

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN THE MATTER OF)
D. R., d.p.) C.M. No. 2599-K

MASTER'S FINAL REPORT

Date Submitted: August 28, 2008
Redacted Final Report: September 5, 2008

H. S., pro se, Petitioner.

J. S., pro se, Respondent.

GLASSCOCK, Master

This matter involves two outstanding motions in the guardianship of D. R.. The first was filed by H. S., the guardian (“H.”).¹ She seeks to expend funds of Ms. R. (the “ward”) to renovate a first floor room in H.’s home to be used as a bedroom by the ward. The second motion was filed by J. S. (“J.”) seeking the discharge of H. as guardian and her own appointment as successor guardian. J. is the ward’s daughter; H. is J.’s daughter and the ward’s granddaughter. H. spent several years of her childhood living with the ward and has a very close relationship with her. The ward currently lives with H.. I will address J.’s motion first.

Up until a few years ago, the ward and her boyfriend, M. C. (“Mr. S.”) lived together in Philadelphia. The ward also allowed several relatives to live with her at her house in Philadelphia. In 2004, Ms. R. decided to sell her home and move in with her daughter J. in Las Vegas, Nevada. J. has a house with a mother-in-law suite. The ward and Mr. S. lived with J. for around a year.

Eventually, Ms. R. decided to return to the east coast and moved in with H. in Delaware. While there was some dispute about whether this was to be a visit or represented a permanent move on the ward’s part, I find, based on the testimony of H. and her uncle, W. P., that the ward intended to make her home with H..

Believing the ward to be incompetent, H. filed a guardianship petition in 2007. That petition was opposed by J. and she filed a counter petition for guardianship. The

¹ Because the cross-petitioners in this matter are both named S., I have referred to them in this report by their first names. No disrespect is intended.

matter was mediated, and J. agreed to H. becoming guardian. Ms. R. was determined to be disabled, and H. was appointed guardian on Dec. 7, 2007.

J. is a registered nurse. She made the decision to drop her opposition to H.'s guardianship petition in part because she was at that time working as a traveling nurse, in locations around the country. J. has since become employed in Las Vegas and is now able to care for her mother there. She has made a number of allegations concerning H.'s unfitness to continue to serve as guardian. I held a hearing on the matter on August 20, 2008. This is my final report on J.'s petition.

At the heart of this matter is an extremely unfortunate antipathy between J. and H.. Much of the time at the hearing was spent exploring the root causes of that antipathy, which I need not recount here. It is sufficient to say that the relationship between mother and daughter is tainted by incidents that have nothing to do with the current situation of D. R..

This Court appointed H. as guardian and has reposed its trust in her to act in D. R.'s best interest. The Court may, of course, remove a guardian for cause shown, whenever it appears that that action is in the best interest of the ward. *E.g.*, In Re Lamanna, Del. Ch., No. C.M. 7783, Jacobs, V.C. (May 11, 1999)(Mem. Op.) at 2, *citing* 12 Del.C. § 3908(a). However, I would not remove a guardian lightly or without a demonstration that the interests of Ms. R. so require. J. has made a number of allegations of actions of H. she believes inimical to Ms. R.'s interests. For instance, she claims that

H. has left Ms. R. without adult supervision, but this claim was not substantiated by the evidence submitted at the hearing. She points out that H. has failed to obtain a local primary-care physician for Ms. R., but H. (who is also a registered nurse) testified, just as persuasively, that her belief is that it is in Ms. R.'s best interest to retain her primary care physician in Philadelphia. The two have disagreements about physical care provided to Ms. R., which I am unable to resolve unfavorably to H.. J. has made allegations about illegal behavior taking place in H.'s home, which once again were not demonstrated at the hearing.

