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IN THE COURT OF CHANCERY  
OF THE STATE OF DELAWARE

IN RE: J.L.H.

) CM02607-K

MASTER'S REPORT

Date Submitted: December 20, 2007

Draft Report: December 21, 2007

Final Report: January 17, 2008

Diane V., pro se, Petitioner.

Norman H. Brooks, Jr., Esquire, of Marks O'Neill O'Brien & Courtney, P.C.,  
Wilmington, Delaware, Attorney for Dover Behavioral Health System.

Lisa Barchi, Esquire, Department of Justice, Wilmington, Delaware

David T. Pryor, Esquire, of Dover Law, P.A., Dover, Delaware, Attorney-Ad-Litem.

GLASSCOCK, Master

J.L.H. is a twenty-two-year-old man who suffers from Huntington's Disease. As a teenager, he sexually abused his younger half-sister, and is a registered sex-offender as a result. Late last summer, he voluntarily committed himself to the Dover Behavior Health System ("DBHS"), a psychiatric facility, complaining of depression. He was admitted and treated and, according to his treating psychiatrist, Dr. Pitts, his depression resolved within a few weeks. DBHS is an acute (short-stay) treatment center, and personnel at DBHS began to attempt to formulate a discharge plan for Mr. H. Unfortunately, as a result of his Huntington's Disease, Mr. H.'s ability to care for himself is impaired. He is in need of nursing home care or assisted living. However, due to his status as a sex-offender, DBHS was unable to find a placement at an appropriate facility for Mr. H.

Prior to his admission to DBHS, Mr. H. lived in a recreational vehicle parked on his grandfather's farm. For reasons not pertinent here, that living arrangement is no longer available to Mr. H., nor is he able to live at his mother's home, because the half-sister he victimized shares that home. Because she feared Mr. H. would be discharged to a homeless shelter, Mr. H.'s mother, Diane V., sought an interim and permanent guardianship over Mr. H.'s person and property. Mr. H.'s treating physician, Dr. Gazzi-McIlroy, testified via affidavit that Mr. H. required a guardian due to his Huntington's Disease. An attorney-ad-litem was appointed for Mr. H. and supported the petition. Mr. H. himself agreed that he needed assistance and that his mother was the appropriate guardian. Ms. V. was appointed Mr. H.'s guardian on August 17, 2007. Meanwhile, Mr.

H. had been demanding release from DBHS. His psychiatrist took the unusual step of seeking, then testifying in opposition to, an involuntary commitment for Mr. H. In other words, the petitioning doctor testified before the Superior Court Commissioner at a probable-cause hearing that Mr. H. did not have a psychiatric illness that supported commitment. The Commissioner, unsurprisingly, found no probable cause to support an involuntary commitment. Mr. H. is not mentally ill, although he has cognitive as well as physical problems as a result of his Huntington's Disease. He is no longer receiving treatment at DBHS. In effect, he is being warehoused there in default of an appropriate placement.

Realizing that Mr. H.'s discharge was imminent, Ms. V. filed what I deemed to be a petition for instructions. I ordered DBHS not to release Mr. H., pending a hearing. At the hearing, DBHS requested that it be allowed to discharge Mr. H. It pointed out that no psychiatric treatment is indicated or being administered to Mr. H. at DBHS, and that DBHS is not being paid for Mr. H.'s care. Further, Mr. H. himself insists that he wishes to be released. Counsel for DBHS pointed out that a Commissioner has adjudicated that Mr. H. is not subject to an involuntary commitment, and that by statute, a guardian may not waive a ward's right to oppose a commitment. DBHS acknowledges that a release may mean that Mr. H. is discharged to the street, without a place to live.

The facts, as developed in the record, are these. Mr. H. is a disabled person, adjudicated by this Court to be unable to act in his own best interest. Ms. V. is the

guardian of his person, authorized by the Court to make decisions for the ward including what medical care he should receive and where he should reside. Mr. H., however, is not mentally ill and has been adjudicated unamenable to involuntary commitment. Despite his disability, Mr. H. was able to testify clearly at the hearing that he wants to be discharged from DBHS. I also find that, despite a credible effort by the guardian and by DBHS, neither has been able to find an appropriate placement for Mr. H. Mr. H., moreover, is at personal and financial risk if he must live on his own, unsupervised.

At the conclusion of the hearing, I appointed the Public Guardian as co-guardian of the person of Mr. H., for the limited purpose of attempting to find an appropriate placement. Mr. H. has insufficient private income to support a placement in a private nursing home, and in any event, no nursing home in the State would agree to accept Mr. H., according to the testimony at the hearing. The Public Guardian has approached the Delaware Hospital for the Chronically Ill, which had previously rejected Mr. H., to ask that agency to reconsider and admit him.

The remaining issue before me is DBHS's request that I lift my status-quo order of November 30, 2007 prohibiting DBHS from discharging Mr. H. Pursuant to 12 Del.C. § 3922 (b), despite the fact that the guardian appointed over the person is entitled to custody of the ward, and may establish the ward's place of abode, "[t] the guardian may not waive any right of the disabled person respecting involuntary commitment to any facility for the treatment of mental illness ...." This is precisely what the guardian here seeks to do:

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notwithstanding the desire of the ward to be discharged from DBHS, the guardian seeks to consent on the ward's behalf to further commitment to DBHS. There is no question in my mind that the guardian takes this decision out of love for her child and concern for his well-being. By statute, however, the ward, who is not mentally ill, may not be confined at DBHS without his consent, absent an involuntary commitment order.

Therefore, I withdraw my status-quo Order of November 30, 2007. I stand ready to take any further action sought by the co-guardians of the person, as appropriate, to obtain a proper placement for Mr. H.

Finally, in the petition for instructions, the guardian complains that she is not given unlimited access to her son at DBHS. Dr. Pitts testified that Mr. H. grows agitated after visits with his mother, and that a restriction was put in place limiting her visitation and requiring that a social worker be present during the visitation for Mr. H.'s safety and that of other patients, due to the agitation I have mentioned above. That testimony went un rebutted at the hearing. So long as Mr. H. is a patient at DBHS, DBHS must take those actions it feels are required for the proper care of Mr. H. and others resident there. However, I direct DBHS to make every effort to allow Ms. V. access to Mr. H., with appropriate restrictions, to the maximum extent reasonable.

/s/ Sam Glasscock, III  
Master in Chancery

cc: Office of the Pubic Guardian