



# SAT

State  
Administrative  
Tribunal

Western Australia

## ***Guardianship and Administration Act 1990***

### **DECISIONS BULLETIN**

**No 19 April 2008**

---

This Bulletin contains summaries of written reasons published by the Tribunal in April 2008. The full text of decisions and reasons can be found on the Tribunal's website at [www.sat.justice.wa.gov.au](http://www.sat.justice.wa.gov.au)

---

**MS and YS [2008] WASAT 72**

**3 APRIL 2008**

**MR M ALLEN (SENIOR MEMBER)**

**MS J STANTON (SENIOR SESSIONAL MEMBER)**

**MS V O'TOOLE (SENIOR SESSIONAL MEMBER)**

**Guardianship and administration - Applications by daughter for appointment of guardian and administrator for elderly mother - Mother and daughter estranged for many years - Mother suffering from psychiatric illness and dementia - Finding that proposed represented person is a person in respect of whom guardianship and administration orders could be made, but is not in need of a guardian because informal arrangements in place are sufficient to meet her needs in relation to guardianship - Finding that informal arrangements, including an enduring power of attorney (EPA), are not adequate to meet the needs of the proposed represented person in relation to her financial affairs - Financial affairs**

The Tribunal considered an application by a daughter (MS) for the appointment of a guardian and administrator for her elderly mother (YS). YS and MS have been estranged for many years and YS has suffered from paranoid schizophrenia for many years. An application by MS in 2002 for the appointment of an administrator for YS was refused in 2003 by the former Guardianship and Administration Board.

The Tribunal was satisfied that by reason of YS's chronic mental illness and dementia she is a person in respect of whom both guardianship and administration orders could be made. Nevertheless, the Tribunal was satisfied that the existing informal arrangements were sufficient to deal with all matters that a guardian was likely to be called upon to deal with and, accordingly, YS was not in need of a guardian.

YS's financial circumstances were not straight forward. She has personal assets in excess of \$1 million as well as being the trustee of, and a beneficiary under, a discretionary family trust established many years ago by YS and her now late husband. MS was at one time a beneficiary under the terms of the trust deed but there is now conflict as to whether she remains a beneficiary. The potential conflict in relation to the administration of the trust, plus the need for decisions to be made concerning the sale or lease of YS's residence indicated that some form of external administration of YS's financial affairs was required.

The Tribunal considered that an existing enduring power of attorney, under which YS appointed a friend (BM) to manage her affairs, was not sufficient as it did not seem to enable the attorney to act as an ex officio trustee of the trust and the Tribunal considered that there was a need for involvement by a member of YS's extended family in the administration of her affairs.

Accordingly, the Tribunal dismissed the guardianship application but made an order appointing as joint administrators BM and a nephew of YS's late husband. The joint administrators were granted plenary powers and the Tribunal also authorised the administrators to exercise the power vested in YS in her capacity as a trustee of the discretionary trust. The Tribunal also revoked the existing enduring power of attorney in favour of BM. The Tribunal considered that the order should be reviewed after 18 months, that being a sufficient period to establish whether the administrators could work together, and to allow the foreseeable decisions to be made.

**JED [2008] WASAT 80**  
**11 APRIL 2008**  
**MR M ALLEN (SENIOR MEMBER)**

**Guardianship and administration - Administration - Review of order appointing Public Trustee as plenary administrator of estate - Represented person suffering from paranoid schizophrenia - Consideration of impact of that illness on represented person's ability to make reasonable decisions in relation to financial affairs - Finding that represented person is unable to make reasonable decisions and that the needs of the person cannot be met in a less formal manner**

The Tribunal reviewed an order appointing the Public Trustee as plenary administrator for a young woman who suffers from paranoid schizophrenia. The Tribunal was satisfied that this mental disability, through the short-term focus and disorganised thinking involved, resulted in the represented person continuing to be unable to make reasonable decisions regarding her financial affairs. The most recent examples of poor decision-making were a desire (not accomplished) to use superannuation funds (gained by reason of hardship) to pay for a holiday for the represented person and her boyfriend or, alternatively, to purchase a car - even though the represented person does not hold a driver's licence.

The Tribunal considered that the represented person continued to need an administrator and the Public Trustee should continue to have plenary powers.

**BW [2008] WASAT 82**  
**16 APRIL 2008**  
**MS D DEAN (MEMBER)**

**Application for Guardianship - Application for administration - Capacity to make reasonable judgments - Need for a guardian - Need for an administrator - Need for an independent decision-maker - Perpetual Trustees appointed plenary administrator - Remuneration of administrator - Public Advocate appointed limited guardian - Application for costs to be paid out of the estate of the represented person**

BW, an elderly man, diagnosed with dementia, had been married and divorced three times. He had three children by two of his wives. His eldest child, a daughter, made applications to the Tribunal for guardianship and administration orders precipitated by BW's inappropriate financial and lifestyle decisions which the daughter deemed put him at risk in various ways.

