

Franklin County Legal Journal

Vol. 30, No. 19, pages 272-279

In Re: Wible

IN RE: SHARON M. WIBLE, an alleged incapacitated person
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Fulton County Branch, Orphans' Court Division
Docket No. 10-2012-OC

Older Adult Protective Services Act

1. Area agencies on aging are responsible for investigating reports of suspected abuse of older adults, including abuse, neglect, exploitation, or abandonment, and for seeking plenary guardianship of the person, if necessary.
2. If an agency believes that it is necessary to provide emergency protective services to an elderly individual, the agency may petition the court for an emergency order and must show that there is "clear and convincing evidence that if protective services are not provided, the person to be protected is at imminent risk of death or serious physical harm."
3. As there is little published precedential case law defining "clear and convincing evidence" as it applies to the Older Adult Protective Services Act, the Court referenced the Pennsylvania Superior Court's interpretation of the standard from an Orphans' Court case regarding termination of parental rights. The Court stated that "the standard of clear and convincing evidence is defined as testimony that is so clear, direct, weighty, and convincing as to enable the trier of fact to come to a clear conviction, without hesitation, of the truth or the precise facts in issue."
4. An elderly individual's unwillingness to undergo a mini-mental health examination and have personal records investigated, without more, does not amount to clear and convincing evidence that the individual is being subject to coercion by a third party or is at imminent risk of death or serious physical harm or loss of assets.
5. An individual's inherent distrust of government and preference for privacy must be respected when that individual appears competent to dispose of her own assets and does not wish to have her financial decisions authorized.

Search and Seizure

1. The Fourth Amendment of the United States Constitution states that "the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures should not be violated."
2. Under the Constitution of the Commonwealth of Pennsylvania, Article I - Declaration of Rights, states "that the general, great, and essential principles of liberty and free government may be recognized and unalterably established, we declare that Inherent Rights of Mankind. All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness."
3. Under Article I, Section 8, of the Pennsylvania Constitution, "The people shall be secure in their persons, houses, papers, and possessions from unreasonable searches and seizures, and no warrant to search any place or to seize any person or thing shall issue without describing them as nearly as may be nor without probable cause supported by oath or affirmation subscribed by the affiant."

Appearances:

Thomas M. Dickey, Esquire

Michael Kipphan, Esquire

OPINION

Meyers, J., Date not provided

Factual / Procedural History

On March 16, 2012, the Huntingdon/Bedford/Fulton Area Agency on Aging (hereinafter referred to as "HBFAAA") filed a petition to adjudicate Sharon M. Wible an incapacitated person and to appoint an emergency and/or permanent guardian of the estate.¹ Upon presentation of the petition to adjudicate Sharon M. Wible incapacitated and to appoint an emergency and/or permanent guardian of the person and the estate, this Court issued a citation upon the alleged incapacitated person and all next-of-kin to show cause why both an emergency and permanent guardian of the person and of the estate should not be appointed for Sharon M. Wible. The citation commanded that a hearing would take place on Tuesday, March 21, 2012, at 1:30 p.m. in the courtroom of the Fulton County Courthouse. The Court set a hearing as the Court had a letter response from the alleged incapacitated person's counsel challenging the petition.

¹ Previously on February 17, 2012, the HBFAAA filed a petition for access to records under the Older Adult Protective Services Act, 35 P.S. § 10211 and Guardianship Support Agency Provisions of 20 P.S. § 5551 et. seq., to which an order was signed February 17, 2012 by President Judge Herman authorizing the HBFAAA authority to have Sharon M. Wible evaluated by a qualified professional regarding issues of capacity and appointing Dwight C. Harvey, Esquire as her counsel.

The Court convened the hearing as scheduled in the jury deliberation room of the Fulton County Courthouse as there were other proceedings in the courtroom, and the jury deliberation room is immediately accessible to the courtroom of the Fulton County Courthouse. The Court instructed the Sheriff's Department and the attorneys in the case, both Mr. Harvey and Mr. Kipphan, to ensure that the alleged incapacitated person, Sharon M. Wible, was not in the building before the hearing commenced. Mr. Harvey was present on behalf of Ms. Wible as her court-appointed counsel, and the matters were transcribed. At the conclusion of the hearing, the Court made findings of fact and entered an order of court appointing an emergency guardian of the person and estate of Sharon M. Wible. Subsequent to service of the Court's order appointing the HBF AAA as emergency plenary guardian of the person and estate, Mr. Harvey on behalf of Ms. Wible filed a motion for stay of order of temporary guardianship asserting that his client provided appropriate answers and indicating that she opposed any interference or investigation of her affairs by the HBF AAA. As part of the Court's order appointing the HBF AAA as emergency plenary guardian of the person and estate, it was also ordered that an evaluation be performed of Sharon M. Wible.

