

Britney Spears under conservatorship – Will I ever be placed under one?

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I. INTRODUCTION

On 29 September 2021, fans of the American singer – Britney Spears – cheered when the court suspended her father’s role as her conservator.¹ Britney had previously claimed that her conservatorship was “oppressive” as her father controlled almost every aspect of her life.² The court subsequently terminated the conservatorship completely on 12 November 2021.³

A conservatorship is a legal arrangement whereby the court appoints an individual as a “conservator”, who is given the power to make decisions for an incapacitated individual (also known as a “conservatee”).⁴ The conservatee’s consent is not required for this to occur. As such, he could lose his autonomy under a conservatorship.⁵

In Britney’s case, the court first placed her under a conservatorship in 2008 because she was unable to care for herself due to her mental health issues.⁶ Britney’s father was one of three conservators who were appointed to care for Britney’s personal and property affairs.⁷

However, in recent years, many have wondered whether Britney is being held under a conservatorship against her will as she seems capable of caring for herself.⁸ Since Britney was under a conservatorship, she has released three albums and made numerous television

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¹ Sam Levin, “Britney Spears’s father suspended from conservatorship in victory for singer” (29 September 2021) <<https://www.theguardian.com/music/2021/sep/29/britney-spears-father-removed-conservatorship-ruling-latest>> (accessed 30 September 2021).

² *Ibid.*

³ Jon Blistein, “Britney Spears’ Conservatorship: what’s going on and what’s next?” (12 November 2021) <<https://www.rollingstone.com/music/music-news/britney-spears-conservatorship-timeline-1193156/>> (accessed 10 January 2022).

⁴ Lisa Zammiello, “Comment: don’t you know that your law is toxic? Britney Spears and abusive guardianship: a revisionary approach to the Uniform Probate Code, California Probate Code and Texas Estates Code to ensure equitable outcomes” (2021) 13 Tex Tech Est Plan Com Prop LF 587 (“Zammiello”) at 589.

⁵ *Ibid.*

⁶ *Id.*, at 611.

⁷ *Id.*, at 610.

⁸ Kelly McLaughlin, “Britney Spears’ mom says the singer has been able to take care of herself ‘for the past many years’ in new court filing”, (8 July 2021) <<https://www.insider.com/britney-spears-conservatorship-case-mother-lynn-spears-speaks-out-2021-7#:~:text=Attorneys%20for%20Britney%20Spears'%20mother,to%20allow%20Britney%20Spears%20to>> (accessed 13 September 2021).

appearances.⁹ Further, Britney had expressed her desire to end the conservatorship. However, the court previously rejected her application to remove her father as her conservator and even extended the conservatorship.¹⁰

If being placed under a conservatorship is up to the court's determination, and if it is difficult for one to get out of a conservatorship, one might be concerned if he or she might be entrapped in Britney's situation.

This article seeks to explain how a conservatorship works, and shed light on similar legal arrangements in Singapore. It will explain when someone might be placed under such a legal arrangement and how Britney can challenge her conservatorship if she was in Singapore.

II. DISCUSSION

A. *When will the court grant a conservatorship?*

Britney's conservatorship was approved in California.¹¹ Under Californian law, a conservator may be appointed for an individual who is unable to provide for his own physical needs or when he is unable to manage his own financial resources.¹² An individual's physical needs will include care for one's physical health, food, clothing and shelter.¹³

The conservator has to act in the conservatee's best interest.¹⁴ This would mean ensuring that the conservatee's physical needs are met, and the conservatee's assets are properly managed and protected.¹⁵

B. *Why is Britney under a conservatorship?*

There was little controversy when the conservatorship was first granted over Britney. Britney was going through a divorce, a child custody battle, and was estranged from her parents.¹⁶ She had displayed "reckless behaviour" like driving while holding her infant son and shaving her

⁹ *Ibid.*

¹⁰ Amanda Holpuch, "Britney Spears: judge denies request to remove father from conservatorship" (1 July 2021) <<https://www.theguardian.com/music/2021/jul/01/britney-spears-judge-denies-request-to-remove-father-jamie-from-conservatorship>> (accessed 1 October 2021).

¹¹ *Zammiello, supra* n 4, at 610.

¹² Cal Prob Code § 1801 (a) and (b).

¹³ *Id.*, at § 1801 (a).

