



SAT

State
Administrative
Tribunal

Western Australia

HUMAN RIGHTS

DECISIONS BULLETIN

for the period 1 July 2009 - 31 July 2009

This Bulletin contains summaries of all written reasons for decisions published by the Tribunal in the Human Rights stream for the period 1 July 2009 - 31 July 2009. The full text of decisions and reasons can be found on the Tribunal's website at www.sat.justice.wa.gov.au. If you would like the monthly bulletin emailed to you directly, please enter your email address and details at our subscription page.

GUARDIANSHIP AND ADMINISTRATION ACT 1990 (WA)	1
TJC [2009] WASAT 130	1
PH AND IW [2009] WASAT 141	2
BS AND VTN [2009] WASAT 144	3
CF [2009] WASAT 145	4

GUARDIANSHIP AND ADMINISTRATION ACT 1990 (WA)

TJC [2009] WASAT 130

8 JULY 2009

MS J TOOHEY (SENIOR MEMBER), MS D DEAN (MEMBER), DR D STEPNIAK (SENIOR SESSIONAL MEMBER)

Guardianship - Intellectual disability - Original decision of Tribunal set aside by Supreme Court - Matter remitted for rehearing - Hearing of remitted matter - Capacity of the represented person not in issue - Need for a guardian not in issue - Conflict between family members - Guardian needed to make decisions concerning where and with whom the represented person should live, services, treatment, arrangements for contact - Who should be appointed guardian - Whether grandmother and father suitable to act as guardians jointly or severally - Whether mother suitable to act as guardian - Public Advocate appointed limited guardian to decide accommodation, services and contact - Mother appointed limited guardian to consent to treatment

TJC was a young man who had suffered a serious brain injury at birth. The Tribunal had appointed his mother his limited guardian to make decisions about where he should live and the medical treatment and services he required. There was intense conflict between family members about his wishes and where he should live, and the Tribunal had appointed the Public Advocate limited guardian to make decisions about arrangements for contact with family members.

On an appeal by TJC's grandmother, the Supreme Court found that the Tribunal had erred by failing to discharge its obligation to ascertain TJC's wishes. The Court set aside the Tribunal's decision and remitted the matter for rehearing. It ordered the Tribunal's orders remain in effect pending the rehearing.

On the rehearing, there was still conflict between family members about TJC's wishes and where he should live. The Tribunal appointed a litigation guardian to instruct a

separate legal representative for him and ordered an independent assessment by a clinical psychologist.

The Tribunal accepted the evidence of the clinical psychologist that TJC's capacity to express his wishes in a meaningful way is limited and that he is not able to determine what is in his own best interests.

In light of the continuing conflict between the parties, the Tribunal appointed the Public Advocate limited guardian to make decisions on his behalf concerning where he should live, the services he required and to make decisions concerning contact between family members. It was satisfied that his mother was suitable to consent on his behalf to medical and dental treatment and appointed her limited guardian for that purpose.

PH AND IW [2009] WASAT 141

22 JULY 2009

MS F CHILD (MEMBER)

Guardianship and administration - Review of guardianship order appointing Public Advocate as limited guardian - Application for intervention in an enduring power of attorney - Whether there is a need for a guardian because of continuing conflict between the spouse and adult children of the represented person - Need for orders appointing independent guardian - Whether there should be intervention in an enduring power of attorney - Wishes of the represented person

The son and daughter of a woman with a diagnosis of dementia applied to the Tribunal for leave to apply for review of a guardianship order which appointed the Public Advocate as her limited guardian some months before. They also applied for orders varying the enduring power of attorney their mother had made which appointed her spouse as her attorney. The son and daughter contended that if they were appointed their mother's guardians as they proposed, it would be unworkable if the spouse remained as the attorney.

Although by the time the applications were finally heard their mother had been admitted as a permanent resident of a nursing home, the son and daughter maintained that they should be appointed her guardians. They said that their mother's spouse had not made appropriate decisions for her care in the past and that they should replace him for healthcare decisions. They also submitted that they should have authority to determine where she was to live because, although they were currently satisfied with her care in the nursing home, this may not always be the case. The spouse maintained that there was no need for a guardian to be appointed. The Public Advocate's delegated guardian submitted that because of the ongoing tensions in the relationship between the adult children and the spouse, there was a need for an independent guardian.

The Tribunal accepted that there was a need for an independent guardian. Although all parties agreed that the woman was well cared for and settled in her present placement, the complete breakdown in the relationship between her spouse and her adult children would inevitably lead to further conflict which might impact on her care. The Tribunal was not satisfied that the parties could resolve these matters themselves, and the appointment of the Public Advocate in a limited role to make decisions about accommodation and contact for the woman would provide some external monitoring of the situation in her best interests.

