

GUARDIANSHIP AND ADMINISTRATION BOARD
HOBART

B O on application by a Service Coordinator Disability Services for guardianship and administration

GAB No. 1681

REASONS FOR DECISION

Anita Smith (President)
Ann Tullgren (Board Member)
Kereth West (Board Member)

Date of Hearing: 7.8.03

Guardianship and administration – need for a guardian and administrator for person with intellectual disability - complex and unpredictable home life and care arrangements – represented person wanting to return home to unsatisfactory environment – accessibility of Public Guardian - appointment of Public Guardian as plenary guardian - lack of delineation between represented person’s funds and her mother’s – incompatibility between guardian and arrangements for financial management – appointment of Public Trustee as administrator

Guardianship and Administration Act 1995 (Tas), ss 19, 20, 21, 27, 50

1. Pursuant to section 19(1) and 50(1) of the *Guardianship and Administration Act* 1995 (“the Act”) the applicant has applied to the Guardianship and Administration Board (“the Board”) for the appointment of a guardian and administrator for Ms O. Ms O is a 23-year-old woman who has an intellectual disability resulting from Downs Syndrome.
2. On 1 July 2003 the Board made an emergency guardianship order, limited to decisions relating to accommodation, pursuant to Part 8 of the Act. That order was renewed for a further 28 days on 24 July 2003. In accordance with the authority vested in the Public Guardian under the emergency order, the Deputy Public Guardian had directed that Ms O reside at premises in X Service during the currency of the emergency order which included the hearing date.
3. The application was lodged with the Board on 14 July 2003. The application was heard on 7 August 2003. Notice of the hearing was served on all interested parties on 17 July 2003. The Board had notice that Ms O’s mother, Mrs O opposed the

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application for the appointment of the Public Guardian and the application for the appointment of the Public Trustee as administrator.

4. In support of the application, the Board received:
 - a completed standard application form,
 - a cognitive assessment by clinical psychologist, Ms P
 - a weekly calendar of activities for Ms O and a list of “health issues” prepared by X Housing Services,
 - a Health Care Professional Report from Dr B,
 - a report by consultant psychiatrist, Dr W,
 - a report from the Senior Investigation and Liaison Officer for the Guardianship and Administration Board,
 - a report by Deputy Public Guardian,
 - a letter dated 28 July 2003 from the applicant enclosing documents from the Disability Services file, (a briefing note to the Minister, letter from Mrs O, letter from Independent Health Care Service, a note from O, file note for 17 July 2003, behaviour analysis form, file note from staff member dated 29 May 2003)
 - a letter from X Service dated 25 July 2003

5. The Solicitor for Mrs O supplied the following documents for the Board:
 - a letter from the Y Welfare Centre dated 24 July 2003
 - a letter from M O (brother) dated 31 July 2003
 - a letter from Dr GB dated 4 August 2003
 - Health Care Professional Report from Dr GB

6. The Board was satisfied on the basis of the reports from Ms P, Dr B, Dr W and Dr GB that Ms O’s intellectual disability is such that she is unable to make reasonable judgments about her life circumstances or her financial estate. These matters were not contested. The contested issues were whether there was a need for appointment of an administrator and a guardian and, if there was such a need, who should be appointed.

7. Prior to the hearing the Chair and the Deputy Public Guardian attended Ms O at the premises of Cosmos to provide an opportunity for Ms O to express her wishes

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in accordance with section 22(2)(a) of the Act. Ms O communicated a strong affection for her sister, S. She said she loved and missed her mother but that her mother does not love her. She showed a high degree of frustration at not being able to return to her home with her mother and did not acknowledge that she had many trips to respite. She did not want to make any choices herself and repeated that her mother and brother, M, make decisions for her.

