

AUSTRALIA / JUDGMENT

YKD v YKE [2025] NSWCATAP 4

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Civil and Administrative Tribunal

New South Wales

Medium Neutral Citation: YKD v YKE [2025] NSWCATAP 4

Hearing dates: 21 November 2024

Date of orders: 06 January 2025

Decision date: 06 January 2025

Jurisdiction: Appeal Panel

Before: Coleman SC ADCJ, Principal Member

C Mulvey, Senior Member

M Bolt, General Member

Decision: (1) The appeal is dismissed.

- (2) If the First Respondent seeks any order for costs of the appeal, he is to file and serve written submissions not exceeding 5 pages in length in support of such application and the quantum of any costs sought within one month of the date of the Appeal Panel's order.
- (3) In the event that the First Respondent seeks an order for costs of the appeal, the Appellant file and serve any written submissions not exceeding 5 pages in length in opposition to such order or the quantum of such order within sixty days of the date of the Appeal Panel's decision

Catchwords: APPEAL – No error of law – no new evidence – re-agitation of the same issues

GUARDIANSHIP – whether application misconceived – summary dismissal at interlocutory hearing – s 55(1)(b) of the Civil and Administrative Tribunal Act (NSW) 2013

Legislation Cited: Civil and Administrative Tribunal Act 2013 (NSW)

Guardianship Act 1987 (NSW)

Cases Cited: Dranichnikov v Minister for Immigration and Multicultural Affairs [2003] HCA 26

Ebner v Official Trustee in Bankruptcy (2000) 205 CLR 337; [2000] HCA 63

Edwards v Noble (1971) 125 CLR 296; [1971] HCA 54

Ferella v Chief Commissioner of State Revenue [2014] NSWCA 378

Fox v Percy (2003) 214 CLR 118; [2003] HCA 22

House v The King (1936) 55 CLR 499; [1936] HCA 40

Kudrynski v Orange City Council [2024] NSWCA 33

Micallef v ICI Australia Operations Pty Ltd [2001] NSWCA 274

Resource Pacific Pty Ltd v Wilkinson [2013] NSWCA 33

Schwartz Family Co Pty Limited v Capitol Carpets Pty Limited [2017] NSWCA 223

Stead v State Government Insurance Commission (1986) 161 CLR 141

YBC v YJC [2024] NSWCATAP 221

Category: Principal judgment

Parties: YKD (Appellant)

YKE (First Respondent)

NSW Trustee and Guardian (Third Respondent)

Public Guardian (Fourth Respondent)

YKG (Fifth Respondent)

YKH (Sixth Respondent)

Representation: Appellant (self-represented)

First respondent (self-represented)

File Number(s): 2024/00261494

Publication restriction: Pursuant to s 65 of the Civil and Administrative Tribunal Act 2013 (NSW), the publication of the name of any of the parties or other people referred to in this decision including the publication of any information, picture or other material that identifies them, or is likely to lead to their identification, is prohibited.

Decision under appeal Court or tribunal: NCAT

Jurisdiction: Guardianship Division

Date of Decision: 09 May 2024

Before: R H Booby, Principal Member

File Number(s): 2017/00240685

REASONS FOR DECISION

1. By Notice of Appeal filed on the 11th of July 2024 YKD appealed against orders made by the Guardianship Division of the Tribunal on 9 May 2024, the reasons for which decision were published on 14 June 2024. The proceedings related to YKG, a 77 year old woman who resides in the aged care facility in which she has lived since 2018. The Appellant is the former de facto partner of YKG. YKE and YKH are adult children of YKG.
2. YKE and YKH opposed the appeal. The NSW Trustee and Guardian and the Public Guardian opposed the appeal, but did not file submissions or participate in the hearing.
3. On 9 May 2024 the Tribunal dismissed the Appellant's application filed on 9 November 2023 seeking orders for guardianship of YKG in his favour pursuant to s 55(1)(b) of the Civil and Administrative Tribunal Act 2013 (NSW) (CAT Act) as lacking in substance or otherwise misconceived.
4. Although the Appellant indicated in his Notice of Appeal (paragraph 6.A) that he was seeking leave to appeal, at paragraph 6.B, the Appellant made clear that he did not seek leave to appeal. Attached to his Notice of Appeal and headed "Submission for review" the Appellant recorded 10 pages of submissions in support of "a review" of the Tribunal's decision. None of those paragraphs asserted error on a question of law. To the extent that the Appellant complained that the Tribunal's decision was "against the weight of evidence" or "weight against Applicant" and "weight against children", the Appellant did not seek leave to appeal on that, or any other basis.

