



# In The Supreme Court of Bermuda

## CIVIL JURISDICTION

2020: No. 289

IN THE MATTER OF THE MENTAL HEALTH ACT 1968  
AND IN THE MATTER OF MFD

**BETWEEN:**

AB  
CD

**Applicants**

and

MFD

**Respondent**

2022: No. 76

**BETWEEN:**

MFD  
AB  
CD

**Plaintiffs**

and

EF  
GH  
IJ

DAVID COOPER

**Defendants**

# JUDGMENT

*(The names of the lay people in this judgment have been anonymized)*

**Date of Hearing:** 21 February 2024

**Date of Ruling:** 20 June 2024

**Appearances:** David Cooper, Cox Hallett Wilkinson Limited, for MFD, GH, IJ, David Cooper

Philmore Warner, AAA Law Company Ltd, for AB, CD

## **RULING of Mussenden CJ**

### **Introduction**

1. In the case of 2020: No 289, pursuant to an application under section 54 of the Mental Health Act 1968 (the “**Act**”), for appointment of Receivers, an Order dated 14 January 2021 (but dated 14 January 2020) (the “**2021 RO**”) was issued appointing AB (“**Adam**”) and CD (“**Carla**”) as Joint Receivers (the “**Grandchildren Receivers**”) in respect of their grandmother MFD (the “**Patient**”). By an Order dated 31 March 2022 (the “**2022 Stay Order**”), the 2021 RO was stayed pending determination of an application by the Patient for the receivership to be terminated and a full accounting provided. The Grandchildren Receivers were prohibited from acting until further order of the Court.
2. In the case of 2022: No. 76, the Patient and the Grandchildren Receivers caused an Originating Summons dated 23 March 2022 to be issued seeking an Order that the Defendants in the case cease to use a Power of Attorney dated 24 November 2021 (the “**Patient POA**”). The Defendants are: (i) EF, the Patient’s son (“**Eden**”) and the father of Carla, one of the Receivers; (ii) GH, the Patient’s grandson (“**Greg**”); (iii) IJ, Greg’s wife (“**Ivy**”) jointly the “**Three Relatives**”); and (iv) David Cooper, an attorney with Cox Hallett Wilkinson Limited (“**CHW**”) who had drawn up the Patient POA.

3. In the matter of 2020: No. 289 a Summons was issued by CHW on behalf of the Patient seeking the following relief:
  - a. Matter 2020: No. 289 be consolidated with matter 2022: No. 76.
  - b. The Grandchildren Receivers render to the Court and to the Patient a final account with supporting documentation and to pay to the Patient any balance of funds due thereon.
  - c. The Grandchildren Receivers take all steps to remove themselves from any accounts operated by them on behalf of the Patient held by them in her name or jointly; to deliver any debit/credit cards and any passwords for such accounts.
  - d. In the alternative to an Order that the Patient be restored to the management and administration of her property and affairs, that the Three Relatives be appointed receivers for the Patient.
  - e. That the application and claims of the Grandchildren Receivers be dismissed.
4. In respect of both matters, the matters were consolidated informally, and in an Order dated 1 September 2022, all applications were adjourned to allow the parties to seek common ground. In an Order dated 19 January 2023 directions were made to set the matter down for hearing. Affidavit evidence was filed before the directions order and afterwards as follows: Adam and Carla, affidavit of kindred and fortune, sworn 10 August 2020 (“**Adam/Carla KF**”); Bruce Swan sworn 18 August 2020 (but the Commissioner for Oaths has dated it 18 August 2022) (“**Swan 1**”); Greg sworn 21 February 2022 (“**Greg 1**”); Patient sworn 17 February 2022 (“**Patient 1**”); Adam sworn 18 March 2022 (“**Adam 1**”); Greg sworn 8 August 2022 (“**Greg 2**”); Greg, affidavit of kindred and fortune sworn 17 January 2023 (“**Greg KF**”); Greg, sworn 6 July 2023 (“**Greg 3**”);
5. On 21 February 2024, I heard submissions on the matter and was referred to the various affidavits when the issue in essence before the Court was to determine who, in all the circumstances, should be the receiver(s) for the Patient.
6. As a preliminary point on consolidation of matters, the parties proceeded at the hearing on the basis that the proceedings were consolidated. For the sake of formality, pursuant to Order 4 rule 10 of the Rules of the Supreme Court 1985, I am satisfied that these matters

should be consolidated and tried at the same time as there are some common questions of law and fact and the rights to the relief claimed arise out of the same series of transactions.

