



SAT

State
Administrative
Tribunal

Western Australia

Guardianship and Administration Act 1990

DECISIONS BULLETIN

No 20 May 2008

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

RE TA; EX PARTE LA [2008] WASAT 90

1 MAY 2008

MS F CHILD (MEMBER), MS C HILL (SENIOR SESSIONAL MEMBER), DR D STEPNIAK (SENIOR SESSIONAL MEMBER)

Guardianship and administration - Application for legal costs to be paid from represented person's estate under s16(4) of the Guardianship and Administration Act 1990 - Whether the claimant for costs acted in the best interests of the represented person

Following a hearing at which the State Administrative Tribunal appointed an administrator of the estate of an elderly woman suffering dementia, the Tribunal received an application for the legal costs of a party to be paid from the woman's estate. The claim for costs was made by a daughter of the woman. The Guardianship and Administration Act 1990 (WA) provides that a party's legal costs relative to a proceeding brought under that Act, can be paid from the represented person's estate if the Tribunal is satisfied that the party acted in the best interests of the represented person.

Although the Tribunal found that the legal representation obtained by the parties had reduced the time required for the hearing through the development of a common position put by their representatives, it was not satisfied that the claimant for legal costs had acted in her mother's best interests sufficient to justify the payment of her legal costs from her mother's estate. The Tribunal found that it had been the daughter's conduct, as the donee of her mother's enduring power of attorney, which had brought about the need for the application to the Tribunal and the appointment of an administrator. In addition, some of the legal costs had been incurred by her prior to the application being made to the Tribunal and could not be said to be relative to those proceedings.

The Tribunal dismissed the application because, applying the provisions of both the Guardianship and Administration Act 1990 (WA) and the State Administrative Tribunal Act 2004 (WA), it determined that the claimant was not entitled to the payment of her legal costs.

**RE CH; EX PARTE ED [2008] WASAT 94
9 MAY 2008
MS J TOOHEY (SENIOR MEMBER)**

Application to inspect document held by Tribunal for purposes of proceedings under the *Guardianship and Administration Act 1990* - Application under s 112(4) - Proceedings finalised - Applicant sought access to letter provided in support of appointment of guardian and administrator - Letter made passing reference to unidentified person whom applicant believed was herself - Applicant wanted opportunity to challenge statement in the letter - Considerations to be taken into account - Insufficient reason to allow inspection - Application refused

The applicant sought access under s 112(4) of the *Guardianship and Administration Act 1990* (WA) to a document which the Tribunal had received in the course of hearing applications to appoint a guardian and an administrator for CH. The proceedings had been finalised.

The document in question was a letter which had been sent to the Tribunal unsolicited by a person who supported the appointment of CH's cousin as her guardian and administrator. The writer, who identified himself, made a passing reference to a "carer" in terms which suggested that the conduct of the "carer" was wanting in some respect. It did not identify the "carer" or give details of the conduct. The applicant said that she was the "carer" referred to in the letter and she wanted to respond to the accusations against her.

The Tribunal refused the application. The document had been given to it for the purpose of the proceedings concerning CH. The applicant clearly knew the identity of the writer and the contents of the letter. She did not need the letter to respond to any allegations. Her reasons for seeking access to the document had nothing to do with CH.

Although the Tribunal has a wide discretion to allow access under s 112(4), the applicant's desire to inspect the letter did not outweigh other considerations. It would undermine confidence in the Tribunal's processes if access could be obtained to documents for purposes unrelated to the proceedings for which they were held without a cogent reason and a demonstrated need to know.

**LT and RT & JS [2008] WASAT 98
13 MAY 2008**

JUDGE J ECKERT (DEPUTY PRESIDENT), MR J JAMES (SENIOR SESSIONAL MEMBER), MS V O'TOOLE (SENIOR SESSIONAL MEMBER)

Review - s 17A - Guardianship order - Capacity - Need - Family conflict

LT, the sister of the represented person JS, applied under s 17A of the *Guardianship and Administration Act 1990* (WA) to review a decision by a single member of the Tribunal to appoint their brother RT plenary guardian for JS. JS was a 38-year-old woman with depression and congenital Down Syndrome. She had high care needs and lived in a residential facility. Prior to 2004, she lived a very sheltered life with her mother and had very few social and living skills. Since moving to the residential facility she had developed many of these skills and was continuing to improve. However, the evidence before the Tribunal was that she would need high level long-term care.

There was conflict in the family between LT and RT. LT sought review of the decision appointing RT plenary guardian because she said RT did not let her have regular contact with JS. The residential facility, RT and JS's counsellor believed that contact between JS and LT was not in the best interests of JS.

The Tribunal found that JS lacked capacity to make decisions regarding her health, she lacked capacity to make reasonable judgement in respect of matters relating to her person and that she was in need of oversight care or control in the interests of her own health. The Tribunal concluded that there was the need to appoint a guardian for JS and that there was no less restrictive means of meeting her needs. The Tribunal was of the view that RT was a suitable guardian for JS to make decisions about her health and care and where she lived. However, because of the conflict between RT and LT and because another brother MT was not suitable to be appointed limited guardian, the Public Advocate was appointed as limited guardian for JS to make decisions regarding who JS has contact with.

