



## HUMAN RIGHTS

### DECISIONS BULLETIN

for the period 1 September 2009 - 30 September 2009

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This Bulletin contains summaries of all written reasons for decisions published by the Tribunal in the Human Rights stream for the period 1 September 2009 - 30 September 2009. The full text of decisions and reasons can be found on the Tribunal's website at [www.sat.justice.wa.gov.au](http://www.sat.justice.wa.gov.au). If you would like the monthly bulletin emailed to you directly, please enter your email address and details at our subscription page.

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## GUARDIANSHIP AND ADMINISTRATION ACT 1990 (WA)

**AS [2009] WASAT 183**

**22 SEPTEMBER 2009**

**JUDGE J ECKERT (DEPUTY PRESIDENT), MS F CHILD (MEMBER), MR J JAMES (SENIOR SESSIONAL MEMBER)**

**Guardianship and administration - Review pursuant to s 17A of the *Guardianship and Administration Act 1990 (WA)* - Represented person with diagnosis of vascular dementia - Whether the represented person is a person for whom a guardian and administrator may be appointed - Whether she is in need of a guardian and administrator - Friend denying the represented person incapable of making decisions - Whether the appointment of the Public Advocate required in circumstances where there is a supportive family but continuing conflict between the family and friend of the represented person - Continuing need for orders appointing independent guardian and administrator - Orders confirmed**

### **Background**

Following an application by N, the brother of A, a woman who had been diagnosed with vascular dementia, the Tribunal constituted by a single member appointed the Public Advocate as A's guardian and the Public Trustee as the administrator of her estate.

FS, a friend of A's, sought review of those decisions as he considered that A was able to make decisions for herself and did not need a guardian or an administrator. Alternatively, FS argued that if a guardian was to be appointed it should be him. He gave evidence of his close friendship and daily contact with A.

### **Summary of Tribunal's decision**

The Tribunal found that because of A's progressive dementia, she was unable to make decisions for herself about her person or about her estate. She was at risk because she had no insight into her insulin-dependent diabetes and the dangers to her health of

non-compliance with medication and a diabetic diet. She did not understand the extent of her estate and needed someone to pay for her accommodation and her other needs.

The Tribunal found that FS was not suitable for appointment as the guardian as he did not accept A's diagnosis or that her capacity to make decisions was impaired. He did not acknowledge her consequent vulnerability. Because of this, the Tribunal concluded that there was a risk if FS were appointed guardian that he would make decisions for her which were not sufficiently protective of her health and welfare. Although A's family were protective and concerned for her welfare, because N disapproved of A's relationship with FS and had genuine concerns about the risks of that relationship for his sister, it was likely that unless an independent decision-maker were appointed, there would be ongoing conflict about the contact arrangements. The Tribunal determined that independent decision-makers were best placed to act on A's behalf.

Having considered all of the material before it including medical and other professional reports and submissions from FS and A's family and from the Public Advocate and Public Trustee, the Tribunal concluded that the orders should be confirmed.

**GB AND BM [2009] WASAT 186**

**23 SEPTEMBER 2009**

**MS J STANTON (SENIOR SESSIONAL MEMBER)**

**Guardianship - Administration - Costs**

An application for legal costs relating to a hearing on 4 May 2009 was made by letter on 7 August 2009.

At the hearing, the Office of the Public Advocate and the Public Trustee were appointed guardian and administrator, respectively.

The Tribunal dismissed the application for costs to be paid from the representative person's assets. The Tribunal was of the view that the legal advice assisted the applicant in making her application and presenting her case at the hearing.

The Tribunal did not accept that the reasons given for seeking reimbursement of legal costs were directly related to the matter in hand and found that there was no significant benefit to the represented person that would justify costs being met from her estate.

**EML [2009] WASAT 191**

**30 SEPTEMBER 2009**

**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**

An application for release of documents on a file held by the Tribunal was made pursuant to s 112(4) of the *Guardianship and Administration Act 1990 (WA)*.

The application was made by the executrix of the last known will of a person who had, prior to her death, been the subject of an order for administration made under the *Guardianship and Administration Act 1990 (WA)*.

The applicant had made the application because one of the beneficiaries of the deceased's estate was challenging the validity of the will on the basis of an allegation that the deceased did not have testamentary capacity to make a will.

The Tribunal decided not to allow the application as the applicant did not provide sufficiently cogent reasons to warrant the exercise of the discretion available under s 112(4).

The *Guardianship and Administration Act 1990 (WA)* was designed to protect people with disabilities which prevented them from making reasonable judgments about their

personal life and financial estate. The legislation was not related to the administration of estates of deceased persons.

In proceedings before the Tribunal, information was generally provided by professionals and other people, including family and friends of a person with a disability, in a candid manner and which often contained sensitive material and contentious opinion.

The Tribunal considered it important to the integrity of the Tribunal's processes that the providers of information did so in the knowledge that it would only be used in other forums in limited circumstances.