

In Re Guardianship of Botz, No. 764-12-05 Wncv (Teachout, J., Mar. 15, 2007)

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**STATE OF VERMONT
WASHINGTON COUNTY**

IN RE: Guardianship of)
ARTHUR BOTZ) **Washington Superior Court**
) **Docket No. 764-12-06 Wncv**
)

MOTION TO MODIFY GUARDIANSHIP

Findings of Fact, Conclusions of Law, and Order

This is an appeal by Arthur Botz from a decision of the Washington District Probate Court modifying the terms of his guardianship. On September 23, 2004, the Probate Court found him in need of a guardianship as a mentally disabled adult, and appointed Richard Longhi to be his limited guardian with powers over financial matters. In May of 2005, Mr. Botz sought to remove Mr. Longhi as financial guardian. On June 30, 2005, after hearing, the Probate Court amended the guardianship on a temporary basis to add additional powers “until further order of the court,” and ordered a new evaluation. On September 25, 2006, Mr. Botz filed a motion to modify the temporary order to remove the additional powers and replace Mr. Longhi as guardian. After a hearing on October 26, 2006, the Probate Court issued Findings and an Order denying Mr. Botz’s request and finalizing the temporary order, making Mr. Longhi total guardian. He appeals that Order.

At a pretrial status conference held on January 10, 2007, the court determined that because the modification resulting in expanded powers was initiated by Mr. Botz’s May 2005 request to remove Mr. Longhi, the Order of June 30, 2005 was by its terms a temporary order pending further court order, and Mr. Botz’s motion filed in September 25, 2006 sought the same relief as he had originally requested in May of 2005, the scope of the *de novo* hearing would encompass the action of the Probate Court both in ruling on Mr. Botz’s May 2005 request and in ruling on Mr. Botz’s September 2006 motion. The parties were in agreement that Mr. Botz had the burden to show grounds for a modification from the time of the prior Order of November 16, 2004, under which Mr. Longhi was appointed limited guardian with financial powers.

The hearing was held on February 27, 2007. Arthur Botz was present and represented by

Attorney Adrian Otterman. Guardian Richard Longhi was present and represented by Attorney John Nicholls.

Arthur Botz agrees that he has a continuing need for a guardian with financial powers as established by the Order of November 16, 2004, including powers (2), (3), (4), and (6) of 14 V.S.A. §3069(b). He seeks to replace Richard Longhi with his proposed guardian Ines Wachtel as financial guardian. He opposes the additional powers added under the temporary order of June 30, 2005 and continued under the Order of November 10, 2006: (1) general supervisory power, and (5) medical consent power.

Richard Longhi initially agreed to be replaced as financial guardian, but now seeks to continue as financial guardian. At this point, he is not seeking the expanded powers of general supervision and medical consent that were granted to him under the temporary and final orders referenced above.

At the pretrial conference held on January 24, 2007, both parties stipulated to the admission of the Guardianship Evaluation conducted by Catherine Hinchey, M.A. reflecting an evaluation dated September 9, 2006. She recommended a limited guardianship with powers (3), (4), and (6). She did not recommend the continuation of expanded powers.

Findings of Fact

Based upon a review of the evidence admitted, including observation of the demeanor and physical presentation of all witnesses, the court makes the following findings of fact:

Arthur Botz is 58 years old. He is a person of low average intelligence, but with no mental retardation or mental illness. He “demonstrates significant deficits in visual-spatial processing as well [as] his ability to thoroughly think through solutions to problems, proactively plan how to prevent or avoid problems, and effectively apply the knowledge he does have.” Evaluation, page 12. “It is likely that his anxiety and depression, for which he does not always take medications as prescribed, further contribute to his difficulties with mood stabilization, sound judgment, memory, and ability to independently meet the ordinary demands of life. These deficits have caused regular disruptions in his social and occupational functioning and represent a chronic condition that appears to be worsening.” *Id.* In particular he is vulnerable to people who seek his money. Past evaluations have shown that he tends to rely on others who may not promote his best interest, and who may take advantage of him.

