



SAT

State
Administrative
Tribunal

Western Australia

Guardianship and Administration Act 1990

DECISIONS BULLETIN

No 5 January 2007

This Bulletin contains summaries of written reasons published by the Tribunal in January 2007. The full text of decisions and reasons can be found on the Tribunal's website at www.sat.justice.wa.gov.au

EA and KD, TA, LA, BA & VT [2007] WASAT 3

5 JANUARY 2007

MR J MANSVELD (MEMBER), DR A MCCUTCHEON (SENIOR SESSIONAL MEMBER)

MS J STANTON (SENIOR SESSIONAL MEMBER)

Guardianship and administration - Mental disability - Unable to make reasonable judgments in respect of estate - Lack of capacity to make complex financial decisions - Need for an administrator - Who should be appointed administrator

An application for administration was made by the children of a 79-year-old man, who, they said, was suffering from impaired decision-making. The man had previously sold his home, and had in a deposit account approximately \$300 000 from the sale. The children were of the view that their father was no longer capable of managing these funds, and were concerned that the funds would not be preserved for his future care. It was proposed that one of the children be appointed the man's administrator.

Both the man and his partner, with whom he lived, disputed that he had lost capacity, and did not support the children becoming involved in the management of his finances.

An earlier, single member Tribunal had made an order giving the Public Trustee the powers of a plenary administrator in respect of the man's estate, pending the determination of his capacity to make reasonable judgments about his finances.

The application for administration was then further heard before a three member Tribunal.

The man was assessed by his general practitioner as capable, but was later assessed by a consultant geriatrician. The geriatrician's specialist opinion was that the man had a cognitive impairment, manifesting in severe memory deficits and a consequent inability to contextualise information necessary to consistently make financial decisions in his own best interests. The geriatrician was of the view that the man was no longer capable of making complex decisions of the type which would involve the management of his estate. The Tribunal agreed with that assessment.

The Tribunal decided to appoint the Public Trustee as administrator. It was the Tribunal's view that the son's suitability was compromised by the man's wishes and the difficult relationship he and his siblings had with the man's partner. It was not in the man's best

interests for the administration of his estate to be contaminated with the current state of the family relationships. In this regard, the Tribunal agreed with the man's partner that there was a better chance of those relationships improving should the issue of estate be removed. Both the man's partner and his children would be in the position of putting their views before an independent administrator.

The man was legally represented at the hearing, as were his children as applicants. Applications for legal costs to be paid from the man's estate were made at the end of the hearing and the Tribunal's decision was reserved.

**JCH and CH [2007] WASAT 4
8 JANUARY 2007
MS F CHILD (MEMBER)**

Guardianship and Administration - Need - Enduring power of attorney executed - No need for administrator - Diagnosis of serious illness - Need for a guardian to consent to medical treatment and care

The State Administrative Tribunal dismissed an application for the appointment of the Public Trustee as administrator for an elderly woman suffering from dementia with a recent diagnosis of cancer. The Tribunal determined that there was no need for the appointment of an administrator as the woman had executed an enduring power of attorney and there was acknowledgement by the applicant that the financial arrangements were working well.

The Tribunal appointed the applicant, her stepson, as her guardian, as there was a need for someone with proper authority to make decisions about her treatment and care. There was some uncertainty in the existing informal arrangements, and this was not in her best interests, given her diagnosis and the need for treatment decisions to be made in the near future.

**AG [2007] WASAT 7
12 JANUARY 2007
MS F CHILD (MEMBER), DR E LEIPOLDT (SENIOR SESSIONAL MEMBER),
MS R CARROLL (SENIOR SESSIONAL MEMBER)**

Guardianship and administration - Appropriate appointee - remuneration of the administrator - Past remuneration - Rate of future remuneration - Expenses

On review of an administration order, the State Administrative Tribunal confirmed the appointment of Perpetual Trustees Australia Limited, a trustee company, as administrator for a man diagnosed with Asperger's Syndrome. The company had first been appointed as administrator in 2003 by the Guardianship and Administration Board. The Board authorised remuneration of the administrator but did not specify a rate.

The Tribunal considered that the estate under administration was of sufficient size and complexity to warrant remuneration, and the Tribunal ordered that future remuneration of the administrator be at the usual rate charged by the company for this size estate.

As the order under review had not expressly provided for the rate of remuneration of the administrator, the Tribunal's order regularised the remuneration of the administrator under the *Guardianship and Administration Act 1990* (WA) which requires express authority for remuneration.

The Tribunal also considered the past charges applied to the estate since 2003. The Tribunal found that the administrator had acted in good faith and in the mistaken belief it was entitled to be paid remuneration for administration of the estate that was expressly not authorised. Most importantly, as the work had been done and the represented person had benefited from the administration of the estate, it was appropriate that remuneration be authorised for this period to reflect the charges actually imposed.

The Tribunal ordered remuneration for the period March 2003 to July 2006 equal to an amount charged by the administrator for that period. Thereafter, the administrator was authorised to charge its published rate of fees for that size estate.

