



SAT

State
Administrative
Tribunal

Western Australia

Guardianship and Administration Act 1990

DECISIONS BULLETIN

No 14 October 2007

This Bulletin contains summaries of written reasons published by the Tribunal in October 2007. The full text of decisions and reasons can be found on the Tribunal's website at www.sat.justice.wa.gov.au

JW [2007] WASAT 252

5 OCTOBER 2007

MS F CHILD (MEMBER)

MR J MANSVELD (MEMBER)

DR E LEIPOLDT (SENIOR SESSIONAL MEMBER)

Guardianship and Administration - Review of guardianship order - Application for the appointment of an administrator - Need for guardian - Complex health conditions - Need for certainty of authority for medical consent - Less restrictive means for the management of pension income - No need for administration order

On review of a guardianship order, the Tribunal reappointed the members of the foster family of a former ward as his limited guardians. The functions of the guardians had been to consent to health care and services on his behalf. The young man had severe physical disabilities and an intellectual disability. He was dependent on carers for all aspects of his care, and the Tribunal was told that his physical health could deteriorate rapidly and that he was frequently hospitalised. In these circumstances, the Tribunal confirmed that there was a need for certainty about who had authority to make health care decisions for him.

The original order appointing the guardians had been made in May 2007 and set for review by 30 June 2007 as there was some uncertainty whether the funding for the care of the young man would continue if the carers were formally appointed his guardians because of the application of the "Family as Paid Carers Policy" by the Disability Services Commission.

On review of the order, this matter had still not been resolved but the guardians were willing to be appointed and the grandmother of the young man, the original applicant from the Department of Child Protection and the Public Advocate all supported the reappointment of the guardians. At the time of the review hearing, the Tribunal was told that the policy was under review and an application had been made for an exemption on the grounds of geographic isolation and that there was no alternative placement available for the young man.

As the guardians were willing and the Tribunal considered them suitable for appointment, the appointment of the Public Advocate was not available under the legislation.

The application for the appointment of an administrator was dismissed as the Tribunal decided that the systems in place for the management of and accountability for the young

man's pension, which was his only income, were sufficient and there was no need for a formal order to be made.

SG [2007] WASAT 269

17 OCTOBER 2007

MS F CHILD (MEMBER)

MR J MANSVELD (MEMBER)

DR A MCCUTCHEON (SENIOR SESSIONAL MEMBER)

Guardianship and administration - Administration - Capacity - Existing enduring power of attorney - Need for independent administration of the estate - Public Trustee appointed plenary administrator

The Tribunal appointed the Public Trustee as the plenary administrator of the estate of a 79-year-old man who suffered cognitive impairment following a brain aneurysm in 2005.

His daughter applied for the appointment of the Public Trustee as administrator of his estate and asserted that the management of her father's affairs since his illness had been to his detriment and to the benefit of his spouse. In particular, she alleged that large sums had been transferred from accounts in her father's sole name into joint accounts with his spouse following what the daughter alleged was a loss of capacity. In addition, over \$3 000 000 had been transferred to the spouse's son. This transaction followed advice to the couple from their accountant about their taxation obligations as Australian residents. Such a transfer was said to be both out of character for the man and evidence of his incapacity.

The Tribunal found that, based on all of the medical evidence regarding the effects of his illness in 2005, the man was a person for whom an administrator could be appointed in that he was unable by reason of his disability to make reasonable judgments about his estate.

The Tribunal found that he was in need of an administrator of his estate. It accepted the submission from counsel for the man and his spouse that his capacity and the need for an administrator of his estate should be seen in the context of the size and complexity of the estate to be managed. The Tribunal did not accept that the estate was so simple that all aspects could be managed by the man's spouse without the need for an order. The Tribunal determined that, considered in its entirety, there was a large estate to be managed and the decisions that would be required for its management were now beyond the man because of his disability and as such there was a need for formal management of his estate.

The Tribunal determined that an existing enduring power of attorney (EPA) executed by the man in November 2006 was not an effective or appropriate means of managing his estate. His spouse, whom he had married in August 2006 following a long-term relationship, was the donee of the power and maintained that she had not acted on it. The Tribunal heard that other informal means had been used to manage aspects of the estate.

The Tribunal was not satisfied that the less formal arrangements for financial management of his affairs said to be in place were operating in the man's best interests.

Although the EPA executed in November 2006 had not been acted on, it was revoked by the Tribunal. Based on the medical evidence, the Tribunal concluded that the capacity of the man at the time of the execution of the EPA was in doubt and the attorney (his spouse) was now in a position of conflict of interest in relation to the man's interests. This meant that the EPA could not operate as a less restrictive alternative to the making of an administration order.

The Tribunal accepted the submissions of the applicant, and of the Public Advocate, that an independent administrator should be appointed to act on the man's behalf and appointed the Public Trustee as the administrator of the estate.

CDM [2007] WASAT 282
30 OCTOBER 2007
MR J MANSVELD (MEMBER)

Guardianship and administration - Need for a guardian - Less restrictive alternative to the appointment of a guardian - The meaning of the phrase "with whom the represented person is to associate" - Limited guardian

Applications for guardianship and administration were made for a young man who had recently reached 18 years of age and who had been under the care and protection of the State.

The applications were made by the relevant State authority and envisaged the parental authority held by that agency to be transferred to adult guardianship.

The young man suffered from a cognitive impairment. He had difficulty learning and retaining information, and applying knowledge that he had learnt. He was a socially popular young man but with poor impulse control and emotional regulation, which often caused him to run into conflict with others or to engage in antisocial behaviours such as stealing and fighting. He had recently been charged with a criminal offence. The young man had also developed a relationship with a young woman and this was causing problems for his former foster parent with whom he had lived for eight years.

The State agency supported the living arrangement with the former foster parent and negotiations were taking place between the agency and the Disability Services Commission as to the level of funding and attendant support services that should be made available to the young man.

The Tribunal decided to appoint the Public Trustee as the young man's administrator and the Public Advocate as his guardian to decide with whom he should associate and to act as his guardian in respect of the criminal charge.

The former foster carer had not proposed herself as the young man's guardian because as guardian she would not be paid for his care due to the existing funding policy of the Disability Services Commission.

SW [2007] WASAT 285
31 OCTOBER 2007
MR J MANSVELD (MEMBER)

Guardianship and administration - Review of administration - Presumption of capacity not displaced

An order for administration was made for SW in December 2006. The Public Trustee was appointed the young man's plenary administrator. The application for administration had been made by SW's mental health team.

SW suffered from schizophrenia and concerns were raised that he could not properly negotiate the sale of his property due to the effects of his illness. After the administration order was made the Public Trustee completed the sale of the property.

About a year after being placed under administration, SW sought a review of the order. He was of the opinion that he was able to make reasonable judgments about his estate which now comprised mainly of the net proceeds of the sale of his property, about \$134 500.

SW had planned to purchase a property in Tasmania for about \$100 000 and also invest \$20 000 on behalf of his two children who were in the care of his sister-in-law.

SW's application was supported by his mental health team and it was the assessment of his treating psychiatrist of five years that his plans were reasonable and that he had been making appropriate decisions for the previous 12 months.

The psychiatrist had also assessed SW as being aware of the consequences of the choices available to him.

The Public Trustee and SW's sister-in-law were of the view that the administration order should remain in place.

The Tribunal decided that there was insufficient evidence to displace the presumption of capacity that SW could make reasonable judgments about his estate.

In the case of SW such a determination was not without risk but it was based on the judgment that his right to autonomous decision-making outweighed his need for protection.

The administration order was therefore revoked.