

SUPREME COURT OF QUEENSLAND

CITATION: *MDJM v The Nominal Defendant* [2026] QSC 128

PARTIES: **MDJM**
(applicant)
v
THE NOMINAL DEFENDANT
(respondent)

FILE NO/S: BS 1795/2026

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court of Queensland at Brisbane

DELIVERED ON: 12 June 2026

DELIVERED AT: Brisbane

HEARING DATE: 15 and 28 May 2026

JUDGE: Treston J

ORDER: **1. I declare that the applicant is not a person under a legal disability so as to require a sanction of a settlement.**
2. I declare that the applicant does not have impaired capacity regarding a financial matter relevant to receiving, investing and managing the settlement sum.
3. The respondent pay the applicant's costs of this proceeding on a standard basis.

CATCHWORDS: PROCEDURE – STATE AND TERRITORY COURTS – JURISDICTION, POWERS AND GENERALLY – DECLARATIONS – APPROPRIATE FORM OF RELIEF - DISCRETION OF COURT – where applicant injured in a motor vehicle accident and suffered a traumatic brain injury – where claim made by the applicant for damages arising out of the injury settled at compulsory conference prior to the commencement of proceedings – where applicant's solicitors seek declarations as to the applicant's capacity to settle the claim – where applicant's solicitors uncertain as to the applicant's capacity to receive and manage the settlement sum payable to the applicant – where correct form of declaration, drawing on the court's *parens patriae* jurisdiction, requires the determination of whether the applicant is a person under a legal disability such as to require a sanction – whether the applicant is under a legal disability – where appropriate to make a

negative declaration that the applicant was not a person under a legal disability so as to require a sanction

STATUTES – ACTS OF PARLIAMENT – INTERPRETATION – PARTICULAR WORDS AND PHRASES – whether applicant is a person with impaired capacity for a matter within the meaning of the *Guardianship and Administration Act 2000* (Qld) – whether the matter should be transferred to the Queensland Civil and Administrative Tribunal for the purpose of determining if a guardian or administrator should be appointed

Guardian and Administration Act 2000 (Qld)

Public Trustee Act 1978 (Qld)

Foran v Jalbao Pty Ltd [2001] QSC 42

Gregory v Nominal Defendant [2006] 1 Qd R 509

Hewitt (by his litigation guardian Hewitt) v Bayntun and another (2015) 72 MVR 416

H v Nominal Defendant [1997] QSC 233

Morris v Clair [2004] QSC 127

Welland v Payne [2000] QSC 431

COUNSEL: E Fitzgerald for the applicant
S Boland, solicitor, for the respondent

SOLICITORS: Fisher Dore Lawyers for the applicant
Barry Nilsson for the respondent

Introduction

- [1] MDJM was injured in a motor vehicle accident which occurred on 31 March 2021 when he was aged 25 years. He is currently aged 30. His injuries were significant and included a traumatic brain injury.
- [2] He gave instructions to commence proceedings against the respondent and, after attendance at a mediated compulsory conference on 14 November 2025, ultimately reached a resolution of his claim resolving his claim in the sum of \$1.5 million plus standard costs.
- [3] In April 2026, MDJM's solicitors filed an originating application seeking orders, primarily, that there be a declaration that MDJM had the legal capacity to provide instructions to settle his claim for damages.
- [4] That is not the correct declaration to be sought. The correct question is whether it is necessary that the compromise be sanctioned pursuant to s 59 of the *Public Trustee Act 1978* (Qld) (the **PT Act**), or, in the alternative, a declaration that the plaintiff is not a person under a legal disability so as to require a sanction.

- [5] The concern about MDJM’s capacity to settle his claim was formed by his solicitors during the course of the pre-court proceedings. That concern was a sensible one, and potentially engaged of the court’s *parens patriae* jurisdiction.¹

An issue arises as to capacity

- [6] The facts are that, broadly, in December 2024, MDJM communicated to his solicitor that he was concerned about having been placed under surveillance. He believed that people were following him, and he felt unsafe. The Nominal Defendant’s solicitors advised the solicitors for MDJM that they have not placed him under surveillance, and repeated that at the hearing of this application. It can be accepted that MDJM’s concerns are cognitive delusions.
- [7] The issue in relation to MDJM’s delusions have been referred to a number of medical practitioners, and it is necessary to review their evidence for the purposes of forming a conclusion regarding his capacity. Before doing so, the legislative framework is important to set out.

