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Changing the Professional Deputy: Is it in P's Bests Interests or Is it Deputy Shopping

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Deputy Shopping?



'Dear XX

*We are instructed by Mr and Mrs A, parents of P,
to transfer P's deputyship file to our firm.*

*Please arrange to send a copy of P's file to us by
XX 2021'*

Kambli v Public Guardian [2021] EWCOP 53

Her Honour Judge Hilder

- Background in NKR, Sood v Thomson Snell & Passmore TC [2019] EWCOP 15
- 2 previous breakdowns of professional deputyships
- 3rd request for a change made by (panel) deputy
- family ‘particularly challenging’
- application refused on paper noting ‘exceptional turnover of deputies’

- Application for reconsideration
- Deputy said there was an irretrievable breakdown in the relationship with P's father:
 - Calling deputy/staff liars, corrupt, criminals, robbing, evil
 - Unilaterally instructing professionals to carry out work without deputy's approval
 - Demands that clearly not in P's best interests i.e. selling land to father at under value
 - Objecting to deputy's fees but demanding high level of engagement
 - Recording meetings without providing recording to deputy

- Deputy's submission that:
 - cannot be 'enslaved to a job for life'
 - financial ramifications i.e. not recovering all time spent
 - decision making 'hampered'
- Argued Father was 'intent on breaking down the relationship he has with the deputy' by 'deputy shopping' until he finds a deputy who will accede to his demands.

-Application was supported by the other parties, including, the OPG.

-OPG's position was that a new deputy would not change the dynamic within the family but they would need to be 'firm' with the father.

-OPG also suggested that new deputy could take legal action against father although did not 'expect the costs of any litigation to be met using [P's] funds'

HHJ Hilder's Decision

Application allowed. Father's 2 cousins were appointed in K's place

[39]‘When a deputyship encounters difficulties, the response of the Court should not be to change the appointment as default response. Changing deputy inevitably incurs costs which could otherwise be avoided and risks being perceived as ‘rewarding’ negative behaviour, which in turn undermines the prospects of future stability. Rather the Court should probe the actual circumstances, with a view to salvaging working relationships if possible.’

[40] ‘Unfortunately, in this matter such support as is offered to both sides by the Office of the Public Guardian has effectively been tried already, without success; and the Court's encouragement to devising an express framework of agreed expectations in which the deputyship might operate has not realistically generated any goodwill either. In the context of AR's less than constructive response to the proposal drafted by the Deputy and endorsed by the Public Guardian, Mr. Kampli's unwillingness to act even if an agreement were to be reached looks more realistic than obstructive’

The magnetic factor.....



[42] ‘In those circumstances, in my judgment it is clearly not in the best interests of MBR for the current deputyship to continue. Aspects of managing his financial affairs which should be straightforward (such as agreeing expenditure for a holiday) will be drawn out and acrimonious; and costs will inevitably be higher than necessary. Since deputyship does not operate in a vacuum, MBR's living arrangements are likely also to be adversely affected in terms of household stress. It is these considerations, and not in themselves either Mr. Kambli's withdrawal of consent or AR's inappropriate behaviour, which point to the conclusion that the current deputyship appointment should be discharged’

Key Points

- Removal of a deputy is not a fait accompli
- The guide will also be P's best interests, including their financial interest, see *Cumbria CC v A* [2020] EWCOP 38
- The deputy's continued consent to the appointment is not required
- The court and the parties should probe the circumstances before deciding whether to substitute

- what steps can or should be taken to repair the relationship?
- Is there a case for using mediation?
- Court is unlikely to embark upon fact finding exercise at the hearing
- How can the application be dealt with proportionately?
- will the court consider invoking more robust powers – injunctive relief??

What about the opportunistic application?



Example

- Mr A appointed as pro deputy for P, who is a young adult
- There is new file handler (Mr H) at Mr A's firm. Mr H and P's parents got off on the wrong foot. He said the house was looking tired and should be repainted.

- Things go from bad to worse.....
- Mr A declines to approve payment of a family holiday from P's funds. Family furious.
- Family ask to discuss but Mr A unavailable for a few weeks.
- Mr A reviews family care payment as P's investment portfolio performing poorly and payments have not been reviewed for some time. BI decision to reduce. Mr H tells family by letter

- Family approach another firm in an effort to change P's deputy.
- Firm B sends email requesting transfer of file.
- Mr A refused.
- Firm B makes COP1 application. Cite irretrievable breakdown of relationship between P's family and Mr A as ground
- Listed for a dispute resolution hearing

Is this the right approach from Firm B?