Upon information in the possession of the HBF AAA, the Agency filed a petition to strike a subsequent hearing scheduled by this Court for 1:00 p.m. on March 23, 2012, to consider whether or not an emergency order for plenary guardianship of the person and estate be extended beyond the 72 hour provision as permitted by the statute. The Court granted the order of the Agency striking the hearing of March 23, 2012 from the court's calendar.

Subsequently, Thomas M. Dickey, Esquire entered his appearance on behalf of Sharon Wible on April 19, 2012. Upon receiving the motion to withdraw as counsel filed by Dwight Harvey, Esquire, the Court entered an order approving the withdrawal of Dwight Harvey, Esquire as counsel for Sharon M. Wible, and furthermore set a hearing to consider the requested relief of the incapacitated person, Sharon Wible, and her newly appointed counsel, Michael Connor, Esquire, to appear at a hearing on May 15, 2012 at 3:00 p.m. The Court was unaware that Thomas M. Dickey, Esquire had filed his entry of appearance on behalf of Ms. Wible. Upon learning of Mr. Dickey's entry of appearance, the appointment of Michael Connor, Esquire was rescinded by order of court April 24, 2012; however, the hearing scheduled for May 15, 2012 was maintained on the calendar. The hearing was necessitated because the alleged incapacitated person continued to protest involvement by the HBF AAA. Furthermore, the Agency asserted that although Ms. Wible appeared for the evaluation as anticipated under the order, she did not complete the evaluation.

The court convened the hearing on May 15, 2012, at which time it took evidence on behalf of the Agency and on behalf of the alleged incapacitated person. Ms. Wible appeared for the first time before the Court with counsel. The Agency asserted that the Court take into account the previous findings of fact at the emergency hearing when determining whether or not a continued right of access to the person and records was warranted. In addition, the Agency presented testimony of Stephanie Rakoczy, MSW, LSW, who is employed by Fulton Behavioral Health Services, PC. Ms. Rakoczy attempted to complete a mental health assessment of Ms. Wible on March 22, 2012 using the mini-mental status examination. Ms. Rakoczy testified that Ms. Wible appeared at her offices with Agency staff and Fulton County Sheriff staff. Ms. Rakoczy testified that Ms. Wible was very guarded and demonstrated minimal cooperation during the appointment, indicating that she did not trust psychiatric evaluations. Ms. Wible provided her correct name, her correct address, her correct birthdate, some work history, the correct month and year, and some family information correctly. She advised Ms. Rakoczy that she has contact with her niece Dixie, with whom she spends a frequent amount of time. Ms. Wible also advised Ms. Rakoczy that she has lost all of her siblings, most recently her brother in June 2011. She constantly protested answering questions or to sign any documents. Ms. Rakoczy suggested that Ms. Wible seek a more comprehensive psychiatric or psychological evaluation in order to determine her competency. As a result of Ms. Wible's lack of cooperation, Ms. Rakoczy was unable to complete the examination and gave her scores of 0 in responses to questions that Ms. Wible refused to answer.²

The Court also heard from Ms. Wible. Ms. Wible presented as a thin, but not malnourished elderly woman. Ms. Wible is 62 years old. She spoke in a soft, but determined voice. Ms. Wible had greying long hair and was appropriately dressed. Ms. Wible's attorney, Mr. Dickey, characterized her as being "eccentric," but not incapacitated. It is clear to the Court that Ms. Wible is a very private person. She does not wish to have others reviewing her activities. She has an inherent distrust of government agencies and psychiatrists and psychologists. Ms. Wible regularly repeated under questioning by the Agency's attorney, her own attorney, and the Court, that she did not like being in court. She did not like having people questioning her affairs. She did not like being asked questions about her income or assets. She believed it was her right to do what she wished with her property without having to answer to third party agencies. Ms. Wible appeared lucid, aware of her surroundings, and able to interact and discuss matters with her counsel while seated at counsel's table.