Legislative framework

- [8] A settlement or compromise of a claim for damages, where proceedings have been brought, requires the sanction of the court where the claim is made by “a person under a legal disability”². If the plaintiff is such a person, then, absent a sanction, the compromise is not a valid one and the statute prohibits the payment of damages to any person other than the Public Trustee, unless the court otherwise directs.³
- [9] A person under a legal disability is defined in s 59(1A) as including “a person with impaired capacity for the matter within the meaning of the *Guardian and Administration Act 2000* (Qld)” (the **GA Act**).
- [10] The starting point is a presumption of capacity: s 11(1) of the GA Act.
- [11] Capacity is defined in Schedule 4 to the GA Act as follows:
- “**capacity**, for a person for a matter, means the person is capable of—
- (a) understanding the nature and effect of decisions about the matter; and
- (b) freely and voluntarily making decisions about the matter; and
- (c) communicating the decisions in some way.”
- “**Impaired capacity**, for a person for a matter, means the person does not have capacity for the matter.”
- [12] The GA Act then categorises matters as either a personal matter, special personal matter, special health matter or financial matter: s 10 of the GA Act.
- [13] A financial matter is described in s 1 of Schedule 2 to the GA Act as “a matter relating to the adult’s financial or property matters, including, for example, a matter relating

¹ *H v Nominal Defendant* [1997] QSC 233 (Lee J).

² *Public Trustee Act 1978* (Qld) s 59(1).

³ *Hewitt (by his litigation guardian Hewitt) v Bayntun and another* (2015) 72 MVR 416; [2015] QSC 250, [14] (McMeekin J).

to 1 or more” of the matters set out in s 1 of Schedule 2. Section 1(o) of Schedule 2 provides that those matters include “a legal matter relating to the adult’s financial or property matters”.

- [14] A legal matter for an adult includes a matter relating to:
- “(d) bringing or defending a proceeding, including settling a claim, whether before or after the start of the proceeding.”⁴
- [15] It follows that the compromise of a proceeding in which the plaintiff claims damages for personal injuries is “legal matter” within the GA Act.
- [16] A series of cases in this court has taken the view that this court can sanction a compromise only if the plaintiff has “impaired capacity” for “bringing or defending a proceeding, including settling a claim” and not some other “matter” that might come within the definition of “legal matter” or “financial matter”.⁵ Put another way, does MDJM have impaired capacity for the matter of the compromise of his proceedings, in order to enliven the court’s power to sanction?

What is the medical evidence about MDJM’s capacity for the matter?

- [17] Dr Bawani Marsden, psychiatrist, provided an initial medico-legal report in April 2025. During the examination which led to that report, MDJM did not disclose his concerns about being followed and harassed by private investigators. He subsequently told Dr Marsden that he was concerned that disclosure of that issue would lead to him being perceived as “insane”.
- [18] Dr Marsden saw MDJM again in May 2025 at which time he explained that he had noticed a particular individual starting to follow him in late 2024. He said that in January 2025, whilst visiting Melbourne, he confronted one of the individuals whom he believed was following him. Later he perceived that more people had become involved and that they were beginning to try to cause him to have road accidents. He reported that he had dodged approximately 10 incidents within a week and a half. He said that as his claim did not resolve as planned, he started to feel directly more threatened. He stopped driving so as to avoid detection. He became concerned that private investigators were accessing his security cameras, his internet router, his phones and his Google accounts. He began taking measures like putting his phone on aeroplane mode at work and was concerned about interference with his online accounts, including the deletion of data.
- [19] At the end of March or early April 2025, MDJM was suspended from his employment for a week. He continued to be concerned about being followed. He heightened the precautions he was taking for his personal safety (including by installing new cameras) and monitored his environment closely. His family became concerned about his behaviour.

⁴ GA Act, Schedule 2, s 18(d).

⁵ *Welland v Payne* [2000] QSC 431, [15] – [24], [28] (Mullins J); *Foran v Jalbao Pty Ltd* [2001] QSC 42 (Moynihan J), [14]; *Morris v Clair* [2004] QSC 127, [13]–[16] (Wilson J); *Gregory v Nominal Defendant* [2006] 1 Qd R 509, 512 [12]–[15] (Wilson J); *Hewitt*, [14]–[20].

- [20] Dr Marsden concluded that his recent symptoms, particularly those related to these delusions were consistent with a psychotic disorder (persecutory delusion) secondary to his acquired brain injury. Dr Marsden concluded:

“... This is evidenced by his fixed, false beliefs about being surveilled, harassed and targeted by private investigators, leading to significant distress, hypervigilance and behavioural changes such as stopping driving and taking extended leave from work due to perceived technological interference. ...”

- [21] Dr Marsden thought that the delusional disorder (or psychotic disorder secondary to ABI) also carries a high likelihood of being permanent or, at best, a chronic relapsing-remitting condition. Factors suggesting chronicity include the fixed nature of his beliefs, his limited insight into their potential psychiatric origin, and the possible organic contribution from his significant traumatic brain injury.

