

SHERIFFDOM OF NORTH STRATHCLYDE AT PAISLEY

[2024] SC PAI 49

PAI-AW150-23

JUDGMENT OF SHERIFF BRIAN A MOHAN

in Summary Application

by

ALEX GRADY

Applicant

against

RUTH GRADY

First Respondent

WENDY BARRETT

Second Respondent

In respect of
the Adult AGNES GRADY, residing in [] Care Home, Renfrewshire

Applicant: Taylor, solicitor; TC Young
Respondents: McNamara, solicitor; MSM Solicitors

PAISLEY, 31 October 2024

Introduction

[* Pseudonyms have been used throughout this published judgment to preserve the privacy of the Adult and the parties.]

(1) This is an application for guardianship made under the Adults with Incapacity (Scotland) Act 2000. The Adult is Agnes Grady, aged 84; she has dementia. She has four children. The applicant is one of her sons and seeks appointment as her welfare and financial guardian. The respondents are her two daughters; they seek their joint

appointment as welfare and financial guardians. The applicant and respondents have a poor relationship. They disagree about the care arrangements for their mother. The Chief Social Work Officer of East Renfrewshire Council was appointed by the court as an interim guardian at an early stage in these proceedings, to allow the Adult's discharge from hospital.

(2) The sheriff, having resumed consideration of the cause:

FINDS IN FACT

The Adult

1. The Adult is Agnes Grady, born []. She is 84 years of age. She formerly resided at [], Barrhead. She is currently resident in [] Care Home, Barrhead.
2. The Adult has four children, these are Wendy Barrett, Donald Grady, Alex Grady and Ruth Grady.

The applicant

3. The applicant is Alex Grady, aged 57. He resides at [], Barrhead. The applicant is the joint owner of that property with his mother, the Adult. The property was purchased from the local authority in their joint names, and the applicant pays a mortgage secured over the property.
4. The applicant was formerly employed on cruise ships as a musician. This required him to be at sea for various periods of time ranging from weeks to months. Since the Covid-19 pandemic, the Applicant has returned to live at []. He has been employed in different jobs since then, although he has not returned to work on cruise ships.

The respondents

5. The first respondent is Ruth Grady, who resides in [], Barrhead. She is aged 59.

The second respondent is Wendy Barrett, who resides in [], Barrhead. She is aged 63 and retired. She is the oldest of the Adult's children.

6. There is another son of the Adult, named Donald Grady. He is supportive of the respondents' application and does not support the applicant in his request to be appointed as guardian.

The Adult's health

7. For several years prior to 2023, the Adult lived at [], Barrhead. She was independent-minded and often resisted outside help. When the applicant was working away on cruise ships, she received assistance within her home from her three other children, all of whom lived nearby.

8. Following the outbreak of the Covid-19 pandemic and consequent lockdowns in 2020, the applicant was unable to continue his employment on cruise ships and returned home. He lived with his mother at [], Barrhead. Relations between the applicant and his siblings (his sisters - the respondents - and his brother Donald) were strained. He did not speak to his sisters and brother when they visited their mother. The applicant eventually changed the locks to the property and did not provide them with a key, to limit their access.

9. The Adult continued to attempt to live independently. She resisted the use of a walking frame within the house, even though one was provided. This made her prone to falls because of her failing physical health.

10. In October 2022, a referral was made to the local authority's Adult Support and Protection team because the applicant did not allow carers to enter the home to support his mother.
11. In March 2023, an ambulance attended at the Adult's home in Barrhead because she had suffered a fall. The report had been made by a neighbour. The applicant was resistant to the involvement of the paramedics. After further investigation, the local authority's Adult Support and Protection team concluded that the applicant was suffering from "carer stress" and took no action.
12. Over the period of 2022 to 2023, various other reports to social work were made by the respondents about the applicant's care of his mother. Social work found it difficult to distinguish between genuine reports and those which merely reflected disagreements between the siblings.
13. In May 2023, the Adult suffered a fall within her home and was admitted to the Royal Alexandra Hospital in Paisley (the RAH). She has not returned to live in her home in [] since that time.
14. While in the RAH, the Adult was diagnosed with dementia.
15. After some months as an in-patient the Adult no longer required to remain in hospital. However, her children were unable to agree on suitable arrangements for her care. This delayed her discharge from hospital.
16. On 12 December 2023, the Chief Social Work Officer of East Renfrewshire Council was appointed as interim welfare guardian for the Adult. Following that appointment, in January 2024 the Adult was moved from hospital to reside in [] Care Home in []. She still resides in that facility.

