



SAT

State
Administrative
Tribunal

Western Australia

Guardianship and Administration Act 1990

DECISIONS BULLETIN

No 22 July 2008

This Bulletin contains summaries of written reasons published by the Tribunal in July 2008. The full text of decisions and reasons can be found on the Tribunal's website at www.sat.justice.wa.gov.au

PN [2008] WASAT 158

4 JULY 2008

MS J TOOHEY (SENIOR MEMBER)

MS F CHILD (MEMBER)

MS J STANTON (SENIOR SESSIONAL MEMBER)

Guardianship - Community guardian - Restraint - Whether additional authority required to consent to use of chemical restraint

On an application by the Public Advocate, the Tribunal revoked her appointment to consent to treatment for PN and appointed a community guardian in her place. A question arose in the course of the hearing as to whether certain medications that PN had taken over many years to manage outbursts of aggression could be considered chemical restraint and whether the guardian needed additional authority in relation to them.

The Tribunal appointed the community guardian for three months to consent to treatment and asked the Public Advocate to obtain further information about the medications.

At the subsequent hearing the Tribunal was satisfied that the medications could be considered to be for the purpose of restraint and outside the meaning of treatment in the Guardianship and Administration Act 1990 (WA). It reappointed the community guardian and gave him additional authority to consent to the use of chemical or physical restraint.

JB [2008] WASAT 159

7 JULY 2008

MS J TOOHEY (SENIOR MEMBER)

MS D DEAN (MEMBER)

MR J JAMES (SENIOR SESSIONAL MEMBER)

Guardianship - Review of order appointing Public Advocate limited guardian - Whether father suitable to be appointed guardian - Arrangements for out of home care - Whether father would maintain current arrangements - Tribunal not satisfied in represented person's best interests for father to be appointed - Appointment of Public Advocate confirmed - Application by accommodation service provider to appoint administrator - Whether father suitable to be appointed - Invoices for costs related to accommodation ignored by father - Tribunal not satisfied in represented person's best interests for father to be appointed - Invoices for costs related to

accommodation ignored by father - Tribunal not satisfied in represented person's best interests for father to be appointed - Public Trustee appointed plenary administrator

JB was a young man with profound multiple disabilities that made him dependent on others for all aspects of his care. He had been cared for at home by his father for many years. In 2006 the Disability Services Commission became concerned that he was being neglected and asked the Tribunal to appoint a guardian. The Tribunal appointed the Public Advocate his guardian to decide where and with whom he should live and what services he should receive, and to consent on his behalf to medical treatment. The order was to be reviewed after two years.

Over a long period, JB's father, DB, had been difficult to contact and had failed to keep to arrangements concerning JB's care. Even after the Public Advocate was appointed guardian, her attempts to make contact with JB were repeatedly frustrated by his father. In 2007, when she had still not met JB, the Public Advocate applied to the Tribunal for a warrant to enter the home. In the end, an agreement was reached with DB that JB would spend two weeks of "respite care" at a Senses Foundation facility and four weeks at home in his father's care on a rotating basis.

At the review of the order appointing the Public Advocate, the Tribunal heard, and accepted, evidence from the Public Advocate and Senses Foundation about the benefits JB gained from the periods in care and that he would benefit from increased periods of care. The Tribunal also accepted that JB's father continued to frustrate the arrangements for his care.

DB denied obstructing the arrangements. He did not dispute that his son gained some benefits from the respite care but disagreed that he would benefit from increased periods of care. He maintained there was no need for a formal order or, if there was, that he should be appointed guardian.

The Tribunal was not satisfied that DB would keep to the arrangements for respite care if he were appointed guardian and, for that reason, did not consider him suitable to act as guardian. It confirmed the appointment of the Public Advocate.

The Tribunal also considered an application by Senses Foundation for the appointment of a plenary administrator for JB. The Tribunal was satisfied that JB was in need of an administrator but not that JB's father should be appointed because he was unable sufficiently to separate his own financial interests from those of his son. It appointed the Public Trustee plenary administrator for five years.

VS [2008] WASAT 160

11 JULY 2008

MR J MANSVELD (MEMBER)

MS J STANTON (SENIOR SESSIONAL MEMBER)

MS H LESLIE (SENIOR SESSIONAL MEMBER)

Guardianship and administration - Enduring power of attorney - Need for a guardian - Enduring power of attorney as a less restrictive alternative to the appointment of an administrator - Guardian appointed - Administration application dismissed - Application to revoke an enduring power of attorney dismissed

VS is an elderly woman who, before being admitted to an aged care hostel, lived with her daughter EB in a property owned by them. VS and EB had lived together for all of EB's life, even after EB married in 1988.

In late 2001, VS was diagnosed with a dementing illness. EB and her husband cared for VS in their home until her care needs became too much and she was admitted to the hostel in December 2004.

VS had appointed EB her attorney under an enduring power of attorney (EPA) executed in November 2001 and witnessed by two medical practitioners.