The reasons for the decision of the Tribunal at first instance

1. For reasons which will become apparent, it is appropriate to refer in detail to the reasons for the decision of the Tribunal of 9 May 2024. Those reasons were published on 24 June 2024.
2. The Tribunal recorded [1] the background to the proceedings to which we have referred above. The Tribunal then recorded a series of background facts, none of which is capable of being controversial. Those facts recorded:
 1. on 5 July 2004 YKG signed an Enduring Guardianship (EG) document and an Enduring Power of Attorney (EPOA) appointing her children YKE and YKH jointly in those roles. Those appointments were made prior to YKG commencing her de facto relationship with the Appellant;
 2. on 18 July 2017 YKG signed revocation documents with respect to the 2004 EG and EPOA;
 3. on the same date YKG signed an EG and an EPOA appointing her brother and YKD in both roles;

4. on 10 January 2018 the Tribunal revoked the EG made on 18 July 2017 and made a guardianship order for YKG, appointing the Public Guardian for twelve months to make decisions for her about her access to others, accommodation, health care, medical and dental consents and services;
5. on 22 February 2018 the Tribunal found that YKG lacked the capacity to revoke the 2004 EPOA and found that it remained valid as a whole. The Tribunal found that YKG lacked the capacity to make the 2017 EPOA appointment and revoked it. The Tribunal made a financial management order appointing the NSW Trustee and Guardian (NSWTAG) as YKG's financial manager, such order to be reviewed within twelve months. YKD appealed against the orders of the Tribunal of January and February 2018. On 29 October 2018 the Appeal Panel refused to grant leave to appeal and dismissed YKD's appeal;
6. on 21 February 2019 the Tribunal heard the statutory review of YKG's guardianship order. A further guardianship order was made appointing the Public Guardian for two years with access, health care and medical and dental consent functions. The review of the reviewable financial management order and a requested review of the financial management order lodged by YKD were adjourned;
7. on 15 May 2019 the Tribunal reviewed the existing financial management order and also conducted a review of that order in response to an application by YKD. The Tribunal renewed the order, and appointed NSWTAG as YKG's financial manager;
8. on 15 June 2020 the Federal Circuit Court found that the de facto relationship between YKG and YKD had broken down by no later than 25 May 2018. YKD appealed that decision and on 11 December 2020 the Full Court of the Family Court allowed the appeal, finding that the de facto relationship had not broken down;
9. on 16 February 2021 the Tribunal conducted the statutory review of the guardianship order made on 21 February 2019 and made a guardianship order appointing the Public Guardian as YKG's guardian for a further two years to make decisions about her access to others, health care, and medical and dental consent;
10. the NSWTAG appealed the decision of the Full Court of the Family Court to the High Court of Australia which, on 11 May 2022, allowed the appeal, finding that the de facto relationship between YKG and YKD had broken down no later than 25 May 2018 (*Fairburn v Radecki* [2022] HCA 18);
11. on 1 November 2022 Consent Orders were made in the Federal Circuit and Family Court, as it was then by then known, with respect to a Family Law property settlement between YKG and YKD. The Consent Orders included a declaration that YKG had sole right, title and interest in her real property. YKD was granted sole occupation of the property for seven months, subject to his paying \$1,000 each fortnight by way of contribution to YKG's daily accommodation payment for residing at the care facility in which she was living;

