

BARBADOS

[Unreported]

**IN THE SUPREME COURT OF JUDICATURE
HIGH COURT
CIVIL DIVISION**

No. 567 of 2016

IN THE MATTER OF THE MENTAL HEALTH ACT CAP. 45

BETWEEN:

MARIA ANNABELLE ELIAS

APPLICANT

AND

MARY CARMEN HYANCINTH LEVERS

RESPONDENT

Before the Honourable Madam Justice Margaret A. Reifer, Judge of the High Court

Dates of Hearing: 2017 April 25th, June 16th, July 17th, August 24th,

Date of Decision: 2018 January 12th

Appearances:

Ms. Hazelyn E. Devonish Attorney-at-Law for the Applicant

Ms. Duanna Peterson Attorney-at-Law for the Respondents

RULING

Introduction

- [1] This matter began by Fixed Date Claim Form filed April 22nd, 2016 in which the Applicant Maria Elias sought to act as Receiver of Mary Hyacinth Levers under the **Mental Health Act** of the **Laws of Barbados Cap. 45**.
- [2] **Section 17** of the **Mental Health Act** empowers the Court on being satisfied, by the submission of medical evidence, that a person is incapable by reason of mental disorder, of managing and administering their property and affairs, to make such an Order.
- [3] “Mental disorder” is defined in the interpretation section of the Act as “mental illness, arrested or incomplete development of mind, psychopathic disorder and any other disorder or disability of mind”.
- [4] Most of the present day applications deal with patients suffering from Alzheimer’s, age related dementia and to a lesser extent other disorders or disability of the mind. Given the increase in applications of this nature, it has become clear that the current legislation needs amendment or alternatively a new statutory or legislative regime, similar perhaps to the UK’s **Mental Capacity Act 2005**.
- [5] In accordance with the requirements of the **Mental Health Act** and the **Mental Health Rules, 1984**, the Applicant filed a Notice of Originating

Proceedings, which was served on the Intended Patient on the 3rd May 2016 in the presence of her housekeeper/caregiver (Rule 25). Also filed and ordered served were an Affidavit in Support and a document titled Statement of Expenditure of equal date (this satisfies the requirement for an Affidavit of 'Fortune': Rule 36 (1)).

[6] What these documents evidenced was that the Applicant was seeking to concretize/legitimize a de facto arrangement, by which the Applicant had been managing the affairs of the Intended Patient, an 89 year old retiree for the period 2010 to 2016. She deposed that Mrs. Levers asked her sometime in 2010, when she was 82 years old, to assist her in managing her finances, and from that time the Applicant paid the utility bills, did the shopping and took the Intended Patient to the Bank.

[7] In 2014 the Intended Patient gave the Applicant full access to her finances by making her a signatory to her Bank account in the presence of and under the supervision of her only known next of kin, a Mr. Terrance Drayton. Also in 2014, the Applicant's area of responsibility widened as the Intended Patient's physical and mental circumstances deteriorated. In that said year, the Applicant became involved in making medical decisions for the Intended Patient after she sustained a fall at her home. Initially, the Applicant placed the Intended Patient in the Gentle Folks Nursing Home, but after the

Intended Patient became distressed at being away from her home and pets, after 19 days at that Nursing Home, the Applicant returned her to her home, and employed Ms. Norma Slocombe to care for the Intended Patient on a daily basis. Ms. Slocombe lives within a short walking distance of the Intended Patient.

- [8] The application to the Court was first advised in 2015 when the Applicant observed a deterioration in the mental health of the Intended Patient and sought the medical opinion of a Dr. Hawkins-Voss, who diagnosed dementia. The Applicant consulted with the cousin/next of kin of the Intended Patient who resides in the United States, and the decision was made that she should seek the Court's approval to be appointed as the Receiver of the Intended Patient.

The Course of the Proceedings

- [9] This matter has been before this Court since June 2016. It was filed together with the two documents above-mentioned, but through Directions, further Affidavits and several dates of hearing, the matter has reached the stage of this Ruling.