8. Ms O decided to attend the hearing. During the hearing Ms O sat very close to her mother and spoke frequently during the hearing to tell her mother she loved her or to exchange kisses. It is clear that in the absence of any orders, Ms O sees her home as being with her mother and her brother, M. The applicants and other parties did not dispute these wishes. Discussion at the hearing centred upon the other principles in section 6(a) and (b); whether an order for administration or guardianship would be the least restrictive of Ms O's freedom of decision and action, and whether an order would be in her best interests.

The Application for Guardianship

9. The applicant reported that an application had been made to resolve a situation that had developed over the past 6 to 9 months for Ms O. During that period, the respite services of Disability Services had been contacted frequently for emergency assistance because Mrs O had stated she could not cope. When Ms O was removed from the home at Mrs O's request respite staff found her to be consistently distressed, crying, screaming and it was reported that she had not been sleeping or eating.
10. Staff at the respite service reported that they had known Ms O for over a year, but when she presented recently her appearance caused them great concern. One person described her as 'catatonic' and very difficult to motivate, needing physical prompting to eat, screaming through the night and suffering nightmares. The applicants were very concerned that Ms O had been allowed to continue in a depressed and sleepless state for a period of some months without appropriate medical attention. The psychologist submitted that some of the incapacity Ms O presented with may not be due to a deficit in cognitive ability, but related to

- depression. X Service arranged medical attention and treatment, which brought about positive changes.
11. The written application disclosed that alternatives to guardianship, such as intensive day support and in-home weekend respite, had been attempted and not been successful, failing within a week of instigation.
 12. Ms O's 20-year-old sister, S, reported that she had Ms O to visit approximately 7 weeks prior to the hearing. She was distressed by Ms O's appearance and behaviour. Ms O was distressed and wanted her mother but S was unable to contact her mother. Due to a strained relationship between S and her mother, contact between S and Ms O had been limited in recent years to periods when Ms O was in respite and then "usually when something bad had happened, like Ms O was stressed out or she was in respite and wanted some care because she didn't know where Mum was." S reported that in the past six months Ms O had been moved from respite centre to respite centre and that this was damaging because "she doesn't know if its going to be for a two week period or forever, so that stresses Ms O too."
 13. In 5 - 6 weeks since Ms O had been in full time care staff at X Service reported that she had improved sufficiently to be able to sit down to a meal, sleep through the night, involve herself in activities, dances and household activities such as cooking and washing. S also reported "I feel that Ms O's more secure within herself. She's not stressed out. She's not wondering 'where am I going?' she knows that's her place." S credited the recent changes to a range of personal development activities provided by her day care organisation. S impressed the Board as earnestly having Ms O's best interests at heart.
 14. The Deputy Public Guardian gave evidence that she had known Ms O, through different organisations, since she was a baby. She reported that Mrs O had experienced difficulties due to her husband's ill health and her inability to drive. She also reported that "given that all the children were only fairly young, M and to a later extent S, had quite a deal of responsibility in the care of Ms O at that point in time ... there was a lot of pressure put on the other children to be the primary carers [of Ms O] almost."

15. The Deputy Public Guardian reported that comparing Ms O this year to when she was in a school setting highlighted a loss of skills, such as a lack of awareness of where she was, and a poor memory of recent events.
16. All of the witnesses supporting the application spoke of the need for consistency in accommodation for Ms O. Staff at the respite Centre contended that some of the improvement for Ms O was related to a change in medication and the use of anti-depressants. Her sister, S, however related it entirely to having a stable home at X Service and opportunities for meaningful and pleasurable activities.
17. It was alleged that at times Mrs O was unable to be found when decisions were required or that she provided inconsistent decision-making on behalf of Ms O. Such inconsistency was reflected in a pattern of frequently using emergency respite and failing to collect Ms O from respite when expected. Evidence was given that Mrs O unexpectedly extended respite by days without contacting respite staff or Ms O to explain. These allegations were not denied but were explained as a consequence of Mrs O's illness.
18. Two letters from Mrs O to carers were submitted to the Board. The first, undated, disclosed that both Mrs O and MO were in poor health. It simply tells staff "I'm not in Hobart, I had to go away." The letter is a request to keep Ms O in respite until the following Monday and some instructions to provide some in-home support for Ms O when M was at work.
19. The second letter, dated 9 April 2003, has dietary instructions and an instruction that "Before Ms O goes to Melbourne if Ms O is playing up ring Dr GB and he may tell you to give her a Valium." The same note instructs staff to give Ms O her medication covertly, saying she "is not to be told anything about tablets".
20. Mrs O, through her solicitor, agreed with the need for a stable environment for Ms O, and submitted that such an environment had existed for Ms O until quite recently. He submitted that a brief period of instability has arisen, at first due to an illness that Mrs O suffered requiring periods of hospitalisation, and secondly due to the more active role of the various agencies since the first emergency order.