12. on 12 July 2022 YKG's son, YKE, lodged an application to review the guardianship order made on 16 February 2021. On 22 July 2022 JKD lodged an application to review the guardianship order. On 9 February 2023 the Tribunal determined that YKD was not YKG's spouse, but that YKD had a genuine concern for YKG's welfare, and therefore had standing to bring the application requesting a review of the guardianship order. The Tribunal also found that YKE had standing to bring his application. YKG's daughter, YKH, was joined as a party to both applications;
13. on 8 March 2023 the Tribunal made a guardianship order for two years appointing the Public Guardian and YKG's son, YKE, as her guardians and YKH, YKG's daughter, as alternative guardian. YKE was appointed to make decisions for YKG about her health care and medical/dental treatment and the Public Guardian was appointed to make decisions about her access to others;
14. on 15 March 2023 and 21 April 2023 the Tribunal considered an application by YKE for review of the financial management order made on 15 May 2019. On 27 March 2023 the Tribunal dismissed YKD's application to be joined as a party to the proceedings. On 27 April 2023 the Tribunal revoked the appointment of NSWTAG as the financial manager and appointed YKG's son and daughter jointly and severally as her financial managers;
15. on 21 March 2023 YKD applied for a review of the financial management order. That application was dismissed on 6 July 2023 on the ground that YKD lacked standing to bring the application;
16. on 9 November 2023 YKD made an application for a review of the guardianship order made for YKG on 8 March 2023;
17. on 18 December 2023 YKD applied for a review of the financial management order for YKG made on 27 April 2023;
18. on 27 February 2024 the Tribunal made directions with respect to YKD's applications, inter alia, requiring him by 26 March 2024 to provide submissions with respect to:
 1. his standing to make the applications (s 25B and s 25R Guardianship Act 1987);
 2. why the Tribunal should not refuse the requested reviews on the basis that they did not disclose grounds warranting a review (s 25A and s 250 Guardianship Act 1987);
 3. why the Tribunal should not dismiss the applications under s 55(1)(b) of the CAT Act as being frivolous or vexatious or otherwise misconceived or lacking in substance.
1. YKD provided written submissions with supporting evidence by way of attachments and oral commentary at the hearing before the Tribunal on 9 May 2024. After which the Tribunal dismissed YKD's applications pursuant to s 55(1)(b) of the CAT Act.

1. Under the heading "Misconceived or lacking in substance" [22]-[25], the Tribunal referred to the principles governing the application of s 55(1)(b) of the CAT Act. Nothing raised by the Appellant suggested that the Tribunal misstated those principles. We do not discern that the Tribunal misstated any principle with respect to the operation of s 55(1)(b) of the CAT Act.
2. The Tribunal then referred [26] to submissions made by YKG's son YKE, and the matters of record to which he referred. The Tribunal referred [26(ii)] to the orders of the Family Court that the Appellant vacate YKG's property no later than 1 June 2023 or 14 days after a failure to pay the \$1,000 fortnightly occupation fee ordered by the Court. The Tribunal also referred [26(iii)] to the Appellant being removed from YKG's property on 3 June 2023 after police attended the property and advised the Appellant that he had no legal right to be in occupation of the premises. YKE was recorded [26(iv)], accurately, as submitting that there has been no substantive change in circumstances since the Appellant's previous application for review of the financial management order was dismissed. YKE also relied on the Appellant's continued assertion that, contrary to the decision of the High Court, he was YKG's spouse. YKE was recorded as having submitted [26(viii)] that he and his sister had implemented the financial plan as approved by the NSWTAG, and that their mother's financial affairs were in order, YKG being debt free and having a steady income which exceeded her expenses.
3. The Tribunal referred to the report of NSWTAG of 20 February 2024 [27]-[29]. There is no suggestion that anything there recorded by the Tribunal was inaccurate.
4. The Tribunal then referred in detail [29]-[42] to the Appellant's written and oral submissions. Significantly for present purposes the Tribunal recorded the contentions of the Appellant to include [31] that YKG's views have not been taken into account, and particularly his submission that YKG wished that her children take no part in her affairs or welfare. The Tribunal referred in the latter regard to YKG's expression of wishes in proceedings before the Tribunal in 2023.
5. For the reasons which were set out in detail, including the Appellant's unsuccessful challenges to the January and February 2018 decisions of the Tribunal, the Tribunal recorded [31(4)] that the Appellant's claims that the Tribunal failed to have regard to YKG's views about who she wanted to be her decision makers was unfounded. The Tribunal referred [32] to the Appellant's assertion that he was the only person with a "long term and continuing relationship" with YKG, despite the decision of the High Court that the relationship had broken down by 25 May 2018. The Tribunal recited [33] the findings of the High Court. The Tribunal referred [34] to the reasons of the Tribunal of 8 March 2023 in which the Appellant continued to assert that he and YKG "have a continuing physical relationship".