## **Background**

7. The Patient and her husband (“**Grandfather**”) (together the “**Grandparents**”) had three sons, Greg, Kent and Eden. The Patient owned a home consisting of five (5) apartments (the “**Property**”). At the time of Adam/Carla KF the Patient received rental income of \$4,200 per month and her maintenance was covered by the Bermuda Government and her rental income. She had no debts. The Property had several rental units:
  - a. Unit 1 – occupied by the Patient and Eden;
  - b. Unit 2 – occupied by the Patient’s stepson who paid rent of \$800 per month;
  - c. Unit 3 – occupied by a tenant who paid rent of \$1,800 per month;
  - d. Unit 4 – occupied by a tenant and her daughter with a monthly rent of \$1,425. The tenant was on financial assistance which paid rent of \$1,266, such payments being on hold by the Financial Assistance Department for the last 2 years; and \$165 paid by the tenant’s daughter to an account set up by the Grandchildren Receivers;
  - e. Unit 5 – recently repaired and on rent for \$1,000 per month for one (1) year as the tenant did some repair work, thereafter to be increased to \$2,000 per month.
8. On 17 March 2020, Grandfather executed a Power of Attorney to appoint his grandchildren Adam and Carla as his attorneys (the “**Grandfather’s POA**”). They started to manage his affairs.
9. In June and July 2020, Grandfather was hospitalized. Around that time and later on in 2020, Eden was withdrawing funds from the Grandparents’ bank accounts. On some occasions he had taken the Patient with him to an ATM, she travelling as a pillion passenger on his motorbike. The use of the funds is in dispute as Eden maintains that they were for legitimate expenses for his Grandparents and their property while the Grandchildren Receivers

maintain that the funds were used for other purposes, including to support Eden's drug habit.

10. On 6 March 2020, the Patient underwent a cognitive assessment (a test of cognitive function and screen of cognitive loss) by Dr. Simons at Hope Healthcare. On 10 March 2020, Dr. Simons electronically signed a medical report stating that in a Mini Mental Status Exam ("MMSE") conducted on 6 March 2020, the Patient scored 15 out of a possible 30 points which would indicate suboptimal cognitive ability. On 8 July 2020, Dr. Simons issued a medical certificate in which she stated several matters including that: (i) the Patient had been a patient of Hope Healthcare since November 2019; (ii) she last examined the Patient on 6 March 2020 and in her opinion the Patient was incapable by reason of mental and physical incapacity of managing and administering her own affairs; (iii) the Patient was suffering from Major Neurocognitive Disorder and scored 13 out of 30 a cognitive test conducted on 6 March 2020 and that her condition was stable and there was virtually no chance of recovery; and (iv) there was virtually no chance of the Patient recovering 'his' (sic) mental faculties to the extent that 'he' (sic) would be able to make rational and consistent directions in relation to her own care. Interestingly, there is another medical certificate issued by Dr. Simons, undated in July 2020 and filed 5 January 2021 stating the same particulars although the difference between the two is that the undated one states "*The Patient suffers from severe cognitive impairment due to advance Alzheimer's Disease ...*". It appears to me that both medical certificates were before the Court on 14 January 2021.
11. On the 8 July 2020, Grandfather and Greg gave their consent for the Grandchildren Receivers to be appointed as receivers for the Patient.
12. In the period 2020 – 2021, it is asserted by the Grandchildren Receivers that Eden was interfering with tenants at the Property, evicting tenants, securing other tenants and taking rental income for his own use.
13. On 14 January 2021, the Grandchildren Receivers were appointed Receivers for the Patient.

