

Guardianship and Administration Board  
Hobart

**MS L.B.T. on the application of MS K.T.**

GAB No. XXXX of 2007

**REASONS FOR DECISION**

Anita Smith (President)

Decision: 10 December 2007

Application by administrator for gift – effect on pension entitlements – wishes of represented person – best interests affected by family dynamics – relevance of terms of Will – altruism in caring relationships  
*Guardianship and Administration Act 1995* (Tas), ss 6, 58

1. On 26 September 2007, the Board made an order pursuant to Part 7 of the *Guardianship and Administration Act 1995* ('the Act') appointing Ms K.T. as administrator for her mother, Ms L.B.T.. On 3 December 2007, Ms K.T. has made an application pursuant to section 58 of the Act for a gift of \$25,000.00 from her mother's estate to herself.
2. Ms L.B.T. is 81 years old and lives in an Aged Care facility in Southern Tasmania, she has retained or reverted to her birth name. She has three adult children, Ms K.T. who lives in Tasmania, and two sons, Mr K.A.T. and Mr S.T. who both live interstate. As a result of a stroke, Ms L.B.T. has become incapable of making reasonable judgments about her estate.
3. The hearing in September was attended by Ms K.T., her maternal uncle, Mr F.T. (who until that time had held an enduring power of attorney for Ms L.B.T.) and Mr K.A.T. attended by telephone. Mr S.T. indicated that he did not want to participate in the hearing by telephone.

4. At the hearing of the administration application, Mr F.T. made a strong statement about the sacrifice and dedication that Ms K.T. has undertaken to care for her mother, in particular financial sacrifice in changing from full time employment in Sydney to part-time employment in Tasmania. Mr F.T. indicated that Ms K.T. ought to be compensated, financially, for that sacrifice. This application results from the Board's explanation at that hearing that such compensation should be the subject of a separate application.

**The purpose of the application:**

5. To provide care for her mother, Ms K.T. left full-time employment in Sydney, where she earned a modest income, to live in Tasmania where she earns less than half of the income received in Sydney. She owns a house in Tasmania, subject to a mortgage, in which she now resides, but from which she previously received rental income. Her equity in that property is approximately 25 per cent. If granted the application, she intends to repay a loan to Mr F.T. and undertake maintenance on the roof and floors of that property.
6. Ms K.T. also indicated that she has incurred expenses, e.g. removalist's fees and transport costs in this process. I considered that such expenses are not properly considered in a gift application as they may, with appropriate verification and reporting, be reimbursed to the administrator as part of the normal transactions in the estate.

**Ms L.B.T.'s estate:**

7. Ms L.B.T. owns a home in Northern Tasmania with an estimated value of \$200,000.00 which earns \$200.00 per week rental. She has approximately \$50,000.00 in bank accounts and term deposits and approximately \$45,000.00 invested in shares. There are no liabilities, and Ms L.B.T.'s income from Commonwealth benefits covers her

expenses at the Aged Care facility. The proposed gift represents approximately 8.5% of the current total value of Ms L.B.T.'s estate.

8. At the request of the Board's Investigation and Liaison Officer, the applicant sought advice from Centrelink about the effect that payment of the proposed gift would have upon her estate. Centrelink's advice was that the first \$10,000.00 would take effect as a gift, but the balance \$15,000.00 would be deemed to remain in Ms L.B.T.'s estate for pension assessment purposes. The deemed decrease of \$10,000.00 from the value of her estate would have the effect of increasing her pension by \$9.00 per fortnight. If paid as an interest free loan, the whole amount would be deemed to remain in Ms L.B.T.'s estate for pension assessment purposes.

**Ms L.B.T.'s wishes:**

9. The application states that Ms L.B.T. agrees to the gift. An Investigation and Liaison Officer from the Board visited Ms L.B.T. and interviewed her with respect to her wishes regarding the application. He reported that she 'seemed to have some knowledge of the matter' and had spoken to Mr S.T. about it. The Investigation and Liaison Officer reported that Ms L.B.T. did not agree to the making of a gift of \$25,000 to Ms K.T., though she agreed Ms K.T. is entitled to some recompense, but thought \$5000 or \$10,000 might be more reasonable.
10. Ms K.T.'s application notes that when Ms L.B.T. moved to the Aged Care Facility, Mr F.T. organised that each of her children be paid a cheque to lower the amount of funds in Ms L.B.T.'s account to preserve her pension entitlement. The amount of that gift is not specified in the application. Further Ms L.B.T. has, according to the applicant, given small gifts of \$50.00-\$100.00 from time to time and in April 2007 gave Mr S.T. and Ms K.T. \$1000.00 each.