He grew up in Ohio. When he was an adult, he and his mother moved to Arizona while his father stayed in Ohio for work. He and his mother lived for over 20 years in Arizona before his father rejoined his mother there. While he lived with his mother, she assumed a great deal of responsibility for prompting him with meeting the demands of daily life. Once his father arrived in Arizona, the situation changed, as his father was stern. Mr. Botz resented his father's attempts

to influence him. In 2000 his mother died. His father “drove him crazy,” and he sought a way to escape from his father’s influence. He learned how to use the internet, and gave away \$30,000 to strangers he met on the internet whom he hoped would help him to leave Arizona.

He met Gloria Santamore, who was from Barre, Vermont, on the internet in 2001. Shortly thereafter she flew to Arizona on a ticket he bought for her, and they married. Mr. Botz’s purpose was to be able to leave Arizona to escape his father. His father was upset by the marriage, and established a financial guardianship in Arizona to protect Mr. Botz’s assets. Mr. Botz and Gloria Santamore left Arizona and moved to Barre. The Arizona guardian paid rent directly and sent a monthly check for financial support. Mr. Botz gave Ms. Santamore his monthly check, which she deposited in her solely owned bank account. They lived for a short time in her apartment, but then moved to a larger apartment on Summer Street, where Ms. Santamore still lives.

In the fall of 2004, the guardianship was transferred to Vermont. A hearing was held at the Washington Probate Court, and Judge Belcher appointed Richard Longhi as limited guardian with financial powers. He had, and continues to have, considerable experience as a guardian for several people, including serving as guardian for some for extended periods. He has worked for Washington County Mental Health for ten years, and has been a crisis counselor for the past 2 ½ years. Mr. Botz and Mr. Longhi got along well when they first met and for a month or two. The Arizona guardian had paid Mr. Botz’s rent directly and provided him with \$1,100 for living expenses. Mr. Longhi did the same, except the amount was increased to \$1,200 per month. At some later point, Mr. Longhi learned from the Arizona guardian that Mr. Botz and Ms. Santamore had pressured him constantly for more money, starting not long after the establishment of the guardianship in Arizona.

After a few weeks, Mr. Botz started asking Mr. Longhi for more money. When Mr. Longhi refused, he received phone calls from Gloria Santamore, who screamed at him and used foul language. When he continued to refuse, he then received followup telephone calls from Mr. Botz, during which Ms. Santamore was in the background telling Mr. Botz what to say. Mr. Longhi did not agree to provide more than what he thought were reasonable living expenses. The court finds credible Mr. Longhi’s testimony that Gloria Santamore was seeking access to Mr. Botz’s money. Mr. Botz’s funds were being used to pay for telephone and computers for Gloria Santamore and her children.

In May of 2005, Mr. Botz asked the Probate Court to replace Mr. Longhi as financial guardian. Mr. Botz did not believe that Mr. Longhi was treating his requests for more money with respect.

Ray Thomas of Adult Protective Services has been called several times to investigate concerns about abuse of Mr. Botz. In 2005, Mr. Botz had a 3-4 inch bruise on the back of his neck, about which Mr. Botz and Ms. Santamore gave inconsistent explanations. No allegations of abuse have been substantiated.

In June of 2005, after a hearing, Judge Belcher expanded the guardian's power to those of a total guardian. Mr. Longhi then arranged for the annulment of Mr. Botz's marriage to Ms. Santamore on the grounds that it had not been consummated. Mr. Longhi paid Ms. Santamore as a settlement related to the annulment the amount of \$20,000, as well as paying off a food fraud debt. Ms. Santamore spent the settlement funds in a short time.

Mr. Botz then left Vermont and went to North Carolina with an apparent plan that Gloria Santamore would join him there, but that evidently did not happen. Mr. Botz was able to arrange an apartment and job for himself in North Carolina on his own. Mr. Longhi contributed to his support from guardianship assets.

In June of 2006, Mr. Botz returned to Vermont, and purported to remarry Gloria Santamore, in spite of the lack of consent from Mr. Longhi, who was total guardian. Mr. Longhi has since initiated a proceeding to annul the marriage.

