

Guardianship and Administration Board
Hobart

NHI, on the application of the Department of Health and Human Services, and

XS, on the application of the Department of Health and Human Services.

GAB No.'s XXXX and XXXX of 2005

REASONS FOR DECISION

Anita Smith (President)
Kim Barker (Board member)
Wendy Beveridge (Board member)

Date of Hearing 12 May 2006

Administration – capacity, dementia, schizophrenia – reliance upon charities – defiance and rejection of in home support – capricious management of money, boom or bust lifestyle detriment of health ad wellbeing – Guardianship – wishes – last resort
Guardianship and Administration Act 1995 (Tas), ss 6, 11, 20, 51

1. This matter relates to two applications to appoint the Public Trustee as administrator in respect of two persons, NHI and XS, who live together and operate their finances jointly. The applicant, NU, made the applications in his role as a social worker for the Community Health Division of the Department of Health and Human Services.
2. Given the following factors:
 - (i) the two applications were made by the same applicant,
 - (ii) the interested persons listed in each application were identical,
 - (iii) the factual bases for the applications applied to joint accounts and transactions of the two persons,
 - (iv) of a demonstrated but unfounded level of fear between the proposed represented persons that the proceedings were covertly designed to separate them, and

- (v) of the discretion afforded to the Board in section 11(2) of the *Guardianship and Administration Act 1995* which allows the Board to act informally

the Board determined that the applications would be investigated and heard together

3. The Board received the applications and prescribed information (including a Health Care Professional Report for both proposed represented persons from Dr C.T.) on 12 April 2006. A notice of hearing was sent to interested parties on 21 April 2006 and the hearing was convened on 12 May 2006. To facilitate the attendance of the proposed represented persons, the hearing was convened at an assistance centre for the homeless for ease of access to the proposed represented persons.
4. The proposed represented persons attended and participated in the hearing. Subject to some restrictions discussed below, NU, QG from St Vincent's de Paul, KS from the Salvation Army, HC from XX House, two Investigation and Liaison Officers (ILO) from the Board, Ms Anne Perks and Ms Anna Curtain, and Michael Condon from the Public Trustee also attended and participated in the hearing.
5. Prior to the hearing Mr XS had indicated that he did not want to be in the same room as the applicant. As a result the hearing was conducted by shuttling the parties in and out of the hearing room. At the commencement of the hearing the Board heard from the two proposed represented persons separately from the applicant about issues raised in the applications. The Board heard from the applicant in the absence of the proposed represented persons. Mr NHI then re-joined the hearing. Mr XS subsequently returned and the applicant again left the proceedings. The hearing concluded with all persons present except the applicant.
6. The Board received a request for this statement of reasons on 15 May 2006 from both Mr NHI and Mr XS.

Legislation:

7. The applications were made pursuant to Part 7 of the Act of the *Guardianship and Administration Act*. When considering the appointment of an administrator, the Board must address the criteria in sections 51 and the principles in section 6 of the *Guardianship and Administration Act 1995*

“51(1) If, after a hearing, the Board is satisfied that the person in respect of whom an application for an order appointing an administrator or an order appointing a guardian is made –

- (a) is a person with a disability; and*
 - (b) is unable by reason of the disability to make reasonable judgements in respect of matters relating to all or any part of his or her estate; and*
 - (c) is in need of an administrator of his or her estate –*
the Board may make an order appointing an administrator of that person's estate.
- (2) In determining whether or not a person is in need of an administrator of his or her estate, the Board must consider whether the needs of the proposed represented person could be met by other means less restrictive of the person's freedom of decision and action.*
- (3) The Board must not make an order under subsection (1) unless it is satisfied that the order would be in the best interests of the proposed represented person.*
- (4) Where the Board makes an order appointing an administrator of a person's estate, the order is to be that which is the least restrictive of that person's freedom of decision and action as is possible in the circumstances.*
- (5) An order made under subsection (1)–*
- (a) may be made subject to such conditions and restrictions as the Board thinks fit; and*
 - (b) may be expressed to take effect when the represented person is aged 18 years.*
- (6) The Board may exercise its powers under this section on an application under Part 4 of the Powers of Attorney Act 2000.”*