14. On 4 November 2021, Grandfather died.
15. On 24 November 2021, CHW executed the Patient POA appointing the Three Relatives as her attorneys. The Grandchildren Receivers assert that this was done without CHW verifying her mental capacity and health status. For this reason, the Grandchildren Receivers assert that CHW was negligent and aiding and abetting the Three Relatives in taking advantage of a vulnerable person under receivership.
16. Thereafter, there were more disputes between the Grandchildren Receivers and the Three Relatives about bank accounts, the use of funds and the Property.
17. On 7 December 2021, CHW requested the Grandchildren Receivers surrender their receivership and be replaced by the Three Relatives.
18. On 18 December 2021, the Grandchildren Receivers executed a Deed of Revocation of the Patient's POA.
19. On 20 December 2021, Dr. Cousins-Simpson issued a cognitive assessment that in her opinion, the Patient had mild to moderate dementia but she was still able to choose a Power of Attorney. In a letter dated 24 December 2021, CHW informed AAA Law Company Ltd of such cognitive assessment.
20. On 17 February 2022, in Patient 1, the Patient stated that she was unaware that an application for receivers to be appointed had been filed with the Court as no proceedings were served on her. She became aware of the 2021 RO when a copy was sent to her attorneys on 8 December 2021. She stated that Grandfather was responsible for their bills and expenses during his lifetime. She stressed that she had no confidence in the Grandchildren Receivers and did not consider them to be proper persons to be involved with her affairs. She was of the view that the Grandchildren Receivers had been mismanaging matters and improperly spending or appropriating her monies and those of her husband before his death. She stated that Eden lived with her and looked after her assisted by Greg and Ivy. She stated that she wished to be restored to the management of

her property and affairs on the basis that she can manage the same and otherwise can look to the Three Relatives to assist her as she has confidence in them. Alternatively, she stated that the Grandchildren Receivers should be discharged and that the Three Relatives be appointed in their place.

21. On 20 February 2022, Adam received Grandfather's pension funds from BF&M and deposited them into the Patient's bank account. He asserts that Eden had made attempts to take receipt of the pension funds and that on 14 February 2022 Eden had demanded the pension funds in an aggressive phone call and when refused, Eden threatened his life. I note here that the funds are referred to as pension funds at various times although in fact they were life insurance funds. Nothing turns on the point.
22. Up to the 18 March 2022, Carla continued to visit the Patient whilst Adam had ceased to visit due to the threats from the Three Relatives.
23. On 31 March 2022, the 2022 Stay Order stayed the 2021 RO pending determination of an application by the Patient for the receivership to be terminated and a full accounting provided.
24. On 9 November 2022, AAA Law Company Ltd filed with the Court the following documents: (i) 2020 Financial Accounts (the "**2020 Accounts**"); (ii) 2021 Financial Accounts (the "**2021 Accounts**"); and (iii) the affidavit of attorney Bruce Swan (that is Swan 1).

### **The Law on Receivership**

25. The Act provides in Part IV that the Chief Justice or in his absence a Judge shall be the judicial authority for the protection and management, as provided in Part IV of the property of person under disability.
26. Section 50 sets out the persons who are within the jurisdiction of the Judge as follows:

*“50. The functions of the judge under this Part shall be exercisable where, after considering medical evidence, he is satisfied that a person is incapable, by reason of mental disorder, of managing and administering his property and affairs; and a person as to whom the judge is so satisfied is in this Part referred to as a patient.”*

27. Section 51 set out the responsibility of the Judge with respect to the property and affairs of a patient, the parts relevant to this matter providing a discretion to do or secure the doing of all such things as appears necessary or expedient for the maintenance or other benefit of the patient and otherwise administering the patient’s affairs and in the exercise of such power regard shall be had first of all to the requirements of the patient.

28. Section 52 provides for an extensive list of the Judge’s powers as to the patient’s property and affairs.

29. Section 54 provides for the appointment of a receiver:

*“54 (1) The judge may by order appoint as receiver for a patient a person specified in the order; and the receiver shall do all such things in relation to the property and affairs of the patient as the judge, in the exercise of the powers conferred on him by sections 51 and 52, orders or directs him to do and may do any such thing in relation thereto as the judge, in the exercise of those powers, authorises him to do. (emphasis added)*

*(2) A receiver appointed for any person shall be discharged by order of the judge on the judge being satisfied that that person has become capable of managing and administering his property and affairs, and may be discharged by order of the judge at any time if the judge considers it expedient to do so; and a receiver shall be discharged (without any order) on the death of the patient.” (emphasis added)*

30. Section 60 provides for the Chief Justice to make rules. The Mental Health (Patients’ Property) Rules 1970 (the “**Rules**”) sets out that “Court Forms” means volume 26 of the second edition of Atkin’s Court forms, published in 1962 by Butterworths. The Rules make references to various Court Forms. The Rules require that for an applicant to be appointed a receiver, evidence needs to be filed in the form of: (i) a medical affidavit showing that the patient is incapable, by reason of mental disorder, of managing his property and affairs; and (ii) an affidavit of kindred and fortune, giving particulars of the patient’s relatives, property and affairs and of the circumstances giving rise to the application. A written



consent is required as verified by an attorney for any person applying to be a trustee unless the person is an applicant in the proceedings.