- [10] The following further Affidavits now form part of the record:

1. The Supplemental Affidavit of Maria Annabelle Elias filed October 5th 2016;
2. The Affidavit of Anna Hill filed March 1st 2017;
3. The Affidavit of Alaina Hill filed March 1st 2017;
4. The Further Supplemental Affidavit of Maria Annabelle Elias filed June 13th 2017;

5. The Supplemental Affidavit of Anna Wall-Hill file June 16th 2017.

[11] Together these Affidavits outlined, inter alia, the “kindred” information that enabled this Court to make Orders for service of Notice of these proceedings on next of kin and any or all persons having an interest (Rule 11); it enabled the Court to assess the “fortune” (Rule 36), that is the financial resources and financial needs of the Intended Patient, and to examine and evaluate the current and proposed care arrangements of the Intended Patient.

[12] From this process arose a challenge to the Application by Respondents Anna and Alaina Hill, who have submitted their proposed care arrangements.

[13] Orders to date have been with respect to information gathering and no substantive or interim Orders (appointment of Receiver) have been made.

Issue for Determination

[14] The issue of whether Maria Levers should be declared a Patient poses no challenge on the medical evidence before this Court. It is evident that she is incapable of taking care of herself and managing her financial affairs. What has to be determined is which of the parties, either Maria Elias singly or Anna and Alaina Hill jointly, should be appointed her Receiver[s] under the Mental Health Act. What is in the best interests of the Intended Patient?

The Evidence

[15] Evidence in this matter has been provided by the Affidavits of the parties and by their oral evidence before this Court. All parties were cross-examined. The Court thought it advisable to conduct a site visit. No sworn evidence was taken at the site visit, but there was some interaction and exchanges that afforded this Court an opportunity to make some observations.

Discussion

The Statutory Framework: The Mental Health Act, Cap. 45

[16] The statutory framework for the making of these applications is to be found in the **Mental Health Act Cap. 45**, ‘an Act to provide for the care and treatment of persons of unsound mind and related matters. Part IV titled, ‘Management of property and affairs of patients’, **Sections 17 to 28** provide the statutory framework.

[17] Section 17 gives jurisdiction to the Court to deal with matters of this nature as follows:

“17 (1) Where the High Court, after considering medical evidence, is satisfied that a person is incapable, by reason of mental disorder, of managing and administering his property and affairs, the court may exercise the powers conferred on it by this Part.”

[18] Sections 18, 21 and 22 are instructive (setting out the general powers of the Court as it relates to the management and affairs of the patient and the power to appoint a receiver) and provide as follows:

“18. (1) The court may, with respect to the property and affairs of a patient, do or secure the doing of all such things as appear to be necessary or expedient

(a) for the maintenance or other benefit

- (i) of the patient, or
- (ii) of members of the patient's family;

(b) for making provision for other persons or purposes for whom or which the patient might be expected to provide if he were not suffering from mental disorder; or

(c) otherwise for administering the patient's affairs.

(2) Subject to subsection (3), in the exercise of powers conferred on it by section (1) the court shall have regard to the requirements of the patient.

(3) The rules of law that, immediately before the commencement of this Act, restricted the enforcement by a creditor of rights against the property, under the control of the court, of a person found to be of unsound mind continue to apply to property under the control of the court by virtue of this Part.

(4) Subject to subsections (2) and (3), the court shall, in administering the affairs of a patient, have regard to

- (a) the interests of creditors; and
- (b) the desirability of making provision for obligations of the patient, notwithstanding that they may not be legally enforceable.

(5) For the purpose of this Part "family" includes "child", "spouse" and "dependant" within the meaning of the *Succession Act*.

22. (1) The court may make an order appointing as receiver for a patient a person specified in the order or the holder for the time being of an office so specified.

(2) A receiver appointed under subsection (1) shall do all such things in relation to the property and affairs of the patient as the court, in the exercise of the powers conferred on it by sections 18 and 19, orders or directs him to do and may do any such thing in relation thereto as the court, in the exercise of those powers, authorises him to do.”

The Mental Health Rules 1984

[19] The Mental Health Rules were implemented on the 13th March 1989 by the Judicial Advisory Council under the authority of **section 27** of the **Mental Health Act**, to make rules of court for the conduct of proceedings before the High Court, with respect to persons suffering or alleged to be suffering from mental disorder.