In July of 2006, Mr. Longhi obtained a Relief from Abuse Order on behalf of Mr. Botz against Gloria Santamore. As a result, they were not allowed to live together or have contact, although the evidence suggests that there has been contact between them. Gloria Santamore remained in the apartment in Summer Street. Mr. Longhi paid the expenses of Mr. Botz to live first at the Hollow Inn for several months, and then at the Central Hotel in downtown Barre. Mr. Botz contacted the Attorney General and the FBI to complain that Mr. Longhi was stealing his money. Mr. Longhi believes that Ms. Santamore initiated these efforts.

Mr. Botz, on his own, applied for and obtained a job bagging groceries at Shaw's in Berlin. He takes a taxi to and from work. He works 20-30 hours per week and earns \$7.25 hourly, making approximately \$150 per week. As a result, Mr. Longhi changed the support structure. He now makes direct payments for rent, health insurance (\$439 monthly), uninsured medical expenses, and medications. This leaves Mr. Botz responsible for his food from his earned income. He can also ask Mr. Longhi for additional funds for other expenses if necessary. He has not done so in a long time because he resents the fact that Mr. Longhi does not support his relationship with Gloria Santamore. He also says that he does not like being seen with Mr. Longhi because Mr. Longhi is gay. Mr. Longhi reports that they have reasonable conversations when they speak one-on-one.

Mr. Botz, on his own, contacted Attorney Adrian Otterman to represent him in his attempt to have Mr. Longhi replaced as financial guardian and to have the expanded powers removed. With Mr. Otterman's help, a plan was developed for a different guardian, Ines Wachtel, under a guardianship plan written and admitted as Exhibit A. Although Ines Wachtel has not served as a guardian before, she has an extensive background in human services work over 22 years. She works at the Clara Martin Center with people with mental or emotional limitations. She lives in Bradford. Under the plan, she would serve as limited guardian with financial powers. She would employ William Miller of Chelsea to make regular visits to Mr.

Botz's home to check on his welfare in the role of assistant, or case manager. Mr. Miller has worked in human services for 35 years, including 26 years for the State of Vermont in a variety of human service jobs but including investigation of complaints regarding exploitation, abuse and neglect of adults. Mr. Botz and Ms. Santamore have met with Ms. Wachtel and Mr. Miller, together with Attorney Otterman, and agree to this plan. Both Ms. Wachtel and Mr. Miller are extremely qualified for the roles proposed for them.

Mr. Botz has a history of being regular in making and keeping medical appointments. At some time in the past several months, he discovered that he may have prostate cancer. His response was appropriate: he made followup appointments with a specialist for tests, and he will receive results soon. The evidence shows that he was capable of making reasonable and appropriate arrangements and decisions concerning this medical issue. Mr. Longhi cites this recent example as a reason that he does not believe that Mr. Botz needs the guardian to have power to give consent for medical treatment, as Mr. Botz is capable of caring for his medical needs on reasonable terms on his own. Mr. Botz takes medication for anxiety and depression, and takes medicine for osteoporosis. Mr. Longhi believes that he goes through one of his prescriptions quickly, and thinks that Ms. Santamore is acquiring Mr. Botz's pills, but there is no proof of this. There is no evidence that Mr. Botz is not capable of making and keeping medical appointments that are suitable to his condition and obtaining and taking medications that are prescribed.

Mr. Botz wants to be free from the restrictions of having a guardian with general supervisory powers. He would like to have a financial guardian with whom he gets along in a reasonable respectful relationship. He claims that Mr. Longhi does not meet his needs, although he had no concrete examples of reasonable requests that had been made and denied. He wants to have the RFA lifted so that he can resume his relationship with Gloria Santamore, and return to live with her in the apartment on Summer Street. He apparently values her companionship. The relationship is not a sexual one. He would like to have a car, although he does not have a driver's license.

Mr. Botz used to be soft-spoken and polite. Both his brother and Ray Thomas have observed that he has become much more aggressive in speech and manner, and that he is more likely to yell and scream and be demanding.