31. Counsel for the parties did not file any authorities on the various aspects of receivership under the Act or the Rules.

32. Counsel for the Three Relatives, Mr. Cooper, submitted an extract from an online resource entitled *Patrick J. Thomas Agency (Corporate Surety & Insurance), 5 Things to Consider before Selecting a Guardian or Conservator* 27 March 2018, Minneapolis, Minnesota, USA (the “**PTJA Extract**”). The extract stated in part as follows: “*When a vulnerable person is unable to manage their estate and/or make certain decisions regarding their care, it becomes necessary for the court to appoint a conservator or guardian. The basic difference between conservatorship and guardianship is in the powers they are granted by the court: conservators manage the assets of a vulnerable person’s estate while guardians make decisions regarding a person’s care.*” It listed the 5 things as summarized follows.

- a. #1: Choose Between a Personal Friend/Family Member and a Professional Conservator – the role of a guardian or conservator did not have to be a close personal friend or family member.
- b. #2: Trust Is Essential – The most important is trust. The person in the role should be trusted not to commit fraud or mismanage funds for the vulnerable person.
- c. #3: Do They Understand The Responsibility? – Family members or friends should understand the responsibilities and duties that they will be assuming. The role takes time and the person taking on the role should be able to handle the responsibility.
- d. #4: Do They Have The Necessary Skills? –The role requires a basic level of knowledge about money management and accounting as the Courts usually require an annual accounting and sometimes audits are conducted to ensure proper use of funds.
- e. #5: Are They Bondable? – A bond is usually required before taking up the role.

### **The Three Relatives’ Submissions**

33. Mr. Cooper submitted that in all the circumstances, the Three Relatives should be appointed as receivers to replace the current Grandchildren Receivers.
34. Mr. Cooper submitted that the application against him was that he should have known that the 2021 RO was in place. He stated that if he had been advised of it being in place then the approach would have been different in the form of an application to have it set aside or revoked.
35. Mr. Cooper submitted that the procedure appointing the Grandchildren Receivers was defective for the following reasons:
- a. There was no proper service of the application on the Patient pursuant to Rule 23(b), Rule 24 and Rule 25;
  - b. There was questionable medical support;
  - c. There was non-service of the Intention to Apply on family members pursuant to Rule 10(1), relying on Atkins Court Forms;
  - d. The Order was not received in a timely manner; and
  - e. The Order was not served on the Patient or others pursuant to Rule 39(2).
36. Mr. Cooper submitted that the Court should consider the background prior to and immediately following the death of Grandfather. In essence, the Three Relatives acted for and assisted the Patient on Grandfather's death. At that time, it appeared that the Patient was competent and there was no reason to know that the 2021 RO had been made. Mr. Cooper submitted that there was cause for concern during the time of Grandfather's POA as they were acting as principals and abusing their agency position, not accounting to Grandfather, not separating the funds of Grandfather and the Patient, they were excluding the Patient, and there appeared to be a lack of funds for repairs to the Property and according to Greg a lack of funds for Grandfather's funeral.
37. Mr. Cooper submitted that, according to Greg, the bank statements showed irregularities which led to the following:

- a. Power of Attorney, Advertisement of Intention to Apply for Letters of Administration and a letter to Adam;
  - b. Notice from attorneys for the Grandchildren Receivers to the Three Relatives of the Receivership and 2021 RO;
  - c. Revocation of the Patient POA;
  - d. Withholding of Social Assistance Rent by the Department of Financial Assistance;
  - e. Filing of so-called accounts by the Grandchildren Receivers;
  - f. Application by the Three Relatives to remove the Grandchildren Receivers or stay the Receivership.
  - g. The 2022 Stay Order was issued; and
  - h. Proceedings from the Grandchildren Receivers with respect to the revoked Patient POA which was issued in March 2022 but were only served in May 2022.
38. Mr. Cooper submitted that in respect of appointing receivers, the primary consideration was the Patient, her welfare and the proper management of her affairs. He noted that the Patient stated that she supported the appointment of and trusted the Three Relatives but was fearful of and did not trust the Grandchildren Receivers. He submitted that the evidence showed that the Patient and the Three Relatives consulted and acted with each other during the illness and death of Grandfather as well since the 2022 Stay Order. Further, the Three Relatives had been caring for the Patient during those times and they demonstrated concern for the Patient's property. They have provided her with care, companionship, and stimulation since 2021 including that Eden lived with the Patient and prepared her meals. The Patient had accompanied them to local events and on overseas holidays. They had also improved the residential properties and supervised the tenancies. Also, they made available financial statements fully demonstrating the funds received by the Patient and how they had been applied.
39. In respect of a complaint by the Grandchildren Receivers about Greg and Ivy losing a property to a mortgage default, Mr. Cooper submitted that Greg 3 explained the position of some financial challenges in respect of a mortgage of another property and an earlier divorce from his first wife, the essence being that Greg continued to make payments in