FINDS IN FACT AND LAW:

1. The Adult, Agnes Grady (born []) is incapable of making decisions about her property, financial affairs and personal welfare.
2. The Adult is likely to continue to be so incapable.
3. The applicant is not suitable for appointment as welfare guardian to the Adult.
4. The applicant is suitable for appointment as financial guardian to the Adult.
5. The respondents are not suitable for appointment as welfare or financial guardians to the Adult.

FINDS IN LAW

1. No means other than the appointment of a welfare and financial guardian would be sufficient to enable the Adult's interests in her property, financial affairs or personal welfare to be safeguarded or promoted.
2. In all the circumstances, it is appropriate to appoint the Chief Social Work Officer of East Renfrewshire Council as welfare guardian to the Adult.

THEREFORE:

Sustains the applicant's first and third craves,

Repels the applicant's second and fourth craves,

Repels the respondent's first, second, third, fifth and sixth craves and their first, second and third pleas in law,

And in terms thereof

1. Appoints the Chief Social Work Officer of East Renfrewshire Council to be welfare guardian of Agnes Grady, whose date of birth is [], who resided formerly at []

and who is currently a resident at [] Care Home, [] for a period of 2 years from the date of this interlocutor, and confers upon the welfare guardian the following powers in relation to the Adult's personal welfare in terms of section 64 of the Adults With Incapacity (Scotland) Act 2000, namely to:

- (a) decide where the Adult should live, whether permanently or temporarily, to decide all aspects of her accommodation arrangements, including what facilities and services should be provided to her in conjunction therewith, and to decide and authorise such measures as may reasonably be required to ensure the Adult's safety and security;
- (b) convey the Adult to and from her accommodation for the time being for medical and/or social purposes as the guardian deems appropriate;
- (c) take medical advice and following clinical opinion consent to any medical treatment or procedure or therapy of whatever nature which is for the benefit of the Adult and power to provide access for that, or refuse such consent if not for the benefit of the Adult;
- (d) assist the Adult in attending to her medical, dental and nursing needs;
- (e) assist the Adult in all aspects of her personal care, including washing, dressing and toileting;
- (f) make decisions concerning the Adult's dress, diet and personal appearance;
- (g) exercise any rights of access which the Adult has in relation to personal data and records;
- (h) assist the Adult in accessing appropriate social activities and to make decisions about the Adult's social and cultural activities including the nature and extent thereof and matters related thereto;

- (i) make decisions concerning the Adult's involvement in holidays and cultural or social activities;
 - (j) sign any deed or other document necessary to enable the guardian to implement the powers granted by this order;
2. Appoints the applicant Alex Grady residing at [], to be financial guardian of the said Agnes Grady for a period of 2 years, conferring on the said Alex Grady the powers in terms of section 54(1)(d) of the said Act to manage all parts of the property and financial affairs of the Adult and, without prejudice to the generality of that power, power in terms of 64(1)(a) of said Act to deal with the following particular matters relation to the Adult's property and financial affairs, namely to:
- (a) collect, sue for, receive, discharge and settle all sums, property or rights due or which may become due to the Adult including claiming all benefits and negotiating and appealing such claims;
 - (b) draw cheques on and sign forms of withdrawal to uplift money from, or credit money to, or open or close, any account in the Adult's name including accounts held in common with other persons, on behalf of and for the benefit of the Adult;
 - (c) authorise expenditure for any service or the purchase of any item which is required for the Adult's benefit and pay any accounts incurred by the Adult or for the Adult's benefit to include payment for private medical care and residential care costs;
 - (d) invest any sum or sums which may be available for investment in such way as the guardian may think best; vary the terms of any investment and

purchase any heritable or moveable property which would benefit the Adult;

- (e) exchange, sell or lease by any method any part of the means and heritable or moveable estate, wherever situated, from time to time belonging to the Adult; and in particular to sell (with consent of the Public Guardian as appropriate) the Adult's interest in the heritable property at [], being the whole subjects registered in the Land Register of Scotland under Title Number []; to terminate all utility services to said property; to dispose of all moveable contents belonging to the Adult that the Guardian considers appropriate; and generally do anything else necessary or appropriate in connection therewith, including registering this Court's Interlocutor in the Land Register of Scotland in respect of the aforementioned title;
- (f) have access to any information regarding the Adult's financial affairs;
- (g) give up and sign on behalf of the Adult all returns, claims and forms which may be required in connection with the Adult's liability to taxation;
- (h) raise or defend or compromise any actions or judicial or other proceedings in which the Adult is or may be interested so far as the guardian may consider necessary or expedient; refer to arbitration any questions or disputes in which the Adult is or may become involved; appeal against, enforce or implement any judgement, order or award; and appear or instruct appearance on the Adult's behalf before any tribunal, commission or other official inquiry;
- (i) administer and manage any heritable property wherever situated in which the Adult may be interested; repair, maintain, renew and improve the same,

grant, accept, vary and terminate leases and rights of tenancy or occupancy;
all as the guardian may think proper as if he were the owner of the property;

