

Guardianship and Administration Board
Hobart

Mrs M.K.C. , on the application of Mr B.O.C., her son

GAB No. XXXX of 2006

REASONS FOR DECISION

Anita Smith (President)
Malcolm Schyvens (Member)
Kim Barker (Member)

Hearing: 17 August 2006

Guardianship – application by son and former enduring guardian to be appointed as guardian – history of neglect demonstrated that applicant not capable of making substitute decisions – safety and comfort of represented person

Guardianship and Administration Act 1995 (Tas), s 20

1. This is an application for guardianship for Mrs C. who was at the time of the application resident at Aged Care Facility. The application was made by her son, Mr.C. In an instrument dated 19 October 2004, Mrs C had appointed the applicant and his brother as enduring guardians. In a hearing on 14 July 2006, the Guardianship and Administration Board ('the Board') revoked that instrument. Mr C is now seeking reappointment as a guardian for Mrs C.
2. The Board had the following documents available for the hearing:
 - Application for Guardianship dated 14 July 2006
 - Health Care Professional Report by Dr Sue Fricker dated 27.6.06
 - Reports by Anne Perks, Senior Investigation and Liaison Officer dated 14 July 2006 and 15 August 2006
 - Reports by the Office of the Public Guardian dated 4.7.06 and 10 July 2006
 - Aged Care Assessment Team Report dated 11 July 2006
3. The hearing on 17 August 2006 was attended by Mr C, Ms F.C. from Aged Care Facility, Lisa Warner the Public Guardian, Ms N.O., Advocate for Mrs C, and Anne Perks Senior Investigation and Liaison Officer with the Board.

Section 20(1)(a) - Is Mrs C a person with a disability?

4. Dr Fricker's report dated 27 June 2006 confirms that Mrs C has a disability, which Dr Fricker describes as 'depression, anxiety, panic attacks, a certain degree of subtle dementia and severe pulmonary fibrosis.' The Board is satisfied that she is a person with a disability.

Section 20(1)(b) – Is Mrs C unable by reason of that disability of making reasonable judgments about her person and circumstances?

5. Dr Fricker also confirmed that Mrs C cannot reliably make reasonable plans and follow them through. Ms N.O indicated that she was aware of a significant decline in Mrs C's health and mental state in recent months. She is, according to Ms N.O, more confused now. The major judgment required at present is a judgment about her accommodation. It was clear that Mrs C is not aware that she requires full time residential care, and although reportedly happy at Aged Care Facility still expresses a desire to Mr C to return home to their home. Reports by the Office of the Public Guardian indicated Mrs C was 'rambling and confused.'
6. The Board is satisfied that Mrs C is unable by reason of her disability to make reasonable judgments about her person and circumstances.

Section 20(1)(c) - Is Mrs C in need of a guardian?

7. Whereas at the time of the Board making previous orders, Mr C denied that Mrs C required nursing home care, at the hearing on 17 August 2006, he appeared to concede that his mother required care, the only difficulty being the present placement and distance from his home. Ms N.O agreed to assist with filling in application forms for transfers from the Aged Care Facility to homes closer to their home to facilitate Mr C's visits. Ms F.C. agreed to make telephone calls to relevant homes to facilitate the acceptance of those applications.
8. While Mrs C has a number of serious health complaints, her views about resisting treatment with antibiotics have been respected by the nursing home to date. No change to her present treatment regime is currently contemplated, other than maintaining her health and wellbeing as far as possible without aggressive treatments.

9. At an early point in the hearing, there appeared to be little need for a guardian as all parties were in support of moving Mrs C to a nursing home closer to home and with some prompting Mr C could achieve that. However, Ms F.C. then gave the following information to the Board which left it with grave concerns about the capacity of Mr C to follow through on simple matters that were in his mother's best interests:
- (a) Mrs C had been without her false teeth for an extended period of time and as a result was receiving little nutrition. Despite repeated requests and agreements to supply over the period of residence at Aged Care Facility, Mr C had consistently failed to provide the teeth and this had contributed to her emaciated condition.
 - (b) The Residency Agreement had remained unsigned for the entirety of Mrs C's period of residence.
 - (c) Mrs C's room is sterile and impersonal. Again, despite requests to Mr C and agreements to supply personal items over the period of residence at Aged Care Facility, Mr C had consistently failed to provide such items of personal significance or comfort.
10. When the Board asked Mr C to respond to each of these concerns, he appeared not to consider them particularly serious, or responded apathetically. When it was put to him that his mother was possibly starving without the false teeth, he indicated that he thought he might know where the teeth were and would bring them in. Mrs C's advocate stated that Mrs C could eat, but that she required assistance to do so. She agreed, however, that whereabouts of the teeth were an important issue that needed to be resolved.
11. It became very clear to the Board that Mr C is overwhelmed by the responsibility of caring for his mother. Simple requests made of him, which if satisfied would have major benefits for Mrs C, could not be satisfied by him. Therefore the Board doubted whether Mrs C's transfer might ever be effected or whether simple issues such as access to some personal belongings and her false teeth might be resolved. The Board has no doubt that Mr C cares deeply for his mother. However, he displayed a level of confusion that demonstrated to the Board that he is not capable of making substitute decisions for Mrs C either in an informal manner or formally under an appointment as a guardian.

Finding:

12. The Board was satisfied that Mrs C is a person who by reason of a disability is incapable of making reasonable decisions about her person and circumstances. She is in need of a guardian to make such decisions as are required to see her accommodated safely and comfortably and treated in accordance with her wishes. The Board considered the appointment of the Public Guardian as a plenary guardian as appropriate in all the circumstances.

Conclusion:

AFTER hearing an application by Mr B.O.C. of residence in Tasmania for a guardianship order in respect of M.K.C. of Aged Care Facility (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 judgments in respect of her person and circumstances; and
- is in need of a guardian;

THE BOARD ORDERS

1. That Public Guardian be appointed as the represented person's guardian.
2. That the powers and duties of the guardian be those conferred by Division 3 of Part 4 of the *Guardianship and Administration Act 1995*.
3. That this order remains in effect until the 16th August 2009.

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Anita Smith
CHAIRMAN

For an on behalf of the division.

6 September 2006