respect of that other property. Mr. Cooper submitted that the circumstances of the other mortgage were of no relevance to the present matter.

40. Mr. Cooper submitted that in respect of Eden having any access to the cash of the Patient, Greg 2 had stated that such access could be restricted to him save for limited amounts for food and groceries. In respect of Eden having a drug problem, Mr. Cooper referred to the evidence of drug test results for the period of 3 February 2022 to 15 February 2024 where the vast majority showed negative results and one dated 9 March 2023 showed positive results. Mr. Warner accepted the test results.

41. In respect of the conduct of the Grandchildren Receivers, Mr. Cooper submitted that: they had failed to manage the rental properties; had misallocated funds, in some cases transferring some funds into their personal accounts and other accounts; they failed to provide care and attention on a regular basis to Grandfather, the Patient and the Property; they lacked an understanding of the financial affairs of Grandfather and the Patient, mixing up rent and pension payments; failed to provide proper accounting for all bank accounts; they had a lack of concern for the ongoing welfare of the Patient before and since March 2021, not having visited her in the last two years and not enquiring about her welfare; and they were content to leave the care of the Patient to the Three Relatives. Mr. Cooper submitted that the Grandchildren Receivers mis-appropriated rent monies and failed to provide proper accounting, in particular: (i) not accounting for \$2,000 monthly rent from a tenant seven (7) months prior to the death of Grandfather and 3 months after his death; and (ii) not accounting for a continued payment from a tenant of \$165 per month. I note hear that at the hearing, Mr. Warner confirmed that Adam was receiving \$165 a month into an account set up by the Receivers.

### **The Grandchildren Receivers' Submissions**

42. Mr. Warner submitted that the Grandchildren Receivers should remain as the receivers for several reasons.

43. Mr. Warner submitted that Swan 1 set out the background of how the Grandfather POA and the 2021 RO came about, which was primarily Grandfather's concern about one of his sons. Mr. Swan had advised that Grandfather should execute a power of attorney and, once the Patient was diagnosed with dementia, an application should be made for a receivership order. Swan 1 stated that the Patient stated that she wished for Adam and Carla to be receivers. Thereafter, he met with them and they agreed to be appointed receivers. He advised them to obtain consents from Grandfather and the Patient's children and they made efforts to obtain such consents. However, he understood that Eden did not agree to the appointments and was the only child who refused the request to sign a consent, a circumstance which he stated was brought to the attention of the Court in the application for receivership.
44. Mr. Warner submitted that Mr. Swan obtained a cognitive assessment in respect of the Patient. However, Mr. Cooper did not obtain one and therefore Patient 1 could not be relied upon. I note here that the documentation shows that Dr. Cousins-Simpson conducted a cognitive assessment on 20 December 2021.
45. Mr. Warner submitted that Adam's evidence was that Eden was not trusted as he used illegal drugs and on several occasions, with the Patient as a pillion passenger on his motorbike, had taken her to an ATM to withdraw money. Further, Grandfather had informed him that he discovered that Eden had taken rental income for himself without permission. Also, the bank account statements showed many transactions which did not appear to be for the benefit of Grandfather or the Patient and at one point a new bank card was intercepted and used by Eden to access bank funds. Mr. Warner stressed that such dishonesty should disqualify Eden from being a receiver.
46. Mr. Warner submitted that Greg and Ivy should not be receivers as they had had financial challenges in respect of their mortgaged home, noting here that Greg 3 explained the position about the mortgage as set out above. Also, Grandfather had accused Eden of misconduct. Adam stated that Eden had threatened him and Greg had made threatening words to other people about Adam, so much that he believed they could carry out their

threats, thus he made reports to the Bermuda Police about the threats. I should note here that upon my perusal of the statement dated 14 February 2022 by Adam to the Bermuda Police Service, in my view, the document does not show that Greg was using threatening words to Adam. The statement indicates that Adam overheard Eden saying to Greg. that he would do threatening things to Adam, with Greg hyping up Eden in reply.