- (j) to open, read, attend to and, as appropriate, reply to any mail or any other correspondence or communication addressed to or received by the Adult on his behalf or to make arrangements for such mail to be dealt with accordingly;
- (k) have access to confidential information about the Adult's will and other testamentary provisions;
- (l) sign any deed or document necessary to enable the guardian to implement the powers granted by this deed;
- (m) to grant any consent or renunciation or any right or interest which the Adult has (including without prejudice to the said generality to any power of appointment interest in possession/life rent or other such interest is also in terms of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 as amended or any statutory restatement or re-enactment thereof and also any Affidavit required under the said legislation) and that in such terms and conditions or in such basis as the Financial Guardian may in his sole discretion see fit in the furtherance of the Adult's interest; and to grant any stamp duty Land Tax, Land Transaction return on the Adult's behalf;
- (n) employ solicitors, factors, stockbrokers, investment managers, bankers or other agents, and delegate to them such powers as the guardian thinks fit; and pay to them the usual professional remuneration from the Adult's estate;

3. Orders said Alex Grady to find caution in the sum of £65,000 and that within 28 days of the issue of the extract decree containing this order, and thereafter to find caution at 100% of the estate as at year-end review by the Public Guardian.
4. Makes no award of expenses to or by either party.

NOTE

[1] On 1 September 2023, the applicant lodged this summary application seeking orders for welfare and financial guardianship in respect of his mother Agnes Grady, the Adult. She was then 83 years old and had been a hospital in-patient at the RAH in Paisley for some months. The applicant's three siblings received notice of the summary application. Two of them - sisters Wendy and Ruth - sought their own joint appointment as guardians in their response. The essential and relevant facts of the case were undisputed. All parties agreed that their mother has dementia (there are now four medical and two MHO reports in process confirming this). All parties agreed that by late 2023 she was ready to be discharged from hospital, but that she could not return to live in her old home. However, this action became unnecessarily long, fraught and cumbersome, all because of an underlying dispute between the parties and their unwillingness to find common ground on matters concerning their mother's care.

[2] On 12 December 2023, following the preparation of a report by a safeguarder, the chief social work officer of East Renfrewshire Council was appointed by this court as interim welfare guardian in terms of section 57(5) of the Adults with Incapacity (Scotland) Act 2000. This was to enable the Adult to be moved out of hospital pending resolution of the competing guardianship applications. The interim guardian moved her to [] Care Home in Barrhead in January 2024. There were numerous further callings of the case via the Webex

platform to try and resolve this matter. The siblings all participated in these hearings and were represented. Discussions between their solicitors took place, but no agreement could be reached about who should be appointed as guardian, with each party opposing the application of the other and insisting on their own appointment. Consequently, an evidential hearing became necessary (*Aberdeenshire Council v JM* [2016] 2018 SC 118, para [23]; *Boyle v Denton* [2024] SAC (Civ) 20, paras [34] - [37]). The interim appointment of the chief social work officer was renewed and the last such appointment for a period of 3 months was made on the day of the proof in this case.

[3] The proof took place on 28 August 2024. The evidence was all by affidavit, followed by oral submissions from the solicitors. The dispute was about the suitability - or not - of the applicant (individually) and the respondents (jointly) as financial and welfare guardians.

[4] The applicant's case was supported by:

1. Medical report by Dr Gary Morrow (dated 10 August 2023),
2. Medical report by Dr Alisdair MacRae (15 August 2023),
3. Mental Health Officer (MHO) report by Ms Claire Stevenson (29 August 2023),
4. Affidavit of Claire Stevenson (author of the MHO Report),
5. Affidavit of the applicant,
6. A reference by a former colleague of the applicant, BD.