Section 6 states:

“A function or power conferred, or duty imposed, by this Act is to be performed so that

- (a) the means which is the least restrictive of a person's freedom of decision and action as is possible in the circumstances is adopted; and*

- (b) *the best interests of a person with a disability or in respect of whom an application is made under this Act are promoted; and*
- (c) *the wishes of a person with a disability or in respect of whom an application is made under this Act are, if possible, carried into effect.*"

Mr NHI – History and Capacity

8. Mr NHI is 79 years of age. He is a widower and has no contact with any family members. He has been in a close relationship with Mr XS since the 1970's when they were both residents at a centre for the homeless . He stated at the hearing: *"XS and I have been together for thirty odd years, thirty two years."*. He is in receipt of the Aged Pension.
9. Dr C.T.'s report stated that Mr NHI has dementia as a result of multiple cerebral emboli. This condition has been evident for 10 years and is deteriorating. In the year prior to the application, Mr NHI has been hospitalised several times, and at least on one occasion for treatment for a fall injuring his hip. He attended the hearing in a wheelchair.
10. Dr C.T.'s report also states that Mr NHI has deficits in planning and reasoning and that he is susceptible to undue influence, possibly from Mr XS. He concluded that Mr NHI is not competent to make reasonable decisions in relation to his personal property and unequivocally indicated that Mr NHI is unable to handle his finances or understand the consequences of financial decisions.
11. When asked questions at the hearing, Mr NHI demonstrated that he is completely dependent upon Mr XS for all financial decisions and knowledge. He demonstrated little understanding or concern as to how Mr XS controls his finances. Given Dr C.T.'s opinion and the evidence of Mr NHI at the hearing the Board concluded that, for the purposes of section 51(1)(a) and (b) of the Act, Mr NHI is a person with a disability and is unable by reason of the disability to make reasonable judgments in respect of matters relating to his estate.

Mr XS – History and Capacity

12. Mr XS is 50 years of age and has no contact with any family members. According to the history he supplied to the care team, he was a long term resident of the Royal Derwent Hospital. He became a resident of A centre for the homeless in the 1970's. He is in receipt of a Carer's Benefit from Centrelink because of his role in caring for Mr NHI.
13. There were prejudicial statements in papers received by the Board about claims by Mr XS that he had been involved in either the murder or assisted suicide of another patient at the Royal Derwent Hospital. It is not clear how these vague, third-hand reports are at all relevant to the application and the Board did not place any weight upon such statements.
14. Dr C.T.'s report stated that Mr XS has schizophrenia, which has been evident for 20 or more years and his condition fluctuates. He has been prescribed anti-psychotic and anti-depressant medications.
15. Dr C.T.'s report also states that Mr XS is occasionally prone to impulsive acts without reasonable consideration of the consequences. He cites as an example of this the fact that he will buy items when they are not needed and the money could be put to better use. His report indicates that Mr XS is limited in his ability to make reasonable financial decisions and he is unable to operate a bank account, manage his money or budget. He states that he has major problems in paying bills because he never has any money and has a "do not care" attitude towards the consequences of not paying bills.
16. When asked questions at the hearing, Mr XS was evasive and appeared to be making up answers as he went along. For instance, at the start of the hearing, he stated that he and Mr NHI were moving to Queensland on Dr C.T.'s advice. On other occasions he stated that he was going to gaol because of a debt (which the Board initially presumed may relate to a judgment summons).
17. When questioned about the size of the putative debt and the proceedings whereby Mr XS was being sent to gaol, he indicated that the joint debt was over

two thousand dollars, but that he had not appeared at nor been summonsed to attend the Magistrate's Court. During the course of the hearing he gave differing responses regarding the amount of debt, ranging from \$1,000 to \$50,000. He also stated that the debts were from the 1970's and he would bankrupt himself over them. Papers collated in the investigation process indicated that he had also told charity services that he owed \$10,000.

