

## COURT OF APPEAL OF SEYCHELLES

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**Reportable**

[2020] SCCA ...  
SCA 41/2017

In the matter between

**KARIN BELMONT**  
(rep. by *M B Georges*)

**Appellant**

and

**JOSEPH BELMONT**  
(rep. by *J Bonte*)

**Respondent**

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**Neutral Citation:** *Belmont v Belmont* (MC5/2015) [2020] SCCA 21 August 2020

**Before:** Fernando President, Robinson JA, Burhan JA

**Summary:** Guardianship: interdiction under Article 490 of the Civil Code of Seychelles: where petition for interdiction has been made in accordance with Article 490 of the Code, the court may not require petitioner to show why other persons not party to the petition should not be appointed as guardians: court also may not appoint such other persons not party to the petition as guardians where there is no cross petition.

**Heard:** 06 August 2020

**Delivered:** 21 August 2020

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### ORDER

The appeal is allowed. The orders of the learned trial judge are set aside. The appointment of Mrs Christianne Belmont and Mr Antoine Belmont as joint guardians of the Respondent is set aside, substituting therefor the Appellant, Karine Belmont as sole guardian and to administer and manage the Respondent's affairs and property. No order is made as to costs.

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### JUDGMENT

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**ROBINSON JA**

1. This appeal proceeded on the premise that two guardians could be appointed to an interdicted person, and the two guardians appointed would discharge their duties jointly. I have proceeded on the same premise, without expressing any views as to its correctness. I mention that this Court requested additional submissions per letter of the Assistant Registrar, dated the 15 July 2020. One of the questions posed by this Court was whether or not two guardians could be appointed to an interdicted person, as in the present case. This Court obtained additional submissions from Counsel for the Appellant, and is grateful to Counsel for his views concerning this very pertinent point.
2. Miss Karine Belmont, the Appellant, is the daughter of the Respondent, Mr Joseph Belmont, who at the time of the commencement of these proceedings in 2017, was 69 years old. Mrs Christianne Belmont, the spouse of the Respondent, is the stepmother of the Appellant. Mr Antoine Belmont is the elder brother of the Respondent.
3. The Appellant entered proceedings in the Supreme Court for the interdiction of the Respondent by a petition addressed to the Supreme Court under Article 490<sup>1</sup> *alinéa* 1 of the Civil Code of Seychelles. The petition was supported by an affidavit. The Respondent filed a written answer in which he resisted the application under Article 492 of the Civil Code of Seychelles.
4. The Appellant and the Respondent testified in the case at first instance on the 11 December 2017. An essential aspect of this case is that Mrs Christianne Belmont and Mr

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<sup>1</sup> "Article 490 1. Proceedings for interdiction shall be entered in the Supreme Court and shall be commenced by petition addressed to the Court.

2. *Such proceedings may be entered by -*

- (a) *any relative of the person whose interdiction is sought; or*
- (b) *a spouse with regard to the other spouse; or*
- (c) *the Attorney-General.*

3. *The petition shall set out briefly the material facts on which the application for interdiction is based.*

4. *The person whose interdiction is sought shall be made a respondent in the case, and the petition and such other process as the Court may direct shall be served on him. "*

Antoine Belmont neither cross - petitioned nor gave evidence at the trial.

5. The learned trial Judge made the following orders at paragraph 8 of the judgment, dated 11 December 2017 —

- "1. *I make an order of interdiction in respect of Mr Joseph Belmont.*

2. *I find that Mrs Christianne Belmont and Mr Antoine Belmont are able and willing to be appointed as guardian and to carry out the duties of a guardian to the Respondent and that they are both not subject to any legal incapacity to be appointed as such.*

*In this respect I appoint as guardian of Mr Belmont the Respondent in this matter." Verbatim*

