

GUARDIANSHIP AND ADMINISTRATION BOARD
54 Victoria Street, Hobart

W T, application for an Emergency Order

GAB No. 2062 of 2004

REASONS FOR DECISION

Anita Smith (President)
21 December 2004

Guardianship – elderly person with bi polar affective disorder suffered intercerebral haemorrhage – wanting to leave 24 hour care and return home – imminent risk of returning home to inappropriate care arrangements – adult offspring in serious conflict – urgency
Guardianship and Administration Act 1995 (Tas), s 65

1. This is an application for an emergency order under section 65(2) of the *Guardianship and Administration Act 1995* ('the Act') for the appointment of the Public Guardian as the guardian for Mrs W T. Mrs T is an 80 year old woman who has two adult children, Mrs K G and Dr L T. She also has a son-in-law, Mr S G who together with E D, had been appointed as attorney under her enduring power of attorney.
2. Section 65(2) of the Act states:
 - “(2) Where the Board considers it proper to do so, by reason of urgency, the Board may, in respect of a person who is not a represented person but in respect of whom the Board considers that there may be grounds for making a guardianship order or an administration order make an order appointing –
 - (a) the Public Guardian as his or her guardian; or
 - (b) The Public Trustee as administrator of his or her estate –and in either case the Board may make any order or give any direction considered appropriate in the circumstances.”

Thus the Board need only consider that there *may be* grounds for making a guardianship order, such grounds would generally include a finding that the person to whom the application relates has a disability that renders them incapable of making reasonable judgments about his or her person or circumstances and is in need of a guardian.

3. On 27 June 2004 Mrs T experienced an intercerebral haemorrhage and was admitted to the Royal Hobart Hospital. Before 27 June 2004, she lived independently in Hobart. Upon leaving the hospital, she was admitted to Dwyer Ward for rehabilitation and then discharged to X Apartments, an aged care facility, on 7 September 2004.
4. At the time of receiving this application, dated 14 December 2004, the Board was already in possession of an application in relation to an enduring power of attorney executed by the proposed represented person on 22 June 2004 and registered on 28 June 2004. That application was dated 6 December 2004 and was made by one of two attorneys appointed under the enduring power of attorney. In the interests of making as informed decision as possible, information from the earlier application was available to the Board for the purposes of the emergency application.
5. At the time of assessing the application for an emergency guardianship order and as a result of both applications, the Board had before it the following documents:
 - Application in Relation to an Enduring Power of Attorney dated 6 December 2004 which annexed: a statement by the applicant, a copy of the Enduring Power of Attorney, X Apartments Resident Care Plan, a copy of a purported revocation of Power of Attorney registered 30 November 2004, letter dated 26 November 2004 from Dr Dunbabin to Dr M Mee, letter from S G to W T dated

6 December 2004, Occupational Therapy Assessment by Amanda Smith dated November 2004

- Letter dated 1 December 2004 from Dr E Dunbabin to Dr M Mee regarding Mrs T
- Letter dated 8 December 2004 from S G to the Board
- Copy of an Interim Restraint Order dated 9 December 2004 restraining L T in regard to his behaviour towards 4 members of the G family (not including Mrs T)
- Letter dated 13 December 2004 from S G to the Board
- Request for an emergency order dated 14 December 2004

The Board is also in possession of a sealed copy of the proposed represented person's will, which has remains sealed to date and was therefore not considered in the emergency application.

1. The Board considered the above documents pursuant to section 65(4)(b) of the Act. In the exercise of its powers under section 65, the Board is not required to give notice or to conduct a hearing. The Registrar reported various conversations between staff members of the Board and relatives of Mrs T. Accordingly, the application was considered on the basis of the documents and the Registrar's verbal report.
2. ***Disability and Incapacity:*** Two documents supplied to the Board provide prima facie evidence that the proposed represented person has bi-polar affective disorder and some cognitive difficulties associated with the intercerebral haemorrhage. Dr Dunbabin, a consultant physician and specialist in the health of the elderly, notes in his correspondence dated 26 November 2004:

“With regard to the assessment of capacity to make a decision on returning home, it is clear that Mrs T has a number of cognitive

deficits which would make living completely independently impossible. She has persisting dysphasia with difficulties expressing her desires and communicating appropriately. She has evidence of a degree of lack of insight into her capacity to safely perform domestic activities which may involve an element of risk such as showering, working with some electrical appliances, etc. Her ability to problem solve, especially in an emergency situation, would be markedly impaired. Undoubtedly the stress of performing such assessments and the anxiety engendered may impair her performance, but this might also arise in a domestic situation when she was at home alone. It is clear from the detailed OT assessment that she would require twenty-four hour a day supervision at home until one could safely ascertain that this might need to be reduced.”

