

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2025] SGHCF 66

District Court Appeal No 2 of 2025

Between

XKG

... Appellant

And

XKF

... Respondent

JUDGMENT

[Mental Capacity — Capacity to execute a Lasting Power of Attorney —
Form 1]

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XKG

v

XKF

[2025] SGHCF 66

General Division of the High Court (Family Division) — District Court
Appeal No 2 of 2025
Teh Hwee Hwee J
11 July, 5 November 2025

10 December 2025

Judgment reserved.

Teh Hwee Hwee J:

Introduction

1 The delicate balance between protecting individuals who lack capacity and preserving the autonomy of individuals who still retain it lies at the heart of the framework for Lasting Powers of Attorney (“LPA”) set out in Part 4 of, and the First Schedule to, the Mental Capacity Act 2008 (2020 Rev Ed) (“MCA”).

2 The LPA regime enables individuals with capacity to plan for future incapacity by making decisions about their future care and financial affairs. An LPA is a power of attorney under which an individual, the donor, confers on one or more other individuals (each a donee) authority to make decisions about the donor’s personal welfare or specified matters concerning the donor’s personal welfare, and/or the donor’s property and affairs or specified matters concerning the donor’s property and affairs, when the donor no longer has

capacity to make such decisions (s 11(1) of the MCA). This case concerns the assessment of whether the mental capacity threshold for the valid execution of an LPA was met.

3 Consistent with the terminology used in the MCA, this judgment refers to the person whose mental capacity is being assessed as “P”. This appeal involves an LPA executed by P to appoint her brother (“the Appellant”) as the donee, and the Appellant’s son, her nephew, as the replacement donee, of the LPA. It arose from an application brought by P’s son (“the Respondent”) for, *inter alia*, a declaration that P lacked mental capacity when she executed the LPA and a Statutory Declaration (“SD”) on 24 August 2023, and for the revocation of the LPA and the invalidation of the SD.¹

4 The application was heard and allowed by the learned District Judge (the “DJ”), who found that P lacked mental capacity to execute both the LPA and the SD at the material time.² The Appellant has appealed against the DJ’s decision only in respect of the LPA. The present appeal, therefore, does not concern the validity of the SD, in which P purported to disclaim ownership of two residential properties (Property UEC and Property NR), collectively worth around \$5.7m and held through Company R, and to declare that the Appellant was the true and only owner of both the properties and the company,³ even

¹ Originating Summons (Amendment No 2) filed on 15 April 2024.

² Written decision rendered pursuant to Rule 670 of the Family Justice Rules 2014 on 20 December 2024 at para 2 (Record of Appeal (“ROA”) Vol 1 at pp 56–57).

³ Dr Fones Calvin Soon Leng’s 1st Affidavit dated 3 May 2024 (“Dr Fones’s 1st Affidavit”), Enclosure to Tab 4 (ROA Vol 3 at pp 173–174); Respondent’s 1st Affidavit dated 25 January 2024 (“Respondent’s 1st Affidavit”) at para 62(c) (ROA Vol 2 at p 167) and Enclosure to Tab 20 (ROA Vol 2 at p 271); Appellant’s 1st Affidavit dated 4 May 2024 (“Appellant’s 1st Affidavit”) at para 17(d) (ROA Vol 3 at

though P did not know, at the material time, that Property NR and Company R existed, or that she was the sole director and shareholder of Company R.⁴

5 Having considered the matter, it is my judgment that P lacked the requisite mental capacity to engage in the decision-making process for executing the LPA, being unable to follow and/or process the explanation that was given to her in relation to the nature, purpose and legal effect of the LPA, the scope of the powers she was granting, and the implications of granting those powers or the limitations she specified. The evidence shows that P could not appreciate what an LPA was, could not understand how the LPA related to her own circumstances, and could not grasp the consequences of executing the LPA (namely, that she was granting the Appellant broad powers not only to take care of her or act in her best interests, but also to make binding decisions about her, including regarding her living arrangements, property and finances, once she loses mental capacity). I therefore dismiss the appeal.

Background facts

6 I begin by setting out the pertinent background facts, including the progression of P's cognitive decline, to provide the context within which she executed the LPA.

7 P is an 87-year-old foreign national with permanent residency in Singapore.⁵ Her brother, the Appellant, is 91 years old. He resides in the United

p 81) and Enclosure to Tab 4 (ROA Vol 3 at p 101) and Enclosure to Tab 5 (ROA Vol 3 at p 108).

⁴ Grounds of Decision dated 3 April 2025 ("GD") at [16(b)] and [16(c)].

⁵ Respondent's 1st Affidavit at para 6 (ROA Vol 2 at p 152) and Enclosure to Tab 2 (ROA Vol 2 at p 177).

States.⁶ Her replacement donee, the Appellant's son, is 60 years old and also resides in the United States.⁷ P's only son, the Respondent, is 62 years and lives in Australia.⁸

8 According to the Respondent, the first signs of P's cognitive decline emerged in 2017. By 2020, the deterioration had progressed sufficiently for a geriatrician at a local hospital ("the geriatrician at a local hospital") to diagnose her with dementia, necessitating daily medication.⁹ On 13 July 2023, the same geriatrician assessed P's condition to have worsened to moderate dementia.¹⁰

9 The impact of P's cognitive decline on her daily functioning was evident from 2020 onwards. Her condominium's facility manager noted that her home was unsanitary, crowded with waist-high clutter, and infested with cockroaches and other pests. The condominium's facility manager further noted that P frequently required assistance with basic tasks, such as locating misplaced items or her mobile phone. P would become verbally and physically aggressive when frustrated, striking others with her walking stick or banging on her neighbours' doors at times.¹¹

⁶ Appellant's 1st Affidavit at para 6 (ROA Vol 3 at p 76); Dr Fones's 1st Affidavit, Enclosure to Tab 3 (ROA Vol 3 at p 162) and Enclosure to Tab 5 at para 18 (ROA Vol 3 at p 179).

⁷ Dr Fones's 1st Affidavit, Enclosure to Tab 3 (ROA Vol 3 at p 164).

⁸ Respondent's 1st Affidavit at para 5 (ROA Vol 2 at p 152) and Enclosure to Tab 1 (ROA Vol 2 at pp 173–174).

⁹ Respondent's 1st Affidavit at para 14 (ROA Vol 2 at p 154).

¹⁰ Respondent's 1st Affidavit at para 20 (ROA Vol 2 at p 156).

¹¹ Respondent's 1st Affidavit at para 23 (ROA Vol 2 at pp 156–157) and Enclosure to Tab 14 (ROA Vol 2 at pp 226–227).

10 The Respondent also points to an occasion on 24 November 2022 when, accompanied by two individuals, P opened a three-party joint account and transferred S\$200,000 to it, but subsequently could not recall opening the account or making the transfer.¹² While the parties have different accounts of how P was related to the two individuals and what the transfer was for, the significance lies in P’s inability to remember these banking transactions. P also did not encash dividend cheques,¹³ could not file her annual income tax returns,¹⁴ and was unable to discharge her duties as sole shareholder and director of Company R.¹⁵ Routine responsibilities, such as responding to vehicle inspection notices and road tax reminders, also went unattended.¹⁶

11 As stated above (at [8]), P was diagnosed on 13 July 2023 to have moderate dementia. This was slightly more than a month before P executed the LPA and SD. Shortly after that diagnosis, P suffered a fall and was hospitalised on 21 July 2023. On 25 July 2023, a senior medical social worker (“the senior medical social worker”) at the hospital where P was admitted for her fall informed both parties that P needed full-time care, noting that P could not retain information shared with her after a few minutes or remember meals taken, and required assistance with basic tasks. He further explained that doctors from the Psychological Medicine department in the hospital had assessed P and

¹² Respondent’s 1st Affidavit at para 18 (ROA Vol 2 at p 155) and Enclosure to Tab 10 (ROA Vol 2 at pp 200–202).

¹³ Respondent’s 1st Affidavit at para 16 (ROA Vol 2 at pp 154–155) and Enclosure to Tab 8 (ROA Vol 2 at pp 193–194).

¹⁴ Respondent’s 1st Affidavit at para 17 (ROA Vol 2 at p 155) and Enclosure to Tab 9 (ROA Vol 2 at pp 196–198).

¹⁵ Appellant’s 1st Affidavit at para 17 (ROA Vol 3 at pp 80–81).

¹⁶ Respondent’s 1st Affidavit at para 19 (ROA Vol 2 at pp 155–156) and Enclosure to Tab 11 (ROA Vol 2 at pp 204–212).

determined that she lacked mental capacity to decide on her discharge and care plans.¹⁷ The senior medical social worker was of the view that P did not have decision making capacity at that time, a position that was subsequently clarified in an email dated 13 May 2024, wherein he gave that as the reason why he had not advised either party to assist P in executing an LPA on 25 July 2023.¹⁸ According to the discharge summary dated 1 August 2023, P could not recall the fall, was unaware why she was admitted, and did not know which hospital she was in.¹⁹ P was then transferred to a transitional care facility (“TCF”) on 2 August 2023.