6. Given order 2 of the orders contained in paragraph 8 of the judgment, referred to at paragraph 5 hereof, I read the order: "*In this respect I appoint as guardian of Mr Belmont the Respondent in this matter*" to mean that Mrs Christianne Belmont and Mr Antoine Belmont had been appointed as the guardians of the Respondent. The appeal proceeded on this basis.
7. The learned trial Judge did not appoint the Appellant as the guardian of the Respondent as she was "*not satisfied that she [was] best placed to be appointed legal guardian given the fact that there was an obvious friction between herself and the Respondent's wife Mrs Christianne Belmont*".
8. The learned trial Judge was also "*not persuaded by the evidence that the other two guardians proposed will not act in the best interest of the Respondent*". She held the view that Mrs Christianne Belmont, who lives with the Respondent "*is in the circumstances the best person to be appointed as his guardian and that there is no evidence that she will not act in his best interest*". She went on to appoint Mr Antoine Belmont as co-guardian of the Respondent "*out of an abundance of caution to protect the rights and interest of the Respondent*".
9. The Appellant appealed against the learned trial Judge's failure to appoint her as the

guardian of the Respondent on two grounds, which read as follows —

*"Following her correct interdiction of the Respondent at the instance of the Appellant, the Learned Chief Justice erred in failing to consider —*

- 1. That she was not appointing a physical carer for the Respondent but also a guardian to ensure the proper management of his financial affairs;*
- 2. That the Respondent alone, or in conjunction with the Respondent's wife, would have been the more suitable guardian or combination of guardians for the Respondent".*

10. By way of relief, the Appellant sought the following order —

*"An order allowing the appeal, cancelling the appointments of Mrs Christianne Belmont and Antione Belmont as guardians of the Respondent and substituting therefore the Appellant as sole guardian, or the Appellant and Mrs Christianne Belmont as joint guardians, for the Respondent"*

11. The Attorney General as *Ministère Public* submitted that Mrs Christianne Belmont and Mr Antoine Belmont should not have been appointed as joint guardians because they were never before the Court, and, therefore, not examined about their willingness and fitness to be appointed as joint guardians. The Attorney General as *Ministère Public* urged us to remit the case to the Supreme Court for Mrs Christianne Belmont and Mr Antoine Belmont to be appropriately examined concerning their willingness and fitness to act in the best interest of the Respondent.
12. Counsel for the Appellant argued both grounds of appeal together. He submitted in his Heads of Argument and oral submissions that the learned trial Judge approached the Appellant's application on incorrect grounds.
13. Firstly, he submitted that the learned trial Judge placed a burden on the Appellant to satisfy her as to why the two persons eventually appointed could not be guardians. He was of the view that this was not a duty to be placed on the Appellant, who had made it clear in her petition that she wanted to be appointed guardian.

14. Secondly, he argued that the learned trial Judge improperly conflated the duties of carer with those of guardian. Counsel referred to the bottom of page 34 of the brief, where he stated the learned trial Judge clearly demonstrated this error in her thinking with the question, "*So, how do you propose to be his guardian and give him care if you do not live with him?*". He stated that the duty of a guardian includes care of the person, certainly, but also, and especially, representation in all legal acts and administration of the property of the person. He added that there would have been no issue at all with the legal affairs of the Respondent being vested in another person.
15. He went on further to submit that the learned trial Judge never once addressed her mind to the possibility of appointing Mrs Christianne Belmont and the Appellant as joint guardians. She simply dismissed the possibility with two statements: (i) at paragraph 4 of her Order, that there was *obvious friction* between the appellant and Mrs Christianne Belmont, which precluded the Appellant's appointment as sole guardian and (ii) that she was not persuaded that Mrs Christianne Belmont and Mr Antoine Belmont would not act in the Respondent's best interests.
16. Before I consider the questions in issue, I rehearse the salient facts of this case.
17. On the 11 December 2017, before the hearing of the case at first instance started, the Respondent through Counsel informed the learned trial Judge that he was desirous of Mrs Christianne Belmont and Mr Antoine Belmont being appointed as his joint guardians. The evidence revealed that the Respondent has a mild cognitive impairment, but he was still in a position to make some decisions.
18. A close reading of the whole record of proceedings showed that the learned trial Judge did not address her mind to the possibility of appointing the Appellant as the guardian of the Respondent. It appears that, because Mrs Christianne Belmont and Mr Antoine Belmont were not before the Court, the learned trial Judge placed a burden on the Appellant to satisfy her as to why they would not be good guardians: "COURT TO WITNESS Q. [...] *You need to be able to demonstrate to the Court why* [Mrs Christianne