- The Board was told that Mrs O's illness had now been resolved and if Ms O returned home to live with her mother this would maximise stability and therefore be in Ms O's best interests. He also attributed some of the difficulties to a breakdown in communication between the parties who cared for Ms O.
21. Mrs O gave evidence that when Ms O lives at home she participates in the domestic duties of the household and she attends the Casino at least twice a week. She also attends the Y Welfare Centre twice a week. Mrs O stated that Ms O could continue a day care program at Cosmos but placed greater importance upon attendance at the Y Welfare Centre. Mrs O's evidence concentrated upon the importance of family and culture to Ms O and maintaining an established domestic routine for Ms O. Her evidence did not show a desire for Ms O to develop new skills or to increase her level of independence.
 22. MO, Ms O's brother who assists in her care, could not attend the hearing but provided a letter stating his preference that Ms O return home and defending his mother against any allegations of neglect. Mrs O's fiancé, Mr G also attended the hearing and stated that he had been in a relationship with Mrs O for 8 – 9 months and his opinion was that Ms O was well cared for. Mr G presented in a disorganised and defensive fashion.
 23. Two representatives of the Y Welfare Centre attended and also provided a letter to the Board. One described a range of programs that Y Welfare Centre provides for its community including Ms O. She said that Ms O was included in the family atmosphere of the Centre and had contact with people her own age. She also described a distressing incident that Ms O suffered because of a lack of communication between the family and the respite services. The Board was impressed with the concern that the Y Welfare Centre showed for Ms O and their desire for continuing relationships with her.
 24. The application in relation to guardianship commenced as an application limited to accommodation. During the course of the hearing it became clear that there were disputes between Ms O's family and the support services about other aspects of Ms O's life, such as access to appropriate day support services, selection of

- medical practitioners, diagnosis and treatment by medical practitioners and contact with her sister, S.
25. It was clear that some parties misunderstood the proceedings and saw a need to defend Mrs O against allegations of abuse or neglect. Several witnesses provided evidence of a strong and loving family environment. While some of the papers revealed allegations of abuse (as hearsay evidence), none of those allegations were made directly at the hearing and accordingly were not able to be considered by the Board. Allegations of neglect which the Board considered were limited to an allegation that she had been unable to be contacted on some occasions when Ms O was distressed, that the respite arrangements had been haphazard and inconsistent and that Ms O's depression had remained untreated for so long.
26. The applicants satisfied the Board that a need existed for appointment of a guardian (i) to develop Ms O's skills in making her own decisions, (ii) to establish a stable pattern of accommodation and respite, (iii) to ensure consistent and appropriate contact between Ms O and her mother, brother M and sister S, (iv) to promote appropriate day care activities that continue to develop Ms O's life skills and (v) to select appropriate medical practitioners and ensure competent treatment. The Board considered that this range of issues is best covered by a plenary guardianship order.
27. In opposing the guardianship application, Mrs O and her solicitor were unable to convince the Board that a careful regime of decision-making currently exists for Ms O in her present circumstances such as would qualify Mrs O to be appointed as guardian. Past decisions by Mrs O to place Ms O into respite appeared to occur without planning and in response to frequent emergencies. Times for collection from respite had been delayed without notice to services or to Ms O. None of the discussions between Mrs O and the respite services or Disability Services has resulted a stable outcome for Ms O.
28. The Board was therefore required to consider the requirements of section 21(2) of the Act. Ms O's wishes, for the purposes of section 21(2)(a), were that her mother and brother, M, remain as decision makers, but also a desire to remain in close contact with S.