[5] The respondents' case was supported by:

7. Medical report by Dr Brian Hart (2 December 2023),
8. Medical report by Dr Antony McElveen (5 December 2023),
9. MHO report by Ms Karen Martin (6 December 2023),
10. Affidavit of the first respondent,
11. Affidavit of the second respondent,

12. Affidavit of Karen Martin (author of the respondents' MHO Report),

13. Affidavit of SC.

[6] I also had the benefit of two reports prepared by a court-appointed safeguarder:

14. Report by Mr Mark Ralston (30 October 2023),

15. Supplementary report by Mr Mark Ralston (12 August 2024).

Factual background

[7] The Adult formerly lived at [] Barrhead. She had been a council tenant and purchased the property several years ago under "right to buy" legislation. The applicant (her son Alex) helped to fund the purchase. They became joint owners, and he paid the mortgage. They both lived in the house, although the applicant worked away for long periods of time as a musician on cruise ships. The Adult's other three children - Wendy and Ruth (the two respondents) and Donald - all lived locally and paid regular visits to their mother in her home. The Adult managed living on her own quite successfully.

[8] When the Covid-19 pandemic struck, the applicant lost his work on cruise ships and returned home to live full-time with the Adult at []. Disagreements and tensions between the siblings came to the fore. The respondents and their brother Donald continued to visit their mother at various times. They offered her support and company as they had done when the applicant was away at sea. There was poor or no communication between them and the applicant when they visited. He stayed in a different part of the house while they were present.

[9] The applicant considered that his siblings' frequent visits were unhealthy for their mother. He believed that she was drinking too much tea and coffee at different times of the day and eating too many cakes and biscuits, all causing her to gain weight and become

incontinent during the night. The applicant also believed that his mother was giving away money to his siblings too freely without understanding how much she was losing. He took control of her finances and restricted the amount of cash she kept in the house. He changed the locks of the house and did not provide a key to his sisters or brother, thereby restricting their access.

[10] Social work became involved because of the Adult's failing health and because of different reports made to them which highlighted the disagreements among the family members. The Adult herself resisted social work help. She was stubbornly independent. She had a walking aid in the house because of her failing physical health but refused to use this. As a result, she began to suffer falls within the home.

[11] Several events increased the concerns and highlighted the disagreements within the family:

1. In October 2022, there was a referral made to social work from the Adult's GP practice noting that the applicant was not allowing carers into the home, and reporting that family members were concerned at his derogatory approach towards his mother. Family also complained at that time that the applicant had gone abroad for work and not notified others, to allow them to provide care.
2. In March 2023, an ambulance was called to the home when neighbours reported that the Adult had suffered a fall. Paramedics observed the applicant as behaving in a controlling and defensive manner, that he was unhappy about the ambulance crew attending and was opposed to any further input. Social work made enquiries but took no further action and described the applicant as suffering from "carer stress".

3. Social work became aware of further complaints made by the first respondent (Ruth Grady) about the applicant. She reported to hospital staff that the applicant used cannabis within the house and practised as an “occultist”. Social work concluded that the applicant was supporting his mother to the best of his ability, but that there was clear family conflict resulting in his stressful reaction to outside enquiries.

[12] In May 2023 the Adult suffered a fall at home which required her attendance in hospital. She remained there for several months. Her cognitive function had declined and, while in hospital, she was diagnosed with dementia. She was only moved from hospital once interim orders were made in this action to allow social work to transfer her to a care home. The social work view was that she could not return to live within her home environment.

Relevant law

Adults with Incapacity (Scotland) Act 2000

“Section 59 Who may be appointed as guardian

- (1) The sheriff may appoint as guardian—
 - (a) any individual whom he considers to be suitable for appointment and who has consented to being appointed;
 - (b) where the guardianship order is to relate only to the personal welfare of the adult, the chief social work officer of the local authority.
- (2) Where the guardianship order is to relate to the property and financial affairs and to the personal welfare of the adult and joint guardians are to be appointed, the chief social work officer of the local authority may be appointed guardian in relation only to the personal welfare of the adult.

- (3) The sheriff shall not appoint an individual as guardian to an adult unless he is satisfied that the individual is aware of—
 - (a) the adult's circumstances and condition and of the needs arising from such circumstances and condition; and
 - (b) the functions of a guardian.

- (4) In determining if an individual is suitable for appointment as guardian, the sheriff shall have regard to—
 - (a) the accessibility of the individual to the adult and to his primary carer;
 - (b) the ability of the individual to carry out the functions of guardian;
 - (c) any likely conflict of interest between the adult and the individual;
 - (d) any undue concentration of power which is likely to arise in the individual over the adult;
 - (e) any adverse effects which the appointment of the individual would have on the interests of the adult;
 - (f) such other matters as appear to him to be appropriate.

- (5) Paragraphs (c) and (d) of subsection (4) shall not be regarded as applying to an individual by reason only of his being a close relative of, or person residing with, the adult."