47. Mr. Warner submitted that Swan 1 showed that in respect of the 2021 RO, the Patient's family members had been informed. Mr. Cooper disputed this noting that Mr. Swan's evidence was not from his own knowledge, and that there was no evidence that Eden had been approached and had refused to sign.

48. Mr. Warner submitted that Ivy's age of over fifty years made her unsuitable to be a receiver. He also submitted that there were some other younger people who could be receivers, namely Greg's sister who was in her thirties, and Kevin's wife. He informed the Court that in any event, Carla has health challenges and was prepared to step down.

49. Mr. Warner submitted that in respect of the Grandchildren Receivers, they should remain as receivers as there was no evidence of bad behaviour or criminal conduct against them. Additionally, they were young and had been selected by Grandfather to be his attorney and the Patient's Receivers. Further, when the application for receivership was made, no-one made any objections although Eden did not agree and did not sign in support.

50. Mr. Warner submitted that the Grandchildren Receivers had nothing to hide and were upfront and their work was done properly and reported to the Courts as required. He relied on Adam 1 which set out an extensive history of the circumstances, in particular about the misuse of the Parents' finances by Eden including his efforts to obtain the proceeds of Grandfather's pension. Mr. Warner also relied on Adam 1 to show how the Grandchildren Receivers were receiving and using the funds, including their willingness to provide an accounting to CHW, something which they did not have to do.

51. Mr. Warner submitted that in all the circumstances, the Three Relatives had failed to demonstrate that the Grandchildren Receivers should be removed as receivers and that the Three Relatives should be appointed as the receivers.

### **Analysis of the Defendant's Applications**

52. In my view, the Grandchildren Receivers should be replaced by Greg and Ivy as receivers for the Patient for several reasons.

53. First, I have considered the requirements under section 50 of the Act as to whether, having considered the medical evidence, I am satisfied that the Patient is incapable by reason of mental disorder of managing her property and affairs. In January 2021 the Judge who heard the original application was satisfied on the medical evidence that a receivership should be made. That medical evidence by Dr. Simons in March 2020 indicated suboptimal cognitive ability, major neurocognitive disorder and severe cognitive impairment due to advanced Alzheimer's disease. At that time, Dr. Simons was of the opinion that the Patient was incapable of managing and administering her own affairs and that there was no chance of recovery. Since then, in December 2021 Dr. Cousins-Simpson's assessment was that the Patient had mild to moderate dementia but was still able to choose a Power of Attorney. There has been no expert medical evidence to assist the Court as to whether the medical certificates of Dr. Simons are inconsistent with the medical certificate of Dr. Cousins-Simpson. Thus I am of the view that I should accept that the Patient has severe cognitive impairment due to advanced Alzheimer's Diseases and that she suffers from mild to moderate dementia. Therefore, I am satisfied to accept that the Patient continues to be incapable of managing and administering her own affairs and property. In light of those circumstances, I am satisfied that a receivership order should be in place for the Patient.

54. Second, I have considered the requirement in section 51 of the Act that in exercising the powers of the Court, regard shall be heard first of all to the requirements of the Patient. In assessing the needs of the Patient, I have accepted the evidence in Greg KF that the Patient should continue to reside at her home with Eden, that Eden should receive a monthly allowance of \$1,500 for the day-to-day care and companionship of the Patient and that she needs to be provided with extra comforts, including pocket money and clothing with funds

set aside for any unexpected expenses or emergencies. I also accept that she is able to communicate her needs, makes her wishes known and although elderly she continues to take an active interest in people and events. In essence, I am satisfied that the requirements of the Patient are focused on her living in her home, with Eden caring for her primarily along with other relatives and that her basic needs are met.

55. Third, I have considered the Patient's own affidavit sworn in February 2022. I note that it was duly sworn before a Commissioner for Oaths: (i) some three (3) months after the Patient POA was executed on 24 November 2021; and (ii) some two (2) months after the cognitive assessment was conducted by Dr. Cousins-Simpson on 20 December 2021 who stated that despite mild to moderate dementia, the Patient was still able to choose a Power of Attorney. Initially, I feel obliged to accept that the Commissioner of Oaths was satisfied that the Patient understood the contents of her affidavit. The affidavit was for the purpose of the matters in this hearing, namely that she had no confidence in the Grandchildren Receivers for various reasons, she wanted to be restored to managing her own affairs failing which she wanted the Three Relatives to replace the Grandchildren Receivers as receivers. The Patient also recognized that her son Eden lived with and looks after her and that Greg and Ivy assist him in those duties. In my view, I am reluctant to rely on the contents of Patient 1 because of the earlier cognitive assessments conducted by both doctors in respect of her mental incapacity to manage her affairs. Thus, in assessing the needs of the Patient, I attach only little weight to what she has expressed in her affidavit.