- [22] Dr Marsden considered that the persecutory delusions secondary to the acquired brain injury were caused by the motor vehicle accident and its sequelae. Dr Marsden considered that the primary treatment was antipsychotic medication and antidepressants which would require careful and ongoing management by a psychiatrist. Such treatment would likely be on a long-term basis. Nevertheless, Dr Marsden concluded:

“In my opinion, [MDJM] does exhibit capacity to provide instructions with respect to his claim, as defined by the *Guardianship and Administration Act 2000*. MDJM is capable of understanding the general nature of his claim, an [sic] understanding that his legal claim is intended to address the multifaceted impact of his injury on his life, particularly concerning his career trajectory and future earning capacity. ...

He expressed openness to receiving financial advice or family support on how to manage a large settlement on the condition that he would retain his autonomy in making financial decisions. He also acknowledged the possibility that the claim may not ultimately be successful, to which he reports he has been very careful with money and his savings to support him. He was very clear and capable of communicating his decisions. However, the presence of an active Persecutory Delusion, with persecutory beliefs directly related to the claim process (e.g., being targeted by PIs representing the insurer, fears of being discredited), raises significant concerns about his ability to freely and voluntarily make decisions about specific matters within his claim. His judgement and decision-making processes concerning the claim are likely to be significantly influenced by these fixed false beliefs rather than by a purely rational assessment of the facts and legal advice presented to him. ... While he may understand the mechanics of a decision, the rationale behind his choices might be based on delusional premises. Therefore, whilst he has capacity, his capacity to freely and voluntarily make complex decisions intrinsic to the legal claim that intersect with the content of his delusions may be compromised. It would be prudent to ensure that for significant decisions, careful steps are taken to assess his understanding of the

specific matter at hand, separate from his delusional interpretations, and to ensure he is not making decisions solely based on these persecutory beliefs.

In my opinion, a neuropsychological assessment is recommended ...”

- [23] The Nominal Defendant caused MDJM to be examined by Dr Bradley Ng, psychiatrist in May 2025. MDJM disclosed his paranoid delusions to Dr Ng who described them as delusional and “unshakeable”, however he also observed:

“[MDJM] believes that his paranoia about the insurance company will die down once his claim has been finalised and I do believe that that will happen. I believe that this is a state rather than a trait issue. It is not a long-lasting issue.”

- [24] MDJM has been seen on three occasions by a clinical neuropsychologist, Ms Debbie Anderson. At the time of her first assessment Ms Anderson observed that, based on the report of his family, MDJM might be prone to some fixed ideas but commented that this was not evident at her assessment of him.

- [25] Ms Anderson’s second report recorded at some greater length the development of his strong beliefs about being followed and being under surveillance. However, Ms Anderson’s conclusions included the following:

- (a) that he understood there was to be a settlement conference at which an offer would likely be made based on the severity of his injuries and their effect;
- (b) if the offer was close to his expectations, he thought that negotiations might continue but if the parties were significantly apart the matter might proceed to court;
- (c) he understood that he had to be reasonable and listen to advice from his solicitors and parents;
- (d) he understood that if he took the matter to court no one could guarantee a good outcome for him;
- (e) he had no issues with gambling, and was concerned to put his settlement monies towards a house;
- (f) he relied strongly on the advice of his parents and his best friend although he understood he could obtain advice from a bank or research it himself;
- (g) he gave a history that he kept track of his money, recounting a regularly repaid loan made to a friend; and
- (h) he believed he could protect his own interests by not telling others apart from his family or close friend about any settlement.

- [26] Ms Anderson concluded that although he had fixed ideas in relation to the surveillance, he was not distressed by them, and it was her clinical opinion that he had limited insight into his situation and the likely long term effects of his condition. While she thought that his fixed beliefs placed him at great risk of making poor decisions, he did not demonstrate poor decision-making at her interview with him rather he was able to give logical and calm responses. Despite that, she recorded that she agreed with Dr Marsden’s “concerns in this area”.

- [27] Further, Ms Anderson concluded that her assessment did not reveal that from a cognitive point of view he was deprived of decision-making and went on:

“... that is not to say that there will not be a change, especially under the pressure of a settlement conference etc. It is not possible to predict how he will cope under pressure, and the history does suggest that the severity of his symptoms is variable. His brain injury may make him more susceptible to pressure, this may be magnified by the impact of the impact of his fixed beliefs. Under those circumstances he may be unable to over-ride them with the logic he displayed at my interview.