12 Later that month, on or around 24 August 2023, P executed the LPA and the SD, with the LPA Certificate issued by Dr Fones Calvin Soon Leng (“Dr Fones”), a consultant psychiatrist. Shortly before the LPA and SD were executed, Dr Fones met with the Appellant and the Appellant’s son on 15 August 2023 when they were in Singapore.²⁰ That visit marked the Appellant’s first return to Singapore in over a decade. His previous visit was in 2010, following the death of his mother.²¹ The Appellant and the Appellant’s son attended at Dr Fones’s office again on 22 August 2023, this time, together with P.²² Dr Fones conducted a psychiatric assessment that day. In his medical report,

¹⁷ Respondent’s 1st Affidavit at paras 22–24 (ROA Vol 2 at pp 156–157) and Enclosure to Tab 14 (ROA Vol 2 at pp 226–231).

¹⁸ Respondent’s 4th Affidavit dated 6 June 2024 (“Respondent’s 4th Affidavit”), Enclosure to Tab 6 (ROA Vol 3 at p 216).

¹⁹ Respondent’s 1st Affidavit at para 21 (ROA Vol 2 at p 156) and Enclosure to Tab 12 (ROA Vol 2 at pp 214–217).

²⁰ Dr Fones’s 1st Affidavit, Enclosure to Tab 5 at paras 1 and 3 (ROA Vol 3 at pp 176–177).

²¹ Appellant’s 1st Affidavit at para 34 (ROA Vol 3 at p 85).

²² Notes of Evidence for 13 November 2024 (“Day 1 NE”) at p 12, lines 12–14.

Dr Fones stated his opinion that P suffered from a major neurocognitive disorder, noting that the diagnosis was supported by P's history of deteriorating memory, decision-making ability and poor self-care.²³ Dr Fones's psychiatric assessment included a Mini-Mental State Examination ("MMSE"), for which P scored 20/30.²⁴ That falls within the band of 11 to 20, which indicates a "moderate" level of dementia severity (on a scale of "none", "questionable", "mild", "moderate" and "severe").²⁵

13 The Appellant and the Appellant's son brought P to Dr Fones's clinic again two days later on 24 August 2023,²⁶ the day that the LPA and SD were executed. In relation to the LPA, Dr Fones's evidence was that he was satisfied, based on his assessment of P on 22 August 2023 and his interactions with P,²⁷ that P understood the nature and purpose of an LPA, and noted that she wanted to appoint the Appellant as her donee on the basis that he had looked after her and supported her over the years, and that she trusted him the most and he knew her best.²⁸ She did not want to choose her son, the Respondent, as "he [was] not around" and "doesn't care" or understand her.²⁹ P appointed the Appellant's son to be the replacement donee on the basis that he would also act in her best interests. She similarly did not choose the Respondent.³⁰

²³ Dr Fones's 1st Affidavit, Enclosure to Tab 5 at paras 32–33 (ROA Vol 3 at pp 182–183).

²⁴ Dr Fones's 1st Affidavit, Enclosure to Tab 5 at para 38 (ROA Vol 3 at p 183).

²⁵ Dr Fones's 1st Affidavit, Enclosure to Tab 5 at para 39 (ROA Vol 3 at pp 183–184).

²⁶ Day 1 NE at p 10, lines 1–8.

²⁷ Day 1 NE at p 9, lines 15–25.

²⁸ Dr Fones's 1st Affidavit, Enclosure to Tab 5 at paras 29, 30 and 53 (ROA Vol 3 at pp 181 and 187).

²⁹ Dr Fones's 1st Affidavit, Enclosure to Tab 5 at para 31 (ROA Vol 3 at p 181).

³⁰ Dr Fones's 1st Affidavit, Enclosure to Tab 5 at para 54 (ROA Vol 3 at p 187).

14 On 7 September 2023, a doctor from the TCF emailed the Appellant cautioning that P may have limited decision-making capacity and therefore P’s stated desire for the Appellant to be “the main spokesperson and decision-maker” in relation to her care was recommended to be treated with caution.³¹ That was two weeks after the LPA had been executed. Then on 8 September 2023, P was diagnosed with Alzheimer’s disease by Dr Ting Kang Seng Simon (“Dr Ting”), a senior consultant cognitive neurologist.³² A psychologist from Dr Ting’s team administered another MMSE on 8 December 2023, where P scored 14/30, again indicating a “moderate” level of dementia severity.³³ After a follow-up consultation on 15 December 2023, Dr Ting recorded in a memo that P had no mental capacity to make decisions relating to her financial or personal affairs.³⁴ In his medical report dated 22 December 2023, Dr Ting expressed the opinion that P was mentally incapacitated and that she likely had no mental capacity to execute the LPA in August 2023. He further expressed the opinion that P likely lacked mental capacity to make decisions on personal and financial affairs since she was first seen by him in September 2023. This assessment was based upon cognitive testing (including the MMSE conducted on 8 December 2023), medical history and CT brain imaging.³⁵

³¹ Appellant’s 1st Affidavit at para 8 (ROA Vol 3 at pp 76–77) and Enclosure to Tab 1 (ROA Vol 3 at pp 91–92).

³² Respondent’s 1st Affidavit at para 26 (ROA Vol 2 at p 157) and Enclosure to Tab 15 (ROA Vol 2 at p 233).

³³ Respondent’s 1st Affidavit, Enclosure to Tab 18 at p 3 (ROA Vol 2 at p 244); Dr Ting Kang Seng Simon’s Affidavit dated 13 June 2024 (“Dr Ting’s Affidavit”), Enclosure to Tab 1 (ROA Vol 3 at pp 237–238).

³⁴ Respondent’s 1st Affidavit at para 28 (ROA Vol 2 at p 158) and Enclosure to Tab 17 (ROA Vol 2 at p 237).

³⁵ Respondent’s 1st Affidavit at paras 29 and 30 (ROA Vol 2 at pp 158–159) and Enclosure to Tab 18 (ROA Vol 2 at pp 242–250).

15 P was also assessed by Dr Bharathi Balasundaram (“Dr Bharathi”), a senior psychiatrist consultant on 18 September 2023. In a memo dated the same day, Dr Bharathi recorded that P lacked mental capacity to decide on her finances.³⁶ Following two additional consultations on 14 December 2023 and 18 December 2023, Dr Bharathi certified through a report dated 3 January 2024 that P was incapacitated under the MCA and recommended the appointment of a deputy by the court.³⁷

16 Dr Ting and Dr Bharathi were called as the Respondent’s witnesses. Dr Fones was called as the Appellant’s witness. The Appellant also called two other medical experts as witnesses, namely, Dr Sitoh Yih Yiow (“Dr Sitoh”), a consultant geriatrician,³⁸ and Dr Ho King Hee (“Dr Ho”), a consultant neurologist.³⁹ Dr Sitoh and Dr Ho did not personally assess P but conducted reviews of P’s medical records and the evidence provided by Dr Ting, Dr Bharathi and Dr Fones. Dr Sitoh’s report dated 17 September 2024 stated that P’s fluctuating capacity could have resulted in different assessment outcomes when evaluated by various doctors. Factors which could have affected P’s capacity include the time of day, medication taken, whether P had established rapport with the assessing doctors, her other illnesses such as COVID-19 and urinary tract infections, and sleep disturbances. In his report dated 19 September 2024, Dr Ho disagreed that it was likely that P had no mental capacity to make

³⁶ Respondent’s 1st Affidavit at para 27 (ROA Vol 2 at pp 157–158) and Enclosure to Tab 16 (ROA Vol 2 at p 235).

³⁷ Respondent’s 1st Affidavit at paras 31–35 (ROA Vol 2 at pp 159–161) and Enclosure to Tab 19 (ROA Vol 2 at pp 255–264).

³⁸ Dr Sitoh Yih Yiow’s Affidavit dated 17 September 2024 (“Dr Sitoh’s Affidavit”), Enclosure to Tab 1 (ROA Vol 4 at pp 7–15).

³⁹ Dr Ho King Hee’s Affidavit dated 19 September 2024 (“Dr Ho’s Affidavit”), Enclosure to Tab 1 (ROA Vol 5 at pp 7–16).

the decision to execute an LPA and concluded that it was “certainly possible” that P possessed sufficient mental capacity to execute the LPA and SD. This assessment was based on P’s MMSE score obtained during Dr Fones’s assessment, her consistent expression of her feelings towards the Appellant and the Respondent across various medical consultations, and what Dr Ho stated to be the straightforward nature of the decisions required for the execution of the LPA and SD.⁴⁰ Dr Ho further reasoned that the variability in results across different cognitive tests administered by different doctors could be attributed to P’s fluctuating mental capacity, which is possible for patients with moderate dementia.⁴¹

17 The Respondent discovered the existence of the LPA and SD during his visit to P in December 2023. According to the Respondent, when he asked P about the LPA, she was unable to recall any details.⁴² By the time the matter was heard by the DJ in November 2024, P had lost mental capacity.⁴³

The decision of the court below

18 The DJ found that P lacked mental capacity at the time of executing the LPA and SD on 24 August 2023. While the invalidation of the SD is not in issue on appeal, I include the DJ’s findings in relation to it as the DJ dealt with both the documents in her judgment, and considered the circumstances surrounding their execution as part of a coordinated process that raised questions about P’s mental capacity. Further, although the DJ did make specific findings in relation

⁴⁰ Dr Ho’s Affidavit, Enclosure to Tab 1 at p 13, para 38 (ROA Vol 5 at p 15).