3. Dr Dunbabin also concluded that Mrs T has testamentary capacity, but concludes that her family members will need to make a decision regarding whether she receives twenty four hour a day care at home or at X Apartments and suggested a family meeting.
4. Amanda Smith, Occupational Therapist, reported that she conducted a Mini Mental Assessment with Mrs T in which she scored 17 out of 30 displaying deficits in short-term recall, attention and language. This significantly low score suggested to Ms Smith an underlying loss of cognitive functioning.
5. The Board concluded that there was sufficient prima facie evidence to establish that Mrs T experiences cognitive disabilities and may lack the capacity to make reasonable judgments about her circumstances, particularly regarding her need for twenty four hour a day care.
6. ***Reasons for the application:*** The application was made on the basis that Mrs T had decided to return to her home in Hobart and there was an imminent risk that Dr L T would assist Mrs T to return to her home prior to satisfactory care arrangements being put in place. It alleged that one of the consequences of Mrs T returning to her home in Hobart would be that her place at X Apartments would be

relinquished. There also appears to be a concern that Dr L T planned for unnamed tenants to occupy a downstairs area of Mrs T's home and take part in Mrs T's care.

7. The Registrar reported that the family had been unable to agree regarding Mrs T's future accommodation. He stated that Mr G, a solicitor, had asserted that the enduring power of attorney gave him authority to make binding decisions about accommodation, an assertion that the Registrar rejected. He also reported that there was strong opposition from other members of Mrs T's family regarding Dr T's plans to return Mrs T to her home in Hobart. He reported that Dr T is a non-practising psychiatrist.
8. **Reasons for urgency:** The application states that the date for removal of Mrs T from X Apartments to her home in Hobart is planned for either the 20 or 21 December 2004. The Registrar reported that as Mrs T indeed wishes to leave X Apartments and return to her home, staff members at X Apartments have no authority to prevent her doing so in the absence of a guardianship order. Returning to her home with inadequate care arrangements in place will, according to the applicant, Ms Smith and Dr Dunbabin, place Mrs T at risk of harm and not be in her best interests. It may also limit her ability to return to X Apartments, if her place there is relinquished. The proposed timing of the move means that there is insufficient time to conduct an investigation and hearing under Part 10 of the Act upon any potential application for guardianship.
9. **Need for a guardian:** Dr Dunbabin's letter of 26 November 2004 sensibly suggests that the family members meet to discuss Mrs T's future care arrangements. Had the family members been able to reach an agreement, there would be no prima facie need for the appointment of a guardian. To the extent that there is an Interim Restraint Order currently restricting Dr T's contact with members of the G family, there is at least prima facie evidence that Mrs T's two

closest relatives are engaged in a serious dispute and it is reasonable to assume that their communication is limited by the terms of that order, if not by the dispute itself.

10. Further, the earlier application regarding the enduring power of attorney discloses a level of dispute in itself, in that the purported revocation on the power of attorney is witnessed by Dr T and a supporting statement suggests that Mrs T has attempted to install Dr T to assist her in financial matters instead of the attorneys. These contests regarding Mrs T's financial affairs and accommodation, together with the interim restraint order are indicative of a family disagreement that is not in the best interests of Mrs T. It is common for the Board to make a guardianship order in circumstances where family disputes undermine the best interests of the proposed represented person.
11. In these circumstances, the Board considers it prudent that Mrs T's place at X Apartments should not be relinquished until such time as it has been established upon cogent evidence either (i) that she has capacity to make her own decision to return home with or without care arrangements, or (ii) that appropriate care arrangements have been implemented and are available at the Hobart premises. It is appropriate that the Public Guardian be appointed as an independent arbiter to determine these questions in the short term and to keep open the option for Mrs T to remain at X Apartments. Thus appointment of the Public Guardian is, for these purposes, the least restrictive alternative.
12. **Conclusion:** Given the prima facie evidence (i) that Mrs T has lost capacity to make reasonable judgments about her circumstances, and (ii) that her closest relatives are unable to communicate to the extent of agreeing upon her housing and care regime, there may be a necessity to appoint a person with authority to

determine whether Mrs T should stay at X Apartments or whether she can return home and, if so, under what circumstances.

13. Therefore, I consider that there may be grounds for making a guardianship order, there exist reasons of urgency and it is appropriate that the Public Guardian be appointed for a period of 28 days.

THE BOARD ORDERS

1. That the Public Guardian be appointed guardian of the represented person.
2. That this guardianship order remains in effect for 28 days from this date.

Anita Smith
PRESIDENT