

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

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.GOV.TZ/FAMILY-JUSTICE/ABOUT-US/ABOUT-THE-FAMILY-COURT/LEGISLATION/RESTRICTION-ON-PUBLISHING-JUDGMENTS](http://www.justice.govt.nz/family-justice/about-us/about-the-family-court/legislation/restriction-on-publishing-judgments).

**IN THE FAMILY COURT
AT HUTT VALLEY**

**FAM-2015-096-000109
[2017] NZFC 7788**

IN THE MATTER OF	THE PROTECTION OF PERSONAL AND PROPERTY RIGHTS ACT 1988
BETWEEN	[E C] Applicant
AND	[E C] Person In Respect Of Whom the Application Is Made

Hearing: 27 September 2017
Appearances: B Yeoman for the Applicant
Judgment: 27 September 2017

ORAL JUDGMENT OF JUDGE T M BLACK

[1] This is an application by [EC], and I know he does not like me using that name, but I am going to use it because that is the intituling on the application that he filed for a property order in respect of his own property.

[2] The application is made for the exercise of the Court's jurisdiction under Part 3 Protection of Personal and Property Rights Act 1988.

[3] In terms of the application itself I have an application form in Form PPR 10.

[4] The application does not propose an appointee. I accept that that is not required. At paragraph 4 of the application [EC] states that it is made on the ground that he partly lacks the competence to manage the property of [EC].

[5] There is no medical evidence in support of the application.

[6] [EC] has appeared today and has explained his position.

[7] Mr Yeoman has given him some assistance to do that.

[8] The legal position is that under s 24 of the Act there is a presumption of competence. Section 24 says that:

For the purposes of Part 3, every person shall be presumed, until the contrary is proved, to be competent to manage the affairs in relation to his or her own property.

[9] Two issues arise out of that in this case. The first is that proof requires, in this Court, proof on the balance of probabilities. That is the ordinary civil standard of proof. That requires evidence to be called to establish the proposition and a simple assertion by [EC] that he lacks competence does not prove that assertion. That is the first issue.

[10] The second issue is that property management arises under the Protection of Personal and Property Rights Act which is a protective jurisdiction. The Act is designed to provide assistance for persons who lack competence in the management of their property. It is predicated on the property being managed for the benefit of the protected person.

[11] While I acknowledge s 62 allows the establishment of trusts that has to be read subject to a manager's powers under s 36 of the Act which says that:

The first and paramount consideration of the manager is to use the property in the promotion and protection of the best interests of the person for whom the

manager is acting while seeking at all times to encourage that person to develop and exercise such competence as that person has to manage his or her own affairs in relation to that property.

[12] As I perceive [EC]'s position what he is seeking to do is to divest himself of property. It is not entirely clear to me what property he means. He has talked at some length about concepts of legal persona, his name that sort of thing. That is not property as defined in the Protection of Personal and Property Rights Act. When I pointed that out he suggested that the proposed management could extend more widely.

[13] But the whole purpose of property management is for property to be used for the benefit of the person in respect of whom the application is made and not to facilitate divestment of property to the Crown which is what [EC] suggests should happen.

[14] I am not satisfied that jurisdiction is established. I am not satisfied that the presumption of competence has been displaced. While [EC] raises some interesting issues in relation to concepts of property, of persona, of estate, those are not matters of which I can or should make decisions about. I have to act in accordance with the law as it stands, which is set out quite clearly in the Protection of Personal and Property Rights Act, and for that reason the application cannot succeed and it is dismissed.

[15] This is the third application which [EC] has made on almost identical grounds, well, certainly not materially different grounds since the beginning of 2015. In each case the applications have been unsuccessful, and in each case for the same reason, that is that there has been no evidence of lack of competence provided to the Court.

[16] Certainly, in relation to the first application Mr Yeoman was appointed, and that was in 2015. He was not appointed when an application was filed a few months later because it was dismissed in a summary way by another Judge. He has been appointed again this time around all at a cost to the tax payer.

[17] This Court has an inherent power to make directions and orders which are required to prevent an abuse of the Courts processes and I am not going to allow the Court's time to be wasted, and the tax payer's resources to be wasted by further applications from [EC].

[18] I make a direction that no such applications may be accepted for filing without my express leave.

Judge TM Black
Family Court Judge
02/10/2017 10:08 am