56. Fourth, I have considered the conduct of the Grandchildren Receivers. I give significant weight to the fact that they answered the call of their Grandfather to be his Power of Attorney until he died and to be appointed receivers for the Patient in January 2021. I also commend their actions to care for the Patient, her Property and their efforts to care for their grandmother, sometimes in adverse circumstances where Eden was accessing the bank accounts, taking the Patient on his motorbike to the ATM and interfering with the tenants. However, I take into account that the Grandchildren Receivers have not been participating in the care and maintenance of the Patient or the Property for the last few years, Adam because of threats made to him. In my view, the Patient has continued to exist without their care and attention. Further, even though a stay was placed on the 2021 RO, the



Grandchildren Receivers could have still visited the Patient and or enquired about her over time, as long as the circumstances were safe to do so.

57. Fifth, I commend the accounting that the Grandchildren Receivers provided to the Court. I do not find it necessary to conduct a forensic examination of the accounts as for the reasons set out below I am not prepared to base my decision about the receivership on the basis of the maintenance of the accounts. To that point, I make no adverse findings against the Grandchildren Receivers in respect of the accounts.

58. Sixth, I have considered the conduct of Eden. On one hand I accept that he lives with the Patient, cares for her daily and tends to most of her needs, all which is commendable. On the other hand, I accept that there are negative aspects to his conduct in that he has had a drug addiction problem for which he seems now to have under control as the test results show. Additionally, I am satisfied that he has had access to the funds and bank accounts of his Grandparents' accounts and after Grandfather died, to the funds of the Patient. To that end, I am not satisfied on the evidence that all the funds went to the care of the Parents and the Property. Further, I am satisfied that Eden has issued threats of violence against the Grandchildren Receivers and has interfered with the tenants. For these reasons, I am not satisfied that Eden should be appointed as a receiver for the Patient. I take some guidance on this point from the PTJA Extract point number 2 that trust is essential in appointing someone as a guardian and that the person in the role should be trusted not to commit fraud or mismanage funds for the vulnerable person.

59. Seventh, I have considered the roles of Greg and Ivy. They are presently caring for the Patient. I am not satisfied that the issue with their mortgage for the other property should act as a bar to them acting as receivers in respect of the Patient. To that point, I take the view that people have issues with mortgages without there being some form of mismanagement of financial negligence. Additionally, I have reviewed the evidence of Greg in his respective affidavits and I have the impression that he is caring and helpful to the Patient and that he has been forthright and of some valuable assistance to the Court. In respect of Ivy, I am not satisfied that her age should bar her from being a receiver for the Patient. In my view, Greg and Ivy as a married couple and close relatives of the Patient

would be suitable people to be receivers and Ivy as a female would be a suitable support person for the Patient.

60. Eighth, I have considered that Carla wishes to step down due to health issues. In light of that submission, I am satisfied to discharge her from the receivership appointment.
61. Ninth, I have considered leaving Adam as a receiver and appointing Greg and Ivy to be receivers also. However, in my view, unfortunately there are too many issues between the two sides such that having the three of them as receivers would create more problems than would solve them, such that the parties are likely to be back before the Court before too long.
62. Tenth, in respect of the defendants, (the Three Relatives and Mr. Cooper) in Case No. 2022: No. 76, I note that the Grandchildren Receivers caused a revocation of the Power of Attorney, such revocation dated 18 December 2021. At the point of service or notice on them, the Three Relatives and Mr. Cooper should have stopped using the POA. The Originating Summons and Adam 1 set out that the Three Relatives and Mr. Cooper continued to use the POA to access the Patient's funds. Further, Adam 1 states that Mr. Cooper was negligent by not advising the Three Relatives to desist in using the revoked Patient POA. Adam's evidence on this point was that BF&M has relied on the Patient POA to pay the life insurance funds (earlier referred to as pension funds) to the Three Relatives. However, the exhibit to Adam 1, at page 33, shows that Ms. Penny Smith of BF&M indicated that the funds were paid out on 8 December 2021 by order of the Patient POA. Thus, the Patient POA was in effect at that time and had not yet been revoked. As it turns out, the life insurance funds were not paid to the Three Relatives. There are no other allegations that the Three Relatives and Mr. Cooper used the Patient POA after it was revoked. In light of these circumstances, I am not satisfied that the Three relatives and Mr. Cooper used the Patient POA after it was revoked. It follows that I am not satisfied that Mr. Cooper aided or abetted the Three Relatives in using the Patient POA after it was revoked.