⁴¹ Dr Ho’s Affidavit, Enclosure to Tab 1 at p 13, para 37 (ROA Vol 5 at p 15).

⁴² Respondent’s 1st Affidavit at para 9 (ROA Vol 2 at p 153).

⁴³ GD at [3].

to the LPA and the SD, she also made general findings as to P's mental capacity regarding both the LPA and the SD – especially with respect to the evidence of the doctors that were called as witnesses.

19 I note that in respect of the factual underpinnings pertaining to the execution of both the SD and LPA, the Appellant argues that the inferences drawn from these facts support a different result for each document because the decisions concerned are different.⁴⁴ I accept the Appellant's submission that while the same facts may be relied upon in both inquiries, the inferences drawn as regards P's capacity to execute the SD would not necessarily apply to P's capacity to execute an LPA, because the determination of capacity is decision-specific (i.e. whether P has the capacity to execute a particular document depends on whether P has the capacity to make the specific decisions relevant to the execution of that document).

20 In relation to the SD, the DJ found that P was unaware of the existence of Property NR and Company R (which held the titles to Property NR and Property UEC). This rendered P's declaration that she had no rights in these properties unacceptable, even if the DJ had disregarded the fact that there was little evidence supporting the Appellant's claim of beneficial ownership.⁴⁵ The DJ found that it was not satisfactory for P to have been informed by Dr Fones about Property NR's existence and the Appellant's ownership of that property, as a vulnerable person was in a position where information conveyed by a trusted source was often readily accepted without question.⁴⁶

⁴⁴ Appellant's Written Submissions (Amendment No 1) filed on 5 November 2025 at paras 6 and 8.

⁴⁵ GD at [16(b)].

⁴⁶ GD at [16(b)].

21 The DJ also found that P had no knowledge of her directorship or shareholding in Company R. The DJ was of the view that P could not give away her rights to ownership if she was not even aware of having them.⁴⁷ In this regard, P had in effect signed the SD that placed the ownership of assets in the hands of the Appellant based on information obtained from the Appellant himself.⁴⁸ The DJ further expressed concerns about the timing and circumstances of the execution of the documents, particularly the complete lack of involvement of the Respondent, P’s only son.⁴⁹

22 In relation to the LPA, the DJ found that P lacked sufficient understanding of the extent of her own estate, which was relatively large and diverse, and hence it appeared implausible that P knew much about the powers she was vesting in the Appellant. While the DJ did not expect P to know every asset P had, the DJ was of the view that P had to demonstrate an understanding of at least some of the significant assets in her name. The DJ rejected the position that mere trust in a potential donee was sufficient, and held that an awareness of what one had as assets, which were to be entrusted to another to manage, was “imperative”.⁵⁰ The DJ also had concerns about the insufficient explanation of the LPA given to P, observing that certain parts of the LPA form had not been read to P, particularly Section 4 relating to “Other Powers”.⁵¹

23 The DJ further expressed concern about the lack of engagement with the Respondent, P’s only child, noting that there was no indication that the

⁴⁷ GD at [16(c)].

⁴⁸ GD at [16(c)].

⁴⁹ GD at [13] and [16(c)].

⁵⁰ GD at [16(d)].

⁵¹ GD at [16(d)].

Respondent did not care for P, as evidenced by his regular phone calls to P and visits. The DJ found that P's choice of the Appellant's son, rather than her own son, as replacement donee cast doubt on her ability to understand the significance of the LPA. In this regard, the DJ questioned whether P understood the consequences of appointing the Appellant as her donee, given his advanced age and the challenging medical treatment that he was undergoing.⁵²

The Appellant's case

24 The Appellant raises several grounds on appeal.⁵³ First, he contends that the DJ misinterpreted the results of the MMSE. According to Dr Fones's testimony, P's inability to recall three simple objects after a three-minute interval might reflect their irrelevance to her rather than cognitive impairment. Dr Fones further testified that, even if P's retention of information was brief, this did not necessarily indicate a lack of mental capacity. The Appellant also emphasises that P demonstrated capacity by providing internally consistent accounts to different people at different times about both the Appellant's support and her preference for him to care for her.⁵⁴

25 Second, the Appellant argues that the DJ placed undue emphasis on P's lack of recollection of her estate, thereby conflating two distinct issues: whether P lacked mental capacity when executing the LPA, and whether P understood the powers being vested in the Appellant.⁵⁵ The Appellant contends that P's inability to recall the full extent or the majority of her assets does not

⁵² GD at [16(d)].

⁵³ Appellant's Case dated 23 May 2025 ("AC").

⁵⁴ AC at paras 24–33.

⁵⁵ AC at paras 35–36.

automatically mean that she lacked capacity to execute the LPA. There is no legislative requirement for a donor to have comprehensive knowledge of their estate. Further given the breadth of her estate, P's inability to recall all assets is hardly unusual.⁵⁶ Moreover, P was not so concerned with the specifics of the management of her assets.⁵⁷ The Appellant argues that when executing an LPA, a donor need only choose who the donor wants to make decisions on his behalf when he is not able to do so, and that the central consideration is who the donor trusts.⁵⁸ At the hearing, counsel for the Appellant clarified that both trust in the donee and appreciation of the scope of powers being granted to the donee are required.⁵⁹

26 Third, regarding the medical evidence, the Appellant challenges the weight given to Dr Bharathi's assessment, arguing it was temporally distant from the execution of the LPA, and failed to account for P's fluctuating capacity, and focused on testamentary capacity rather than LPA capacity.⁶⁰ Conversely, he contends that Dr Fones's evidence should be given greater weight, as it specifically addressed P's ability to understand, retain and weigh information, and to communicate her choice of donees. The Appellant further argues that the fact that Dr Fones did not read a few parts of the LPA to P or engage the Respondent does not necessitate its revocation.⁶¹

⁵⁶ AC at para 38.

⁵⁷ AC at para 39.

⁵⁸ AC at paras 64–65.

⁵⁹ Minutes of hearing on 11 July 2025.

⁶⁰ AC at paras 45–53.

⁶¹ AC at paras 54–57.

27 Fourth, the Appellant maintains that there was no legal requirement to involve the Respondent in the LPA's execution,⁶² and that P had rational reasons for appointing the Appellant's son as replacement donee instead of the Respondent.⁶³

The Respondent's case

28 The Respondent contends that P lacked mental capacity for the following reasons. First, P's performance on the MMSE revealed significant cognitive deficits in temporal, orientation, attention, and recall abilities. These impairments suggest that she would have been unable to retain information long enough to process and apply it meaningfully, especially in the context of an LPA with its complex legal implications.⁶⁴ The Respondent argues that the Appellant's attempts to dismiss P's recall failures are misconceived, as the evidence relied upon by the Appellant includes only P's long-term memory, as well as her unreasoned assertions, tangential responses and repetitive statements that are contradicted by evidence, and does not reflect P's ability to understand, retain or weigh information relevant to executing an LPA.⁶⁵

29 The Respondent also argues that the results of the MMSE conducted by Dr Fones are corroborated by Dr Ting and Dr Bharathi, who observed significant cognitive impairment in P. In addition, the Respondent asserts that the evidence of Dr Ting and Dr Bharathi should be given sufficient weight as their findings are consistent and their examination of P is sufficiently proximate

⁶² AC at paras 71–80.

⁶³ AC at paras 81–86.

⁶⁴ Respondent's Case dated 23 June 2025 ("RC") at paras 23–28.

⁶⁵ RC at paras 30 and 36–39.

in time to the execution of the LPA, and is further corroborated by observations from other healthcare professionals and family members.⁶⁶

30 Second, the Respondent argues that the execution of an LPA involves “cognitively complex” decision-making.⁶⁷ To execute a valid LPA, the Respondent contends that P must have understood the scope of her estate, the legal nature and purpose of the LPA, and the powers she was conferring.⁶⁸ The Respondent highlights that P’s references to her assets were vague and imprecise, lacking the necessary detail to support a finding of informed decision-making.⁶⁹ While trust in the donee is relevant, the Respondent argues that this does not obviate the need for donors to understand the powers being conferred through an LPA.⁷⁰ The Respondent contends that P’s lack of understanding of her assets necessarily meant that she could not have understood the powers she was conferring on the donees in respect of those assets.⁷¹ The Respondent also contends that the explanation given by Dr Fones to P about the powers granted under the LPA was inadequate, having failed to read out portions of the LPA to P and discuss the implications and consequences of one of her choices that qualified her donee’s authority.⁷²

⁶⁶ RC at paras 31–35, 40 and 42.