Gloria Santamore was not called as a witness by any party, and the court has limited information about her. The Evaluation Report suggests that she may have been responsible for physical abuse of Mr. Botz resulting in a serious bruise, but there was no evidence of that at this trial. Even if such evidence existed, it is reasonable that neither party would have introduced it. Mr. Botz wants to resume living with Ms. Santamore without a guardian having any role in the relationship, and Mr. Longhi, although suspicious of Ms. Santamore's motives concerning Mr. Longhi, is not seeking to prove the need for general supervisory powers, nor does he wish to exercise them himself. Mr. Longhi wishes to have the marriage annulled, and believes that in the event that Mr. Botz is free to marry Ms. Santamore and wishes to do so, a prenuptial agreement

should be executed to protect Mr. Botz's assets from Ms. Santamore. His view is that with respect to Gloria Santamore, "it has been about money from the start." The court finds this testimony credible, and finds that Gloria Santamore's interest in Mr. Botz has always been founded on an interest in his money. That does not mean that there are not other aspects of the relationship that are desirable to each.

Mr. Longhi maintains a friendly relationship with Mr. Botz's brother, Jack, who lives in Ohio. Jack is the trustee of family funds, and he periodically transfers trust distribution funds to Mr. Longhi as additions to Mr. Botz's guardianship assets. Mr. Longhi has a copy of the trust instrument which he obtained from Jack. Although Mr. Botz and his attorney have requested to see it, Mr. Longhi has not provided information about its terms. This is understandable and supportable as a measure to conserve those funds for the benefit of Mr. Botz. The evidence shows that if Mr. Botz knew specifics about the trust, Gloria Santamore would seek access to the funds and attempt to prompt Mr. Botz to obtain money from the trust to give her for her use.

Mr. Longhi's annual accounting for 2005 was approved in June of 2006. He is not yet able to prepare the accounting and tax return for 2006 as he is waiting for financial documents. Mr. Botz has approximately \$100,000 in remaining assets, before the payment of attorneys' fees to Mr. Nicholls and Mr. Otterman for the current dispute in both Probate Court and Superior Court. It is not likely to be enough to support Mr. Botz during his remaining life. Mr. Botz believes that the funds should be used for his benefit without the necessity of setting money aside for later life. Mr. Longhi believes that the funds should be used conservatively in order to make them last to support Mr. Botz as long as possible. Specifically, he does not provide full living expenses during periods (such as now) when Mr. Botz is earning income. He believes that Mr. Botz benefits from a job by having a sense of self-worth and self respect by working, in addition to having income from which he can contribute at least partially to his own support.

The change from the Arizona guardian to Mr. Longhi as the guardian appointed by the Washington Probate Court entailed a significant amount of work and related expense that was paid for from guardianship funds. Replacing Mr. Longhi as guardian would also require a significant amount of paperwork, calling for the expenditure of funds from the guardianship estate. These costs would reduce the funds available for use by Mr. Botz.

Conclusions

14 V.S.A. §3077 sets forth grounds for modification of a guardianship. Mr. Botz is proceeding under §3077 (5). Under that section, grounds for modification are "a change in the capacity or suitability of the guardian for carrying out his or her powers and duties." It is the burden of Mr. Botz to prove the grounds.

Mr. Botz argues that there has been a change in the suitability of Mr. Longhi to act as guardian because there has been a breakdown in the relationship. He points out that under 14

V.S.A. §3072 (b), one of the criteria for appointment of a guardian is the preference of the ward, and Mr. Botz no longer wishes to have Mr. Longhi in the role. He also cites as an example of Mr. Longhi's unsuitability the fact that Mr. Longhi is in possession of the trust document under which Mr. Botz's brother is holding family funds in trust for Mr. Botz, but Mr. Longhi refuses to provide requested information about it to Mr. Botz. Finally, Mr. Botz argues that he has assembled a well-qualified team capable of serving as financial guardian and assistant, and he should be able to have a guardian of his own choosing as long as the person is qualified and the plan is a reasonable one.

There is no question that the proposed guardian, Ines Wachtel, is qualified for the role, and that the assistance to be provided by William Miller under the plan is well suited to the circumstances of Mr. Botz. They each have appropriate background, experience, and knowledge of relevant issues and potentially useful social services. If Ms. Wachtel were offered as a candidate for appointment of guardian, with the plan of assistance from Mr. Miller, at the time of an initial appointment or vacancy, she would be highly eligible.

