



# SAT

State  
Administrative  
Tribunal

Western Australia

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

### **DECISIONS BULLETIN**

**No 12 August 2007**

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This Bulletin contains summaries of written reasons published by the Tribunal in August 2007. 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)

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**RP and PC [2007] WASAT 196  
1 AUGUST 2007  
MS D DEAN (MEMBER)**

**Applications for Guardianship and Administration - Represented person suffering from a progressive neurological disorder impacting on both physical and mental functioning - Need to make difficult decisions which, if a family member appointed, might have a negative impact on close family relationships - Public Advocate appointed limited guardian - Public Trustee appointed plenary administrator**

Applications were made by the represented person's medical treating team for guardianship and administration orders. The represented person had a hereditary, progressive, neurological disorder which had impacted on his cognitive and physical functioning, and will, in the future, cause further deterioration in functioning.

The medical treating team assessed the represented person as incapable of making reasonable judgments about his lifestyle or finances. His mother disagreed with this assessment and believed that he still had the capacity to make reasonable decisions for himself.

The Tribunal accepted the evidence of the medical treating team in respect of both capacity and the need for a guardian and administrator. The Tribunal appointed the Public Advocate limited guardian and the Public Trustee plenary administrator on the basis that some difficult lifestyle, health and financial decisions needed to be made and would be difficult for the mother to make given her belief in her son's capacity to make these decisions for himself. It was the view of the Tribunal that the mother's close, supportive relationship with the represented person might be compromised if she was required to make decisions which went against his wishes and it was therefore in his best interests that an independent decision-maker be appointed.

The Tribunal made the appointment for one year, as in that time, the mother may accept that the represented person no longer has the capacity to make reasonable decisions for himself and she may be suitable to be appointed to make decisions for him.

**M [2007] WASAT 201**

**7 AUGUST 2007**

**MR J MANSVELD (MEMBER), MS C HILL (SENIOR SESSIONAL MEMBER), MS  
M JORDAN (SENIOR SESSIONAL MEMBER)**

**Guardianship and administration - Review of administration order - Application by administrator to make a gift to himself and siblings from the represented person's estate - Discretion available under section 71(5) should not be used in this case**

The son of an elderly woman, suffering from dementia, was appointed her administrator in 2003. The woman resided in a nursing home. Her husband had died some years ago.

In 2007, the son sought review of the administration order. He sought an authority to make a gift from his mother's estate of approximately \$258 000. He maintained that the gift represented an expression of his late father's wishes. He was the executor of his late father's estate.

The son submitted that, when the jointly owned family home was sold, it was expected that the proceeds be split between the mother and father's estates. This did not occur as it was found administratively simpler to invest the proceeds in a joint investment account. When the father died the investment account became wholly the property of the mother. The son submitted that his father wanted his share of the property proceeds to be distributed to his surviving children upon his death. This could now only be achieved by making a gift from the mother's estate.

The Tribunal was not satisfied the proposed gift was in the best interests of the woman. It could not be said, for the purposes of a gifting application under the *Guardianship and Administration Act 1990* (WA), that half the proceeds of the sale of the property did not really belong in the estate of the woman but belonged to the father and should be distributed according to his wishes.

The other reasons put by the son and his brother as to why the gift should be allowed were, in the Tribunal's view, subsidiary to the main purpose just described and were not of themselves fully formed or costed to satisfy the Tribunal that the gift should be authorised.

The Tribunal confirmed the order made in 2003 appointing the son as the woman's administrator. The order did not include an authority to make a gift from her estate.