The Tribunal dismissed the application for intervention in the enduring power of attorney as no substantive issues were raised about the management of the woman's finances under the power, and an investigation by the Office of the Public Advocate reported that the spouse was dealing with her affairs appropriately. The expressed wishes of the woman, through her enduring power of attorney and more recently, was that her spouse manage her finances. As this arrangement was operating effectively in her best interests, it was not necessary or appropriate to vary the enduring power of attorney as proposed.

29 JULY 2009

MS M JORDAN (SENIOR SESSIONAL MEMBER)

Need for appointment of guardian to sign visa application for carer from Vietnam - Alternative arrangements to be proposed for local qualified carers - No need for guardian

An application was made on 9 October 2008 for the appointment of TC as the guardian for the represented person for the purpose of signing papers for the Department of Immigration and Multicultural Affairs to sponsor the niece of TC from Vietnam to be employed as a full-time carer for the represented person so that he could be returned to his home from his present nursing home where he receives high-level care.

The matter was adjourned on 28 November 2008 for the following to occur prior to resumption of the hearing on 30 January 2009:

- a) the applicant to file with the Tribunal the document requiring the signature of the represented person's guardian;
- b) the administrator - the Public Trustee - to attend the resumed hearing; and
- c) the Office of the Public Advocate to provide a report for the resumed hearing as to whether it is in the best interest of the represented person to have TC appointed as his guardian, given her proposal to return him to home care, in the circumstances of sponsoring a niece from Vietnam to be employed as his carer.

The represented person's daughter of his first marriage, HL, opposed her father being removed from the nursing home where he is receiving a satisfactory level of high care, as she was not convinced that the same level of care could be provided to him at home, and also, due to the friction between her and the second family of the represented person, HL was concerned that her present access to her father would be restricted.

When the hearing resumed, it was clear that the financial obligations upon the sponsor imposed by the Department of Immigration and Multicultural Affairs were such that it was appropriate that the administrator be the signatory to the document. The administrator was not willing to undertake the sponsorship as, although the represented person had considerable funds at his disposal due to a court-awarded trust following the motor vehicle accident in which the represented person received his severe injuries, the funds at the administrator's disposal as administrator were limited to approximately \$25,000, which would not be sufficient security to undertake the sponsoring role. As trustee of the court-appointed trust, the Public Trustee was not prepared to sign the document, as he was not satisfied that the appropriate level of care could be provided to the represented person at home under the proposed arrangements. However, the trustee was prepared to meet the expenses of carers to look after the represented person at his home, should he be returned there.

The applicant then, in consultation with TC, told the Tribunal that they would put forward a proposal to the trustee for the payment of private carers to look after the represented person at home. As that had not previously been discussed, the applicant stated that it would take some time to put together such a proposal, with the agreement of the represented person's present treating team and carers, with costing for the approval of the trustee. Such a proposal would be put to HL, who had been opposed to her father being returned home, for her agreement prior to the represented person being removed from the nursing home. As all parties agreed with this proposal, there was no further need for the guardianship order to proceed and it was therefore dismissed.

**CF [2009] WASAT 145
31 JULY 2009
MS D DEAN (MEMBER)**

Review of administration order - Capacity of the represented person - Need for an order - Best interests of the represented person - Public Trustee appointed limited administrator - Public Advocate appointed limited administrator

The Public Trustee was appointed plenary administrator of the estate of CF in 2003. In 2005, CF's mother died, leaving the bulk of her estate to her sister, CF's aunt. In March 2009, the Public Trustee applied to the Tribunal for a review of the administration order on the basis that no investigation had been conducted to ascertain whether an Inheritance Act claim should have been made on CF's behalf in relation to her mother's estate.

The Tribunal found that the Public Trustee had acted in the best interests of CF in all areas of her estate except in his failure to consider whether an Inheritance Act claim should have been made on CF's behalf. The Tribunal appointed the Public Trustee limited administrator with all the powers and duties of a plenary administrator, save and except for in respect to any potential claim CF may have had in relation to the estate of her late mother.

The Tribunal found that there was an inherent conflict of interest in the Public Trustee being charged with the authority to investigate the potential Inheritance Act claim and to make decisions in relation to any compensation to the estate of CF that may result from such an investigation.

The Public Advocate was appointed limited administrator to investigate any potential Inheritance Act claim and to act as next friend in any legal proceedings that may become necessary in relation to that investigation.