Applicant's submissions

[13] The applicant sought an order for welfare and financial guardianship. His position can be summarised as follows:

- (a) He had the trust of his mother, the Adult, and had a good relationship with her.

- (b) He had a new part-time job and was likely to remain living in the house at [], and not return to working on cruise ships. Even if he was to obtain employment which involved working away, modern communication and his mother's residence within the care home setting meant that he would be available to fulfil the duties of a guardian.

- (c) The Mental Health Officer had knowledge of the background. Even taking account of the conflict within the family and the applicant's difficulty in dealing with social work, her professional view supported his appointment.

- (d) He had shown since his mother's admission to hospital that he was willing and able to take advice from health professionals. By contrast, the respondents - and particularly his sister Ruth (the first respondent) - were not willing to accept advice about the best place for their mother to live. Ruth showed a stubborn state of mind and would not listen to outside views.
- (e) [] Care Home was the best place for the Adult. The respondents wanted to move her from there despite professional advice to the contrary.
- (f) When considering section 59(3) of the Act (awareness of the Adult's needs and circumstances), he was well aware of his mother's needs and had been her primary carer for several years.
- (g) Taking account of section 59(4)(c) (likely conflict), there was no conflict of interest. Both he and his mother were joint owners of the house at []. This was not a difficulty. He paid the mortgage. There had been no suggestion that the house required to be sold for her care costs. That had simply not been raised as an issue.
- (h) There was no getting away from the personal conflict within the family, but viewing the matter objectively, the respondents could not be considered as suitable for appointment. They had unrealistic views about moving the Adult out of a care home to live with one of them. They had no experience in managing her finances.
- (i) So far as the application for financial guardianship was concerned, the applicant had proved adept at this and could be trusted to manage his mother's money. Even the respondents appeared to accept that he had done well in that regard.

Respondents' submissions

[14] The respondents maintained that they were suitable for appointment as both welfare and financial guardians on a joint basis. Their arguments could be summarised as follows:

- (a) On the test of "accessibility" under section 59(4)(a) of the Act, the respondents both lived in [], close to where the Adult had formerly resided and close to the care home. This contrasted with the applicant. Although he was living at [], he had made clear his wish to return to work on cruise ships. He had even said this to the safeguarder, notwithstanding his claim that he now had a part-time job and was settled in [].
- (b) Following the Adult's admission to hospital in May 2023 the applicant had sometimes been unavailable to medical staff when they tried to contact him. This was confirmed in the independent NHO report which he had instructed.
- (c) The respondents' NHO report demonstrated that they were suitable for appointment and was supportive of their application.
- (d) The respondents had a good knowledge and understanding of the Adult's needs and could work together.
- (e) Under section 59(4)(c) there would be no conflict of interest in the respondents' appointment. This contrasted with the applicant's situation. His joint ownership of the Adult's home could create a potential conflict of interest if, for example, this required to be sold to pay care home costs and he opposed this.
- (f) Turning to section 59(4)(d) (undue concentration of power), this was a relevant consideration if the applicant were to be appointed as welfare and financial guardian. As well as being joint owner of the home, he had already

demonstrated controlling behaviour towards his mother and this had been observed by professionals who were called at crisis moments. He was unwilling to engage with social work. Left to his own devices, he would be unlikely to communicate with other family members because of the personal animosity between them.

- (g) The respondents were open to considering [] Care Home as the appropriate place for their mother to reside. Their initial resistance to this placement arose because of the history of their mother's medical condition and her admission to hospital. They did have concerns about standards within the care home and the risk that the Adult's needs were not being met. She was left in her room all day and lacked stimulation. Although she had dementia, there were periods of lucidity and a more stimulating environment was required. It was a possibility that she could live with family members. The affidavit from a former worker in the care home demonstrated that she stood out as someone who did not necessarily need to be there. The respondents simply wanted the ability to make the appropriate decision about where their mother was to live, as part of their duties as welfare guardian.
- (h) In terms of section 59(4)(f) (other circumstances), it was wrong of the applicant to suggest that the respondents were financially motivated. The applicant had claimed this in his affidavit and made wild accusations about the partner of one of the respondents visiting and making threats to him to withdraw his claim for guardianship. There was nothing to support this.
- (i) Before the Adult developed dementia, the respondents had actively considered a power of attorney, a step which they were proposing to take with the

agreement of the Adult. She was comfortable with the respondents and would be happy knowing that her daughters - who were ever-present - were the ones making decisions about her welfare and finances. The Adult was aware of the conflict within the family and, if the respondents were appointed as joint guardians, this would give her peace of mind.