My recommendation would be for his support system (family and solicitors) to remain vigilant for instances of the delusions impacting his decision-making. Ideally, encouraging him to take advantage of his informal support network (i.e. including his parents in the negotiations) would provide additional supervision and opportunities to observe difficulties. The types of issues he may exhibit include unrealistic and illogical decision-making. His limited insight may also cause difficulties (although again whilst I thought that this feature was present, I could not clearly demonstrate that it deprived him of capacity, although I accept that it has the potential to.)”

- [28] In her third report of 6 February 2026, Ms Anderson concluded:

“His desire to settle the matter quickly does appear to be influenced by the residue of his paranoid thoughts. He demonstrated extremely limited insight into the possibility that life will not bounce back to normal once settlement has taken place.

Thus, there seems to be some vulnerability as a result of it. It was also not clear whether he is understating the symptoms, and psychiatric review may be necessary. I was unable to clearly demonstrate a cognitive incapacity to make decisions, but I agree with the psychiatrists that significant psychiatric vulnerability remains and is impacting his thinking. In light of that, some type of formal assistance/monitoring of legal and financial decision making would be indicated. Psychiatric review may be able to more clearly establish if there is an underlying condition at risk of relapse.”

- [29] Properly construed, it seems to me that what can be taken from the medical evidence is that Dr Marsden was expressing the view that while MDJM had capacity to freely and voluntarily make complex decisions in relation to his claim, that decision-making was intersecting with the content of his delusions such that the decision-making might be compromised. Her suggestion was that he be assessed by a neuropsychologist, and despite a number of assessments by Ms Anderson, she concluded that she was unable to reach a definitive conclusion regarding his cognitive incapacity to make decisions. Indeed, she thought that further psychiatric review was required, pushing the issue back onto Dr Marsden. Ultimately, the issue is one for the court, not for the individual medical practitioners, although naturally the court is assisted by their expertise on the issue.

- [30] MDJM has sworn an affidavit in these proceedings, no doubt prepared with the assistance of a solicitor and counsel. The affidavit sets out MDJM’s understanding

of his participation in the compulsory conference proceedings, his consideration of advice he has received from both solicitor and counsel, his participation in the negotiation of the ultimate settlement sum, and his ability to involve his parents in his decision-making processes, among other matters.

- [31] Ultimately, it seems to me that the better view of the medical evidence is that MDJM has capacity for the decision to settle his claim. He appears to understand the nature and effect of his decision about the matter and is capable of clearly communicating his decision in the way required to satisfy the provisions of the GA Act as to capacity. The only genuine issue is whether he is freely and voluntarily making a decision about the settlement, or whether his delusions about surveillance have affected his ability to freely and voluntarily decide to settle his claim.
- [32] The question of his ability to freely and voluntarily make decisions in relation to his claim is well reflected in the evidence of Ms Anderson, contained in paragraph [25] above. That evidence appears to demonstrate that he has a genuine understanding of his decision to settle the claim which appears to be separate from any cognitive distortions from which he was suffering in 2024 and 2025 when he saw Dr Marsden and Ms Anderson.
- [33] There is a presumption in MDJM's favour that he is an adult with capacity. Recognising that capacity is decision-specific, it is of importance that MDJM's decision-making ability took into account a genuine understanding of the advice which he received at the conference, the fact that no person could give him a guarantee in relation to outcomes, that he understood the importance of listening to good advice including from both his solicitors and his parents (the latter on whom he relied heavily), and his own protective mechanisms including a good understanding of how to keep track of his money and to protect his interests by protecting his privacy. Having regard to those facts, I am not satisfied that MDJM is a person under a legal disability.
- [34] As a consequence, there is no power to sanction the settlement because MDJM is not a person who is under a legal disability as defined in s 59(1) of the PT Act.
- [35] I therefore decline to sanction the settlement. MDJM can decide for himself whether he wishes to settle the matter or not.
- [36] There will be a declaration that the applicant is not a person under a legal disability so as to require a sanction.

Should an administrator be appointed?

- [37] As to the related question which I was asked to consider, being whether an administrator ought to be appointed, I respectfully adopt the same approach as McMeekin J in *Hewitt*⁶ that absent a sanction, this court has no jurisdiction to exercise the power to appoint an administrator, the appointment of such an administrator being only available for adults with impaired capacity for matters. That is because pursuant to s 245 of the GA Act, the power to appoint an administrator only arises in a civil proceeding where the court sanctions a settlement between another person and the adult, and the court considers the adult is a person with impaired capacity for the

⁶ *Hewitt*, [24].

matter. Neither of these criteria are satisfied and the power to appoint an administrator cannot arise on the current facts.

- [38] There will therefore be a declaration that the applicant does not have impaired capacity regarding a financial matter relevant to receiving, investing and managing the settlement sum.

Costs

- [39] The parties agreed that the respondent ought to pay the applicant's costs of this proceeding on a standard basis, and I so order.