¹⁴ *Id.*, at § 1800 (e).

¹⁵ *Id.*, at § 1800 (g).

¹⁶ *Zammiello, supra* n 4, at 610.

head in public.¹⁷ The court found that Britney had severe mental health issues,¹⁸ and she was at risk of exploitation when it was established that her former manager was drugging her.¹⁹ Placing Britney under a conservatorship would have been in her best interest at that time.²⁰

Under Californian law, a conservatorship can be terminated if the court finds that the conservatee can now care for himself and his property.²¹ Now that Britney is capable of caring for herself, a conservatorship will not be in her best interest. Therefore, the Californian court chose to terminate the conservatorship completely.²²

C. When will the court grant a conservatorship in Singapore?

(1) Deputyship – the equivalent of a conservatorship in Singapore

The equivalent of a “conservator” under Singapore law would be that of a “deputy”.²³ The court will appoint a deputy if the incapacitated individual did not appoint any individuals to care for his affairs before he lost his mental capacity.²⁴ The deputy will make decisions relating to an incapacitated person’s personal welfare and property.²⁵

A deputy also has to act in the best interest of the incapacitated person.²⁶ Amongst the several considerations stipulated in the Mental Capacity Act (“MCA”),²⁷ a deputy has to take into account the factors that the individual will likely consider if he had the capacity to do so.²⁸ For example, the individual’s wishes, feelings, personal beliefs and values have to be considered before making a decision on his behalf.²⁹

¹⁷ *Zammiello*, *supra* n 4, at 612.

¹⁸ *Id.*, at 610.

¹⁹ *Id.*, at 611.

²⁰ *Ibid.*

²¹ Cal Prob Code § 1860.5.

²² Bianca Bruno, “Judge ends Britney Spears’ 13 year conservatorship” (12 November 2021) <<https://www.courthousenews.com/judge-ends-britney-spears-13-year-conservatorship/>> (accessed 13 January 2022).

²³ Allen Sng & Tan Kah Wai, “The deputyship regime under Singapore’s Mental Capacity Act: An introduction” (2020) 32 SAclJ 167 (“*Deputyship*”) at [10] – [11].

²⁴ *Id.*, at [21].

²⁵ Mental Capacity Act (Cap 177A, 2010 Rev Ed) s 20(1).

²⁶ *Id.*, at s 3(5).

²⁷ *Id.*, at s 6.

²⁸ *Id.*, at s 6(8).

²⁹ *Id.*, at ss 6(8)(a) & 6(8)(b).

(2) *When will the court grant a deputyship?*

Anyone who wishes to be appointed a deputy will have to first make an application to the court.³⁰ This applicant has to show the court that it is more likely than not that the *subject* lacks mental capacity (we shall term the person whose capacity is to be determined as the “*subject*”).³¹

Under the MCA, the applicant has to show:³²

- (a) that the *subject* was unable to make a decision at a material time; and
- (b) that this inability was due to a medical impairment of the mind or brain.

The court has coined these two elements as the “functional component” and “clinical component” respectively.³³

Regarding the functional component, the court in *Re BKR*³⁴ explained that the analysis of this component does not require much help from medical experts.³⁵ Instead, the court will determine whether the *subject* can make decisions for himself competently from the “knowledge and experience” of the process of reasoning that “rational human beings have”.³⁶

Thus, in *Re BKR*, the court considered the *subject*’s memory, her ability to understand information, and her ability to use or weigh information in a decision-making process.³⁷ The court found that the *subject* could not remember details like an email that was shown to her 35 minutes before,³⁸ nor could she recognise a court document that she submitted.³⁹ She was unable to show her understanding of a trust or a will.⁴⁰ Thus, she was found to have lost her capacity to make her own decisions.⁴¹

³⁰ *Deputyship*, *supra* n 23, at [11].

³¹ Mental Capacity Act (Cap 177A, 2010 Rev Ed) s 4(4).

³² *Id.*, at s 4(1).

³³ *Re BKR* [2015] 4 SLR 81 (“*Re BKR*”) at [134].

³⁴ *Re BKR*, *supra* n 33.

³⁵ *Id.*, at [134].

³⁶ *Ibid.*

³⁷ *Id.*, at [155] – [162].

³⁸ *Id.*, at [156].

³⁹ *Id.*, at [158].