Although the exact details of his estate were not known, it was thought to be large and complex and included property, shares and cash. The daughter proposed Perpetual Trustees as administrators. For the Tribunal to appoint a trustee company it must first find an individual, in this case the daughter, suitable to be appointed and she must request in writing the appointment of the trustee company.

The Tribunal found the daughter suitable to act and in response to her written request that Perpetual Trustees be appointed, the Tribunal appointed Perpetual Trustees plenary administrator of the estate of BW.

The Tribunal was advised that in the interests of preserving family relationships and harmony, a guardian independent of the family would be in the best interests of BW and indeed, BW himself indicated, through his nominated spokesperson, that if an appointment was to be made he would prefer someone independent of his family.

The Tribunal appointed the Public Advocate limited guardian for a period of two years by which time it was likely that the accommodation issue would have been resolved and a family member might be in a position to take on the role of decision-maker for medical and other lifestyle issues.

Solicitors representing the applicant daughter and the third former wife made applications to the Tribunal for payment of their legal costs out of the estate of BW pursuant to s 16(4) of the *Guardianship and Administration Act 1990* (WA). Although guardianship and administration is a no cost jurisdiction with parties bearing their own costs, the Tribunal may, if it thinks fit, order that costs be paid out of the estate of the represented person. In this case, the Tribunal found that there was no evidence to indicate that such payment was warranted and therefore dismissed both applications for costs.

**LL and PL [2008] WASAT 85**  
**18 APRIL 2008**  
**MS D DEAN (MEMBER)**

**Application for administration - Capacity to make reasonable judgments - Need for an administrator - Need for an independent decision-maker**

An application for administration was made by LL, the Thai wife of PL who suffered a debilitating stroke while living in Thailand. At the time of his stroke PL was estranged from LL and living with another Thai woman who left him after the stroke. LL arranged for appropriate hospital treatment in Thailand and PL's subsequent repatriation to Australia at a cost of \$35,000. This is currently a debt to the Department of Foreign Affairs and Trade.

PL's estate consisted of a caravan in which he and LL lived in a Perth caravan park and where LL continued to live, two cars, one of which had a debt of \$17,000 and a large credit card debt. At the time of the hearing neither PL nor LL were in receipt of any income.

The Tribunal was provided with evidence from PL's sister, Mrs R, that LL was unable to read and write English and in Mrs R's view would therefore not be suitable to take on the role of administrator. Mrs R did not propose herself as administrator. LL proposed herself as administrator and confirmed that she could not read or write English and that she relied on others to read documents and explain their contents to her.

The Tribunal found that, given the complexity of the problems in relation to the estate at the time, it was in the best interests of PL that the Public Trustee be appointed administrator to negotiate with the Department of Foreign Affairs and Trade in relation to the repatriation

debt and to liaise with the necessary organisations in relation to the car and credit card debts and Centrelink in relation to any benefits to which PL may be entitled.

The appointment was made for one year.

**AI & ANOR and OF [2008] WASAT 87**

**18 APRIL 2008**

**MR J MANSVELD (MEMBER)**

**MS J STANTON (SENIOR SESSIONAL MEMBER)**

**MS V O'TOOLE (SESSIONAL MEMBER)**

**Guardianship and administration - Administration - The represented person's estate held jointly with her son, her attorney under an enduring power of attorney - Attorney not to profit from a transaction unless a fully informed consent has been given by the donor - Need for an administrator - Administrator appointed - Enduring power of attorney inconsistent with the functions of an appointed administrator - Enduring power of attorney revoked**

An application for administration was made for an elderly woman who was residing in a nursing home. She suffered from dementia.

The application was made by two of the woman's grandchildren.

The woman's estate was currently being managed by her son under an enduring power of attorney.

The applicants submitted that the son was not managing the woman's estate in her best interests. In particular they said that he had sold the woman's property unnecessarily. They had offered to assist financially so that the property need not be sold but the son had refused their offer.

The property was bequeathed to the applicants under a will purportedly made by the represented person in 2004.

The son said that the property needed to be sold to provide for an accommodation bond to be paid by the woman to enable her to live in an aged care facility. He had refused the grandchildren's offer because he said they had not assisted previously and it was not culturally appropriate to accept help.

The son said he had not been made aware of the 2004 will when it was made. He submitted that the only reason the applicants had made the application was to protect their inheritance.

In the course of the hearing the son's evidence was that he had invested the net proceeds of the sale of the woman's property jointly in his name and the name of the woman. He said this was done under advice as the most practical way in which the funds could be managed. Other funds of the woman had been invested by the son in his name only and in the name of his company.

The son had also arranged for cash gifts to be made to him from the woman's estate, he said with her consent.

The son said his mother still made her own decisions.

The Tribunal found on the evidence that the woman was no longer capable of making reasonable judgments about her estate.

The Tribunal found that the conflict between the applicants and the son was mainly to do with who was (or deserved to be) the ultimate beneficiary of the woman's estate.

The Tribunal found that the conflict clouded the judgment of both the son and the applicants when they considered the woman's estate and how it should be managed in her best interests.

The Tribunal therefore decided to appoint the Public Trustee as the woman's administrator and to revoke the enduring power of attorney.