6. After reviewing those findings, the Tribunal found [35] that the Appellant's submission that he remains the spouse of YKG was "without foundation and is untenable having regard to the decision of the High Court and the lack of evidence of resumption of the relationship". The Tribunal observed [35] that this was "also a matter that has previously been considered by the Tribunal and is not open to being re-adjudicated in the absence of new evidence to the contrary".
7. The Tribunal recorded [36] YKD's submissions about the motivation and conduct of YKG's children and his assertion that they have "abused (YKG) in terms of her welfare and finances". The Tribunal further recorded [37] that the substance of YKD's allegations with respect to YKG's children, as they were then made, had been considered by the Tribunal on 10 January 2018. The Tribunal recorded [37] that in his current applications YKD provided "no evidence that would indicate that this matter should be reconsidered". The Tribunal referred [38] to submissions which had previously and unsuccessfully been made by the Appellant, finding that "resubmission of that same material in the absence of new supporting evidence is not relevant to a review of a subsequent decision".
8. The Tribunal recorded [39]-[40] further allegations which the Appellant had previously made and continued to make. The Tribunal recorded that the Appellant's allegations had previously been made in Tribunal proceedings, and had been rejected. The Tribunal noted, accurately, that guardianship decisions with respect to YKG were made by the Public Guardian and were "not referable to (YKH's) opinion of YKD".
9. The Tribunal referred [41]-[42] to the Appellant's allegations of abuse of YKG's personal or financial affairs by her children, all of which were "general in nature" and did not reference the specific matters which had been taken into account by the Tribunal in its decisions on 8 March 2023 or 27 April 2024. The Tribunal concluded that the Appellant's "general assertions are amorphous and nebulous in character and do not provide an arguable basis for a review of the orders made by the Tribunal".
10. The Tribunal considered the Appellant's requested review of YKG's guardianship order [43]-[53]. The Tribunal identified [45] the essential basis of the Appellant's application as being that the Tribunal's decision of 8 March 2023 was based on "false information and other allegations from the children". The Tribunal found in that regard that the claim was "of a general nature" and was "amorphous and nebulous and is not arguable as grounds for a review of the decision". The Tribunal referred to further grounds advanced by the Appellant [46] which included alleged financial abuse of YKG and acting to her detriment for the benefit of YKE and YKH. The Tribunal recorded [47], accurately, that the Appellant did not assert that YKG was not a person in need of a guardian, and did not raise issues regarding any guardianship decisions made about YKG's health care or medical/dental treatment. The Tribunal recorded, accurately, that the Appellant did not seek a review of the need for a guardian for YKG or the decisions made about her health care and medical treatment.

11. The Tribunal found [48] that although many of the Appellant's claims were "general in nature", or "relate to the management of her financial affairs" he asserted that YKH had prevailed upon the Public Guardian to make access orders. The Tribunal referred to the orders made on 8 March 2023 with respect to access. The Tribunal recorded [49], again accurately, that the Appellant had provided no evidence in support of his claim that YKH inappropriately prevailed upon the Public Guardian to make access decisions.
12. The Tribunal referred [50] to the Appellant's application to be appointed as YKG's guardian, and referred to findings made by the Tribunal in its decision of 8 March 2023. The Tribunal found [51] that in his current application the Appellant had provided no further relevant evidence as to his suitability for appointment, that the Appellant was a party to the hearing on 8 March 2023, but had not appealed that decision as was open to him if he was of the view that the Tribunal erred. The Tribunal recorded that, in the absence of new evidence going to the suitability of the Appellant for appointment as YKG's guardian it was not arguable that the matter should be reconsidered and that review of the order for the purposes of appointing the Appellant as YKG's guardian was not reasonably arguable on the facts available.
13. The Tribunal reiterated [52] that the Appellant had not appealed the current order but "now seeks a review of that decision in the absence of relevant new evidence, including a lack of material indicating that the guardians have not acted in the best interests of (YKG)". The Tribunal thus found [53] that the Appellant's application to review the decision made on 8 March 2023 was without foundation as it sought a review "on the basis of matters already adjudicated, alleges matters that are not supported by relevant and tangible evidence or those that are amorphous or nebulous. The application does not provide an arguable basis for the review of the guardianship order and is therefore without substance. To the extent that the application alleges errors of law in the Tribunal's decision the application is misconceived in that it seeks to overturn a previous decision of the Tribunal in place of an appeal of the decision and in the absence of new evidence or finding that the Tribunal is in error."
14. The Tribunal considered the Appellant's application for review of the financial management orders for YKG [54]-[77]. The Tribunal reiterated [57] that the Appellant did not submit that YKG was now able to manage her affairs. The Tribunal recorded [58] that, other than his general assertion that he could "look after" YKG's financial affairs, the Appellant had not provided any detail of how he would do so. The Tribunal recorded, accurately, that the essential inquiry [60] was whether the appointment of the current financial managers should be revoked and, if so, whether, as the Appellant sought, he should be appointed as YKG's financial manager.
15. The Tribunal referred [62] to the Appellant's allegations of "false and deceptive conduct" by YKG's children. The Tribunal recorded [63] that the Tribunal had previously considered, in its decision of 22 February 2018, the matters which the Appellant raised in the review application before it. The Tribunal recorded [64] that the Appellant provided no evidence in