⁶⁷ RC at para 58.

⁶⁸ RC at para 45.

⁶⁹ RC at para 56.

⁷⁰ RC at para 58.

⁷¹ RC at para 75.

⁷² RC at paras 73–79.

31 Third, the Respondent argues that the circumstances surrounding the execution of the LPA raise serious concerns, particularly the failure to involve the Respondent, P’s only son, in the process.⁷³

Issue for determination

32 The central issue is whether P had or lacked mental capacity when she executed her LPA on 24 August 2023.

The law

33 The starting point for this analysis is the MCA. The statutory framework establishes that capacity is presumed. Under s 3(2) of the MCA, “a person must be assumed to have capacity unless it is established that the person lacks capacity”. Complementing this presumption, ss 3(3) and 3(4) of the MCA provide, respectively, that “a person is not to be treated as unable to make a decision unless all practicable steps to help the person to do so have been taken without success”, and “a person is not to be treated as unable to make a decision merely because the person makes an unwise decision”. The plaintiff bears the burden of proving on a balance of probabilities that P lacked capacity at the material time (*Wong Meng Cheong v Ling Ai Wah* [2012] 1 SLR 549 at [30]; *WEW v WEX* [2022] SGHCF 32 at [6]; *VVC v VVE* [2021] SGFC 94 (“*VVC v VVE*”) at [33(a)]).

34 Section 4 of the MCA sets out the test for when a person lacks capacity:

Persons who lack capacity

4.—(1) For the purposes of this Act, a person lacks capacity in relation to a matter if at the material time the person is unable

⁷³ RC at para 80.

to make a decision for himself or herself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.

(2) It does not matter whether the impairment or disturbance is permanent or temporary.

(3) A lack of capacity cannot be established merely by reference to —

(a) a person's age or appearance; or

(b) a condition of the person, or an aspect of the person's behaviour, which might lead others to make unjustified assumptions about the person's capacity.

(4) In proceedings under this Act (other than proceedings for offences under this Act), any question whether a person lacks capacity within the meaning of this Act must be decided on the balance of probabilities.

(5) Subject to section 21, no power which a person ("D") may exercise under this Act —

(a) in relation to a person who lacks capacity; or

(b) where D reasonably thinks that a person lacks capacity, is exercisable in relation to a person below 21 years of age.

35 In *Re BKR* [2015] 4 SLR 81 ("*Re BKR (CA)*") at [134], the Court of Appeal explained the nature of the test for capacity under s 4(1) of the MCA as follows:

134 ... [T]he test for capacity in s 4(1) of the MCA may be thought of as having a functional and a clinical component – the functional aspect is that P must be unable to make a decision, and the clinical aspect is that this inability must be caused by a mental impairment. It is not difficult to see that we require the assistance of expert evidence when addressing the clinical component of the test: we need medical professionals to tell us whether P has a mental impairment based on the observable symptoms and any other diagnostic tools available, and if so, what that impairment is, and what effect it has on P's cognitive abilities. But as to the functional component, it is in our judgment a question for *us* to grapple with leaving perhaps a limited scope for the involvement of the medical experts. ... [emphasis in original]

36 The clinical component of the test under s 4(1) of the MCA requires “a close examination of the expert evidence” to determine whether P had an impairment of mind, while the functional component requires “an examination of all the evidence regarding [P] and her interactions with others” to determine whether P was likely unable to make the decision for herself (*Goh Yng Yng Karen v Goh Yong Chiang Kelvin* [2021] 3 SLR 896 at [33]).

37 Section 5 of the MCA specifies when a person will be considered to be “unable to make a decision for himself or herself”:

Inability to make decisions

5.—(1) For the purposes of section 4, a person is unable to make a decision for himself or herself if the person is unable —

- (a) to understand the information relevant to the decision;
- (b) to retain that information;
- (c) to use or weigh that information as part of the process of making the decision; or
- (d) to communicate his or her decision (whether by talking, using sign language or any other means).

(2) A person is not to be regarded as unable to understand the information relevant to a decision if the person is able to understand an explanation of it given to him or her in a way that is appropriate to his or her circumstances (using simple language, visual aids or any other means).

(3) The fact that a person is able to retain the information relevant to a decision for a short period only does not prevent the person from being regarded as able to make the decision.

(4) The information relevant to a decision includes information about the reasonably foreseeable consequences of —

- (a) deciding one way or another; or
- (b) failing to make the decision.

38 The four situations, namely, that (i) the person is unable to understand the information relevant to the decision, (ii) the person is unable to retain that information, (iii) the person is unable to use or weigh that information as part of the process of making the decision, and (iv) the person is unable to communicate his decision by whatever means, are to be read conjunctively. This was observed by the High Court in *Re BKR* [2013] 4 SLR 1257 (“*Re BKR (HC)*”) (at [71]), and this observation was not disturbed by the Court of Appeal. Therefore, for a person to be considered capable of making a decision, the person must be able to understand, retain, and use or weigh the information relevant to the decision, and then communicate the person’s decision, as “[a] deficiency in any one of these requirements would mean he lacks mental capacity” (*BUV v BUU* [2020] 3 SLR 1041 (“*BUV v BUU*”) at [31], referring to *Re BKR (HC)* at [71]).

Analysis and findings

Information relevant to the decision to execute an LPA

39 The assessment of P’s mental capacity is decision-specific, as statutorily mandated under s 4(1) of the MCA, which provides that a person lacks capacity “in relation to a matter” if at the material time he is unable to make a decision for himself “in relation to the matter” (see also *VVC v VVE* at [23]; MCA Code of Practice (September 2023) at para 4.3.1). Given the decision-specific nature of mental capacity assessment, it is necessary to ascertain what constitutes relevant information that P has to understand, retain and use or weigh in deciding to execute the LPA (see Gary Chan Kok Yew, “Assessing Mental Capacity: *BUV v BUU* [2019] SGHCF 15” (2020) 32 SAclJ 287 at para 21; see further *The Public Guardian v RI* [2022] EWCOP 22 (“*Public Guardian v RP*”)

at [13] and [16] on what constitutes “relevant information” in relation to the execution of an LPA in England).

40 Section 5(4) of the MCA explains the meaning of “information relevant to [the] decision” to include information about the reasonably foreseeable consequences of deciding one way or another or failing to make the decision. Guidance on information relevant to the decision to execute an LPA may be taken from para 2(1)(a) of the First Schedule to the MCA, which states that the content of an LPA must include information in the prescribed form about the purpose and effect of an LPA. Paragraph 2(1)(b) requires a donor to confirm that the donor has read this information or has had it read to him, and that the donor intends the authority conferred under the LPA to be authority to make decisions on the donor’s behalf in circumstances where the donor no longer has capacity. Additionally, as a safeguard, para 2(1)(e) requires a certificate issuer to certify, *inter alia*, that the donor understands the scope of the authority conferred. The relevant provisions are set out below:

Requirements as to content of instruments

2.—(1) The instrument must include —

- (a) the information specified in any of the forms mentioned in paragraph 1(1)(a) about the **purpose of the instrument and the effect of a lasting power of attorney**;
- (b) a statement by the donor to the effect that the donor —
 - (i) **has read the information mentioned in subparagraph (a) (or has had it read to the donor); and**
 - (ii) **intends the authority conferred under the instrument to mean authority to make decisions on the donor’s behalf in circumstances where the donor no longer has capacity;**

...

(e) a certificate by a person of a prescribed description that, in the person's opinion, at the time when the donor executes the instrument —

(i) the donor **understands the purpose of the instrument and the scope of the authority conferred** under it;

(ii) no fraud or undue pressure is being used to induce the donor to create a lasting power of attorney; and

(iii) there is nothing else which would prevent a lasting power of attorney from being created by the instrument; ...

[emphasis added]

41 Reading paras 2(1)(a), (b) and (e) of the First Schedule to the MCA together, it is clear that a donor must understand the purpose and effect of the LPA, and also that he is granting the donee(s) authority to make decisions on his behalf when he no longer has capacity. These requirements are restated in para 8.12 of the MCA Code of Practice (September 2023), which provides, *inter alia*, that the donor “must understand what an LPA is and its effect” (at para 8.12.1). The same paragraph explains that to ensure that the donor understands the consequences, the LPA forms require the donor to state that the donor has read, or someone has read to the donor, key information about the LPA, and that the donor intends to give the donee(s) authority to act when the donor no longer has capacity. These requirements align with the broader statutory framework. As stated at [40] above, s 5(4) of the MCA provides that information relevant to any decision includes the reasonably foreseeable consequences of deciding one way or another. Drawing these threads together, the information relevant to the decision to execute an LPA (which a donor must be able to understand, retain, and use or weigh) includes:

- (a) the nature and purpose of the LPA as a legal instrument that operates upon the donor's future lack of capacity, when the donor can no longer make decisions in relation to matters specified in the LPA;
- (b) the legal effect of executing the LPA in conferring authority on the donee(s) to act and do anything on behalf of the donor, effectively placing the donee(s) in the donor's position with respect to those matters specified in the LPA;
- (c) the scope of the specific authority granted under the LPA; and
- (d) the reasonably foreseeable consequences of making the decision to execute, and executing, the LPA, including the consequences of granting the specific authority to the donee(s) who may make legally binding decisions relating to the personal welfare and/or property and affairs of the donor when the donor no longer has capacity.