Towards the end of 2007, EB and her husband moved overseas because of her husband's employment. EB continued to communicate with the hostel on a regular basis and with her mother by way of a webcam on her computer. EB also arranged, under the EPA, for her mother's hostel fees to be paid directly from her pension income and for a real estate agent to manage the property owned by them. The hostel was happy with the financial arrangements.

At about the time EB moved overseas, another daughter of VS became more involved with her care at the aged care hostel. This daughter, DGS, had not had a close relationship with her mother for many years. The hostel staff communicated a concern to EB about the way DGS was expressing her input into her mother's care needs and suggested EB lodge an application for guardianship to ensure certainty in the decision-making for VS.

Both EB and DGS applied for guardianship of VS. DGS also applied for an administration order and sought the revocation of the EPA.

DGS submitted that EB had made gifts to the staff at the hostel and that as a consequence the staff showed greater interest in EB than the care of VS. DGS said she did not feel welcome at the hostel, and also said that EB was not attending to VS's religious needs.

In respect of the estate of VS, DGS alleged that EB had given away her possessions and was secretive about their mother's finances. She also submitted that her mother had not been capable of executing the EPA in November 2001.

EB disputed the allegations. She said she and VS had a very close relationship as evidenced by them residing together for many years. She and her husband had cared for VS and the decision to admit her mother to an aged care hostel had been the most difficult of her life.

EB said she had applied for guardianship because she wanted to ensure that there was certainty in the decision-making for VS. She submitted that the EPA was operating appropriately and that there was no reason to have it set aside.

The Tribunal preferred the evidence of EB which was supported by the reports from the hostel. DGS provided no credible evidence to satisfy the Tribunal that EB was not acting in her mother's best interests.

The Tribunal was satisfied that VS was in need of a guardian and appointed EB as limited guardian to decide her accommodation and to consent to her treatment and health care.

The Tribunal dismissed the applications for administration and to revoke the EPA. The EPA was a clear expression of the wishes and intentions of VS and there was no need to interfere in its operation.

KS (2) [2008] WASAT 167
28 JULY 2008
MS F CHILD (MEMBER)
MR J MANSVELD (MEMBER)
MS S GILLETT (SENIOR SESSIONAL MEMBER)

Guardianship and Administration - Application to intervene in an enduring power of attorney - Donor deceased but capable at the time of his death - Transaction benefiting the donee - Role of the Tribunal to supervise enduring powers of attorney

KS executed an enduring power of attorney in 2004 appointing his son-in-law, GC, as the donee. KS died in 2006. After KS's death, one of his sons applied to the Tribunal for orders that the attorney file records kept by him of transactions made under the enduring power of attorney.

Preliminary questions of law arose as to whether the Tribunal had jurisdiction to intervene where the donor of an enduring power of attorney was capable or after the death of the donor. These questions were referred to the President of the Tribunal who determined that the Tribunal had jurisdiction in both cases and referred the application back to the Tribunal, as originally constituted, to determine.

The Tribunal found that the evidence showed that the donee had acted on the enduring power of attorney and had benefited from a transaction made in connection with the enduring power of attorney through the transfer of substantial funds of KS to the donee after the sale of KS's property. In these circumstances, the Tribunal determined that it was appropriate for the donee to file records of transactions following the sale of the property.

WP [2008] WASAT 170
30 JULY 2008
MR J MANSVELD (MEMBER)

Guardianship and Administration - Review of a guardianship order - Review of an administration order - Need for a guardian - Need for an administrator - Guardianship order having little impact on the represented person's circumstances - Accommodation options enhanced by the presence of an administrator because of the security of payment for the accommodation

In October 2007, a guardian and administrator were appointed for WP, an Aboriginal man of 57 years of age.

The Public Advocate was appointed his limited guardian to decide his accommodation, the care services he might need from time to time and to consent to his treatment and health care.

The Public Trustee was appointed his plenary administrator.

The orders were made for six months to test whether they were providing any beneficial effects for WP.

At the hearing of the review of the orders in April 2008, the Public Advocate submitted that the guardianship order should be revoked. The Public Advocate stated that WP led a transient lifestyle and received support from his partner, JT. He had a respiratory condition exacerbated by the consumption of cigarettes and alcohol but when unwell would seek hospitalisation. He would often discharge himself from hospital against medical advice once he had started to improve.

The Public Advocate said that WP's particular lifestyle would likely continue until he became too unwell or he no longer received sufficient support.

The Tribunal found that WP was a person for whom a guardianship order could still be made but accepted the Public Advocate's submission that the order originally made had had little impact on WP's circumstances.

The Tribunal accepted that WP did not understand the role of a guardian but that if he did he would not want another person (except it would seem, JT) to make decisions for him.

The Tribunal decided to revoke the guardianship order.

The Tribunal decided to reappoint the Public Trustee as WP's plenary administrator.

WP had a significant debt to the aged care facility in which he had stayed for a period of time. Prior to the administration order he had not made any provision for its repayment. The debt was being repaid by his administrator.

The Tribunal accepted that WP's chances of finding suitable accommodation would be enhanced by the presence of an administrator who could present a secure payment method to a potential accommodation provider. This was especially important in WP's case as the evidence showed he had a poor record of maintaining accommodation.