support of his allegation of "false and deceptive" conduct regarding the activation of YKG's former EPOA but that, in any event, the Tribunal had previously considered that matter and made no findings adverse to the Attorneys.

16. The Tribunal referred [65] to the Appellant's "historical and unsupported" claims with respect to alleged removal of personal property of YKG from her home by her son YKE in April 2018, finding that those allegations did not provide an arguable basis for review of the 2023 appointment.
17. The Tribunal referred [66] to the Appellant's unsubstantiated allegations that YKG's financial managers had acted without authority from NSWTAG. For the reasons which the Tribunal recorded in relation to that issue and the Appellant's "untenable" claims, the Tribunal found that a review of the financial management order on that basis was not justified. The Tribunal referred to allegations of financial abuse and misconduct of YKG and her property [67] in June 2023. The Tribunal referred to the Consent Orders of the Family Court of 1 November 2022 and to the decision of the Tribunal of 27 April 2023. The Tribunal was satisfied that YKG's children were "very familiar with the assets, income and expenses" of their mother and "could deal with the real estate and other financial matters without incurring additional fees and expenses" for YKG.
18. For the foregoing reasons the Tribunal found [68] that it had been anticipated, accurately, that there could be "some difficulties in obtaining vacant possession of (YKG's) real estate and anticipating that the financial managers would seek to enforce the consent agreement. That they did so is not a reason to seek a review of their appointment" particularly having regard to the Consent Orders made by the Family Court. The Tribunal rejected [69], correctly, the Appellant's claims that YKG's financial managers were acting "contrary to his best interests". Clearly, those claims could not have advanced the Appellant's review application. Similar observations apply to the Tribunal's findings [70] with respect to other complaints of financial misconduct made by the Appellant with respect to the financial managers.
19. The Tribunal referred [71] to the Appellant's assertion that, in his capacity as YKG's financial manager, YKE had acted on a "mission" to "have his entitled inheritance in the bank for when his mother passes and has now saved him the trouble of contesting (YKG's) Will". The Tribunal found that there was no objective evidence provided in support of those claims, they being no more than the Appellant's opinion and not providing an arguable basis on which the financial management order should be reviewed. The Tribunal rejected the Appellant's allegations that YKE had a conflict of interest and duty for reasons to which the Tribunal referred.
20. The Tribunal referred to earlier decisions in which the Appellant's similar claims were not made out. The Tribunal made no adverse findings regarding monies advanced to YKE or YKH by YKG. The Tribunal noted [73] that the Appellant advanced no further evidence to support his assertions regarding money purportedly loaned by YKG to YKE, an issue which

the Tribunal had previously determined. The Tribunal found that there was no new evidence with respect to purported historical loans which could provide a tenable basis for review of the financial management order.

21. The Tribunal referred [74]-[76] to allegations made by the Appellant with respect to YKE's financial management and NSWTAG's complicity in the alleged mismanagement of YKG's affairs. The Tribunal found in that regard [76] that acts and decisions of NSWTAG were not matters which went to the review of the appointment of YKG's financial managers and did not provide a basis for review of the order appointing private financial managers. The Tribunal referred [77] to, but rejected, the Appellant's submissions with respect to dismissal of his application pursuant to s 55(1)(b) of the CAT Act.

