



SAT

State
Administrative
Tribunal

Western Australia

Guardianship and Administration Act 1990

DECISIONS BULLETIN

No 3 November 2006

This Bulletin contains summaries of written reasons published by the Tribunal in November 2006. The full text of decisions and reasons can be found on the Tribunal's website at www.sat.justice.wa.gov.au

**JGN and CEN [2006] WASAT 320
2 NOVEMBER 2006
MR J MANSVELD (MEMBER)**

Guardianship and administration – Administration - Who should be appointed administrator - Statutory preference for the Public Trustee - Remuneration of administrator - Size and complexity of estate - Typical administration

The Tribunal was asked to review an order for administration for an elderly woman in which the Public Trustee had been appointed her administrator.

The woman was likely suffering from a dementing illness, could no longer live independently and was being cared for by her son and daughter-in-law in their home.

The son lodged the application for review with the Tribunal because he was not satisfied that the Public Trustee was doing an adequate job managing his mother's estate. He had proposed that an accountant take over the role of administrator.

The accountant was willing to take on the role of administrator but only on the basis that he be paid for the administration services he would provide.

The legislation relevant to the review of the order for administration was the *Guardianship and Administration Act 1990 (WA)*. Under s 117 of that Act remuneration could only be allowed by the Tribunal if it was considered that because of the size or complexity (or both) of the woman's estate, remuneration should be paid to the administrator.

The Tribunal found that the woman's estate did not meet the requirements of size or complexity and therefore the accountant was effectively precluded from being appointed the woman's administrator.

The Tribunal confirmed the order made on 13 December 2005 which appointed the Public Trustee the woman's plenary administrator. The Public Trustee is entitled to charge fees for the administration under the *Public Trustee Act 1941(WA)* by virtue of the operation of s 117(3)(a) of the *Guardianship and Administration Act 1990*.

**G AND J [2006] WASAT 324
7 NOVEMBER 2006
MS J TOOHEY (SENIOR MEMBER)**

Guardianship - Consent to medical treatment – Operation of s 119 – Applicant the unpaid carer of the proposed represented person - Authority to consent to medical treatment conferred by s 119 – Section 119 a less restrictive means of meeting the needs of the proposed represented person than a formal appointment – No need for a guardian to be appointed – Application withdrawn

This was an application for the appointment of a guardian for J who was unconscious and in intensive care in hospital following a life-threatening injury. Decisions needed to be made as to what treatment J should receive. In particular, a decision needed to be made as to whether she should receive palliative care only. J was not expected to recover consciousness before those decisions needed to be made.

The Tribunal was notified of J's circumstances by a social worker at the hospital where J was being cared for, through the Office of the Public Advocate. The Tribunal convened a hearing at the hospital on the same afternoon. In attendance were J's sister and niece, her treating doctor, the social worker and a representative of the Public Advocate. One of J's adult sons was on his way to Perth by plane at the time of the hearing and the other adult son was in Perth but was not able to be present at the hearing.

J's sister told the Tribunal that J had suffered physical and mental illnesses over many years. In that time J's sister had cared for her, including making decisions concerning her medical treatment, and in July 2005 she was appointed J's plenary administrator with authority to manage her financial affairs.

J's sister told the Tribunal that she was willing, and wished, to make decisions concerning her sister's treatment. The treating doctor understood their relationship and was willing to accept, and act on, decisions made by J's sister on her behalf. However, J's injuries occurred in circumstances in which it was possible there would be a coronial inquiry in the event of her death. Both the treating doctor and J's sister wanted to be sure they acted lawfully in making any treatment decisions, and especially any decision to administer palliative care only.

As J's sister was the first in order of priority of persons in s 119(3) of the *Guardianship and Administration Act 1990* and could lawfully consent to treatment on J's behalf, there was no need for a formal appointment. She therefore withdrew her application.

**RET (Deceased) and TT and RT [2006] WASAT 327
8 NOVEMBER 2006
MR J MANSVELD (MEMBER)**

Guardianship and administration - Inspection of documents - Legislative intent of *Guardianship and Administration Act 1990* (WA) - Public policy underpinning inspection regime - Cogent reasons needed to inspect documents

Two sons of a man (now deceased) applied to the Tribunal to be provided with copies of all medical reports and the report of the Public Advocate relating to an application for administration for their father made in November 2005. A "complete" copy of the tape of

the relevant hearing was also requested. In the alternative, the applicants sought an order allowing their legal representative to inspect and read the Tribunal's file.