42 The donor will need this information to decide whether to execute an LPA and, if so, who to appoint as donee(s), what powers to grant to the donee(s), and what limitations (if any) to impose on those powers.

Decision-making process involved in executing an LPA

43 The decision-making process involved in executing an LPA is neither as simplistic as merely choosing a trusted donee nor as complex as requiring special knowledge or involved analysis. The process is not technically or procedurally complicated, but requires a donor to undertake several steps and make various choices, each carrying significant consequences.

44 The relevant information (see above at [41]) must be situated within the decision-making process involved in executing an LPA, in which the donor must understand, retain and use or weigh such information in making a series of choices that this process entails. Here, I will consider only LPA Form 1, which was the LPA form used by P in this case. This form is designed for donors who wish to grant donee(s) general powers with basic restrictions, rather than more complex arrangements such as customised powers available under LPA Form 2 (see Ministry of Social and Family Development, “What is a Lasting Power of Attorney (LPA)” <<https://www.msf.gov.sg/what-we-do/opg/lasting-power-of-attorney/what-is-a-lasting-power-of-attorney>> (accessed 30 October 2025)).

45 First, when using LPA Form 1, the donor must decide on the powers to be granted, namely, whether to confer powers relating to personal welfare only, powers relating to property and affairs only, or both categories of powers. This is a fundamental decision, as each category involves different types of future decision-making authority. For example, a person who may be trusted with the donor’s personal welfare and care decisions may lack the understanding (and consequently may not be suitable) to deal with the donor’s financial matters.

46 Second, the donor must engage in donee selection, which requires evaluating the trustworthiness and suitability (such as in terms of competence and familiarity with the wishes and preferences of the donor) of potential donees for the specific powers being conferred.

47 Third, for each category of powers selected, the donor must decide how the appointment will work by making various elections. This includes determining whether to appoint a single donee or an additional donee for each

set of powers, and if more than one donee is chosen, whether they should act jointly or jointly and severally. The donor may choose the same person for both personal welfare and property and affairs, or select different donees for different categories of powers based on the donor's assessment of their suitability for the particular type of decision-making involved.

48 Fourth, the donor must make limitation decisions for the powers granted. Where a donor does not intend to customise the authority of his donee(s) and is content to use LPA Form 1 to entrust his donee(s) with general powers and basic restrictions, the decision to execute the LPA requires the donor to address his mind to specific questions on particular aspects of the authority to be conferred. These specific decisions that have to be taken when using LPA Form 1 include:

- (a) whether a donee is granted the power to give or refuse consent to start or continue treatments, including clinical trials;
- (b) whether a donee is required to seek the court's approval to sell, transfer, mortgage or otherwise deal with and affect the donor's interest in the donor's residential property; and
- (c) whether a donee is granted the power to make cash gifts from the donor's assets, and if so, whether to set appropriate limits.

49 Fifth, the donor must decide whether to appoint any replacement donee in case the original donee(s) become unable or unwilling to act. The considerations that apply to the selection of the original donee(s) would also apply to the selection of replacement donee.

50 It bears emphasis that the requirements must be understood in the light of the legislative purpose underlying the LPA to empower individuals to “plan in advance” and to “choose, in advance, the person whom they would like to make decisions on their behalf, if and when they lose their capacity in the future” (Singapore Parl Debates; Vol 85; Sitting No 1; Col 110; [15 September 2008] (Vivian Balakrishnan, Minister for Community Development, Youth and Sports)). In this regard, the Respondent has submitted that the LPA regime and the deputyship regime under Part 5 of the MCA are separate regimes, and that the boundary between them must be preserved.⁷⁴ I agree with the Respondent. The LPA regime operates as an autonomy-protecting mechanism that is available only pre-incapacity, and is premised on the donor retaining the ability to engage in informed decision-making. This contrasts with the deputyship regime, which applies only *after* a person has already lost capacity. Under the deputyship regime, the court may appoint a deputy to make decisions on P’s behalf in relation to P’s personal welfare and/or property and affairs under s 20(1) of the MCA. It follows that the line between these two regimes must be maintained to prevent LPAs from being used to appoint donees after the loss of capacity, thereby circumventing the judicial oversight that applies to applications to appoint deputies. To ensure this, a donor of an LPA must be able to grasp the essence of what he is deciding in relation to each choice and question presented to him, together with the implications flowing from each choice and response. This does not, however, in any way demand detailed knowledge or understanding of the provisions in the MCA dealing with LPAs, elaborate analysis of the LPA regime, or perfect factual recall of the donor’s circumstances. Indeed, setting the bar too high would, conversely, strip

⁷⁴ Respondent’s Written Submissions filed on 3 November 2025 (“RWS”) at paras 17–19.

individuals of their autonomy to make such choices, which defeats one of the fundamental principles of the MCA itself. With these considerations in mind, I turn to the facts of this case.

Impairment of, or a disturbance in the functioning of, the mind or brain

51 While there is some variance in test scores and expert opinions regarding P's condition, it is not disputed that P suffered from dementia, which is progressive in nature.

52 P was diagnosed with dementia in 2020 and required daily medication. By 13 July 2023, her condition had worsened to moderate dementia (see [8] above). The Appellant's expert, Dr Fones, was also of the view that P suffered from a major neurocognitive disorder, which he stated was "previously known as Dementia", and that she had "significant [c]ognitive [i]mpairment".⁷⁵ This was confirmed by Dr Fones during his cross-examination.⁷⁶

53 Both the MMSE administered by Dr Fones, and by the psychologist from Dr Ting's team on 8 December 2023, as well as the diagnosis of the geriatrician at a local hospital on 13 July 2023, indicated that P suffered from moderate dementia. Soon after P executed the LPA and SD on 24 August 2023, P was diagnosed with Alzheimer's disease by Dr Ting on 8 September 2023. Subsequent to that, Dr Bharathi administered the Abbreviated Mental Test on 18 September 2023, where P scored 1/10, indicating severe cognitive impairment. Dr Bharathi also administered the Montreal Cognitive Assessment

⁷⁵ Dr Fones's 1st Affidavit, Enclosure to Tab 5 at para 24 (ROA Vol 3 at p 180).

⁷⁶ Day 1 NE at p 43, lines 22–23.

on 14 December 2023, where P scored 14/30, indicating dementia and moderate cognitive impairment.⁷⁷

Ability to decide

54 A person suffering from a neurodegenerative disease does not necessarily lack mental capacity to make decisions (see also para 4.3.2 of the MCA Code of Practice (September 2023)). Here, the question is to what degree P's mental functioning was compromised on 24 August 2023 when she executed the LPA. This involves a determination of the functional component of the test for capacity under s 4(1) of the MCA.

55 The Court of Appeal in *Re BKR (CA)* observed (at [134]) that the question of P's mental functioning is a question for the court, with limited scope for the involvement of medical experts, given that the court does not require the specialised expertise of medical professionals to determine whether P has poor memory or difficulty in understanding sophisticated concepts. The Court of Appeal emphasised that it is ultimately for the court to decide whether P lacks the ability to make decisions within the meaning of s 5(1) of the MCA. In that case, the Court of Appeal noted that there were occasions on which the experts put forth their opinions on that issue, and to the extent they did so, their views in that regard should not be given weight. I take this guidance from the Court of Appeal and apply it here in my determination of this matter.

⁷⁷ Respondent's 1st Affidavit, Enclosure to Tab 19 at pp 4 and 7 (ROA Vol 2 at pp 258 and 261); Dr Fones's 1st Affidavit, Enclosure to Tab 5 at paras 40 and 41 (ROA Vol 3 at p 185).

P's MMSE performance

56 The evidence shows that P's memory was poor, and that impacted her ability to decide on the execution of the LPA. I turn first to the MMSE for an insight into whether P had the mental capacity to make the decision to execute the LPA at the material time. There were two MMSEs administered to P, one by Dr Fones on 22 August 2023 and another by Dr Ting's psychologist on 8 December 2023. P's score was lower when she was assessed on 8 December 2023, but both tests placed her in the same band of moderate dementia, which was also the diagnosis of the geriatrician at a local hospital on 13 July 2023. Following the Court of Appeal's guidance in *Re BKR (CA)* (at [142]), rather than the numerical scores, I will focus on the specific parts of the tests that P struggled with, as these would inform us of the nature of the decline in her mental functioning. In this regard, it suffices for the present analysis to consider only the MMSE performed by Dr Fones, which was most proximate in time to the execution of the LPA, being just two days prior.

