

**GUARDIANSHIP AND ADMINISTRATION BOARD  
LAUNCESTON**

**Mr L.Z.G. on the application of Mrs L.Q. and Mrs L.L.**

GAB No. XXXX of 2007

**REASON FOR DECISION**

Marguerite Lester (Chair)  
Kate Brown (Board Member)  
Kellie Ashman (Board Member)

Date of Hearing – 23<sup>rd</sup> March 2007

Guardianship and administration – ‘need’ for guardian – conflict among family about welfare of proposed represented person – ‘need’ for administrator – potential litigation under *Testator’s Family Maintenance Act 1912* in parent’s estate – conflict of interest for siblings as administrators

*Guardianship and Administration Act 1995* (Tas), Parts 4 and 7, s 21, 54

1. This is an application under Part 4 and Part 7 of the *Guardianship and Administration Act 1995* for the appointment of a Guardian and Administrator for Mr L.Z.G.. The applicants were Mrs L.Q. and Mrs L.L..
2. The hearing was attended by Mr C.G., Mr L.Z.G., Mr Robert Pearce (solicitor for Mr C.G. and Mrs L.Q.) Ms S.R. (niece), Ms I.J. (niece) Mrs L.L., Mr V.L., Ms I.B., Mr C.A.G., Mr R.G., Mrs L.Q. and Mr L.A.Q.; Kate Fitzallen and Geoff Durstan (Public Trustees).
3. The Board heard Mr L.Z.G. is a 39 year old unmarried man living in Northern Tasmania. The Health Care Professional Report from Mr L.Z.G.’s GP of 33 years noted Mr L.Z.G. to suffer from an acquired

brain injury (cerebral palsy) resultant of birth trauma with a secondary mild intellectual disability, deafness and a speech impediment significantly impacting on communication. The Board was therefore satisfied that Mr L.Z.G. was a person with a disability and that by reason of that disability he is unable to make reasonable judgments in respect of comprehending and managing his financial affairs or in relation to decisions about lifestyle issues.

4. Mr Pearce presented a position to the Board stating the whole family agreed the administrator and guardian should be independent. This was unanimously supported by family members at the hearing. He further presented the issues to be in relation to Mr L.Z.G.'s living conditions and his mother's Will.
5. The hearing heard Mr C.G. has been managing Mr L.Z.G.'s pension as Executor of his mother's estate utilising a bank authority and that the entire estate has been bequeathed to Mrs L.L. with no provision in the will for Mr L.Z.G.. Mrs L.L. had previously been accessing Mr L.Z.G.'s account with a bank authority.
6. The family unanimously identified a number of parameters important in the care of Mr L.Z.G.. These were noted as: familiar environment, safety, routine, ability to communicate and financial security.
7. The hearing heard Mr L.Z.G. lived in the family home with his brother Mr C.G. and mother until her death in June 2006. The applicant Mrs L.L. had also lived in the family home until her marriage and subsequent move to her own home with her husband, across the road; several years ago. Mrs L.L. has been in receipt of a carer's allowance for the care of Mr L.Z.G. for the past 12 years. Mr L.Z.G. resided with

- Mrs L.L. and her husband from June to October 2006 and returned to the family home to live with his brother Mr C.G. receiving regular daily visits from Mrs L.Q. while Mr C.G. is working.
8. Concerns were presented to the hearing by family members in relation to Mr L.Z.G.'s general care, health, hygiene, socialisation, financial abuse, physical abuse, safety, accommodation, future. Throughout the hearing significant conflict and a severe lack of trust between family members was displayed with evidence of two opposing groups operating within the family. The groups failed to agree with each other on a number of issues.
  9. Mr V.L. told the hearing Mrs G's Will was a side issue that had not been considered in Mrs L.L.'s application. The hearing heard some members of the family intended to contest the Will and felt Mr L.Z.G. should be represented in a Testator Family Maintenance action. The Testator Family Maintenance action was believed by some members of the family, to be the overarching factor in determining the most appropriate course of care for Mr L.Z.G..
  10. Geoff Durstan from the Public Trustees office told the hearing how the Public Trustees work with their clients and the costs incurred. The importance of coordinating with carers was emphasised in meeting a proposed represented person's needs. An administrator's role would include collection and management of Mr L.Z.G.'s pension, the Testator Family Maintenance action and management of his estate if a successful challenge to the Will results.
  11. Because there was no representative from the office of the Public Guardian at the hearing, the Board advised the hearing how the Public

Guardian liaises with family and the administrator maintaining the best interests of the represented person.

12. There was agreement reached by the family members present at the hearing of the need for the appointment of a guardian for Mr L.Z.G.. The family further agreed that the Public Guardian would be an appropriate independent guardian if the decision of the Board was to appoint a guardian for Mr L.Z.G..
13. There was no agreement within the family as to the most appropriate administrator for Mr L.Z.G.. Some family members supported the appointment of the Public Trustee. Mrs L.L. disagreed preferring the appointment of Ms I.B. (sister) citing the cost, difficulty in communicating with Mr L.Z.G. and his inability to deal with strangers as mitigating factors with the appointment of the Public Trustees. Mrs L.L. stated in her written report to the Board her sister Ms I.B. to be independent as she ‘..is also outside the inner circle which has friction’ in the family.
14. With the conflict apparent in the family, the complexity of a pending Testator Family Maintenance proceeding and the resultant potential conflict of interest for any family member appointed as Administrator or Guardian; the Board could not be satisfied that section 54 (1) (d) (ii) of the Guardianship and Administration Act 1995 would be complied with if a family member was appointed as Mr L.Z.G.’s administrator. That section provides that the Board can appoint a person as the administrator if the Board is satisfied that:
  - a. (ii) the person is not in a position where his or her interests conflict or may conflict with the interests of the proposed represented person.

A similar provision is set out in section 21(1) (b) of the Act in relation to the appointment of Guardians.

15. In this situation administration involves ensuring Mr L.Z.G.'s representation in a Testator Family Maintenance action with management of any successful share of his mother's estate as well as his pension and arrangement of daily financial needs. The family has identified a number of concerns in relation to Mr L.Z.G.'s lifestyle. A guardian would liaise with Mr L.Z.G. and family members to identify accommodation, daily routine and any health or treatment issues for Mr L.Z.G.. The guardian may need to assist with any legal proceedings to ensure a comprehensive approach is provided for Mr L.Z.G. and liaise with the Administrator to ensure sufficient funds are available to support any new involvements in which Mr L.Z.G. may participate.

## **DECISION**

The Board orders that:

1. The Public Trustee be appointed as the represented person's administrator.
2. The powers and duties of the administrator be those conferred by Division 4 of Part 7 of the Guardianship and Administration Act 1995.
3. The Public Guardian be appointed as the represented person's guardian.
4. The Powers and duties of the guardian be those conferred by Division 3 of Part 4 of the Guardianship and Administration Act 1995.

5. The guardian and the administrator report to the Board within 3 months with particular reference to the represented person's claim under the *Testator Family Maintenance Act 1912*.
6. The order remains in effect to 22 March 2010

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Marguerite Lester  
**CHAIRMAN**