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**IN THE FAMILY COURT
AT WELLINGTON**

**I TE KŌTI WHĀNAU
KI TE WHANGANUI-A-TARA**

**FAM-2018-035-000040
[2019] NZFC 1170**

IN THE MATTER OF THE PROTECTION OF PERSONAL AND
PROPERTY RIGHTS ACT 1988

BETWEEN MARTHA TIERNEY
Applicant

AND HENDRICK GEZINUS DIJKSTRA
Respondent

BARBARA JANE DIJKSTRA
Other Party/Person

ELIZABETH HALLEY
Other Party/Person

GEZINUS DIJKSTRA
Person in respect of whom the application is
made

Hearing: 18 February 2019

Appearances: E-J Tucker for the Applicant
No appearance by or for the Respondent
No appearances by or for the Other Parties
K O'Brien for the Subject Person

Judgment: 18 February 2019

ORAL JUDGMENT OF JUDGE T M BLACK
(Results decision)

[1] There are a number of applications which are before the Court: firstly, Mrs Tierney's application to be appointed as Mr Dijkstra's welfare guardian; secondly, an application to review Mr Dijkstra's actions as attorney; thirdly, an application to have Mr Dijkstra and Ms Dijkstra-Morey removed as property and welfare attorneys, respectively; and finally an application for the appointment of Public Trust as property manager.

[2] This is a results decision. I will give full reasons at a later date.

[3] I am satisfied that it is appropriate that I review Mr Dijkstra's decisions, and particularly in relation to payments made by Mr Dijkstra for his benefit and/or for the benefit of his wife. I am satisfied that those decisions and payments were beyond the scope of the power of attorney granted to Mr Dijkstra in 2012.

[4] I have been provided with an amount in respect of which Mrs Tierney seeks the attorney to repay Mr Dijkstra Snr, in Mrs Tucker's submissions, also a schedule setting out an analysis of the payments made and receipts provided.

[5] Mrs Tierney seeks a direction pursuant to s 103 that Mr Dijkstra refund to the subject person the amount of \$136,766.31. I make that order.

[6] The next issue I need to deal with is whether Mr Dijkstra and Ms Dijkstra-Morey should remain as attorneys. I am satisfied they should not. The application is granted. The appointments of those persons are revoked pursuant to s 105. I am satisfied the grounds under s 105(a) are established, and I note that that course of action is supported by Mr O'Brien.

[7] There is then the question of whether I should appoint Mrs Tierney as welfare guardian. My concern about making that appointment is primarily that it runs the risk of further litigation in relation to Mr Dijkstra. It may be that litigation will occur in

any event but, following discussion, there is agreement that I should make an amended personal order in the terms of the draft handed up today and on the basis that the welfare guardianship application is adjourned to a case management review on 31 May for Mrs Tucker to advise whether Mrs Tierney seeks the resumption of the hearing in relation to that application.

[8] In the meantime, the personal order made by me on 30 November of last year and subsequently varied is discharged, and I make a further interim personal order in terms of the draft order handed up today. That order will become final on 31 May if resumption of the welfare guardianship hearing is not sought.

[9] Mrs Tucker signals an intention to make an application for costs. Any such application and submissions in support of it should be filed and served by 15 March 2019, any response from Mr Dijkstra and/or Mrs Dijkstra-Morey by 5 April 2019. The file should then be referred to me and I will deal with the question of costs on a chambers basis.

[10] I make an order that lawyer for the subject person's costs are to be met from the consolidated fund in the particular circumstances of this case.

[11] The Public Trust is appointed as property manager for Mr Dijkstra, all schedule 1 powers.

Judge TM Black
Family Court Judge

Date of authentication: 27/02/2019

In an electronic form, authenticated pursuant to Rule 206A Family Court Rules 2002.