57 Dr Fones's evidence is that the MMSE is a standardised 30-point scale which measures cognitive function across multiple domains, including short-term and long-term memory, orientation, and language. It is widely used to screen for neurological disorders. It can also be used to gauge the severity and progression of cognitive decline in patients with known neurocognitive disorders, with different levels of cognitive impairment assigned based on the scores.⁷⁸

⁷⁸ Dr Fones's 1st Affidavit, Enclosure to Tab 5 at para 39 (ROA Vol 3 at pp 183–184); Notes of Evidence for 14 November 2024 at p 8, lines 2–6.

58 The MMSE consists of a number of questions and tasks, such as requiring P to give the year, month, date and day of the week, recalling three objects given to P to remember, and spelling the word “WORLD” backwards. Points are allocated to each of the questions and tasks, with a maximum possible score of 30. During the assessment by Dr Fones on 24 August 2023, P could not state the day, date and year. The three simple objects that Dr Fones asked P to remember were apple, bicycle, and balloon, and P could not recall those objects after a three-minute interval. She also could not spell “WORLD” backwards, managing to identify only the last and first letter in that word.⁷⁹

P’s inability to recall her significant assets

59 I consider next Dr Fones’s interactions with P on 24 August 2023 for another view of the quality of P’s memory. Before that, it is necessary to appreciate the extent of P’s estate. According to the Respondent, it is valued at approximately \$16.97 million, consisting of different asset classes.⁸⁰ P’s estate includes: (a) significant cash holdings and shares received as gifts and inheritance from her late mother; (b) nearly 20 bank accounts worth over \$2.6 million; (c) a securities portfolio worth more than \$1.6 million; and (d) monthly payouts from her pension and CPF. P is also the sole director and shareholder of Company R, which owns two residential properties (*ie*, Property NR and Property UEC) with a combined value of \$5.7 million. Additionally, P holds 70% of the shares in Company K, which owns a commercial property valued at

⁷⁹ Dr Fones’s 1st Affidavit, Enclosure to Tab 2 (ROA Vol 3 at p 154).

⁸⁰ Respondent’s 1st Affidavit at para 63 (ROA Vol 2 at p 167) and Enclosure to Tab 20 (ROA Vol 2 at pp 270–271).

approximately \$7 million.⁸¹ It is apparent from Dr Fones's medical reports and clinical notes that P was not aware of the extent of her estate and could not remember what she owns. P's lack of awareness was confirmed by Dr Fones during his cross-examination:⁸²

Q. -- my question to you is: **did you ask her what are the properties that you have?**

A. **Yes, and she said she had none.**

Q. Did you ask her whether she remembered what bank accounts she had?

A. Yes, and I think she was only able to mention DBS POSB. She could not name other bank accounts.

Q. So how many bank accounts did she name, because DBS POSB that's the same --

A. Well, she mentioned -- as I recall, I don't think she maybe could tell the difference.

Q. Was she able to tell you how much broadly she had in these bank accounts?

A. No, she was not.

Q. **Did you ask her whether she knew she had any shares?**

A. **I asked her, and I think -- as in, like, stocks and shares?**

Q. Stocks and shares.

A. **She said she couldn't remember.**

...

Q. **Isn't it the case that the only thing that she thought she possessed was the property that she was living in?**

A. **Yes.**

[emphasis added]

⁸¹ Respondent's 1st Affidavit at para 62 (ROA Vol 2 at pp 166–167); Respondent's 4th Affidavit at paras 10 and 42 (ROA Vol 3 at pp 191 and 200).

⁸² Day 1 NE at p 52, line 16 to p 53, line 9 and p 60, lines 10–12.

60 It was also Dr Fones’s evidence, given during his re-examination, that P had to be reminded of Property NR, because she consistently was only able to recall that she owned Property UEC, the property that she used as her residence:⁸³

A. So first of all, from a general sense, not referring to any particular date where I discussed the existence of a second property, **I think when it was put to ‘P’ that there were actually two properties involved, she only consistently was able to recall and acknowledge the existence of [Property UEC (her residential property)] when she had to be informed that there was actually [Property NR (the second property)],** to which she would say that, yes, you know, ‘if [the Appellant] bought it, he wanted me to kind of like -- he bought it’ -- I think her usual words would be ‘and if he bought it in my name’, you know, in that simple sense ‘bought it in my name’ that she would want for him to actually have proper ownership of it and she would actually want to sign whatever documents to ensure such to be the case. ...

[emphasis added]

61 While I acknowledge that Dr Bharathi’s assessment of P on 18 September 2023 has its limitations, as it is temporally less proximate to the execution of the LPA, it largely corroborates Dr Fones’s evidence regarding P’s inability to recall the extent and nature of her estate. The following passage from Dr Bharathi’s report for that assessment provides further illumination on the level at which P was functioning:⁸⁴

... Regarding her memory, she described “I have no memory, when there are lots of old people yes there is memory”. ...

When I asked her about what a Will is, she replied “when I close my eyes what I have is from them”. “Roof over my head is from my brother”. I asked, have you made a Will? to which she replied, ” I don't have anything to make”. When asked about

⁸³ Day 1 NE at p 73, lines 9–22.

⁸⁴ Appellant’s 1st Affidavit, Enclosure to Tab 19 at p 4 (ROA Vol 2 at p 258).

when a Will comes into effect, she replied “I don't know”. My roof over my head, food, water bills are from my brother. Everything goes to my brother. My pension and love are for my son. When I asked if she owned any properties, she replied “no with my hand and pocket nothing”. I am living in a house, ” my brother gave me a dwelling”. When I asked if she has made a Will “I don't have anything; have nothing to make. When asked if she has any shares, “plenty, I did not buy any “; “I don't care as they are gifts to me”. When asked if she had any bank account, she replied, ‘POSB’. How much money do you have in your bank account; “I don't bother”

With whom do you stay; “I am on my own”. When I asked about her home address, she replied “I don't know”. ...

62 Besides her inability to remember the assets she owned, some of P’s answers were lacking in coherence, tangential or irrelevant, such as her description of her memory and her response to the question of what a will is. As mentioned above (at [15]), Dr Bharathi also saw P on 14 and 18 December 2023 and certified through a report dated 3 January 2024 that P was incapacitated under the MCA and recommended the appointment of a deputy by the court. I do not find it necessary to examine or rely on the assessments done by Dr Bharathi in December 2023, which were conducted further away in time from the material date. In any event, P’s inability to recollect details of her property ownership during the December 2023 assessments did not materially differ from her condition in August 2023 (when she was assessed by Dr Fones) or in September 2023 (as reported by Dr Bharathi).⁸⁵

Quality of P’s memory and its impact on her ability to decide on the execution of the LPA

63 I find no merit in the Appellant’s contention that the DJ misinterpreted the results of the MMSE. In my judgment, the quality of P’s memory raises

⁸⁵ Appellant’s 1st Affidavit, Enclosure to Tab 19 at pp 4–6 (ROA Vol 2 at pp 258–260).

serious concerns about her ability to retain information long enough to use or weigh the information at the time the LPA was executed. Based on Dr Fones’s assessment and explanation of the results of the MMSE he conducted,⁸⁶ P’s failure to state the day, date and year indicated poor orientation as to time and place. As for P’s inability to recall any of the three simple objects, that indicated poor delayed recall. It is evident from Dr Fones’s evidence that P’s recollection of her financial circumstances was no different, containing significant gaps and presenting as scanty and hazy. Regarding P’s inability to spell “WORLD” backwards, Dr Fones stated that this indicated impaired attention and working memory, in that P was unable to retain the information long enough to mentally process the task of spelling the word backwards.

64 This presentation of P’s poor memory is consistent with the other evidence that relates to the quality of her memory around the time she executed the LPA and the SD, such as the observations of the senior medical social worker on 25 July 2023 that P could not retain information shared with her after a few minutes or remember meals taken,⁸⁷ as well as the statement in the discharge summary dated 1 August 2023 that P could not recall the fall for which she was admitted to hospital, was unaware why she had been admitted, and did not know which hospital she was in.⁸⁸

65 Considering the facts of this case, I am not persuaded by the Appellant’s contention that P’s inability to recall three simple objects after a three-minute

⁸⁶ Dr Fones’s 1st Affidavit, Enclosure to Tab 5 at para 25 (ROA Vol 3 at p 180); Day 1 NE at p 15, line 25 to p 18, line 13.

⁸⁷ Respondent’s 1st Affidavit at paras 22–24 (ROA Vol 2 at pp 156–157) and Enclosure to Tab 14 (ROA Vol 2 at pp 226–231).

⁸⁸ Respondent’s 1st Affidavit at para 21 (ROA Vol 2 at p 156) and Enclosure to Tab 12 (ROA Vol 2 at pp 214–217).

interval might reflect their irrelevance to P’s functional capacity. Rather, I see it as a consistent and continual manifestation of her poor memory function that shows, on balance, that she could not retain information relevant to the execution of the LPA, or retain it long enough, to use or weigh the information in the course of the decision-making process.

