



SAT

State
Administrative
Tribunal

Western Australia

Guardianship and Administration Act 1990

DECISIONS BULLETIN

No 13 September 2007

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

**RE: SD [2007] WASAT 229
4 SEPTEMBER 2007
MS H LESLIE (SENIOR SESSIONAL MEMBER)**

Guardianship - Administration - Capacity

Upon a periodic review of the order appointing the Public Trustee as her plenary administrator, SD sought revocation of the order on the basis that she was well enough to manage her own financial affairs. Upon a consideration of the medical evidence (current and past), and upon hearing from SD and her mother and principal support, MM, the Tribunal did not accept that this was so, found SD to be lacking in capacity and in need of an administrator and reappointed the Public Trustee as plenary administrator with a direction that the administrator liaise with MM.

**AP [2007] WASAT 230
4 SEPTEMBER 2007
MS D DEAN (MEMBER)
DR E LEIPOLDT (SENIOR SESSIONAL MEMBER)
DR D STEPNIAK (SENIOR SESSIONAL MEMBER)**

Application for review of an administration order appointing daughter plenary administrator - Leave to apply for review required - Leave granted - Breakdown in communication between administrator and other family members - Should legal fees incurred by the administrator be paid out of represented person's estate - Need for independent appointment - Public Trustee appointed plenary administrator

An application for review of an administration order appointing DP, the daughter of AP, the represented person, was made by the other daughter, LD, because of the total breakdown in communication between the administrator and other family members.

Without consultation with family members, the administrator had proceeded to dispose of the represented person's household goods, some of which had subsequently been removed from the home of the represented person by the applicant and her husband. This precipitated legal action by the administrator to recover the goods. The cost of this legal action and legal representation of the administrator at the review hearing was paid out of the estate of the represented person.

Given the level of conflict between the administrator and family members, the Tribunal found that it was not in the represented person's best interests to have the daughter continue in the role of administrator and appointed the Public Trustee plenary administrator with a direction to investigate the appropriateness of payment of the legal fees incurred by the administrator out of the estate of the represented person. The order was to be reviewed in six months.

**G and L & ANOR [2007] WASAT 232
6 SEPTEMBER 2007
MS J TOOHEY (SENIOR MEMBER)**

Administration - Guardianship - Application for review of administration order dismissed - Application for injunction dismissed - Costs sought under s 87 of the *State Administrative Tribunal Act 2004 (WA)* - Costs also sought under s 16(4) of the *Guardianship and Administration Act 1990 (WA)* - Trustees - Order made for costs under s 87(1) of the *State Administrative Tribunal Act 2004 (WA)* - Application for costs under *Guardianship and Administration Act 1990 (WA)* dismissed

In 2006, the Tribunal, differently constituted, appointed G plenary administrator and limited guardian for his wife, J. The Tribunal recognised at the time that G had a potential conflict of interest in that he had indicated his intention to make a substantial claim against a trust in which J had an interest. He had not commenced proceedings and the Tribunal directed him to seek review of his appointment in the event that his claim could not be settled.

Subsequently, L, J's daughter by a former marriage, sought review of the orders. L maintained that G's interests conflicted with J's by reason of his claim against the trust, that he had failed to seek review as directed, and that it was in her mother's best interests that she be appointed in place of G. Prior to the Tribunal convening a hearing in respect of L's applications for review, she sought an injunction restraining G, as administrator of J's estate, from incurring any further legal costs on J's behalf.

L was subsequently joined in the applications by her brother, R. All applications were dismissed by the Tribunal.

G then sought orders pursuant to s 87(1) of the *State Administrative Tribunal Act 2004 (WA)* and s 16(4) of the *Guardianship and Administration Act 1990 (WA)* that the costs he had incurred in his personal capacity and in his capacity as administrator of J's estate be paid by L and by R, who had joined with her in the application.

In the application under s 87(1) of the *State Administrative Tribunal Act 2004 (WA)*, the Tribunal decided that the application for review was unnecessary and that L and R had acted unreasonably in bringing it. It was reasonable in the circumstances for G to have sought legal advice and representation. The Tribunal ordered L and R to pay \$4000, being half of G's costs as submitted.

The application under s 16(4) of the *Guardianship and Administration Act 1990 (WA)* was dismissed because it sought orders against trustees in whose sole discretion it was whether to meet any claim for payment.