[20] Subsection (2) provides an insight into the responsibility vested in a Court in undertaking a task of this nature. It provides as follows:

“(2) Notwithstanding the generality of subsection (1), rules of court made thereunder may make provision

- (a) as to the carrying out of preliminary or incidental enquiries;
- (b) as to the persons by whom and the manner in which proceedings may be instituted and carried on;
- (c) as to the persons who are entitled to be notified of, to attend or to take part in, proceedings;
- (d) as to the evidence that may be authorised or required to be given in proceedings (whether on oath or otherwise and whether orally or in writing) in which it is to be given;
- (e) as to the administration of oaths and taking of affidavits for the purposes of proceedings;
- (f) as to the enforcement of orders made and directions given in proceedings;
- (g) for authorising or requiring the attendance and examination of persons suffering from mental disorder, the furnishing of information and the production of documents;
- (h) as to the termination of proceedings, whether on the death or recovery of the person to whom the proceedings relate or otherwise and for the exercise, pending the termination of the proceedings, of powers exercisable under this Part in relation to the property and affairs of the patient;
- (i) as to the scale of costs, fees and percentages payable in relation to proceedings and as to the manner in which and the funds out of which such costs, fees and percentages are to be paid; for charging any percentages upon the estate of the person to whom the proceedings relate and for the payment of costs, fees and percentages

- within such time after the death of the person to whom the proceedings relate or the termination of the proceedings as may be provided by the rules and for the remission of fees and percentages;
- (j) for the making of orders for the payment of costs to or by persons attending or taking part in proceedings;
 - (k) as to the giving of security by a receiver and the enforcement and discharge of the security;
 - (l) for the rendering of accounts by receivers or persons, not being receivers, ordered, directed or authorised under this Part to carry out any transactions.

The Relationship of the Litigants to the Intended Patient

[21] None of the parties purport to be a blood relative or next of kin. The Applicant purports to act, however, on the direction of the Intended Patient's only known relative, Mr. Terrance Drayton, who resides in New York.

[22] The Applicant, past age 60, has known the Intended Patient from childhood as she and her mother were close friends of the Applicant's mother, herself now deceased. The Intended Patient emigrated to the United States in the 1950s, married and divorced there before returning to Barbados after 1989, the year of her retirement. The Applicant deposes that since her divorce there has been no spouse within the meaning of the Succession Act, nor does she have any children.

[23] The Applicant maintained a relationship with the Intended Patient over the years, and it was at the home of the Intended Patient that she stayed whenever she visited New York in the 70s and after. She is also acquainted with a cousin of the Intended Patient, still resident in New York, who visits from time to time, and who oversees her efforts in the care of the Intended

Patient and assists with her care. It was after discussion with this cousin that she decided to make this Application to the Court.

[24] The Respondents, Anna Wall-Hill and her daughter Alaina Hill are respectively a longstanding family friend and one of several god-daughters of the Intended Patient. It is not disputed that the Intended Patient has played a role in the life of her god daughter, and she (Alaina Hill) deposes that the Intended Patient has played an instrumental role in her upbringing as well as her emotional and religious development.

[25] The Respondent Alaina Hill features prominently in the Last Will and Testament of the Intended Patient; she is named as the sole Executrix and Trustee of the Will, and together with another beneficiary will inherit the Intended Patient's home. This Respondent as well as the Applicant is one of several residuary beneficiaries under the said Will of the Intended Patient.

[26] Prior to 2015 Anna Hill played a role in the care of the Intended Patient, but admittedly reduced her visits because of hostility between herself and the Applicant, who was also involved in the Intended Patient's care, and of whose motives she was deeply suspicious.

The Care Arrangements (Current and Proposed)

[27] The Intended Patient has been fully cared for by the Applicant since 2015 when she sustained a fall at her home and started displaying signs of

dementia. She has not walked since that time, has suffered debilitating pains in her knees and is bed-ridden. She is cared for by daily help and the Applicant, who substitutes when the daily carer is unavailable. The Statement of Expenditure filed April 22nd 2016 shows that a monthly Federal Pension from the United States covers her basic monthly expenses. There is an overseas account (Citibank, N.A.) which carries a moderate cash balance.

[28] She is covered for Medical Insurance under a health insurance policy managed by the United States Blue Cross Blue Shield Federal Employee Program.

[29] The Intended Patient has made arrangements for her funeral and/or emergency expenses by placing a lump sum of \$6000 with family friends to defray these anticipated expenses.

[30] The only initial deficiency seen in these arrangements and addressed by this Court were overnight arrangements for the Intended Patient, as the Medical Report of Dr. Hawkins-Voss exhibited with the Applicant's Affidavit of April 22nd 2016, advised that the Intended Patient needed 24 hour supervision. This was attended to immediately by the Applicant and satisfactory arrangements put in place for an overnight caregiver.

