

Guardianship and Administration Board
Hobart

X T T on the application of N T

GAB No 2350 of 2006

REASONS FOR DECISION

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

Date of Hearing 20 January 2006

Administration – alcohol dependence not a disability – lack of evidence of disability and incapacity when person is sober

Guardianship and Administration Act 1995 (Tas), s 3, 50 and 51

1. This is an application under section 50 of the *Guardianship and Administration Act 1995* for the appointment of an administrator for X T T (hereafter “X”).
2. X is a 64-year-old former retail salesman. He is a widower and father of 3 adult children. His wife, K, died five years ago. Since the sale of the family home, he now lives alone in a unit in Hobart.

Process of Application

3. The Board received an application on 20 December 2005 for the appointment of an administrator for X from his son, N. N’s application detailed his father’s difficulties in budgeting and paying debts because of X’s addictions, drinking and gambling. The family home had been sold for \$280,000.00 to pay off some significant debts that X had. A balance of \$40,000.00 remains after X paid the debts, bought and relocated to a new unit and made some monetary gifts to family members. At the time of the application, X was in the Detoxification Unit subject to a 14-day order under the *Alcohol and Drug Dependency Act*.

4. Notice of the hearing was sent to the proposed represented person, his children and a former neighbour, J N (RN), on 3 January 2006 and to the two trustee organisations on 16 January 2006. The hearing was convened on 20 January 2006.
5. N T and S T attended the hearing, as did two representatives from Tasmanian Perpetual Trustees, and the Investigation and Liaison staff of the Board. X did not attend.
6. At the hearing, in addition to the application, the Board had the following documents before it:
 - Dr Luz Montes - Health Care Professional Report, 21 Dec 2005
 - Dr Cindy Clayton - Centrelink Medical Certificate, 6 Dec 2005
 - Commonwealth Bank statement for X T, 6 Jan 2006
 - D T, letter in support of appointment, 9 Jan 2006
 - Senior Investigation and Liaison Officer (“SILO”) report 12 Jan 2006
 - J N, statement in support of appointment, 18 Jan 2006
 - Dr Cindy Clayton, Medical Opinion 20 Jan 2006
 - Will of X T T

Relevant legislation:

7. Section 50 of the *Guardianship and Administration Act 1995* states:

50. (1) A person may apply to the Board for an administration order in favour of himself, herself or any other person in respect of the estate of a person with a disability (emphasis added).

8. Section 51 of the Act states:

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 (emphasis added).

9. Clearly, the Board must be satisfied that a proposed represented person has a disability before an appointment can be made. 'Disability' is defined in the Act:

"disability" means any restriction or lack (resulting from any absence, loss or abnormality of mental, psychological, physiological or anatomical structure or function) of ability to perform an activity in a normal manner.

10. To proceed with the appointment of an administrator, the Board would have to be satisfied that X's restriction or lack of ability results from an absence, loss or abnormality of mental, psychological, physiological or anatomical structure or function.

The medical evidence:

11. Dr Luz Montes' report dated 21 December 2005 indicated that it is possible that X may have a psychiatric disability, but that this is 'difficult to assess at present'. Dr Montes also indicated that X has alcohol dependence. The report reveals that X's receptive and expressive communication skills are appropriate, but that his memory and learning, planning and reasoning skills are impaired by alcohol and gambling. For all particular financial skills (such as operating a bank account, budgeting, paying bills), Dr Montes answers that it 'depends on intoxication'. Hence Dr Montes' report is inconclusive regarding whether X has a disability.

12. Dr Clayton is a medical practitioner at the Alcohol and Drug Service. The Centrelink Medical Certificate signed by Dr Clayton asks the question:

Diagnosis: Please list all medical conditions (illness, injury and disability) which impact on your patient's capacity for work or study.

To this Dr Clayton responds:

1. substance dependence, 2. depression, abnormal grief reaction, 3. cognitive impairment

13. Because of the discrepancy between the two doctor's reports, the SILO asked Dr Clayton for further information, which arrived at the Board on 20 January 2006. In relation to the Centrelink certificate Dr Clayton stated that the certificate did not iterate an ongoing physical state, that it was intended for a different purpose and that it had an end date of the 6th March 2006. She stated:

Any incapacity is likely to be occurring due to alcohol use at this stage, rather than being due to dementia or brain injury.

If X T were to stop drinking altogether, there would likely be very little incapacity remaining and I am certain he would be able to attend to all normal functions at all times.

14. J N is a qualified and highly experienced nurse, with a specialist registration in mental health nursing. However, her letter to the Board was sent in her capacity as a concerned ex-neighbour and long time family friend providing history and background detail. At the conclusion of her letter, she stated:

From my professional point of view I have concerns that X has become increasingly depressed since the death of his wife in 2000. It is apparent that the increased depression has led to increased use of alcohol. I would suggest that an Administration Order is pivotal in assisting X to combat his depression and subsequent drinking problem. ... My assessment has been that in the last twelve months Mr T's capacity to make decisions in his best interest has become increasingly impaired. I am concerned that if left to his own devices his quality of life will continue to deteriorate both mentally and physically leading to premature death.

15. Although J N's professional opinion is undoubtedly based upon close and consistent observation, it goes against the weight of the evidence from two medical practitioners. The Board accepts the evidence of Doctors Montes and Clayton.

16. The Board was not satisfied that when X is sober, he is a person with a disability; that is the Board did not receive any conclusive evidence that X has experienced any absence, loss or abnormality of mental, psychological, physiological or anatomical structure or function. Even if we were satisfied that there may be an underlying depression or early stage brain damage, we

could not be satisfied that by reason of that disability he is incapable of making reasonable financial judgments.

17. It is clear that by reason of, and at the time of, frequent intoxication X is incapable of making reasonable financial judgments, but that is not the test that the Parliament has set for the Board. The medical practitioners whose opinions the Board had access to agreed that, if sober, X retains the capacity to make reasonable judgments.

Need for an administrator:

18. The Board has not ignored the statements made by X's family at the hearing which echoed the written statement above from J N about the potentially life-saving benefits that the appointment of an administrator could have. It is absolutely tragic that there is no facility under Tasmanian law whereby a person who is firmly in the grip of alcohol and gambling addictions can access the provisions of Part 7 of the *Guardianship and Administration Act 1995* without having a diagnosed disability and resultant incapacity.
19. Had it been satisfied on the questions of disability and incapacity, the Board would quite likely have made the appointment of an administrator to control, in his best interests, X's spending on his addictions. It is important to note that that would be contrary to X wishes.

Other options:

20. The Board believes that two options are open to the applicant and his siblings. On the evidence of his children and the medical practitioner's reports, X evades medical assessment wherever possible. Therefore, no advanced testing or diagnosis has been possible. The first option is to seek an alternative medical opinion and re-apply for the appointment of an administrator. There was some discussion at the hearing that a Dr Singhart has previously had contact with X and may have an alternative opinion. The second option is to attempt while X is sober to have him execute an Enduring Power of Attorney appointing Tasmanian Perpetual Trustees as attorneys.

CONCLUSION:

After hearing an application by N T in respect of X T T the Board was not satisfied that X T T was a person with a disability.

THE BOARD ORDERS that the application is dismissed.

6 March 2006

.....
Anita Smith
CHAIRMAN

.....
Kim Barker
MEMBER

.....
Wendy Beveridge
MEMBER