



SAT

State
Administrative
Tribunal

Western Australia

Guardianship and Administration Act 1990

DECISIONS BULLETIN

No 21 June 2008

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

BMD and KWD [2008] WASAT 127

4 JUNE 2008

MR M ALLEN (SENIOR MEMBER)

MR J MANSVELD (MEMBER)

DR E LEIPOLDT (SENIOR SESSIONAL MEMBER)

Guardianship and administration - Review of administration order requiring administrator of elderly man to investigate circumstances of a transaction entered into by him and to decide whether an application should be made to have the transaction set aside - Decision by administrator not to make such an application - Family members of represented person seeking to have administrator removed so that an application to set aside the transaction could be made - Consideration of Tribunal's jurisdiction on such a review - Finding that represented person remained a person for whom an administration order could be made - Review of factors relevant to issue of whether application to set aside transaction should be made - Finding that administrator's decision was reasonable and that it would not be in the best interests of the represented person for an application to be made - Administration order varied to take account of represented person's current needs

The Tribunal reviewed an administration order made in January 2007 in respect of an elderly man whereby the Public Trustee was appointed as the man's plenary administrator and was directed to investigate a transaction entered into by the man shortly before the appointment of the administrator involving the sale of the man's interest in land, buildings and a business to the man's longstanding de facto partner (from whom he was at the time separated) and members of the partner's family - and to decide whether an application should be made to set aside the transaction under s 82 of the *Guardianship and Administration Act 1990* (WA).

Soon after that order, the man and his partner reconciled and married, and the Public Trustee determined that a s 82 application should not be made, but that, rather, the transaction should proceed and that there should be some adjustment to the ownership interests of the man and his now wife in another property that was their matrimonial home.

A son of the man's previous marriage was aggrieved by the Public Trustee's decisions. Because a s 82 application can only be made by an administrator, the son applied to the Tribunal to have the administration order reviewed, with a view to obtaining orders removing

the Public Trustee as administrator and having a new administrator appointed who would be able to make a fresh decision about whether to make a s 82 application.

The Tribunal considered a preliminary issue that the Tribunal may have no jurisdiction to review the original administration order in that way. The Tribunal rejected that submission, considering that on a review the Tribunal can make any order or direction that could be included in an administration order and that the Tribunal had a wide review jurisdiction to supervise the decisions and activities of administrators.

On the evidence before it, the Tribunal was satisfied that the man remained a person who was unable to make reasonable judgments regarding his estate by reason of a mental disability, namely a cognitive impairment, and that he continued to be in need of an administrator.

The Tribunal reviewed the evidence that was available to inform the Public Trustee's decision-making, and other evidence available to the Tribunal. The Tribunal was satisfied that the decisions made by the Public Trustee were reasonable and reasonably represented what the Public Trustee, and the Tribunal, considered to be the man's best interests - namely that a s 82 application should not be made. Accordingly, the Tribunal was not prepared to alter the original administration order in a way that would enable such an application to be made.

However, the Tribunal was satisfied that once the sale transaction was finalised the man's needs in relation to an administrator could be met by his now wife being appointed as administrator. Because the wife had an interest (as one of the purchasers of the business) that conflicted with that of the man - concerning the final settlement of one aspect of the sale transaction - the Tribunal decided that the Public Trustee should continue to be the man's administrator in relation to only that part of his estate with the power to negotiate and finalise that aspect. The wife was appointed as the man's plenary administrator in relation to the balance of the man's estate.

TAF and VAS [2008] WASAT 139
20 JUNE 2008
MS S GILLETT (SENIOR SESSIONAL MEMBER)

Guardianship - Need for guardian - Contact

The Tribunal considered an application by a daughter for the appointment of a guardian for her 78-year-old mother who suffered with Alzheimer's disease and resided in a secure wing of an aged care facility. The daughter sought the appointment of a guardian specifically to provide the authority to limit contact between her mother and a volunteer visitor to the aged care facility. The daughter believed that her mother was at risk of financial exploitation by this volunteer visitor who was considered by staff at the facility to have been behaving inappropriately.

The proposed represented person executed an enduring power of attorney in 2004 by which she appointed her daughter, TAF, and her son-in-law, TAF's husband, as her attorneys. TAF proposed that she be appointed as guardian for her mother.

It was not in dispute, and the Tribunal found on the evidence, that the proposed represented person was a person in respect of whom guardianship orders could be made. Nevertheless, the Tribunal was satisfied that her needs could be met by other less restrictive means. In particular, the authority provided in the enduring power of attorney enabled the protection of the proposed represented person's estate.

Accordingly, the Tribunal found the proposed represented person not in need of a guardian and dismissed the application.

PERPETUAL TRUSTEES and BW [2008] WASAT 146

26 JUNE 2008

MS D DEAN (MEMBER)

Administration order made - Application for legal costs to be paid out of the estate of the represented person under s 16(4) of the *Guardianship and Administration Act 1990 (WA)* - Principle that parties bear their own costs - That principle may be overturned when legal representation is necessary for the Tribunal to make a decision in the best interests of the represented person.

This was an application for costs relating to proceedings by which administration and guardianship orders were made by the Tribunal in relation to BW, the represented person. The applications for guardianship and administration were heard over two hearings both of which were attended by the subsequently appointed administrator, Perpetual Trustees, and the solicitor representing Perpetual Trustees.

Subsequent to the hearings and the written decision being provided, (see **BW** [2008] WASAT 82), Perpetual Trustees sought an order for costs in relation to the hearings, to be paid out of the estate of the represented person.

The Tribunal found that there was nothing about the conduct of, or preparation for, either of the two hearings, to suggest that legal representation was necessary to ensure the best outcome for the represented person.

The application for costs was dismissed.