RE C; EX PARTE I and D [2007] WASAT 10

15 JANUARY 2007

MS J TOOHEY (SENIOR MEMBER), MS F CHILD (MEMBER), MR J JAMES (SENIOR SESSIONAL MEMBER)

Guardianship - Review of order appointing the Public Advocate plenary guardian - Munchausen's by Proxy – Mild intellectual disability – Represented person living with carers since order made – Represented person's wish to return to live with parents – Evidence that represented person had developed and matured - Risk if returned to mother's care – Guardian still needed to make decisions in her best interests

When she was 17, the young woman whom these proceedings concerned was declared by the Children's Court of Western Australia to be in need of care and protection. She was removed from her parents' care and had lived with carers since. After she turned 18, the Guardianship and Administration Board appointed the Public Advocate her guardian. Her parents sought review of that order.

The young woman had a long and complex medical history involving numerous admissions to hospital and surgical procedures; at different times she had been dangerously ill. The application for care and protection was made after doctors and hospital staff raised concerns that her mother might suffer from Munchausen's by Proxy, a condition in which one person induces physical or psychological symptoms in another for complex reasons that are not fully understood.

The Tribunal took into account the findings of the Children's Court and the Board and found the most probable explanation for the young woman's condition, and her recovery once removed from her mother, was Munchausen's by Proxy. It found that, despite evidence that she had developed and matured since the order was made, she remained vulnerable and was in need of oversight, care and control in the interests of her own health and safety.

In the period since she had lived with her carers, the young woman's address and the identity of her carers had not been disclosed to her parents, although they had had supervised contact for some time. This was because, in the view of her guardian, the risk to her of unregulated, unsupervised contact was too great. In particular, the mother's denial of Munchausen's by Proxy and unwillingness to undergo family or other counselling made the chance that she had recovered remote.

The Tribunal accepted that the young woman wished to return to live with her parents. However, it found that, in the absence of a guardian who would regulate and supervise contact with her mother, there was a risk that she would again become seriously ill; the risk was sufficiently real that she remained in need of a guardian to decide whether she should live and with whom she should have contact.

The Tribunal confirmed the appointment of the Public Advocate as guardian but made the order limited rather than plenary as it was satisfied that a limited order was sufficient to meet the young woman's needs.

AM [2007] WASAT 11
16 JANUARY 2007
MS D DEAN (MEMBER)

Review of guardianship order - Need for a guardian - Order revoked - No one suitable or willing to act as guardian - Public Advocate appointed guardian of last resort - Functions of a guardian - Need for a plenary order

The represented person is a 19-year-old man. He was made a ward of the state as a baby and was raised by foster carers who, when he reached 18 years of age and was no longer a ward of the state, were appointed his joint plenary guardians.

AM had been assessed as having an intellectual disability with organic personality changes and possible psychosis. At the time of the hearing, he was living with his foster parents and attending a pre-employment course for disabled young people. He was keen to move into independent accommodation and to find employment. It was clear from the information provided to the Tribunal that AM had no insight into his own limitations and had no ability to identify appropriate accommodation, education or employment options or to make any of the necessary day to day lifestyle and medical decisions which needed to be made. He denied that he had a disability and was incapable of making reasonable judgments about his own health and treatment needs.

On review of the guardianship order, the foster parents advised that, due to the negative impact on both their family relationships and their health, they were no longer able to continue in the role of guardians.

As there was no one else in the life of AM who was willing or suitable to take on the role of guardian, the Tribunal appointed the Public Advocate as plenary guardian for AM.

QW [2007] WASAT 23
31 JANUARY 2007
MS D DEAN (MEMBER)

Application for guardianship - Need for a guardianship order - Dementia

QW is an elderly woman diagnosed in 2004 with dementia. In 2005 QW married MW. QW had two daughters who were in conflict with MW and as a result contact between QW and the daughters was compromised.

In March 2006 QW's daughter made applications to the Tribunal for administration and guardianship orders. The Tribunal found that QW was a person for whom orders could be made and appointed the Public Trustee plenary administrator for 12 months. The Tribunal made a short administration order to give the family time to resolve their differences and in the likelihood that a family appointment might later be made.

The application for guardianship was dismissed on the basis that there was no need for an order as QW's granddaughter, who was on good terms with all family members, agreed to

act as a go between and ensure that QW's needs were being met and that contact between QW and her daughters could occur.

In October 2006 QW's daughters made an application to the Tribunal for a guardianship order because MW planned an interstate holiday for himself and QW and refused to provide the daughters with contact information during the planned holiday.

The Tribunal found that there was a need for a guardianship order as the family had been unable to work together to ensure that QW had all her medical, welfare and accommodation needs met and as a result her health and welfare were at risk. Further, the Tribunal found that MW had, because of his conflictual relationship with the daughters, made contact between QW and her daughters difficult. In addition, the Tribunal found that MW, because of his lack of insight into QW's disability and needs, had historically made decisions which were not always in QW's best interests. There was no evidence to suggest that this would be any different in the future.

In order to preserve family relationships and to ensure that QW had all her needs met, the Tribunal appointed the granddaughter limited guardian to make decisions about medical matters, contact and accommodation.