An order for administration had been made by the Tribunal in January 2006. The man died in May 2006.

One of the sons had previously applied for inspection of documents in May 2006 which the Tribunal refused. Written reasons for the decision were delivered on 9 June 2006.

The sons sought and were provided with a copy of the transcript of the hearing in January 2006.

The legislation relevant to the sons' application was the *Guardianship and Administration Act 1990* (WA).

The sons made the current application to obtain evidence of the deceased man's testamentary capacity in respect of a will he executed in November 2004.

The application for inspection and access to documents (including the tape of the hearing) was dismissed as it was not considered, in this case, in the public interest for the documents and materials held by the Tribunal to be used for what the sons were proposing. The *Guardianship and Administration Act 1990* is intended to provide certain protections for people who are unable to make reasonable judgments about their personal life and financial estate. Sensitive information is provided to the Tribunal by professionals and other people, including family and friends of the person with the disability, and it is important in maintaining the integrity of the Tribunal's processes that the information is given in the knowledge that it will only be used in other forums in limited circumstances.

**THE PUBLIC TRUSTEE and EP [2006] WASAT 335
15 NOVEMBER 2006
MS J TOOHEY (SENIOR MEMBER)**

Administration - Public Trustee appointed administrator - Application for revocation of appointment- Represented person now living in South Australia - South Australian Public Trustee now appointed administrator - No further need for administrator in Western Australia - Appointment revoked

On 3 March 2005, the Tribunal appointed the Public Trustee plenary administrator for EP pursuant to s 64 of the *Guardianship and Administration Act 1990* (WA). At the same time, the Tribunal appointed the Public Advocate limited guardian for EP with functions to decide where, and with whom, she was to live. Both appointments were made reviewable by the Tribunal after 12 months.

On 28 September 2005, in circumstances which were not relevant to this decision, the Tribunal confirmed both appointments and ordered that each be reviewed by 9 November 2007.

Shortly after the Tribunal's decision to confirm the appointments, EP moved from Western Australia to a nursing home in South Australia. The Public Trustee in South Australia and the Public Advocate in that State were subsequently appointed her administrator and guardian respectively.

On 13 July 2006, the Public Advocate sought revocation of her appointment on the ground that, the Public Advocate in South Australia having been appointed EP's guardian, there was no further need for an appointment in Western Australia. The Tribunal accepted this was so and, on 7 August 2006, revoked the Public Advocate's appointment.

Subsequently, the Public Trustee sought revocation of his appointment as plenary administrator on similar grounds. As EP no longer owned any property in Western Australia, and as the Public Trustee in South Australia was now her plenary administrator, there was no longer any need for the appointment in Western Australia. The Tribunal therefore revoked Public Trustee's appointment.

**VN [2006] WASAT 346
27 NOVEMBER 2006
MS F CHILD (MEMBER)**

Guardianship and administration - Review - Need for orders - Represented person suffering from mental illness - Incapable of making decisions about her person and about her estate - Spouse of represented person unsuitable to make decisions for her - No other person suitable or willing to be appointed - Public Advocate appointed - Directions not given to the guardian for contact as would fetter the discretion of the guardian - Need for independent financial decision-making - Public Trustee confirmed as plenary administrator

The Tribunal reappointed the Public Advocate as limited guardian for a woman suffering from a long term mental illness. The woman was living in hostel care following her discharge from Graylands Hospital some years before. The guardian's functions included authority to decide accommodation and health care, the contact the woman should have with others, and the extent of the contact.

The Tribunal considered that the woman needed an independent guardian because her care needs had not been met when she was previously in the care of her family. There was a need for future decisions about where she should live and the extent of contact she should have with her family to be based on an assessment of her best interests, having regard to the current medical assessments. If a guardian were not appointed, the spouse of the woman would assume decision-making authority for her and he had not always acted in her best interests in the past when her interests, both personal and financial, had conflicted with his interests or wishes.

The Public Trustee was reappointed plenary administrator as there was an ongoing need for independent financial management of her estate, again because the spouse was unable to differentiate between his interests and those of his wife.