63. Eleventh, in respect of the original instructions to execute the Patient POA, in my view Mr. Cooper as an attorney sought to carry out the instructions of the Three Relatives. The complaint is that he should have known there was a receivership order in place and that the Patient medical capacity should have been confirmed. I note here that in my review of the evidence, up until when Grandfather died on 4 November 2021, the correspondence that flowed from counsel for Grandfather indicated that the attorneys were acting for Adam and Carla as Grandfather's power of attorney, not mentioning that they were also receivers for the Patient. However, I note that in the original application for receivership, Greg or his representative had signed a Consent for appointment of a receiver dated 8 July 2020. Greg also stated in Greg 1 that after Grandfather had died, he knew that Adam had assumed some responsibility with the assistance of Carla for the Patient. Therefore, whilst I can accept Mr. Cooper's submission that Swan 1 was not from his own knowledge but from what he had been told about the knowledge of the Three Relatives, it seems clear to me that Greg knew that it was highly likely that a receivership order was in place by the time the Three Relatives had instructed Mr. Cooper to draw up the Patient POA. To that point it strains credulity that Greg did not share this knowledge with Eden and Ivy as they attended to the Patient. In my view, I am not satisfied that Mr. Cooper aided and abetted the Three Relatives in taking advantage of the Patient, or that he was sufficiently apprised of the circumstances to warrant verifying her mental capacity or enquiring whether she was under a receivership order before executing the Patient POA. Thus, I decline the application to grant the relief sought that an order be made to cease the Three Relatives and Mr. Cooper to cease to use the Patient POA on the basis that it is not necessary as there is no evidence that it was being used after it was revoked by the Deed of Revocation dated 18 December 2021.

64. Twelfth, in light of all the circumstances and the reasons as set out above, in my view, I consider it expedient to discharge the Grandchildren Receivers as receivers for the Patient. Further, I am satisfied that in respect of the requirements of the Patient, it is expedient to appoint Greg and Ivy as the receivers of the Patient in respect to the property and affairs of the Patient with the powers to do all such things as appears necessary or expedient for the maintenance or other benefit of the Patient and otherwise administering her affairs. In

essence they are caring for her on a daily basis as well as they are in regular communication with Eden.

## **Conclusion**

65. In respect of matter 2020: No 289, my conclusions are as follows:

- a. I discharge Adam and Carla as receivers from the 2021 RO on the basis that I consider it expedient to do so;
- b. I grant the application that Adam and Carla render to the Court and to the Patient a final account with supporting documentation and to pay to the Patient any balance of funds due thereon within 28 days of the date of this Judgment.
- c. I grant the application that Adam and Carla take all steps to remove themselves from any accounts operated by them on behalf of the Patient held by them in her name or jointly; to deliver any debit/credit cards and any passwords for such accounts within 14 days of the date of this Judgment.
- d. I decline the application by the Patient to be restored to the management and administration of her property and affairs;
- e. I grant the application to appoint Greg and Ivy as receivers for the Patient, in the same terms as the 2021 RO with liberty to apply by letter to settle the terms of the Order.
- f. I decline the application for Eden to be appointed as a receiver for the Patient.
- g. Unless either party files a Form 31TC within 7 days of the date of this Judgment to be heard on the subject of costs, I direct that there be no order as to costs.

66. In respect of matter 2022: No 76, my conclusions are as follows:

- a. I decline the application for an order for the Three Relatives and Mr. Cooper to cease to use the Patient POA as there is no evidence that it has been used after it was revoked.
- b. Unless either party files a Form 31TC within 7 days of the date of this Ruling to be heard on the subject of costs, I direct that costs shall follow the event in favour of

the Defendants against Adam and Carla on a standard basis, to be taxed by the Registrar if not agreed.

Dated 20 June 2024



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**HON. MR. JUSTICE LARRY MUSSENDEN**  
**CHIEF JUSTICE**