The evidence does not, however, support a finding that Mr. Longhi is no longer suitable for the role. There is no evidence that his decisions have been anything but beneficial to Mr. Botz's financial and personal well-being. He has withstood very strong pressure from Gloria Santamore directly, and indirectly through her influence on Mr. Botz, to distribute to Mr. Botz more of the guardianship funds than Mr. Longhi has deemed prudent, but there is no evidence that he has denied to pay for any specific reasonable expense. This demonstrates his continued suitability, rather than lack of suitability. He has exercised protective responsibility while at the same time respecting Mr. Botz's desire and ability for autonomy in his personal life to the maximum degree that is consistent with safety.

The fact that Mr. Longhi has withheld financial information about the family trust shows reasonable conduct in view of the strong evidence that if that information became available to Mr. Botz, it would become available to Ms. Santamore and stimulate efforts on her part to gain access to those funds. It shows that he has exercised his guardianship powers responsibly.

The court also finds credible the evidence that Mr. Botz had a good relationship with his Arizona guardian at first, until Ms. Santamore began demanding more money, and then had a good relationship with Mr. Longhi, until Ms. Santamore began demanding more money. The evidence shows that even though Mr. Botz is pleased now with Ms. Wachtel and Mr. Miller, it is highly likely that after a short period of time, if Ms. Wachtel were not responding to Ms. Santamore's direct and indirect requests for more money, the relationship between Mr. Botz and Ms. Wachtel would also deteriorate. As long as Mr. Botz remains committed to a relationship with Gloria Santamore, tension between Mr. Botz and his financial guardian, whoever it is, will be an inherent part of the circumstances. There is no reason to change the financial guardian to suit Mr. Botz's current personal preference when Mr. Longhi is still suitable and willing to serve, and when the change would only result in waste of guardianship money with the result that the same dynamic would be repeated.

It is unclear from 14 V.S.A. §3077 (c) and §3068 (f) whether the standard of proof on a motion to modify a guardianship by changing the person appointed as guardian, as opposed to establishing the basis of the guardianship, is clear and convincing evidence, or the lesser standard of a preponderance of the evidence. Even under the lesser standard of a preponderance of the evidence, Mr. Botz has not shown evidence sufficient to support the claim that Mr. Longhi is no longer suitable, and should be replaced.

Under the temporary and final orders, guardianship powers were expanded to include the power of medical consent and general supervision. No party is advocating the continuation of these expanded powers, and the Evaluation Report does not support or recommend them either. It appears that there may have been additional evidence before the Probate Court relevant to these issues that was not presented before this court, or that has been eclipsed by more current evidence.

The evidence at trial shows that Mr. Botz has recently addressed the newly developed prostate medical issue in a reasonable manner, and has a history of making and keeping medical appointments that are suitable to his needs. In view of this recent positive evidence, Mr. Longhi does not see the need for the guardian to exercise medical consent powers. While there is some suggestion that Mr. Botz may allow Ms. Santamore access to some of his medication, that is insufficient proof that he needs a guardian to exercise powers of medical consent.

Mr. Longhi is not willing to exercise general supervisory powers, and at this time he supports returning to a guardianship with the limited powers in effect prior to June of 2005. He is aware that Mr. Botz would then have the authority to seek to terminate the RFA order on his own behalf, or let it lapse at the expiration date, and would be free to decide to marry Ms. Santamore. Nonetheless, the opportunity is available in the future to seek the expanded power if there is evidentiary support for it. In the meantime, Mr. Botz has shown that apart from the need he has for protection of a financial guardian, he has been reasonably able to take care of himself, including getting and maintaining a job, maintaining personal health and hygiene, and seeking appropriate medical care.

Order

For the foregoing reasons,

1. The Motion of Arthur Botz for removal of Mr. Longhi as guardian is *denied*,
2. The Orders of June 30, 2005 and November 10, 2006 are *vacated*, and
3. The Order of November 16, 2004 of the Washington Probate Court is *reinstated and continues in full force and effect*.

Dated at Montpelier, Vermont, this ____ day of March, 2007.

Hon. Mary Miles Teachout
Presiding Judge