11. I also considered the terms of Ms L.B.T.'s Will to be relevant to her wishes with regard to the application.
12. I am satisfied that Ms L.B.T.'s wishes are to provide Ms K.T. with a substantial gift, but that she considers the proposed gift to be too generous.

**Ms L.B.T.'s best interests:**

13. Given the advice from Centrelink, it cannot be argued that a payment from the estate of \$25,000.00 will be of any financial advantage to the estate. I consider the 'best interests' test in this application to be most relevant to the issue of family dynamics.
14. Family dynamics at present are thus: Ms K.T. feels that she had a very protracted and difficult time in the transition process of moving her mother from her home in Northern Tasmania to the Aged Care Facility. She found this process to be an emotionally, financially and physically draining task which resulted in her leaving a well paid job in Sydney to move to Hobart with a contract position that is far less well paid. In a sense, she harbours grievance against her brothers that, apart from Mr K.A.T.'s attendance to some sorting of chattels, she was left alone to this task. However, it is not unusual for children of aged parents to make these kinds of sacrifices and these tasks are not usually done with a view to financial recompense.
15. Mr K.A.T. and Mr S.T. have concerns about the size of the gift requested, partially, it appears, because the gift will affect the income earning capacity of Ms L.B.T.'s estate. To that extent, Ms K.T.'s brothers had offered to pay her \$10,000.00 as recompense from their own money; an offer she rejected. (The making of this offer tends to support Ms K.T.'s assertion that her brothers are more financially comfortable than she is.)

16. When she was appointed as administrator, Ms K.T. had the support of her brother's for that role. It appears that the process of Ms K.T. applying for this gift has undermined the relationship between the siblings in that they feel that she is asking too much and she feels underappreciated by them for the work that she has done.
17. Ms L.B.T.'s best interests are best served by ensuring that Ms K.T. remains available in Tasmania to provide the level of support that she does, but also in not exacerbating any difficulties in family dynamics that presently exist.

**Conclusion:**

18. Taking into account the views of all concerned, I am satisfied that a gift or settlement from Ms L.B.T.'s estate is appropriate. However, I am of the opinion that some conditions be placed upon that gift or settlement so that the terms of Ms L.B.T.'s will are not unduly overrun by any actions of this Board.
19. I believe it is appropriate for an immediate gift of \$10,000.00 to be paid from Ms L.B.T.'s At Call Account (Account number: X) to Ms K.T.. This money is not presently earning any significant rate of interest. The deduction of it from Ms L.B.T.'s account will leave approximately \$9,000.00 in the account for any day-to-day purchases required for Ms L.B.T.. At her present rate of spending, it is highly unlikely that this balance would be expended. A gift of \$10,000.00 will be acknowledged by Centrelink as having been expended by Ms L.B.T. and result in a modest increase in her pension.
20. The balance of the sum of \$15,000.00 of the proposed gift or settlement may be paid as an interest free loan payable as a deduction from Ms K.T.'s eventual entitlement under her mother's will. That balance shall be paid from the Term Deposit (Account number: X) upon the maturation of that account on 17 February 2008. I make this

particular determination so that Ms L.B.T. will have the benefit of the interest on that account and so that the capital sum may be withdrawn without penalty. The future loss of interest from this particular investment is not significant in light of the other assets which appear to be increasing in value.

21. This gift and settlement is made to acknowledge the sacrifice Ms K.T. made in moving back to Tasmania and reducing her income but not to fully compensate for it. One assumes that when an adult child cares for their parents, it is done for familial and altruistic reasons and any compensation is an unanticipated reward. It is also made on the understanding that there will not be any future applications for a gift and that this was a once-off application for such compensation. Of course past and future expenditure made on Ms L.B.T.'s behalf may still be reimbursed with appropriate verification and reporting.

**THE BOARD APPROVES the following:**

- (i) An immediate gift to the administrator of \$10,000.00 from the represented person's At Call Account (account no. X).
- (ii) An interest free loan to the administrator of \$15,000.00 payable as a deduction from her eventual entitlement under the represented person's will. The amount is to be paid from the Term Deposit (account no. X) upon the maturation of that account on 17 February 2008.

Anita Smith  
PRESIDENT