LM and MM [2008] WASAT 106

15 MAY 2008

**MS D DEAN (MEMBER), MS H LESLIE (SENIOR SESSIONAL MEMBER),
MS M JORDAN (SENIOR SESSIONAL MEMBER)**

Application for guardianship - Need for a guardian - Need for an administrator - Need for an independent decision-maker - Public Advocate appointed limited guardian

MM was an elderly woman with advanced dementia. She had resided for some time at H Nursing Home. LM, her daughter, had been her main support and advocate during this time. LM was one of five children of MM and was in conflictual relationships with three of her four siblings. LM did not believe that MM was receiving optimal care at H Nursing Home and consequently complained to the Department of Health and Ageing, the department responsible for licensing nursing homes. The Department of Health and Ageing investigated the complaints and found that H Nursing Home was not in breach of their responsibilities and were providing adequate care for MM.

LM's relationship with the nursing home deteriorated to the point that several staff applied for restraining orders against her. These applications were later withdrawn. After several unsuccessful attempts on the part of the nursing home to put in place strategies to control LM's allegedly difficult behaviour, the nursing home banned her from visiting.

LM made application to the Tribunal for a guardianship order proposing herself as guardian. Three of LM's four siblings were opposed to her appointment.

The Tribunal found that it was in MM's best interests to have a guardian independent of the family and appointed the Public Advocate limited guardian to make decisions about accommodation, contact with others and medical treatment and health care. The appointment was made for one year.

KD [2008] WASAT 109
16 MAY 2008
MS J TOOHEY (SENIOR MEMBER)

Costs - s 16(4) *Guardianship and Administration Act 1990 (WA)* - Whether applicant's legal and related costs should be paid out of the estate of the represented person - Principles to be applied

The applicant asked the Tribunal to appoint an administrator for his sister, KD, and to revoke an Enduring Power of Attorney by which she had appointed two attorneys to act on her behalf.

The applicant had become concerned that KD's attorneys were not acting in her best interests. In particular, he was concerned that she had sold her unit for an amount well below its value without fully understanding the transaction or knowing that her attorneys were the purchasers through a company of which they were sole directors.

The Tribunal made an emergency order pursuant to s 65 of the *Guardianship and Administration Act 1990 (WA)* appointing the Public Trustee plenary administrator for KD. It subsequently confirmed the Public Trustee's appointment as her plenary administrator. In that capacity, the Public Trustee has investigated other matters relating to the sale of KD's unit and is considering what action against her attorneys is open to her.

Before making his application to the Tribunal, the applicant obtained a valuation of KD's unit and sought advice from solicitors to ascertain her legal position. He asked the Tribunal for an order under s 16(4) of the *Guardianship and Administration Act 1990 (WA)* for his costs to be paid out of KD's estate. The amount was \$3,462.73.

The Tribunal was satisfied that the applicant had acted in KD's best interests and that it was appropriate that his costs be paid out of her assets.

JB and CL [2008] WASAT 105
19 MAY 2008
MS M JORDAN (SENIOR SESSIONAL MEMBER)

Guardianship and administration - Review of administration order - Gifting - Application by administrator to make additional gift from the estate to herself in addition to \$2,500.00 allowed in order - Section 71(5) of the *Guardianship and Administration Act 1990 (WA)* - Exercise of discretion consistent with intention of the legislation

An application for review of an administration order which appointed her as administrator for her mother was made by CL, seeking an authority to make an additional gift from the estate of \$17,179.59, or in the alternative, \$10,000.00. CL had been appointed sole administrator for her mother who was suffering from dementia. The State Administrative Tribunal did not authorise the gift as it was considered to be inconsistent with the overall intention of the *Guardianship and Administration Act 1990 (WA)*. The amount of \$2,500.00 permitted in the order under review was maintained.

JH [2008] WASAT 119

27 MAY 2008

**MS J TOOHEY (SENIOR MEMBER), MS M JORDAN (SENIOR SESSIONAL MEMBER),
MS S GILLETT (SENIOR SESSIONAL MEMBER)**

Guardianship - Community guardian - Whether appointment of Public Advocate should be revoked in favour of community guardian - Community guardian appointed - Provision of medical and other information by Public Advocate to the community guardian

For some years the Public Advocate had been guardian for JH for the purpose of consenting on her behalf to medical treatment. The Public Advocate asked the Tribunal to revoke her appointment and appoint in her place a community guardian.

The Tribunal was satisfied that JH continued to need a guardian to consent on her behalf to treatment. It was satisfied that the proposed community guardian was a suitable person to be appointed.

A recent review of JH's medications had raised the question of whether a particular medication was for the purpose of restraining her; if so, it was arguable that it was not treatment within the meaning of the *Guardianship and Administration Act 1990* (WA) and the guardian would need specific authority to consent to its continued administration. JH's treating doctor had indicated that the medication could be considered by some practitioners to be restraint.

The Tribunal revoked the Public Advocate's appointment and appointed the community guardian for 12 months so that her appointment could be reviewed at the end of that time. In addition to giving the community guardian authority to consent to treatment, the Tribunal gave her authority to consent to the use of chemical or physical restraint.

The Public Advocate asked the Tribunal to authorise her to divulge to the community guardian information about JH held by the Public Advocate for the purpose of the Tribunal proceedings. The Public Advocate submitted that making the information available would enable the community guardian to perform her functions effectively. The Tribunal authorised the disclosure.