66 The Appellant argues that even if P’s retention of information was brief at the time of executing the LPA, this did not necessarily indicate a lack of mental capacity to execute the instrument because P had consistently indicated to different people at different times her preference for the Appellant, and not the Respondent, to care for her. I find this to be a flawed premise for concluding that P had capacity in the circumstances of this case. I am inclined to agree with the DJ that P did not appear to know very much apart from the fact that she was grateful to her brother.⁸⁹ Her repetitive expressions of affection and appreciation for the Appellant, including statements like “[t]he drop of my saliva comes from my brother”, and her stated preference for him as donee, were more likely a consistent reflection of her devotion to her brother.

67 In relation to the Appellant’s argument that the DJ had failed to account for the fact that it was possible for P to have fluctuating capacity, and for P to have had a “good day” when she executed the LPA on 24 August 2023,⁹⁰ I find this argument unpersuasive. The Appellant has pointed to no evidence demonstrating any such cognitive improvement or surge on 24 August 2023 or around that date. More fundamentally, P’s documented behaviour from July 2023 establishes that her cognitive decline had progressed to such an extent that

⁸⁹ GD at [23].

⁹⁰ AC at para 52.

regardless of any temporary fluctuations that may theoretically have occurred, she likely lacked the baseline cognitive function necessary to decide on the execution of an LPA. This conclusion is reinforced by her documented behaviour in the months following the execution of the LPA.

68 I turn now to address the Appellant's submission that the DJ placed undue emphasis on P's lack of recollection of her assets. Awareness of assets exists on a spectrum. The extent of a donor's awareness of his financial circumstances, or where a donor lies on this spectrum, should be assessed alongside other evidence of the donor's ability to understand, retain and use or weigh information, to determine whether the donor had capacity to execute the LPA.

69 In my judgment, where a donor grants general authority through LPA Form 1 with only basic restrictions, incomplete knowledge, inaccurate recall or memory lapses regarding the donor's assets do not necessarily prevent him from understanding the authority being conferred. Under LPA Form 1, the donor makes a blanket delegation of authority to deal with *all* matters relating to his personal welfare and/or property and affairs, subject to specified limitations on particular aspects of the authority conferred and to statutory safeguards, such as the duty of the donee(s) to act or make decisions in the donor's best interests (s 3(5) of the MCA). As this delegation of authority is meant to be comprehensive, gaps in knowledge of specific assets do not necessarily prevent the donor from understanding the authority being conferred. The critical inquiry is whether the donor grasps that he is transferring decision-making power over all such matters to a trusted person, subject to specified limitations and safeguards, should the donor lose capacity.

70 That having been said, a donor’s knowledge deficiencies regarding his financial circumstances and assets become a red flag when they are at the extreme end of the spectrum, and reflect, on the totality of evidence, a broader pattern of cognitive impairment that prevents the donor from understanding, retaining, and/or using or weighing relevant information.

71 The assessment of capacity is necessarily highly fact-sensitive and context-dependent. For example, a donor who remembers both recent and past events, and demonstrates sound reasoning, but possesses only limited awareness of his finances and assets presents a different case from a donor who exhibits severe memory deficits in addition to a limited awareness of his finances and assets. In the former scenario, the limited awareness of finances and assets may simply reflect the donor’s lack of engagement with financial matters or lack of financial literacy, or the donor’s delegation of such matters to others in circumstances that are not inconsistent with retaining capacity. In the latter, however, the combination of severe memory impairment and financial and asset unawareness may indicate a more fundamental inability to grasp and retain relevant information necessary for decision-making. Limited awareness of significant assets, taken in isolation, may therefore not be sufficient to establish incapacity to execute an LPA in LPA Form 1. Indeed, competent adults can possess varying degrees of awareness of their net worth and asset portfolios.

72 The DJ held that it was necessary for P to demonstrate “an understanding of at least some of the significant assets in her name” and that “[while] trust is fundamental, an awareness of what one has as assets which is entrusted to another to manage is imperative”.⁹¹ I do not read the DJ as holding that asset

⁹¹ GD at [16(d)].

awareness is always determinative of capacity. However, to the extent that the DJ's statement that an awareness of what was entrusted was "imperative" might suggest otherwise, this requires clarification. As stated above (at [68] and [70]), the extent of financial and asset awareness is not, in and of itself, determinative of capacity, but there is a threshold below which lack of awareness becomes incompatible with the ability to understand what one is deciding—not because substantial financial and asset knowledge is required *per se*, but because extreme lack of awareness may evidence a broader inability to grasp and retain relevant information. This is such a case. On the spectrum of awareness of one's net worth or asset ownership, P falls at the extreme end of lack of awareness, forming part of a consistent pattern of severe memory deficits and a broader picture of cognitive impairment. P's severely limited awareness of her significant assets reinforces the conclusion that she lacked capacity to decide on the execution of an LPA.

73 Where a donor uses an LPA Form 2 because he does not intend to give broad powers to his donee(s) with basic limitations, such a donor would generally have to consider the range of potential decisions that the donee(s) will have authority to make, and what constraints should apply to the donee(s). As this case is not concerned with such a donor or the use of an LPA Form 2, I will say no more except that the extent of asset knowledge required of the donor may be different.

74 For completeness, I deal with the cases of *BHR v BHS* [2013] SGDC 149 ("*BHR v BHS*") and *BUV v BUU*. Both cases were cited by the Respondent in support of his submission that P must have knowledge of the extent of her estate in order to understand the powers that she was conferring on the Appellant and the Appellant's son as replacement donee.

75 It must be emphasised that the assessment of mental capacity under the MCA is decision-specific, and that the cases cited by the Respondent related to different types of decisions:

(a) In *BHR v BHS*, the parties agreed that P in that case had capacity to decide matters relating to her medical treatment and to choose her caregivers but lacked capacity to handle financial affairs. The issues in dispute were, *inter alia*, whether P had capacity to deal with and dispose of her properties, and whether P had testamentary capacity (at [4]). In that case, P did not know the value of her two properties, could not recall the number of bank accounts she held, name the banks where she held accounts, or state the amounts in these accounts (at [28]). The court observed (at [30]) that to “make a decision on what to do with an asset”, a person needs to “know and be aware of the extent and value of what she has and what she can choose to sell or give away to a potential pool of beneficiaries”. The court further held that for P to make decisions about her two properties, she needed to know their value to understand the financial implications of her decision, whether that decision be to give away a property during her lifetime or by will, or to sell a property and distribute the sales proceeds, as well as to decide on the beneficiaries and their respective shares (at [30]). P was declared to lack testamentary capacity and capacity to handle her property and affairs, including her financial affairs and the disposition of her assets. It is pertinent to note that the court’s observation was made in the context of whether P had mental capacity to dispose of her properties or make testamentary dispositions, in circumstances where she had executed a new will. In contrast, the present case relates to the different question of whether P had mental capacity to execute an LPA, which is concerned not with

asset disposition but with selecting appropriate donees and defining the scope of authority to be exercised if and when loss of capacity occurs.

(b) The case of *BUV v BUU* concerned MCA applications seeking a declaration of the mental incapacity of, and deputy appointment for, P in that case. There was a related application by P regarding a bank account jointly held by P, the first defendant and the plaintiff. P sought a declaration of ownership and orders relating to moneys in that bank account (at [2]–[3]). P, diagnosed with moderate dementia in 2015, had executed an LPA appointing the first defendant as sole donee and a will bequeathing the residue to him in 2016. The court revoked the LPA and set aside the will, finding that P lacked capacity. The court also made no order on P’s application, because it found that P lacked capacity to conduct litigation. The court’s assessment was based on expert medical evidence showing cognitive impairment, P’s cross-examination demonstrating her inability to follow proceedings, recall document contents or remember family/financial details, and the suspicious circumstances surrounding the execution of the documents. The court’s observation that P was unable to “state with any definitive accuracy the amount which she owned or what bank accounts she had” (at [49]), which the Respondent here refers to, was made in relation to P’s application concerning the jointly-held bank account. Her knowledge of the position in relation to that account was put in issue.

P’s inability to grasp the consequences of executing an LPA

76 There is a further point to be made on P’s lack of ability to understand the consequences of executing the LPA, including that the Appellant may make legally binding decisions relating to her personal welfare and/or property and

affairs. I turn once again to the evidence of Dr Fones, and in this regard, to P's response when Dr Fones discussed the question of whether P would require her donee to obtain a court order before disposing of Property UEC, the property that P was residing at:⁹²

Mr Han: Yes. Did you explore with "P" the possibility that should "P" lose her mental capacity, [the Appellant] would be able to sell [Property UEC] without the need for her consent?

A. There is one part of the LPA where I had to specifically alert her to that ... you know the section on "Do you require your donee to seek the court's approval to sell, transfer, mortgage?" whatever interests in the residential property?

