

Dementia patient, 95, wins unlawful detention legal battle against Public Advocate, his wife and the Civil and Administrative Tribunal

AN elderly dementia patient will be released from a nursing home after the Supreme Court ruled that he had been unlawfully detained.

The court granted the man a writ of habeas corpus, a legal recourse with origins in the 1600s which safeguards the right of any person against unlawful detention or imprisonment.

The 95-year-old man, who suffers from moderate dementia, was placed under the limited guardianship of the Public Advocate during a hearing in the South Australian Civil and Administrative Tribunal in September.

The Public Advocate's control is limited to making decisions about the patient's accommodation and lifestyle.

Under the orders of the State Government body, the man was placed in a Nuriootpa-based aged-care facility which restricted his freedom. The court heard that the facility placed "restrictions on his freedom of movement" by confining him to a ward behind a locked door which could only be opened with a key code or an electronic pass.

The man took the Public Advocate, his wife, who was granted guardianship control of his healthcare, and the tribunal to court.

He was supported by his son in the proceedings and asked the court for release into his care.

Justice Tim Stanley said the case centred around the construction of the legislation which placed the man in the care of the Public Advocate.

He found that the man was mentally incapacitated but that the tribunal had used guardianship legislation which did not allow the Public Advocate to detain those in their care.

"Fundamental assumptions deeply embedded in the foundational structure and rules of the common law recognise that certain rights and freedoms are not to be infringed except by clear lawful authority," Justice Stanley, pictured, said.

"Some of the most important fundamental rights are the rights to enjoy personal liberty, freedom of movement and privacy. I find that the plaintiff has been detained by reasons of the acts of the Public Advocate and the staff of the facility.

“For these reasons, I find that the plaintiff has been unlawfully detained.”The man will be released from the nursing home while a further legal review goes through the tribunal.