29. The appointment of a guardian does not assume a loss of regular contact between Ms O and her mother and brother. Furthermore, so far as section 21(2)(b) is concerned; the Board considered that the desirability of preserving family relationships included Ms O's relationship with S. Given the level of hostility displayed in the hearing between Mrs O, her fiancé and S, the relationship between Ms O and S would be best preserved if the Public Guardian was appointed but not if Mrs O was appointed guardian. Section 21(2)(c) is addressed below in consideration of the administration issue.
30. Section 21(2)(d) requires that a guardian should be accessible and available to the proposed represented person to fulfil the requirements of a guardian. Mrs O did not dispute that she had been unavailable at times and had unexpectedly left Ms O in respite for extended periods without contact. Given a history of some months of poor communication between Disability Services, Ms O's paid carers and Mrs O, the Board could not be confident that Mrs O would be available to make decisions when required. Even if Mrs O's lack of availability arose from her illness which appears to be resolved, she displayed little understanding of the means to assist Ms O to develop life skills or the support as expected of a guardian under section 27(2).
31. The Board considered the issue of making an order against Ms O's expressed wishes very carefully. However, given the evidence of a very marked decline in emotional and psychological health that Ms O has experienced over 12 months, and the recent improvements during the period of stable accommodation at X Service, it considered that it would be in Ms O's best interests for an independent guardian to be appointed. The improvement of Ms O's mental and physical health and the capacity for a less restricted life with an independent guardian outweighed her stated wishes on this occasion.
32. No other person was proposed as a guardian for Ms O. Accordingly, the Board decided to appoint the Public Guardian as Ms O's plenary guardian for a period of three years.

The Application for Administration

33. The written application disclosed that Ms O does not have a designated bank account or separate assets. The Senior Investigation and Liaison Officer's (SILO) report confirmed that the usual pension Ms O would receive would be \$427 per fortnight. This pension was paid directly to Mrs O's account. Presently, X the housing service, forward an account to Disability Services for \$304 per fortnight for accommodation and a further \$150 per fortnight reimbursement for spending money that they provide for Ms O.
34. These expenses and transport costs had been paid in the short term by Disability Services to ensure stability for Ms O. However Disability Services could not continue to fund those services long term. Expenses incurred by X Service to date totaled \$3390.65. Such expenses included linen and clothing. No attempt had been made to recover those costs from Mrs O. The implication by the applicants was that, in the absence of payment, Ms O may face eviction from X Service and present arrangements would cease.
35. The SILO reported allegations that Mrs O had misused Ms O's money for gambling and interstate holidays. Mrs O had refused to sign Medicare forms for reimbursement after medical appointments prompting staff to apply for an individual Medicare card for Ms O. Neither allegation was addressed at the hearing.
36. Mrs O stated that money was not an issue for Ms O and that she would fund any need that Ms O had. She made reference to carrying several thousand dollars in cash to the hearing. She also made reference to investments and accounts, though it appeared uncertain whether there was any delineation at all between Ms O's funds and her mother's funds.
37. Discussion was had at the hearing regarding whether Mrs O could continue to control Ms O's money if a guardian was appointed. There is opportunity for inconsistency if an independent guardian makes decisions that have financial implications with which her mother does not agree. Mrs O's solicitor agreed that such a situation could be unworkable or extremely difficult.

38. Given the Board's decision to appoint an independent guardian, its responsibilities under section 21(2)(c) and the need for financial flexibility and responsibility for Ms O's estate, the Board decided to appoint the Public Trustee as administrator for a period of three years.

DATED this day of September 2003

Anita Smith
President