J. makes two other points. One is that teenagers are "in and out" of the home, in a manner that is potentially upsetting to the ward. There are three, soon to be four, teenagers living in H.'s household. In addition, the house is something of a neighborhood gathering spot for their friends. It is obvious that H.'s household is much busier and less peaceful than J.'s large home in Las Vegas, which the ward would share only with J.. However, H. points out, persuasively, that the ward is used to living with members of her extended family and either does not mind or actively enjoys having these people around her. I note in this regard that the Public Guardian, Stefanie Donovan, testified that she has spoken with the ward privately and Ms. R. has indicated that she is happy living with H., although she desires to visit with J. as well. Therefore, I discount the testimony concerning the crowded nature of H.'s household as inimical to the interest of the ward. J. also points to an incident where the ward had been visiting her in Las Vegas and J.

accompanied her on a flight to Philadelphia airport to be returned to H.'s home. Instead of being met by H., Ms. R. was received by two of the teenagers living in H.'s home, aged 13 and 16. J. contends it was entirely improper to allow these boys to drive Ms. R. from the airport back to Delaware, although she ultimately did allow them to take the ward with them. H. explained this incident by stating forthrightly that she had made a mistake as to the day on which the ward would be returning from Las Vegas, and was occupied at work and unable to pick Ms. R. up herself. I do not find this isolated incident to be indicative of a lack of proper care on the part of H..

Finally, J. makes a more troubling allegation. She testified, as did her husband and uncle, that they find it extremely difficult to get in touch with the ward or H. by telephone. They feel that they are being excluded from the ward's company in a way that is harmful to Ms. R.. J. played messages left by H. left on her answering machine that were extremely unpleasant and indicate the extent to which the ward is being used as a pawn in the S. family feuds. H. testified that the messages were left during a time when the ward was visiting her mother in Las Vegas and had fallen and broken her wrist. According to H., she was upset by this and the phone messages do not reflect her normal method of communication with family members. I hope that this is the case. The messages were vile and suggested that H. was attempting to use access to Ms. R. as a method to settle grievances with members of her family. This I will not tolerate.

The truth of this situation is that both J. and H. are fully capable of serving as

guardians. More than capable, in fact: both are registered nurses, both are intelligent individuals who clearly love Ms. R.. Their disagreements, while currently centered around Ms. R., are not directly related to her. Although J.'s home would provide a suitable environment for Ms. R., and although I am convinced that J. could act as guardian, I note the following factors for maintaining the guardianship as is: (1) Ms. R. has indicated that she is satisfied to live with H.; (2) Ms. R. is currently living close to her family, most of whom reside in Philadelphia; and (3) Ms. R. is also able to visit her long-time companion, Mr. S., who is currently in rehabilitative care in this area. I therefore find it in the best interest of the ward to maintain H. as guardian and to have Ms. R. continue to reside with her. As mentioned above, however, I am concerned about Ms. R.'s ability to remain in contact with her daughter and other members of her family, which is clearly in her interest. For that reason, I am appointing a guardianship agency, Senior Partner, as co-guardian of the person of Ms. R.. Senior Partner is appointed co-guardian for the limited purpose of facilitating communication and visitation between the ward and her family. This should include insuring that a telephone is installed in Ms. R.'s new bedroom on the first floor so that she can communicate with her family, and also the scheduling of times for regular telephone calls and visits by her family. It should also include enabling Ms. R. to visit J. in Las Vegas, so long as she desires to and remains able to do so. H. shall cooperate in accommodating all reasonable requests for communication and visitation between Ms. R. and her family. If, in the opinion of Senior Partner, such

cooperation is not forthcoming, it should so notify the Court. I will not hesitate to amend any aspect of the guardianship order, including who shall serve as guardian, to ensure access between the ward and her family.

Petition to Expend

The expenditure requested by H. for new flooring and other changes to a downstairs room to accommodate Ms. R. and (if he is able to return home) Mr. S., is reasonable and is granted.

Conclusion

Because J. has failed to demonstrate that removal of H. is in the ward's best interest, J.'s petition to be appointed successor guardian is denied. Senior Partner is appointed co-guardian for the limited purpose of facilitating communication and visitation between the ward and her family. Senior Partner shall file a report within 30 days indicating whether and to what extent this goal has been accomplished. The petition to expend is granted.

/s/ Sam Glasscock, III
Master in Chancery