



Elderly amputee wins court battle after being prevented from living on yacht

Man known as J was held in hospital under guardianship order for eight months

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An elderly amputee has been given the all clear to return to live on his yacht after being held in hospital under a guardianship order for eight months.

The case is likely to pique the interests of the aged care royal commission and the upcoming national inquiry into the disability sector.

The man, who is known as J in the supreme court judgment, won an appeal against Tasmania's guardian and administration board last week.

Justice Helen Wood ruled the board had made a legal error in granting powers to the public guardian to stop him from returning to his boat. The board had wrongly found that he had a disability and was unable to make reasonable judgments about his personal circumstances, the judgment said.

"It is worth bearing in mind that a person's fixed and resolute determination to live in their home does not necessarily suggest rigid and fixated thinking generally and an inability to make reasonable judgments," Wood said in the judgment.

“A person’s attachment to their home is understandable and does not necessarily reveal cognitive difficulties. In [J’s] case, his yacht is not just a place to stay, it is his home, his chosen lifestyle.”

The man had lived alone on a yacht until 11 May 2018 when it ran aground in a storm.

The court was told he visited a pharmacy and sought advice about his foot, which was causing him discomfort.

The pharmacist told him to go to the Royal Hobart hospital and he was admitted with a gangrenous foot. He underwent four operations and on 4 July his right leg was amputated above the knee.

When he was close to being discharged, after undergoing rehabilitation, the man told hospital staff that he intended to return home to his yacht, which he planned to berth at a marina.

An occupational therapist and physiotherapist visited the yacht in mid-August and decided it couldn’t be modified to accommodate his physical requirements and satisfy safety considerations.

“An assessment was made that [J] was ‘lacking the capacity to decide about his accommodation’,” the judgment said.

J refused to consider living elsewhere, so a hospital social worker filed an application to the guardian and administration board. The board concluded that J lacked capacity to make reasonable decisions about his accommodation.

The court considered a report by doctor Madeline Black that characterised J as having a disability - “cognitive impairments presumed secondary to cerebral small vessel ischaemia in the setting of poorly controlled type 2 diabetes”.

“[J’s] poor insight, reasoning, judgment and decision making skills put him at high risk in the community,” Black wrote. “He does not appreciate the many safety concerns associated with living onboard a boat.”

J had refused to participate in any formal objective cognitive assessment.

Hospital psychologist John Murphy noted J’s speech was often rambling and during assessment was dismissive of any functional impairment from the amputation.

“He was unable to identify any potential difficulties in returning to live on the boat, stating he could bring his wheelchair on board and sit on a seat and ‘watch any bad weather’,” Murphy wrote.

J’s legal team relied on evidence from geriatrician Dr Jane Tolman, who found he scored well on all cognition tests and saw no evidence of “cognitive impairments” or “poor safety awareness”.

“He demonstrated insight into the difficulties of his amputation, the nature of his stump wound, and his plans for the future, including a prosthesis, modifications to his yacht, the need for a personal alarm and how to obtain one,” she said.

Tolman found him to have above average problem-solving skills and to be very focused about how to achieve his goals. She said he had not led a “conventional life”.

Wood said there was a need for caution about a “boot straps” approach to guardianship orders in the case of a person declining to accept medical advice that is in their interests.

“There was an error of law vitiating the decision of the board,” Wood said.

J’s lawyer, Christian Street, told Guardian Australia that J he was a private man and did not wish to comment on the case.

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