Analysis of the evidence

[15] The children of the Adult are at loggerheads, with the applicant on one side and his two sisters (the respondents) and brother on the other. The applicant previously lived with the Adult and jointly owns the former family home which was purchased from the local authority. He seeks appointment as the sole welfare and financial guardian to his mother. The respondents seek their own appointment as joint welfare and financial guardians. All of those applying to be guardian or joint guardians have lodged the relevant medical reports and separate Mental Health Officer reports supporting their application.

Applicant

[16] The applicant formerly worked as a musician on cruise ships and was away for months at a time until the Covid-19 pandemic. When he was furloughed, he came home and took control of the situation which he found in the home he shared with his mother. His view was that the rest of the family were ever-present (he described them as “camping out”) in the house. For reasons which are unclear and irrelevant to the present determination, there was already a poor relationship between them. This all led to further tension and stand-offs; members of the family were spending time in different parts of the house during visits. The applicant considered that his siblings were not behaving in ways

which helped their mother; he thought they fed her too many cakes and biscuits and gave her too much tea and coffee. As a result, her general health deteriorated (she gained weight) and she had to visit the toilet too often at night. He changed the locks in the house preventing his siblings visiting except when he permitted. He restricted his mother's use of her bank account because he thought she was giving away cash too readily and was being exploited.

[17] Matters moved beyond mere disagreements between the siblings, however. The applicant's attitude towards carers and other workers became unhelpful. A number of Adult Protection concerns were raised by independent sources - the Adult's General Practitioner, Scottish Ambulance Service, and staff within the Royal Alexandra Hospital (this detail is contained within the applicant's own MHO report at page 18). Accordingly, there was a strong indication of the applicant exerting a degree of control, resistance to outside help, and possibly acting in a way which was detrimental to his mother's health. The applicant was frank with the safeguarder and told him that the situation was a strain, that it had ruined his career, that he would rather never see his siblings again, and that if he was able to obtain another cruise ship contract he would consider this. He has had other jobs since his return to live in [], but none have yet worked out satisfactorily (at least until the date of the proof, when I was told that he had started another job which he hoped would provide more stability). The applicant and his siblings have not spoken for some time, probably in excess of a year: in the first safeguarder's report the non-communication had lasted for some months, and the indications before me at the proof were that there had been no further direct discussions since.

[18] The Adult Protection enquiries prompted by independent bodies demonstrated a concerning approach from the applicant to the needs of his mother and the involvement of

his siblings in her life. His attitude appears to have arisen partly from what was described as “carer stress”, which is understandable. But his mother has not lived in the house with him for well over a year (she was admitted to hospital in May 2023). She then transferred to [] Care Home in January 2024. Despite various callings of the case and an awareness of the responsibilities of guardianship, the applicant has not tried to reach common ground with his siblings in the intervening period. He seems to hold a degree of resentment that he has required to make the application at all (he told the safeguarder that this application was being made at the instigation of social work). There is a contradiction in his application. He argues that his application to be appointed as his mother’s guardian should be preferred over his sisters’ counterclaim. Yet he has also stated that the whole process has ruined his career, and still appears to desire a return to his former employment on cruise ships. He cannot, of course, be criticised for wanting to resume what seems to have been a fulfilling career for him. However, this contradiction leads me to conclude that he would struggle to exercise the role of a welfare guardian. Notwithstanding the submissions made on behalf of the applicant, significant concerns remain. I am not at all sure how present the applicant would be nor how much he would be willing to communicate with his siblings. This is relevant, given that the second respondent, being the Adult’s oldest child, would retain the status of “nearest relative” under the Act, irrespective of who is appointed as guardian.

[19] The applicant favours the Adult remaining in the care home and thinks that the respondents are unrealistic in their outlook and expectations. He believes they are in denial about their mother’s condition and that they cannot see that it would be unsuitable for her return to a home setting because of her dementia. The applicant is supported in his application by the MHO Claire Stevenson.

Respondents

[20] The respondents have applied for their joint appointment as welfare and financial guardians. Although their application is contained within their Answers to the applicant's claim (as is competent), it appears that they were in the process of seeking a power of attorney or guardianship even before their mother's admission to hospital in May 2023. The respondents - together with their brother Donald who has not joined in the application - are united in their view. They took much involvement in the day-to-day care and interactions with their mother when the applicant was away working. When the applicant returned home because of Covid-19, they found a change in his attitude. He became difficult, hostile, and resistant to any visits or carers' intervention. He changed the locks in the house. He refused the Adult food and restricted her access to fluids. He controlled her money and gave her only £75 per week. He was hostile to ambulance staff when she had a fall. He seemed to think that, because he was joint owner of the house, this gave him the right to make all decisions relating to their mother's welfare and finances.