Belmont and Mr

Antoine Belmont] *would not be good guardians*" and "COURT TO WITNESS Q. [...] *The question that is being put to you is very specific, can you demonstrate to the Court why the 2 persons suggested should not be appointed legal guardians? That is the only question. Is there a reason why you do not think they can be guardians*".

19. The Appellant testified that: *"I do not understand why I am not also included as the person to be able to be his guardian because I am also his child"*. She also testified that she would leave her current employment to care for the Respondent if she were to be appointed as his guardian.
20. According to the testimony of the Respondent, Mrs Christianne Belmont takes care of his affairs, including looking after his money and signing cheques, and takes care of him. When asked whether or not he had any objection to the Appellant being appointed as his guardian to take care of his affairs, his response was: *"A: No because my wife and me we are still capable of doing our house so I do not see why she would come there when we can do it now. So I do not see this no. She has a place where she is living"*. The Respondent also testified that the Appellant is a good daughter to him, and that he has no reason to believe that she was trying to take his property. He testified that he would visit her regularly at her house, which he had given to her and his son, one Karl Belmont. According to the evidence of the Respondent, Mr Antoine Belmont does not live with him but he [the Respondent] would meet him occasionally at the church and during the week. He testified that Mr Antoine Belmont would assist if something *grave* were to happen. It appears that the learned trial Judge had relied on this evidence to appoint Mrs Christianne Belmont and Mr Antoine Belmont as joint guardians and persuade herself that they would act in the best interest of the Respondent.
21. With respect to the finding made that there was *obvious friction* between Mrs Christianne Belmont and the Appellant, it appears from a reading of the brief that the *friction* has to do with the Appellant and Karl Belmont being reserved heirs. The application by the Appellant *inter alia* revealed a suspicion of the reserved heirs that they were being side-

lined and might lose out in the succession of the Respondent in favour of the spouse, Mrs Christianne Belmont.

22. A guardian's duties are set out in Article 450 of the Civil Code of Seychelles by reference thereto in Article 509 of the said Code. Articles 509 and 450 of the Civil Code of Seychelles provide —

*"Article 509*

*The interdicted person is assimilated to a minor, both in regard to his person and to his property; the laws relating to the guardianship of minors shall apply to the guardianship of interdicted persons".*

*and*

*"Article 450*

*1. The guardian shall have the care of the person of the minor and shall represent him in all legal acts.*

*He shall administer his property showing in this respect, reasonable care, and shall be liable for damages which may arise from his mal-administration.*

*He shall neither buy the property of the minor nor take it on lease, nor shall he consent to the assignment of a right belonging to the pupil or bind the minor's property to the payment of any sum.*

*2. Except when authorised by a Judge in chambers, the guardian shall only invest the minor's funds in such stocks and securities as are mentioned in laws enacted from time to time.*

*Pending investment, the guardian shall deposit into a Savings Bank or the Treasury or a Bank approved by a Judge all the funds which are not required for the yearly expenses of a minor and for the administration of the minor's property, and he shall owe interest on all funds not so deposited. He shall not withdraw the funds deposited, or any part thereof, without the authorisation of a Judge in chambers.*

*3. Provided that nothing in this article shall be construed as preventing a guardian from setting up a fiduciary fund. However, in that case, the safeguards of the minor's property contained in this Code shall be read into the notarial setting up such fund".*