⁴⁰ *Id.*, at [162].

⁴¹ *Id.*, at [206].

Regarding the clinical component, the opinion of medical experts will be critical.⁴² Medical professionals determine whether the *subject's* inability is caused by a medically diagnosed mental impairment, such as dementia.⁴³ This will be done through the observation of any symptoms and the use of any diagnostic equipment.⁴⁴

There must also be a “strong causative nexus” between the two components.⁴⁵ This means that the mental impairment must have caused the *subject's* inability to make decisions.⁴⁶

D. How can Britney get out of a conservatorship if she was in Singapore?

A *subject* can only be held under a deputyship if he has lost his mental capacity.⁴⁷ Therefore, disproving the clinical and functional components can allow one to revoke a deputyship successfully.⁴⁸

First, medical professionals have to conclude that Britney does not have any mental impairment.⁴⁹ If this is found to be so, she would be assumed to possess the capacity to make her own decisions.⁵⁰ There will be no need to consider the functional component.⁵¹ However, should Britney be diagnosed with a mental impairment, she will need to show that she is capable of making her own decisions. She can do so by showing that she can remember, understand and use the information in a decision-making process.⁵²

In the case of *Wong Meng Cheong*, the court found that the *subject* of the case had made a carefully considered decision when he transferred the ownership of his property.⁵³ He was able to balance the interests of all the parties involved and he understood the implications of the transaction.⁵⁴ He could also read and understand documents of other corporate transactions that

⁴² *Re BKR*, *supra* n 33, at [206].

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ *Id.*, at [113].

⁴⁶ *Ibid.*

⁴⁷ Mental Capacity Act (Cap 177A, 2010 Rev Ed) s 20(1).

⁴⁸ *Id.*, at s 20(7).

⁴⁹ *Id.*, at s 4(1).

⁵⁰ *Id.*, at s 3(2).

⁵¹ *Deputyship*, *supra* n 23, at [28].

⁵² *Id.*, at [33].

⁵³ *Wong Meng Cheong and another v Ling Ai Wah and another* [2012] 1 SLR 549 (“*Wong Meng Cheong*”) at [26].

⁵⁴ *Id.*, at [26] & [36].

he had made.⁵⁵ He was found to possess the requisite mental capacity under the MCA.⁵⁶ Although this case relates to the revocation of a corporate transaction and not of a deputyship, the establishment of his mental capacity would have allowed him to revoke the deputyship as well.⁵⁷

Similarly, Britney could understand the nature of her conservatorship and has expressed her desire to remove her father as a conservator.⁵⁸ However, she has to show that she will be able to remember, understand and weigh information that are critical to her personal welfare and financial affairs. These will prove her ability to make her own decisions without the help of a deputy.

III. CONCLUSION

It is crucial for the court to appoint someone who will look after our best interests when we have lost the capacity to care for ourselves. However, we can never be sure when these individuals could abuse their authority, or when we may regain our capacity again. Nevertheless, we can be assured that the law provides an avenue for us to revoke a deputyship when these situations happen.

However, to safeguard our interests further and to prevent the situations mentioned above from happening, it will be better for us to apply for a Lasting Power of Attorney (“LPA”). The LPA is a legal document that allows an individual (also known as a “donor”) to appoint one or more persons (also known as a “donee”) to make decisions on his behalf should he lose his mental capacity,⁵⁹ just like a deputy. The donor can also specify the extent of the donee’s authority when he applies for a LPA.⁶⁰

By appointing someone that we trust, and by delimiting the donee’s scope of authority, (instead of leaving this decision to the court), we can reduce our chances of being entrapped in a situation akin to what Britney experienced.

⁵⁵ *Wong Meng Cheong*, *supra* n 53, at [41].

⁵⁶ *Id.*, at [25].

⁵⁷ Mental Capacity Act (Cap 177A, 2010 Rev Ed) s 20(1).

⁵⁸ BBC News, “Britney Spears: Singer’s conservatorship case explained”, (8 September 2021) <<https://www.bbc.com/news/world-us-canada-53494405>> (accessed 13 September 2021).

⁵⁹ Ministry of Social and Family Development Website <<https://www.msf.gov.sg/policies/Pages/Lasting-Power-of-Attorney.aspx>> (accessed 14 September 2021).

⁶⁰ *Ibid.*