18. Mr XS was defensive about the manner in which he spends their joint income and described a responsible list of items of regular expenditure, which appeared improbable and was not supported by the evidence of other witnesses. For example, he stated that he spends \$200 per pension on groceries, yet most witnesses spoke of a sparsity of fresh food in their house and reliance upon take-away food.
19. Given Dr C.T.'s opinion and the evidence of Mr XS at the hearing the Board concluded that, for the purposes of section 51(1)(a) and (b) of the Act, Mr XS is a person with a disability and is unable by reason of the disability to make reasonable judgments in respect of matters relating to his estate.

Need for administration orders:

20. At the hearing Mr XS removed two plastic bankcards from his back pocket. Both cards bore his name. He stated that one was his and one was Mr NHI's and that he is Mr NHI's Centrelink nominee. Mr NHI also confirmed that he does not go to the bank and relies on Mr XS to do his banking. It is clear that Mr XS has complete control over the income.
21. According to the applications and witnesses at the hearing, Mr NHI and Mr XS have a long history of presenting at various charitable organisations requesting assistance. These presentations are often within a day or two days after the receipt of benefits and they are seeking money for food or cigarettes.
22. According to evidence at the hearing, Mr NHI's Centrelink payments are paid to his account one week and Mr XS's are received the next, meaning that there is income to the household each week to a total value of approximately \$900.00

per fortnight. They pay only \$70 per week rent and most of their furniture has been donated by community or church organisations. Although it has not occurred in recent months, there have been occasions where their rental was unpaid for substantial periods and they were facing eviction.

23. At the hearing, Mr QG described a long period of reliance on the Society of St Vincent de Paul:

“Now according to the longest living memory up there at least fifteen years we’ve been assisting on a fairly regular basis. At times they’ve stopped for a variety of reasons, ... for the last four years I’ve also been employed at St Vincent de Paul as their administration officer and so I’ve dealt with them both as a conference member and also Mr XS and Mr NHI coming in. They – I have not seen Mr NHI – sorry, N for at least – for about two months. Prior to that at times you would see him very regularly and at times you wouldn’t see him for a while; it was sort of very very erratic. Sometimes he would turn up just wanting some food until the next pension day other times they’d phone and said they’ve needed assistance and we’ve had people come to see them.”

24. Mr HC, manager of a centre for the homeless for the past two years reports that during that period as manager the proposed represented persons have been continually requesting food, transport, cigarettes and other items, sometimes one day after benefits have been received. Sometimes they claim that they have not eaten for several days. At times, Mr XS has been barred for periods for verbal aggression or inappropriate behaviour.
25. Mr HC gave evidence of an occasion in September 2005 where Mr XS was back-paid the sum of \$1600 from his carer’s allowance on a Friday. After repaying a debt of \$71 to the centre for the homeless, with a \$100.00 note, Mr HC held the change of \$29.00 in a safe for Mr XS. Mr XS returned on the following Monday to collect that \$29.00 because he had spent all of the back payment. Mr XS agreed that this was correct, indicating that he had purchased a doona, sheets and clothes for Mr NHI. On another occasion, he admitted spending \$150.00 on a single cab fare to purchase a second hand television costing approximately \$40.00.