23. Under Article 490 *alinéa* 1 of the Civil Code of Seychelles proceedings for interdiction shall be entered in the Supreme Court and shall be commenced by petition. Article 490 *alinéa* 4 stipulates that: *"the person whose interdiction is sought shall be made a respondent in the case, and the petition and such other process as the Court may direct shall be served on him"*.
24. It is fundamental under Article 491 of the Civil Code of Seychelles that: *"[w]hen the application for interdiction is not made at the instance of the Attorney-General, a copy of the petition shall be served on him and the matters shall be referred to him in accordance with the provisions of section 151<sup>2</sup> of the Seychelles Code of Civil Procedure (Cap 213)"*.
25. Under section 151 of the Seychelles Code of Civil Procedure matters relating to the interdiction of persons shall be referred to the Attorney General for his conclusions as *Ministère Public*. Nonetheless, section 151 of the Seychelles Code of Civil Procedure provides that: *"henceforth there shall be no obligation upon him to give conclusions as Ministère Public, in any matter referred to him, unless required to do by the court, and no judgment shall be held to be invalid for want of such conclusions"*.
26. Article 495 of the Civil Code of Seychelles provides —

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<sup>2</sup> *Conclusions of the Ministère Public*

*"Matters which must be referred to the Attorney General for conclusions as Ministère Public*

*151. The following matters shall be referred to the Attorney General for his conclusions as Ministère Public, but there shall henceforth be no obligation upon him to give conclusions as Ministère Public, in any matter referred to him, unless required to do so by the court, and no judgment shall be held to be invalid for want of such conclusions whenever such matter shall have been referred to him according to law:*

*(a) matters relating to the guardianship of minors;*

*(b) matters in which one of the parties is represented by a curator;*

*(c) matters concerning presumed absentees or matters in which such absentees are interested;*

*(d) matters relating to the interdiction of persons or the appointment of advisers(conseils judiciaires)." Emphasis supplied*



*"No judgment shall be vitiated or rendered invalid on account of any error, omission or irregularity in the proceedings arising from or depending upon the provisions of the **three preceding articles** unless such error, omission or irregularity has in fact occasioned a miscarriage of justice".* Emphasis supplied.

I observe that Article 495 of the Civil Code of Seychelles does not concern Articles 490 and 491 of the said Code.

27. A careful reading of Article 490 of the Civil Code of Seychelles has led me to conclude that it gives an exhaustive list of persons, who may enter proceedings for interdiction in the Supreme Court. I mention in passing that the Civil Code of Seychelles does not contain an article similar to that as obtained in the *Code Civil Mauricien*: *"504 L'époux est tuteur de son conjoint, à moins que la communauté de vie n'ait cessé entre eux ou que le juge en Chambre n'estime qu'une cause interdit de lui confier la tutelle"*.
28. Further, a close reading of Articles 490 and 491 of the Civil Code of Seychelles has led me to conclude that the said provisions of the Civil Code of Seychelles have the *caractère d'ordre public*. In *Civ. 1er, 23 juin 1987, 85-17126*, the Cour de Cassation held: *"Mais attendu que les dispositions de l'article 493, alinéa 1<sup>er</sup>, du Code civil, qui énumèrent limitativement les personnes qui ont qualité pour requérir l'ouverture de la tutelle, édictées dans un souci de protection de la liberté, ont un caractère d'ordre public ; que le juge doit relever d'office les fins de non-recevoir fondées sur ce texte;"*. Emphasis supplied.
29. In the present appeal, the Appellant, the daughter of the Respondent, entered proceedings, before the Supreme Court, for the interdiction of the Respondent, who was made a Respondent. Her petition was also styled: *"In the presence of: the Attorney General"*. In that regard, Article 491 of the Civil Code of Seychelles was correctly complied with.
30. As mentioned above, the fundamental issue with respect to this case is that Mrs Christianne Belmont and Mr Antoine Belmont neither cross-petitioned nor were before the Court. Both of them had not asked to be appointed as the guardians of the Respondent. The Appellate Court stated in the case of **Jourdanne Guy v Dianna Sedgwick and Anor SCA54/2011**, (delivered on 11 April 2014), at paragraph 21, that: *"We not only have to do justice but have to do justice according to the law"*.