Q. Yes.

A. **So I think when I tried to talk about it, again she again went back to the same thing about, "I already stay in this property which my brother bought for me."**

Q. I know she kept saying that --

A. Yes, so, I mean that was her reply to this question. I had to alert her to the fact that she does need to be aware that one of the things that she needs to agree is that the donee would have the power, or, on the other hand, that she would have the ability to restrict the donee from actually depriving her of the right to actually stay in a property that she is staying in. So her understanding was, "but I already stay in that property" and the donee, which happens to be the donee's property, "so I don't actually even have to indicate that". That was her response to me when I tried to question her on this particular point.

Q. Yes, but did you say to her the fact that you are living there right now doesn't mean that he can't kick you out of the property after you lose mental capacity?

A. Yes, that's why I had to explain that to her, that the LPA requires the donee to actually specify. **So I guess it was an indirect reply to my question that she said it was not necessary to restrict that power simply because she didn't even consider it hers.** So it's a roundabout way of her answering the question.

...

⁹² Day 1 NE at p 53, line 15 to p 55, line 22.

Q. Now, did you discuss with her the pros and cons of choosing “no” versus “yes” to this question?

A. Well, I put it to her that the powers that she would actually delegate to the donee would include deciding whether she would continue staying in that property, and **when I put it to her that perhaps it may not -- she may not be able to continue staying in it, she again went back to that incredulous, “But I already stay there and why would he want to kick me out?”, or something along those lines.**

[emphasis added]

77 In my view, P’s responses demonstrated a failure to understand and weigh risks relevant to her future welfare and property. Her answer was not a sensible counterpoint or response to Dr Fones’s question. Whether or not P was currently staying in the property had no relevance to the donee’s power over the property in the future. The evidence shows that Dr Fones made attempts to explain the specific risk that the Appellant could deprive her of the right to stay in Property UEC after she lost capacity. Each time, P responded that she “already stay[ed]” in this property. This pattern of responses suggests that P was not able to look beyond her present situation, and did not appear to appreciate that the LPA would confer broad legal authority upon the Appellant that could be exercised in ways that might affect her adversely. According to Dr Fones, this sentiment was repeated,⁹³ indicating that she did not comprehend the purpose and effect of the LPA despite his attempts to explain the specific risks to her.

78 Taking the evidence in the round, I find that P could only conceptualise her present living situation and could not grasp that the LPA is an instrument through which she was granting authority that might be exercised to alter her future circumstances. I am unable to accept Dr Fones’s explanation that P had

⁹³ Day 1 NE at p 54, lines 4–15.

answered his question “indirectly” and that she saw no need to “even have to indicate” any restriction on the Appellant’s power to deprive her of the right to continue to stay in her residential property, simply because she did not consider it hers. Her continued insistence that she “already stay[s] in this property” reflects her underlying cognitive inability to move beyond her present circumstances. Critically, P’s answers showed that she could not understand, or engage with, the hypothetical future scenario where the Appellant might exercise the powers granted under the LPA. I do not consider her responses as indirect or roundabout answers to Dr Fones’s questions, but as reflective of her lack of comprehension and confusion about what the LPA would authorise and her inability to weigh the relevant considerations.

79 I find some similarity between the circumstances surrounding the execution of the LPA in this case and that in the English case of *Public Guardian v RI*, in which Justice Poole had to determine whether RD, who suffered from a learning disability and chronic schizophrenia, had capacity to execute an LPA under the English Mental Capacity Act 2005. Justice Poole found that RD was incapable of managing his property and financial affairs, and would not have capacity to revoke the LPA then or to execute the LPA at the material time. He also found that even if the relevant information had been explained to RD by the certificate issuer, he could not infer that RD was able to understand, retain, or weigh and use information relating to the LPA. He therefore concluded that RD lacked capacity to execute the LPA due to an impairment in the function of his brain (at [32]). In coming to his conclusion, Justice Poole observed at [31]:

... RD may have understood that he was signing something important, that it was to do with money, and that RI and RO were to look after his money for him, but the evidence tends to show that he had no understanding of the scope of their powers,

when they could be used, or what would be the foreseeable consequences of his not signing the important document. ...

80 Like RD in *Public Guardian v RI*, P may have understood she was signing a document relating to her welfare, and property and affairs, and that the Appellant would manage matters for her. However, her responses show that she could not comprehend how the LPA may affect her life in future.

81 On the balance of probabilities, it is my judgment that the presumption of capacity under s 3(2) of the MCA is rebutted and that P lacked capacity to execute the LPA on 24 August 2023 due to a mental impairment.

Safeguards

82 It is apposite at this juncture to touch on the safeguards that are put in place for persons executing an LPA. Section 8 of the LPA Form 1, which contains the LPA Certificate, requires the certificate issuer to certify that the donor understands the purpose of the LPA, including his intention to appoint the persons named as Donee(s) and Replacement Donee and “the powers to be granted to the Donee(s) and Replacement Donee as set out on Pages 3–7” (see also MCA Code of Practice (September 2023) at paras 8.10.1 and 8.12.1 to 8.12.3). At page 7 is Section 4 of the LPA Form 1, which sets out “Powers Granted to Donee(s)” and provides as follows:

SECTION 4: POWERS GRANTED TO DONEE(S)

Others

My Donee(s) shall have the powers to do anything necessary or practical to carry out the decisions made on my personal welfare and/or property and affairs in accordance with this LPA. This includes the following:

- a. Sign by deed, which is an instrument in writing between parties that is signed, sealed and delivered; or otherwise all notices, applications, agreements, documents and forms;

- b. Claim and receive money payable to me and to acknowledge that money has been received;
- c. Attend and vote at meetings and represent me in proceedings in any court or tribunal, any negotiation or mediation, engage a lawyer for matters in relation to this LPA, and accept service of court papers or any other notice or document;
- d. Obtain information about me and/or my accounts from third parties, which includes (but is not limited to) the Central Provident Fund Board, banks and financial institutions, insurance companies, healthcare institutions and workers; and
- e. Release the information obtained in (d) to any third parties.

83 During cross-examination, Dr Fones acknowledged that he did not read or explain the specific powers set out in Section 4 of the LPA Form 1 that P would be granting to the Appellant,⁹⁴ although he did explain what powers would be operative “in a general sense”.⁹⁵ As the DJ correctly pointed out, an LPA is executed at a time when a donor is deemed to have capacity. Information relating to the powers to be granted should be read to the donor, or explained to the donor in a manner that could be understood by the donor.⁹⁶ In this case, this ought to have been done before P was asked to sign Section 4 on page 7 and before the certificate issuer certified that P understood “the powers to be granted to the Donee(s) and Replacement Donee as set out on Pages 3–7”. The LPA form incorporates safeguards that, together with other protections built into the LPA framework (including statutory obligations requiring donees to act in the donors’ best interests, and prescribed limits on donees’ powers), serve a crucial protective function for donors by preventing abuse and error. The effectiveness of these measures depends on certificate issuers ensuring that donors genuinely understand the powers they are granting should they lose mental capacity, and

⁹⁴ Day 1 NE at p 58, line 6 to p 59, line 2.

⁹⁵ Day 1 NE at p 60, lines 21–24.

⁹⁶ GD at [16(d)].

observing the safeguards incorporated in the LPA form. I therefore do not see how the DJ's observations in this regard could be considered objectionable.

Remaining matters

84 The Appellant contends that there was no legal requirement to involve the Respondent in the LPA's execution. Further, the Appellant argues that P had rational reasons for appointing the Appellant's son as replacement donee instead of the Respondent.

85 The latter point can be disposed of swiftly, and I will deal with that first. Given my earlier finding that P lacked capacity to execute the LPA, it is unnecessary to separately determine whether the appointment of the Appellant's son as replacement donee demonstrates a lack of capacity. The validity of any appointment under an LPA is fundamentally dependent on the donor possessing the requisite mental capacity at the time of execution. Where a donor lacks capacity to execute an LPA, the entire instrument fails, rendering invalid all appointments contained within it.

86 In relation to the point on the involvement of the Respondent in the execution of the LPA, in my view, the DJ was merely stating what is prudent in cases involving donors with known neurodegenerative conditions. P suffers from dementia and was in a vulnerable position. The exclusion of the Respondent meant that information conveyed to P came solely from the Appellant. This created an asymmetry of information with particular risks, in that P received only one perspective about matters relevant to her decision-making. Besides, even though there has been no allegation of undue influence or wrongdoing, the circumstances here suggest that such an engagement could perhaps have avoided the appearance of what the DJ described as "the need to

block challenges to asset ownership”.⁹⁷ It might also have generated discussions and options that could have obviated the need for these proceedings.

Conclusion

87 For the above reasons, I dismiss the appeal.

88 If costs for the appeal cannot be agreed, submissions on costs, limited to 5 pages, are to be tendered 14 days from the date of this decision.

Teh Hwee Hwee
Judge of the High Court

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⁹⁷ GD at [16(c)].