[21] The first respondent holds strong views. She thought that some of the difficulties with the Adult's health were being exaggerated. Her view appears to be that their mother should not be in a care home. During the course of this action she has made complaints about Claire Stevenson (the MHO who supports the applicant's claim), social work generally, and the standard of cleanliness within [] Care Home. She believes that a different environment would be suitable and that perhaps the Adult should move into a rented ground-floor flat with their brother Donald. She believes this would give the Adult more freedom, remove the need to use stairs, and allow the family better access.

[22] The first respondent is a strong character and has been vocal in expressing her disagreement with others about the care of the Adult. An indication of this was given in the

submissions before me. I was told that on one occasion the MHO Claire Stevenson was present in the Adult's care home when the respondents visited; she had experienced such a difficult time with the first respondent that she hid from her, to avoid another awkward encounter.

[23] However, it appears that the first respondent has been in denial about the extent of her mother's needs. She takes an unrealistic view of where her mother may live. She appears to have difficulty in listening to the professionals who disagree with her. She is prone to making complaints about her mother's care. An Adult Services Assessment conducted in July 2024 noted of the Adult that she was settled and comfortable in the care home and that "she would only like to return to her own home but if she cannot then she does not want to live with any of her other children as an alternative." (page 5 of 10 in Appendix to safeguarder's supplementary report). That observation appears simply to have been ignored by the first respondent because it did not match her entrenched view.

[24] The second respondent did demonstrate a somewhat broader outlook and a more rounded view of matters. She expressed some distress about the family fallout. While she could not see eye to eye with her brother Alex (the applicant), she did understand his wish for privacy within his own home. She recognised that the applicant had not reacted well and had kept the family out of the loop, although she noted that he was "meticulous" when it came to finances. The second respondent thought that her mother needed to be in a care setting although she was not entirely sure that [] Care Home was the best place for her. It was, however, located close to where the family all lived and this allowed regular visits. The applicant attended at different times from his siblings.

[25] The impression I formed is that the first respondent is the more forceful personality and would dominate decision-making if the two sisters were jointly appointed. The second

respondent, when discussing matters with the safeguarder in October 2023, expressed support for the first respondent becoming sole guardian, though in due course the respondents made a joint application. It is apparent that the first respondent has the louder voice. This is unfortunate since, if the second respondent's outlook had been replicated among her siblings, there may have been a greater prospect of agreement between the parties.

[26] I was unable to attach any weight to the affidavit lodged by the respondents from Mr SC, a former care worker at [] Care Home. Although he appeared to be sincere in his view that the Adult did not need the regime of a care home, his comments were at odds with the Adult Services Assessment compiled in July 2024 and with all the medical reports confirming the Adult's diagnosis of dementia. Furthermore, his views closely aligned with those of the respondents and did not appear objective, and it was not clear how professionally qualified he was to offer his strong opinions.

Safeguarder

[27] In October 2023 the safeguarder noted in his thorough and helpful first report:

“[T]he applicant is a reluctant applicant who...has no particular wish or desire to take on the duties and responsibilities of being a guardian with welfare and financial responsibilities. He is acutely aware of the dysfunctional nature of the family and the universal opposition among his siblings to his appointment being confirmed.....The Adult herself.... senses that all is not well within the family.”
(page 11)

[28] He also observed that, although the now second respondent acknowledged that the applicant was “very meticulous about finances”, his siblings were “united in their opposition” to his appointment.

[29] There is, therefore, a longstanding and deep-rooted level of disharmony within the family. The Adult appears to have attempted to appease her children and may have said different things to each of them prior to her diagnosis. Each party has clung to the view that their approach reflects their mother's views and is in her best interests. Despite these stark observations and disagreements being laid bare, and despite all parties acknowledging that this was unhelpful to the Adult (particularly since she was aware of the conflict) none of this prompted any change in attitude, or resolution of the dispute.

Conclusion

[30] When assessing suitability for appointment as guardian I have considered the terms of section 59 of the Adults with Incapacity (Scotland) Act 2000 (set out above). The considerations which loom large in this case are the need to consider:

- The Adult's circumstances and condition, and needs arising from such (section 59(3)(a)).
- Accessibility of the guardian to the Adult and her primary carer (section 59(4)(a)).
- Any undue concentration of power which is likely to arise in the individual appointed over the Adult (section 59(4)(d)).
- Any adverse effects which the appointment of an individual would (or may) have on the interests of the Adult: section 59(4)(e).
- Other factors: section 59(4)(f). Under this heading I have had to consider the conflict within the family and their inability to communicate with each other.

i. Welfare guardianship

[31] Progress in relation to the Adult's care only came about when the chief social work officer was appointed as interim welfare guardian. That led to the Adult's move from hospital to a care home, where she now seems settled and content. This has not resulted in any rapprochement between the siblings, however. They remain in dispute.