31. Although prayer (3) had asked the Court to "*3. make such other orders that this Honourable Court shall deem fit in the circumstances of this case*", I find that the pleadings, including prayer (3), were not sufficiently wide to permit the learned trial Judge to make the findings and grant the relief she did. The petition stated, *inter alia* —

*"7. The Petitioner proposes that the Petitioner be appointed as the Guardian of the Respondent.*

*8. The Petitioner is able and willing to be appointed guardian of the Respondent and to carry out duties of guardian of the Respondent.*

*9. The petitioner is not subject to any legal incapacity to be appointed as guardian of the Respondent.*

*10. That it is, therefore, urgent and necessary that the Respondent be interdicted and the Petitioner be appointed as Guardian for the Respondent and to administer and manage the Respondent's affairs and property."*

The Appellant had not asked in her petition for Mrs Christianne Belmont and Mr Antoine Belmont to be appointed as guardians. There were no indications that Mrs Christianne Belmont and Mr Antoine Belmont were able and willing, and that they were not subject to any legal incapacity as found by the learned trial Judge. In addition, I accept the contention of Counsel for the Appellant that the learned trial Judge was not correct to place a burden on the Appellant to satisfy her as to why Mrs Christianne Belmont and Mr Antoine Belmont should not be guardians.

32. The Respondent in his answer stated that: "*he is in good mental health and that the Petitioner is unfit to act as his guardian and that she should be examined to certify her fitness*". The Respondent also alleged in his answer that the Petitioner had filed this petition because she wanted to have total control of his property. None of those allegations were proved at the hearing of the application. As mentioned above, the Respondent testified to the effect that the Appellant was a good daughter to him, and that he had no reason to believe that the Appellant was after his property.

33. There was no evidence to show that the Appellant was not a fit and proper person to be appointed as the guardian of the Respondent. The evidence also did not reveal any factor disqualifying her from appointment as guardian. It was not alleged that the conduct of the Appellant was notorious, nor was it established. Further, whether or not the learned trial Judge was correct to conflate the duties of carer with those of guardian does not arise for my consideration in view of the statement made at paragraph 1 hereof. The Appellant testified to the effect that she was able and willing to be appointed as a guardian and to carry out the duties of a guardian to the Respondent and would be ready to leave her job to take care of the Respondent as his carer if she were to be appointed.
34. For the reasons stated above, I hold the view that the learned trial Judge erred in finding that Mrs Christianne Belmont and Mr Antoine Belmont were able and willing to be appointed as guardians and to carry out the duties of guardians to the Respondent, and that they are both not subject to any legal incapacity to be appointed as such. I make this finding paying due regard to the view of the Attorney General as the *Ministère Public*, who was not in favour of Mrs Christianne Belmont and Mr Antoine Belmont being appointed as joint guardians of the Respondent, two people who were never before the Court.
35. Thus, I accept the contention of the Appellant that the learned trial Judge denied the Appellant the relief she sought, namely to be appointed as guardian of the Respondent after she had successfully petitioned to have him interdicted and sought her appointment as guardian over his affairs.
36. I make orders allowing the appeal, setting aside the appointment of Mrs Christianne Belmont and Mr Antoine Belmont as joint guardians of the Respondent and substituting therefor the Appellant, Miss Karine Belmont as sole guardian for the Respondent and to administer and manage the Respondent's affairs and property.
37. I make no order as to costs.

F. Robinson (J.A)

**I concur:.** ..... A.Fernando (President)

**I concur:.** ..... M. Burhan (J.A)

Signed, dated and delivered at Palais de Justice, Ile du Port on 21 August 2020