**DB [2007] WASAT 243
17 SEPTEMBER 2007
MS F CHILD (MEMBER)**

Guardianship and Administration - Review of administration order on application by the Public Trustee - Relationship between Joint Administrators broken down - Need for an administrator - Suitable appointment

On review of an administration order by the State Administrative Tribunal instigated by the Public Trustee because of concerns about the operation of the order, the Tribunal revoked the order and reappointed one of the former joint administrators as the sole administrator.

The joint administrators were the brother and sister of a woman with an intellectual disability. The Tribunal decided that the woman still needed an administrator of her estate but as the evidence of both the brother and the sister was that their relationship had completely broken down, a joint appointment was not appropriate. The Tribunal appointed the sister as the sole administrator as it accepted her evidence that she had undertaken the day-to-day administration of the estate with little involvement from her brother since their appointment in 1998.

The Tribunal was satisfied that the sister was able to perform the functions of the administrator and that she would act in the best interests of the represented person.

The Tribunal did not accept the proposal of the brother that the administration of the estate remain as it was; that is, his sister undertake the management of the estate and that he remain as joint administrator playing a monitoring role; reviewing the accounts his sister submitted to the Public Trustee for examination. The Tribunal determined that the proposal was not consistent with the legislation which requires joint administrators to act concurrently and provides that the Public Trustee monitor the private administration of estates through the examination of accounts submitted.

This decision was subject to review under s17A of the *Guardianship and Administration Act (1990) WA*. On review by the Full Tribunal the decision was upheld and the appeal dismissed.

**HSB [2007] WASAT 240
17 SEPTEMBER 2007
MR J MANSVELD (MEMBER)**

Guardianship - *Guardianship and Administration Act 1990 (WA)* protective in its design - Need for a guardian - Less restrictive alternative to the appointment of a guardian - Need to balance the protection of a person with a right to autonomy

The Tribunal reviewed a guardianship order for a young woman who suffered from an intellectual disability and a mental illness. The order had been made in 2006 for 12 months and that order had confirmed an earlier order made in 2004.

The Public Advocate had been appointed the woman's plenary guardian.

At the review hearing the Public Advocate submitted that the guardianship order was no longer needed because the woman was now in stable, supported accommodation and no decision had been required for 12 months.

The woman's mother and the accommodation provider submitted that the guardian formed an important part of the woman's support structure. The guardian was accepted as the authority figure and this had enabled the woman's mother to re-establish a relationship with her.

The mother was not well and was not able to take on the responsibility of being the woman's guardian.

The Tribunal was persuaded by the submission of the woman's mother and accommodation provider for three reasons. The first was that it is made by those who had an intimate understanding of the woman's needs, strengths and weaknesses. Secondly, the stability recently found in the woman's life was accepted by all parties as being fragile and subject to challenge at any time because of her impulsive decision-making. The woman's impulsivity could have a potentially catastrophic effect on her accommodation, support arrangements and work. Thirdly, the Tribunal accepted the contention that it was too early to say that the woman had matured to the extent necessary where the protection of an order was not in her current best interests.

The Public Advocate was reappointed the woman's limited guardian for a period of 12 months.

**BW [2007] WASAT 244
19 SEPTEMBER 2007
MS D DEAN (MEMBER)**

Review of guardianship order - Public Advocate limited guardian with the functions of making decisions in respect of accommodation, medical decisions and services - Public Advocate confirmed as limited guardian - Guardianship order confirmed

The represented person is a young woman with a dual diagnosis of a mental illness and an intellectual disability. She lives in the community with her fiancé who also has an intellectual disability.

A guardianship order was made in 2006 appointing the Public Advocate limited guardian to decide where and with whom the represented person should live, to make decisions about medical and health matters and to determine the services to which she should have access. The order was made for twelve months and was reviewed in August 2007.

At the review hearing the Public Advocate reported that she had not been called on to make any decisions during the term of the order and therefore questioned whether there was a need for the order to continue. Evidence was provided that the represented person, who was on a community treatment order (CTO) to ensure compliance with treatment of her psychiatric illness, had ongoing medical problems not covered by the CTO, and had had at least one medical incident during the term of the guardianship order.

Evidence was provided at the hearing that the represented person was in receipt of support services but would benefit from additional services. Evidence was also provided that she was at risk of losing her accommodation because of her antisocial behaviour.

The Tribunal found that a guardian was needed to advocate and make decisions on behalf of the represented person to ensure that she continued to be accommodated appropriately, that her medical and health care needs were managed appropriately and that she had access to services appropriate to her needs.

The Tribunal confirmed the order appointing the Public Advocate limited guardian for a further five years.