

**EASTERN CARIBBEAN SUPREME COURT
COMMONWEALTH OF DOMINICA**

IN THE HIGH COURT OF JUSTICE

DOMHCV2013 OF 0297

IN THE MATTER OF THE MENTAL HEALTH ACT CHAPTER 40:62

AND

**IN THE MATTER OF A DECLARATION THAT ELOISIA DANIEL PATIENT IS
INCAPABLE OF MANAGING HER AFFAIRS**

AND

**IN THE MATTER OF THE APPOINTMENT OF THE PATIENTS DAUGHTER IRMA
AUSTRIE AS RECEIVER**

BETWEEN:

ERROL AUSTRIE

Claimant

AND

IRMA AUSTRIE

Defendant

Appearances: Ms. Saudia Cyrus of Dawn Yearwood Chambers, Counsel for the
Applicant
Mr. Wayne Norde of Norde & Lambert Chambers for the Respondent

2013: October 18th,

2014: January 29th

DECISION

[1] **THOMAS, J. [Ag.]** Before this court is an application filed on the 16th day of August 2013 seeking the following reliefs:

1. An injunction restraining the respondent Irma Austrie from in the name of Eloisia Daniel to give notices of withdrawal and receive and give a discharge for:
 - (a) All social security benefits, pensions, rents and interest and any income including arrears of whatever nature and from whatever source to which the patient is entitled.
 - (b) All shares, monies on deposits and balances standing to the credit of the patient at any financial institution.
 - (c) All monies in particular held at the Central Co-operative Credit Union (CCCU) Ltd.
 2. Freezing all monies standing in the account at Central Co-operative Credit Union number 00034214 standing in the name of Eloisia St. Jean Daniel
 3. An order, that the order of the Honourable Mr. Justice Brian Cottle on the 12th day of July 2013 whereby his Lordship appointed the Respondent to be the Receiver of the patient Eloisia Daniel be set aside.
 4. Such further or other relief as may be just.
 5. Costs
2. In his affidavit in support and the applicant deposes that he is the son of the patient, Eloisia Daniel. The applicant also identifies his siblings and where they reside. In the case of his brother, Clement Daniel, he deposes that he resides in the United States of America and for this reason is not aware of the condition of their mother.
3. The gist of the Applicant's issue is in relation to the Respondent who, according to him, is in relation to the use of the patient's savings at the Central Cooperative Credit Union. In particular the Applicant identifies a withdrawal of \$3000.00 noted when the account was updated. In this regard, the applicant deposes as follows:

“(x) Upon enquiring i was advised that the Respondent had withdrawn the said amount upon presentation of an order of Justice Cottle dated 12th July 2013 appointing her receiver for our mother.”

The affiant further deposes the following:

“(xi) Upon visiting our mother, I have not seen any indication that \$3000.00 was spent on her in anyway. Over the years that I have held our mother’s bank account I have never had any reason to withdraw such a substantial sum from her account for any reason whatsoever. It is my personal belief that the Respondent’s intentions are not in the best interest of our mother.

(xii) On Monday 12th August 2013 I went to the Central Co-operative Credit Union and upon enquiring about our mother’s bank account I was advised by the tellers and verily believe that the Respondent cause my name to be removed from the said account thereby denying me access thereto.”

4. In her affidavit in reply, filed on the 3rd day of October 2013, the Respondent Irma Austrie raises a number of issues seeking to justify her position as Receiver. Included are the following:

(i) Clement Daniel, a brother dopes support their mother by way of money and stuff and household items about twice yearly.

(ii) When their mother’s mental health began to decline in 2009, the Respondent was the only sibling at the time, who assumed the responsibility and moved in with her parents.

- (iii) Prior to the removal of the Claimant's name on the patient's Credit Union account she noted withdrawals of various sums.
- (iv) The \$3000.00 was withdrawn after the grant of the Order dated the 12th day of July 2013 and used to meet the patient and her husband's monthly expenses and the remainder to settle a legal bill on the patient's behalf.
- (v) She has never received any opposition or objection from any sibling over the last four years relative to her care taker role in the patient's life.
- (vi) Over the last four years her own funds were used in caring for the patient when the need arose.
- (vii) At no time before or after the grant of the Order of 12th July 2013 were the patients funds used from the personal affairs and benefit of the Respondent.

5. In the premises the prayer is for one or all of the following orders:

- (i) Reject the application seeking an injunction;
- (ii) Uphold the Order of the 12th day of July 2013;
- (iii) Such further or other relief as may be just

Reasoning

6. The court has heard the submissions relating the granting of the injunction and the setting aside of the order; and to the continuation of the said order. In the final analysis, the case has as its principal objective, the management of a patient's property and affairs. This is not new.

7. Section 21 of the Mental Health Act* empowers the court to appoint a receiver. And a receiver so appointed has powers to do such things in relation to the property and affairs of the patient as the court, in its exercise of the powers

conferred on it by sections 18 and 19, orders or directs him to do. In turn section 18 prescribes the general functions of the court prefaced by the words “as appear to be necessary or expedient.” On the other hand, section 19 sets out the special powers of the court.

8. Given these wide powers it is fair and reasonable to interpret these powers as being designed to deal with that may be a fluid situation where the court may otherwise be without express powers to address the situation.
9. In this case, at the center of all of this application is the patient's account at the Central Co-operative Credit Union. This stems from the appointment of the Respondent, Irma Austrie and the allegations made in this regard.
10. On the 27th day of September 2013, the court ordered that the order of the 12th day of July 2013 shall stand in abeyance until further order of the court. On the same day the court ordered counsel for the Respondent to file an undertaking not later than the 2nd day of October 2013, an undertaking with respect to the cessation of withdrawals of money from any account with effect from the date of the order. It is not clear that there has been compliance.
11. With respect to orders under section 19, the **Mental Health Act**¹ coupled with Sections 18 and 19 of the said Act, it is clear that proper accounting must prevail and hence the wide powers given to the court. This in essence is reflected in the case with accusations of withdrawals from the patients Credit Union Account.
12. It may be that the Order of 12th July 2013 did not reflect the requirement for accounting in some form to be submitted for this court with receipts attached.

¹ CAP. 80:62 of the Laws of the Commonwealth of Dominica

This would explain the \$180.00, \$300.00 and the \$3000.00 mentioned in the affidavits of the Respondent and the Applicant, respectively.

13. In the circumstances, the court orders the following:

1. A determination with respect to the application will not be made until such time as the court considers appropriate.
2. The order of 12th July 2013 is varied as follows:

(a) The existing paragraph 3 is renumbered as paragraph 6.

(b) The following new paragraphs 3,4,5 added:

“3. The applicant shall submit to the court every six weeks, commencing on the 17th day of March 2014, and continuing, a report by way of an exhibit to an affidavit continuing an account of:

- (a) all social security benefits, pensions, rent or interest received on behalf of the patient;
- (b) all balances at any financial institutions including a Credit Union standing to the credit of the patient;
- (c) any money withdrawn from any financial institution or credit union account standing in the name of the patient;
- (d) any money withdrawn from an account at any financial institution or credit union standing in the name of the patient, together with original receipts showing the amount of such withdrawal and the nature of the expenditure connected to such withdrawal.

4. All parties have liberty to apply.

5. A penal notice shall be attached to Order of the 12th July 2013 in the following terms:

“Notice to the Respondent:

If you the Respondent fail to comply with the terms of this Order, proceedings may be commenced against you for contempt of court.”

3. The stay of the Order of 12th July 2013 is vacated.
4. There is no order as to costs
5. Counsel for the Applicant has carriage of this order.

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Errol L. Thomas
High Court Judge (Ag)