34] However, the issue of the costs of services provided by a welfare guardian under s 21 was subsequently considered by Justice Dunningham in *Grosser v Grosser* [13] She states;

> [30] Section 21, which enables the expenses of a welfare guardian to be charged, also appears to favour a more confined role. The expenses usually fall on the subject person, but s 21(2) allows the Court to order that expenses be met from public funds. A broad approach to the welfare guardian's role would allow a welfare guardian to provide a potentially vast range of services at the public's expense, including education, day care, surgery and psychiatric treatment in a relatively unfettered way, whereas the entitlement to, and funding for, such services are tightly controlled in other contexts.

---

[11] Above at 1
[12] Judgment of Judge McCormick 5 March 2004
[13] 2015 NZHC 974 per Dunningham J

> [31] For these reasons, it was submitted, and I accept, that a welfare guardian's role is intended to be confined, and the provisions of consequential services to the subject person which are required as a consequence of welfare guardian's decisions, is not within the scope of a welfare guardian's role. Instead, the welfare guardian is to consider what decisions need to be made for the subject person. Having made those decisions, the next step is to decide who is best to provide the subject person with any services, facilities, equipment or products required as a result of those decisions. Payment for those consequential services will be made by those given powers to deal with property, who can provide a level of scrutiny as to the quantum and appropriateness of those costs.

[35] The expenses incurred by a welfare guardian are usually met by the subject person. In this case, FA's income from WINZ is used to meet the costs of her care. In light of the reasoning in *Grosser*, for an order to be made under s 21(2), it must, in my view, be to meet an extraordinary cost, one which cannot be met by the subject person or by other means available to the subject person.

[36] The cost of contact is a major issue for Mrs NA. I am not satisfied that an order is required to meet the costs of the caregivers for contact to occur. They are paid to care for FA on a full time basis. If there are additional expenses in terms of transport/food associated with contact, Mrs NA should meet those costs, just as any parent who seeks contact with their child should meet the costs of contact. It is not appropriate in my view for the tax payer to meet that cost.

[37] Contact can occur without further costs being incurred, if Ms NA visits FA at her home, or if she meets the additional travel expenses of the caregivers.

[38] I accept the evidence of Ms EL and the caregivers that a caregiver must be present at contact. I am not satisfied that Mrs NA is now physically able to meet FA's high needs. She has not cared for her on her own for over 10 years, and has not seen FA apart from short interchanges in formal settings, for approximately 5 years. I accept that FA may become distressed if she is not with a person who is currently familiar to her. Accordingly, any contact Mrs NA has with FA should be overseen by her current caregivers.

[39] I am satisfied that the position of the caregivers has not changed since 2008 when they indicated to the Court that they had an open door policy, and would facilitate contact if the arrangements were appropriate for FA. I also concur with

Judge Burn's comment in 2012 at [30] that *"the difficulties are Mrs NA's and not the care team or Ms EL. I do not think there is any order or anything the Court can do about the two issues other than request that Mrs EL and the care team continue to do their best to involve and engage with Mrs NA*."

[40] I am satisfied that the care team will abide by their offer to facilitate contact once every three months, on terms suitable to FA (and not dictated by Mrs NA). In terms of the least restrictive approach required to be taken by the Court, I cannot be satisfied that a contact order should be made.

Orders

[41] Accordingly I make the following orders:

(a) I direct Mr Elliot to file a memorandum confirming that the Appointment of Agent form has been signed and implemented.

(b) Upon receipt of Mr Elliot's memorandum, the s 31 order appointing the Public Trust as property manager for FA is discharged.

(c) I decline to make an order under s 10(e).

Signed at this day of at am/pm.

B R Pidwell
Family Court Judge