[31] The Respondents have outlined their proposed care arrangements in the Affidavits of Anna Hill and Alaina Hill of March 1st 2017, and June 16th

2017, for the full time care and supervision of the Intended Patient on a 24-hour basis, at the Golden Years Retreat Home at Golf Club Road at a cost of \$3210 per month (upper limit dependant on room choice), or alternatively, the provision of live-in care for the Patient by an individual highly recommended by a Church colleague. Both parties have committed to providing any additional financial assistance to the Intended Patient that may be required. They propose to arrange for the Intended Patient to receive her medical check-ups and any major medical care and for the sister of the Proposed Joint Receiver Anna Hill, who is a nurse, “to pay regular visits to the Intended Patient to check her general medical condition, blood pressure and ensure that she is properly cared for.”

[32] Anna Hill is a retiree and proposes that she and her daughter Alaina Hill are fit and proper persons to see after the affairs of the Intended Patient and have asked the Court to appoint her and her daughter Ms. Alaina Hill as the Joint Receivers of the Intended Patient. They both depose that they have concerns about the Applicant’s motives “and as to possible risk to the Patient”. They submit that they are best suited to be her Receivers as they hold her in the highest esteem and “have a tremendous amount of love and affection for her.”

The Site Visit to Dalkeith Hill St. Michael

[33] This Court's visit to the home of the Intended Patient confirmed the position expressed by the Applicant and her caregiver Ms. Slocombe, that whatever her physical and mental challenges, the Intended Patient is happy, comfortable and well-cared for in the home that she has lived in for over twenty years. Her attachment to and dependence on Ms. Slocombe was patently evident, as was that individual's love, consideration and caring for her charge.

The Allegation of Financial Impropriety

[34] It is clear that the Respondents are suspicious of the Applicant and believe her motives to be financial. This Court saw no evidence of this; the only income available to the Intended Patient is a modest monthly sum of \$3400 which just about covers her monthly expenses, with the majority of this amount being the cost of her caregiver[s]. The breakdown of the monthly expense of \$500 was substantially explained by the Applicant.

[35] There is no evidence that when the Applicant became a signatory to the Intended Patient's Bank Account there was anything other than the modest amounts on the account. In fact, to the contrary, if any measurable amounts were in the account prior to 2014, the suggestion appears to be that there was another individual whose name was on the account, and who withdrew

\$3000 per month leaving this Court to draw the inference that the parties were of the view that this \$3000 was not spent on the Intended Patient. It was when the Intended Patient lost confidence in this individual that she made the Applicant a signatory to her bank account and the Applicant became fully responsible for her care.

[36] There is precious little basis for an argument of financial gain by a Receiver in these circumstances. The single most valuable asset is the home which is occupied by the Intended Patient, and to which the Respondent Alaina Hill is beneficiary under the Will.

Are the parties Fit and Proper Persons

[37] The Applicant and the Respondent Anna Hill are both retired persons of seemingly good character. There are both active and mobile. Both have experience with the management and care of elderly persons, in addition to Mrs. Levers. Alaina Hill, the god daughter, is a young woman in her 20/30's and resides with her mother Anna Hill. They all seem generally motivated to care for Mrs. Levers in consideration of her past kindness and friendship.

Conclusion and Disposal

[38] The present care arrangements reflect the wishes of the Intended Patient before her mental capacity became significantly diminished. She wanted to be in her home with her two dogs, to whom she was very attached.

[39] Having made the finding that the Intended Patient is happy and well-cared for in her home, the issue then becomes whether there is any basis for a change of the status quo.

[40] What is in the best interests of this Intended Patient?

[41] It is noteworthy that the Respondents had positive things to say about the care arrangements, both in their affidavits and in their oral evidence to this Court.

[42] At paragraph [15] of her Affidavit of March 1st 2017, the Respondent Anna Hill had this to say:

“...I am comfortable that Norma provides adequate care during the day for the Patient.”

[43] And at paragraph [12] Respondent Alaina Hill, her daughter, states as follows:

“[12] I have also had the opportunity to speak with the patient as well as Norma her day caregiver. The Patient appeared clean and happy, and informed me that Norma, her day caregiver, takes good care of her. Their interaction is also one of a caring relationship. I explained to Norma that had made several attempts to visit the Patient after work on numerous occasions between November 2016 and January 2017 but received no response. Norma indicated that she normally provides care until around 6

pm after feeding her and then leaves for home which is a short distance away. She also gave me her cell phone number so that we may communicate and so she can be reached in case there was no one to let me in if I visited. I have discussed providing night care for the Patient with my mother Anna Hill, and we have agreed to do so.”