26. While the proposed represented persons appeared to occupy a significant period of their time away from home seeking donations of money and food, their attitude towards receiving nursing, hygiene or other in-home support has been one of defiance and rejection. There is also some concern expressed about the safety and appropriateness of persons entering their home to provide support services both because of Mr XS's verbal aggression and a lack of appropriate hygiene in the home.
27. Although the patterns of usage of charity services have been evident for around 15 years, some aspects of the patterns of usage have recently changed. According to reports of witnesses, Mr NHI is becoming increasingly frail. This means that Mr XS regularly leaves him at home alone during the periods when he is seeking out food and money from charity and community services.
28. Papers accompanying the application contained accusations that Mr XS drinks or gambles their money. Mr XS stated that he only gambles \$2.00 on each occasion. He made numerous protestations in the hearing that he spends no money upon himself; he spends all the money upon Mr NHI and insists that he only has the best. He said he looks upon him like a father. When asked why more money is not spent on care services for Mr NHI, he replied that Mr NHI did not want any such services. Mr NHI also expressed that sentiment at the hearing.
29. The hearing occurred on a cold autumn day. Mr NHI was appropriately dressed for the weather with trousers and a thick woollen jumper and some new slippers on his feet. Mr XS, however, was dressed only in a summer weight shirt, which was sparsely buttoned, well worn and apparently dirty. This appearance lent some weight to Mr XS's assertion that he spent more on Mr NHI's clothing than his own, however the question remains whether Mr. NHI is receiving an appropriate level of care and whether an appropriate sum is being spent on his care.
30. There is insufficient evidence for the Board to conclude that Mr XS gambles or drinks with the income derived from both of the proposed represented person's

income. It does, however, conclude that Mr XS completely controls the pair's finances and that he does so in a capricious manner, leading them to a boom and bust lifestyle, which is to the detriment of the health and wellbeing of both men.

31. The Board was satisfied for the purposes of section 51(1)(c) of the Act that both Mr NHI and Mr XS are in need of an administrator for the management of their estates. Mention was made at the hearing of the administrator paying a sum to the centre for the homeless for the provision of daily meals to ensure appropriate nutrition. Such a strategy is highly recommended by the Board.
32. Some concern was expressed at the hearing that as a result of the recent decline in his health, that perhaps Mr NHI requires a guardian to arrange an Aged Care Assessment Team assessment and consider his future accommodation, possibly in a nursing home.
33. The Board took into account the wishes of the proposed represented persons to remain together and the fact that nursing home placement would be contrary to those wishes. It also considered that there may be substantial benefits to their lifestyle from some sustained and careful money management. In the circumstances, although it considered guardianship very seriously, the Board declined to make a guardianship order, as it believed that the situation may improve with administration and the 'last resort' of appointing a guardian had not been reached. However, should the administration order not deliver the expected benefits to Mr. NHI and Mr XS, an application for guardianship might be contemplated by the persons caring for them.
34. The Board was not satisfied pursuant to section 20(1)(c) of the Act that Mr NHI or Mr XS is in need of a guardian at this stage.

CONCLUSION: NHI File No: XXXX

After hearing an application for administration in respect of NHI of Hobart (hereinafter called the 'represented person')

The Board was satisfied that the represented person

- is a person with a disability, and
- is unable by reason of the disability to make reasonable judgements in respect of his estate, and
- is in need of an administrator;

THE BOARD ORDERS

1. That The Public Trustee be appointed as administrator of the estate of the represented person.
2. That the powers and duties of the administrator be those conferred by Division 4 of Part 7 of the *Guardianship and Administration Act 1995*.
3. That the order remains in effect until 11 May 2009.

CONCLUSION – XS File No. XXXX

After hearing an application for administration in respect of XS of Hobart (hereinafter called the ‘represented person’)

The Board was satisfied that the represented person

- is a person with a disability, and
- is unable by reason of the disability to make reasonable judgements in respect of his estate, and
- is in need of an administrator;

THE BOARD ORDERS

1. That The Public Trustee be appointed as administrator of the estate of the represented person.
2. That the powers and duties of the administrator be those conferred by Division 4 of Part 7 of the *Guardianship and Administration Act 1995*.
3. That the order remains in effect until 11 May 2009.

DATED this 6th day of June 2006

PRESIDENT

BOARD MEMBER

BOARD MEMBER