**FS [2007] WASAT 202**

**13 AUGUST 2007**

**JUSTICE M L BARKER (PRESIDENT)**

**MS J TOOHEY (SENIOR MEMBER)**

**MR J MANSVELD (MEMBER)**

**Guardianship and administration - Review of administration order for Aboriginal man - Reasonable judgment in respect of matters relating to his estate - Test of reasonable judgment has objective and subjective elements - Reasonable judgment is the outcome of a process that involves knowledge, understanding and evaluation - Cultural obligations - Personal autonomy as against a duty of care to his community - Administrator shall act in the best interests of the person under administration - Section 70 of the *Guardianship and Administration Act 1990* enables an administrator to manage an estate according to the individual needs and requirements of a person**

An Aboriginal man was involved in a motor vehicle accident in 1987 from which he sustained a head injury and permanent cognitive deficits. He received a large compensation payout.

He lived in an Aboriginal community in regional Western Australia.

In 1997 the Public Trustee was appointed the man's administrator by the former Guardianship and Administration Board. The order was confirmed by the Board in 2003 and again in 2004 before being reviewed by the Tribunal in March 2007.

In 2006 the man was assessed for his ability to make reasonable judgments about his financial affairs by a psychology service that specialised in assessing Aboriginal people. The report of the psychologist raised the concern that the tests used in the assessments were not sufficiently sensitive to the man's Aboriginal worldview and might therefore understate his capabilities.

The man was also said to have cultural obligations that were reflected in a duty of care to his community. He was said to be aware of these obligations but a concern was expressed by an anthropologist experienced in the man's ways that he would be unable to resist the demands for funds from his family and kin were he to regain control of his estate.

The Tribunal found that, as a consequence of his cognitive deficits, the man was unable to make reasonable judgments about his finances. He was found not to be able to assess and evaluate the standards of his cultural obligations as they applied to him.

The Tribunal reappointed the Public Trustee as the man's administrator as no alternative was presented that would displace the need for an order for administration.

The Public Trustee had raised a concern that requests for funding by the man which provided a benefit for his extended family could not be made except with the approval of the Tribunal, as they were in the nature of gifts. This reduced the flexibility available to the administrator to make appropriate financial decisions for the man.

The Tribunal took a different view of the relevant provisions of the *Guardianship and Administration Act 1990 (WA)* and found that it was open for the Public Trustee to consider these payments against the criteria that determine what is in the man's best interests.

The Tribunal had some sympathy for the proposition that the man might benefit from consideration being given to the employment of a mentor to encourage his participation in positive activities and to use his skills and standing to support his community. The Tribunal also agreed with the proposal that the Public Trustee consider making use of "cultural consultants" to obtain a better understanding of the man's situation and needs.

**CH [2007] WASAT 223**

**31 AUGUST 2007**

**MS J TOOHEY (SENIOR MEMBER)**

**MR J MANSVELD (MEMBER)**

**MS D DEAN (MEMBER)**

**Administration – Capacity – Complex estate – Whether enduring power of attorney a less restrictive means of meeting needs – Administrator appointed**

Applications were made for the appointment of a guardian and an administrator for CH who had inherited a large and complex estate comprising residential and commercial real estate,

funds in bank accounts and interests in trusts. Most of the estate was owned jointly with her cousin who disputed the need for either appointment but proposed herself as guardian and administrator in the event that appointments were made. After hearing evidence from a consultant psychiatrist, the Tribunal dismissed the applications for guardianship on the ground that CH was capable of acting on her own behalf within the meaning of s 43 of the *Guardianship and Administration Act 1990*. However, it was satisfied, on the balance of the evidence before it, that CH was unable, by reason of mental disability, to make reasonable judgments about all of her estate.

In determining whether CH was in need of an administrator, the Tribunal considered whether an enduring power of attorney by which CH had appointed her cousin her attorney was a less restrictive means of meeting her need for assistance in the management of her estate. The Tribunal decided that, in all the circumstances, in particular that most of CH's property was jointly owned with her cousin, it was in her best interests that there be a greater degree of independence and accountability in the management of her estate than would be afforded by the enduring power of attorney. As it was satisfied that her cousin was a suitable person to take on the role, and as CH had expressed her strong wish that she assist her, the Tribunal appointed her cousin her plenary administrator.