[44] The issue of night care has been addressed by the Applicant in an acceptable manner.

[45] In short, the conclusion reached by this Court is, that there is obvious hostility between the parties, and a continued distrust of the Applicant’s motives by the Respondents, which must not be allowed to disrupt the harmony of the Intended Patient’s existence. Any concerns of the Respondents can, in the opinion of this Court, be addressed by the Receiver functioning within the powers vested in her, and by the implementation of an Order for reporting in the form of the periodic rendering of accounts, in accordance with the provisions of **Section 28** of the **Mental Health Act** and **Rule 44** of the **Mental Health Rules**.

[46] And of course, it goes without saying that a Receiver under this legislation is accountable to the Court and to the family and loved ones should she fail to properly discharge her duties. In such circumstances, there is always liberty to make a further application to the Court.

[47] This Court is satisfied that it is in the best interests of the Intended Patient that, for the present, her wishes to remain in her home where she appears to

be receiving excellent care, be honoured. In other words, that the status quo remain.

[48] Against this background, and pursuant to its powers and discretion under the statutory framework provided by the Mental Health Act and Rules, the following Orders are made:

1. That Mary Carmen Hyacinth Levers is by reason of mental disorder deemed to be a Patient incapable of managing her property and affairs;
2. The Applicant Maria Annabelle Elias is appointed her Receiver within the meaning of the Act with powers to do the following:
 - (i) To make all the necessary arrangements for care, protection and regulation of the affairs of the said Mary Carmen Hyacinth Levers, the Patient, and with all other general powers over the person with the patient as are granted by this Court and as are conferred on the Receiver by this Order or by any subsequent Order directions or authority.
 - (ii) The Receiver shall continue to receive the income presently deposited into the Bank of Nova Scotia from the Patient's monthly federal pension.
 - (iii) The Receiver is ordered to repatriate the total sums resting in the Patient's Citibank Account No. 26460507 and place such sums (less BDS \$5 000 of same) in a new savings account from which no further funds shall be removed without the consent of the Court. The Citibank Account shall remain active to receive the Patient's Social Security Cheque, until such time as this cheque can be directed to the Barbados Savings Account.
 - (iv) The sum of \$5000 shall be placed in the Bank of Nova Scotia account to defray the increased costs of the night nurse.
 - (v) That the Receiver shall be allowed to apply out of this income of the Patient, so much money as may be necessary, not exceeding the net income of the Patient, for the maintenance and general benefit of the Patient and for such other purposes as the Court

from time to time direct and insofar as the net income of the Patient may be insufficient for those purposes, the Receiver shall apply to the Court.

3. The Receiver is authorized in the name and on behalf of the Patient to locate and take possession of:
 - (i) The documents of title to the property belonging to the Patient and to make all necessary arrangements for the protection thereof.
 - (ii) To receive and give any receipts and notices of withdrawal for all sums outstanding to the credit of the Patient on any current or deposit or other account at any Bank or other financial institutions in Barbados or overseas.
4. The Receiver shall have authority to utilize any funds standing in the name of the Patient or any money in her control belonging to the Patient and may apply any special sums received under this Order as follows:
 - (i) To pay the amount owing for the maintenance of the Patient to the date hereof.
 - (ii) To pay any debt of the Patient.
 - (iii) To apply such sums as may be necessary for the medical care and/or maintenance of the Patient.
5. Service of this Order on the Patient is dispensed with.
6. The Receiver shall receive no remuneration.
7. The Receiver shall account to the Court by Affidavit as and when the Court may require, but in any event at least every twelve (12) months with the first of such accounts concerning the period of twelve (12) months from the date of this Order shall be submitted within one month from the end of such period.
8. No Order is made as to the costs of this application as the finances of the Patient cannot sustain it. In the circumstances, the parties shall bear their own costs (Rule 89).

9. The Receiver is directed to put in place appropriate access arrangements, to enable the Respondents, the family, friends and god children of the Patient, and her Church family, to visit her as often as is reasonably possible.

10. There shall be liberty to apply.

MARGARET A. REIFER
Judge of the High Court