[32] If the applicant were appointed as welfare guardian, it is clear that he would decide to keep the Adult in [] Care Home. According to the safeguarder's supplementary report and the Adult Services Assessment appended thereto, this appears to be in her best interests. However, my conclusion is that it is likely the applicant may move away for work, thereby leaving a very awkward situation for welfare decision-making if he is to be abroad for much of the time. I have concluded also that communication with his siblings would not likely improve if he were appointed as welfare guardian, and he may be prone to shutting down any contact at all with his sisters and brother. The second respondent has a role as the nearest relative, and I am not persuaded that the applicant would properly respect or recognise that.

[33] In relation to the respondents' application for welfare guardianship my conclusion is that, if they were appointed, the Adult would likely be moved from [] Care Home. At an earlier hearing in the case (in March 2024) the respondents' sought their own appointment as interim welfare guardians specifically so that they could move their mother out of the care home and into a flat. Notwithstanding the second respondent's concession that a care home setting may be appropriate my assessment is that - because of the dominance of the first respondent's strong views - the respondents may seek to move her to unsuitable accommodation which does not meet her current needs. In addition, if the respondents

were to be appointed, I consider it likely that communication with the applicant would be limited or non-existent.

[34] I have therefore decided that neither the applicant nor the respondents should be appointed as welfare guardians. In exercise of the power available to me under section 59(1)(b) of the 2000 Act I have decided to appoint the chief social work officer of East Renfrewshire Council to be welfare guardian to the Adult for a period of 2 years.

ii. Financial guardianship

[35] The chief social work officer of the local authority may only be appointed as welfare guardian (section 59(2)). The only candidates for appointment as financial guardian in this case are the applicant individually or the respondents jointly. I have decided that the applicant would be a suitable person to exercise the powers of a financial guardian to the Adult. This is for the following reasons:

1. He is the joint owner of the house at [] together with the Adult. They both lived there together, and the applicant had an involvement in assisting the Adult with her finances for many years because of that background.
2. He took responsible control of the Adult's finances when he came home during the Covid-19 pandemic. Although his sisters complained about this, he did give his mother money to use and appears to have been motivated by a desire to stop her wasting or giving away cash without really knowing where it had gone. There was no allegation and I was given no example of any misuse of funds by him.

3. The second respondent accepted in discussion with the Mental Health Officer that the applicant had managed his mother's money well and was "meticulous" about it.
4. The supporting statement provided by a former work colleague of the applicant (BD) was limited in its relevance. Nevertheless, it did indicate that he and the applicant had previously worked in a bank together and this was confirmed in Ms Stevenson's MHO report. The applicant therefore appears to be good at managing money. He has also arranged and pays the mortgage over the house which he purchased with the Adult.
5. Even if the applicant were to resume employment on cruise ships and work abroad for long periods of time, modern communication facilities would allow him to exercise the powers of financial guardian, assuming that such decisions could not await his return.
6. There is nothing in the safeguarder's reports or in the two MHO reports to indicate that the applicant would be unsuitable as a financial guardian.
7. The need to find caution and to provide annual accounting of his intromissions should allay any general concerns which the respondents may have about the applicant's management of the Adult's finances.
8. The factors which I have concluded make the applicant unsuitable as welfare guardian (the likelihood that he may travel abroad and the irreconcilable conflict between the siblings) would not impact on his suitability or conduct as financial guardian.

[36] Accordingly, I have decided to appoint the applicant as financial guardian to the Adult for a period of 2 years. At the end of that period a re-assessment of both welfare and

financial guardianship can take place. There have been many changes in the last 18 months, with the Adult moving from her home to hospital for several months and then into the care home. In my assessment this makes it appropriate for the appointments as both welfare and financial guardian to be for only 2 years. A review of all circumstances at the end of that period will allow consideration to be given to re-appointment for a suitable time and to any changes which are appropriate to the roles after due reflection.

[37] The outcome of these findings is that I grant the applicant's first crave (for financial guardianship) and refuse his second crave (welfare guardianship). In keeping with these findings, I refuse all of the respondents' craves.

[38] In all the circumstances I make no award of expenses to or by either party.