Principles governing the appeal

1. The principles governing the appeal are not in doubt and require only brief restatement.
2. The Appellant appeals against the decision of the Tribunal of 9 May 2024 as of right on a question of law or, with the leave of the Appeal Panel, on any other ground (CAT Act s 80(2) (b)). As identified earlier, the Appellant has not sought leave to appeal. As will be seen, even if the Appellant had sought leave to appeal, that would not have altered the fate of his appeal.
3. In *Micallef v ICI Australia Operations Pty Ltd* [2001] NSWCA 274, questions of law were identified as including errors of legal principle, decisions based on material errors of fact, decisions made after taking irrelevant matters into account, or failing to take relevant matters into account, and arriving at a result which was so unreasonable or unjust as to suggest that one of the foregoing categories of error had occurred, although the error in question did not explicitly appear on the face of the record. Other questions of law include actual or apprehended bias (*Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337; [2000] HCA 63), failing to adequately expose the process of reasoning which led to the decision and/or constructive failure to exercise jurisdiction (*Resource Pacific Pty Ltd v Wilkinson* [2013] NSWCA 33), failing to respond to a substantial, clearly articulated argument relying on established facts (*Dranichnikov v Minister for Immigration and Multicultural Affairs* [2003] HCA 26) and denying a party procedural fairness or natural justice in circumstances where the same result would not be inevitable if the appeal were allowed and a new trial ordered (*Stead v State Government Insurance Commission* (1986) 161 CLR 141; [1986] HCA 54).
4. The Appellant was obliged to identify with precision the question of law said to be raised by the appeal (*Ferella v Chief Commissioner of State Revenue* [2014] NSWCA 378; *Schwartz Family Co Pty Limited v Capitol Carpets Pty Limited* [2017] NSWCA 223). The Appellant has failed to identify questions of law in his grounds or submissions in support of them. Nevertheless, adopting the "more generous or benevolent approach" endorsed by the Court of Appeal in *Kudrynski v Orange City Council* [2024] NSWCA 33, the Appeal Panel has considered, whether on the material filed by the Appellant, as a matter of substance, the

Appellant had raised a question of law to be considered, YBC v YJC [2024] NSWCATAP 221.

5. An appeal is not a "second go" or, more accurately in the context of this appeal, a second or subsequent "go". As will be seen, all the Appellant has done under the guise of an appeal has been to reiterate claims he unsuccessfully made before the Tribunal on 9 May 2024, and, as the Tribunal identified, he had unsuccessfully made in earlier proceedings.

The appellant's grounds of appeal and submissions

1. The Appellant's "Submissions for a review" under the heading "Client in need of support – (YKG)" made a series of submissions which, if supported by evidence, may have required consideration by the Tribunal at first instance. The Appellant has not identified such evidence. Nothing to which the Appeal Panel has been referred demonstrates, adopting the most generous permissible approach to the Appellant's submissions, a question of law, much less error on a question of law. Under the heading "Review on the papers", the Appellant made a series of submissions. The terms of those submissions make clear that, assuming they were supported by evidence, which they have not been, in the circumstances outlined in detail by the Tribunal at first instance, those submissions could not enliven appellate intervention.
2. Under the heading "Cause for review – the findings of the Tribunal" the Appellant made a series of submissions critical of the Tribunal's conduct of the hearing at first instance. To the extent that the Appellant criticised the Tribunal's determination on the merits, by adopting a "very narrow focus" in examining the evidence, declining to look at or disturb any issue that had previously arisen and been determined, or, at least inferentially, failing to bring an impartial mind to the determination of the proceedings, nothing to which the Appellant has referred the Tribunal advances those complaints. Significantly, and contrary to the directions of the Tribunal of 14 August 2024, the Appellant has not produced a transcript of the hearing of the proceedings. Nothing raised by the Appellant in the eight paragraphs in support of this complaint could enliven appellate intervention. Other than because the Tribunal disagreed with his claims, the Appellant has not identified any basis on which any of these complaints could be upheld.
3. Under the heading "Summary dismissal of (YKG's) wishes and directions" the Appellant again did no more than make unsubstantiated assertions, or criticise decisions made by the Tribunal in earlier proceedings. In its reasons, the Tribunal meticulously referred to each and every prior determination made by it with respect to guardianship of YKG, or management of her financial affairs. The Appellant's submission that "the collective wishes and documents of (YKG) has never been the subject of a hearing review and therefore (the Tribunal) did not recognise the key issues as being new evidence" conveniently ignores the findings of the Tribunal but, more importantly, as was the case at first instance, does not identify any new or other evidence which supported so finding, or finding error by the Tribunal at first instance. Although the Appellant may not appreciate it, reiterating allegations does not constitute "new" evidence, and even if it did, would be no more than

allegations which could not advance his claim unless they were supported by evidence, which they were not.

4. Under the heading "The concerns, directions and wishes of (YKG)" the Appellant referred to alleged statements of wishes by YKG in 2004 and 2017. It is self-evidently apparent that all of those matters were considered, some more than once, by the Tribunal in proceedings which were heard and determined years before the review application with which the Tribunal was concerned in 2024. They cannot advance the present appeal.
5. Under the heading "Move to dismissal", the Appellant, again without reference to any evidence before the Tribunal, or to the transcript of the hearing before the Tribunal made a series of unsubstantiated complaints. Those complaints cannot advance the present appeal.
6. Under the heading "Tribunal – weight towards children", notwithstanding that the Appellant did not seek to challenge the decision of the Tribunal at first instance on that basis, a number of criticisms were made of the Tribunal's acceptance of the evidence of YKE and YKH, and rejection of the Appellant's claims. To the extent that the Tribunal's findings with respect to the evidence of YKE or YKH was dependent upon credit, nothing to which the Appeal Panel has been referred establishes that the Tribunal at first instance was in error (*Fox v Percy* (2003) 214 CLR 118; [2003] HCA 22). To the extent that the findings were not reliant upon credit, but submitted to be plainly wrong (*Edwards v Noble* (1971) 125 CLR 296; [1971] HCA 54), nothing to which the Tribunal has been referred supports such a finding. The weight liable to be given to evidence was a matter for the Tribunal at first instance (*House v The King* (1936) 55 CLR 499; [1936] HCA 40). Nothing to which the Appeal Panel has been referred establishes error on the part of the Tribunal at first instance with respect to the weight given to evidence before it. Similar observations apply to the Appellant's submissions under the heading "Tribunal – weight against applicant".
7. Under the heading "(YKG's) wishes for spouse" the Appellant reiterated a series of contentions which he had previously made, all of which had been rejected by courts or the Tribunal, including by the High Court of Australia. Nothing to which the Appeal Panel has been referred provides any rational basis for concluding that any findings made by the Tribunal with respect to the matters to which the Appellant refers was not open to it. On the contrary, to have made findings of the kind asserted by the Appellant would have been contrary to the decision of the High Court and inconsistent with the orders to which the Appellant consented in the Family Court on 1 November 2022.

Conclusion

1. In reality, under the guise of an appeal, the Appellant has simply re-agitated the submissions which he unsuccessfully made before the Tribunal at first instance, many of which, as the Tribunal accurately recorded, were themselves no more than reiterations of submissions previously unsuccessfully made by the Appellant. Just as the proceedings before the Tribunal at first instance were misconceived, so in our view was the Appellant's appeal. The appeal will be dismissed.
2. YKE provided detailed, logical and relevant submissions in opposition to the Appellant's appeal. The fact that we have not referred to, or needed to refer to those submissions does not mean that they were not necessary, relevant or appropriate. YKE's submissions were all of those things. YKE was the only contradictor to the Appellant's appeal. The Appeal Panel is unaware of whether, in preparing his submissions, YKE had had the benefit of legal advice. If YKE did incur expense in obtaining legal advice with respect to the appeal or preparation of his submissions, and seeks an order for the costs of such advice or assistance, he should have the opportunity to do so. As a matter of procedural fairness, we will afford the Appellant the opportunity to make submissions in opposition to any order for costs which YKE might seek.

Order

1. The appeal is dismissed.
2. If the First Respondent seeks any order for costs of the appeal, he is to file and serve written submissions not exceeding 5 pages in length in support of such application and the quantum of any costs sought within one month of the date of the Appeal Panel's order.
3. In the event that the First Respondent seeks an order for costs of the appeal, the Appellant file and serve any written submissions not exceeding 5 pages in length in opposition to such order or the quantum of such order within sixty days of the date of the Appeal Panel's decision.

I hereby certify that this is a true and accurate record of the reasons for decision of the Civil and Administrative Tribunal of New South Wales.

Registrar

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Decision last updated: 06 January 2025

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Prepared on 29 October 2026 · Esheria