Following the hearing, the Court gave counsel an opportunity to file briefs in support of their relative positions,

² This Court adopts its findings of fact made following the March 20, 2012 hearing in making its determination.

which were submitted on or about May 22, 2012. This Court has now reviewed the entire record made until this date, the parties' briefs, and is in a position to issue an order and opinion.

Discussion

The HBFAAA initiated its effort to secure services for Sharon Wible pursuant to 35 P.S. 10225.101, which is known as the Older Adult Protective Services Act. Under the Act, the Pennsylvania legislature set forth the following statement of legislative policy:

It is declared the policy of the Commonwealth of Pennsylvania that older adults who lack the capacity to protect themselves are at imminent risk of abuse, neglect, exploitation, or abandonment, shall have access to and be provided with services necessary to protect their health, safety, and welfare. It is not the purpose of this act to place restrictions upon the personal liberty of incapacitated older adults, but this act should be liberally construed to assure the availability of protective services to all older adults in need of them. Such services shall safeguard the rights of incapacitated older adults while protecting them from abuse, neglect, exploitation, and abandonment. It is the intent of the General Assembly to provide for the detection and reduction, correction, or elimination of abuse, neglect, exploitation and abandonment, and to establish a program of protective services for older adults in need of them. 35 P.S. § 10225.101.

Under Section 10225.303, the HBFAAA is responsible to investigate reports of suspected abuse of older adults made under section 10225.302 of the Act. The HBFAAA initiated its investigation of alleged abuse of Ms. Wible within 72 hours of receipt of the report. This Court finds that clear and convincing evidence was presented at the March 21, 2012 hearing by the HBFAAA staff to establish that Ms. Wible, at the time of her discovery in her home, was in a partial state of undress, lying prone on her kitchen floor and unable to secure the necessary medical services to address her apparent physical weakness. A second allegation at that hearing was that Ms. Wible has a close relationship with her niece Dixie Wible and that substantial amounts of monies have been taken from existing accounts of Sharon Wible and moved to locations unknown. The amount of the money alleged to be transferred was approximately \$130,000.00. It was ordered that Sharon Wible should undergo an assessment under Section 10225.303(d), to determine whether or not a report of abuse, neglect, exploitation, or abandonment could be substantiated by the Agency.

As indicated in the facts set forth heretofore, Ms. Wible was scheduled to meet with Stephanie Rakoczy of Fulton County Behavioral Health Services to determine her psychological status. Since Ms. Wible did not consent to a "client assessment" as defined under the Act, the Agency has the right to apply to the case the provisions of Section 10255.307, asking for court intervention.

Under Section 10255.307, the standard which the Agency must meet at an evidentiary hearing is to show "clear and convincing evidence" that if protective services are not provided, the person to be protected is an imminent risk of death or serious physical harm. Furthermore, under subsection (b), the court, after finding clear and convincing evidence of the need for an emergency order, shall order only such services as are necessary to remove the conditions creating the established need. There is little-to-no published precedential case law defining "clear and convincing evidence" as it would apply to Older Adult Protective Services Act hearings. Thus, the Court must consult other sources of case law to determine the standard of clear and convincing evidence to apply in this instance.

This Court directs the parties to In re: A.L.D., 797 A.2d 326, 336 (2000 Pa. Super 104). The Pennsylvania Superior Court stated that "the standard of clear and convincing evidence is defined as testimony that is so clear, direct, weighty, and convincing as to enable the trier of fact to come to a clear conviction, without hesitance, of the truth or the precise facts in issue." Id.

This Court concludes in reviewing all of the evidence and upon having the opportunity to engage in conversation with Ms. Wible, that the HBFAAA has not met the burden of proof of clear and convincing evidence. The HBFAAA has not presented testimony that is so clear, direct, weighty, and convincing as to enable this Court to come to a clear conviction without hesitance of the truth of the precise facts in issue. There was no evidence offered to reveal to this Court that Sharon Wible's decisions to refuse a mental health assessment, to permit Agency employees to continue to interview her or to investigate her records is caused by coercion or threats of force, or due to intimidation by Ms. Dixie Wible or any other third party. If every person who objected to submission to a mini-mental health exam or denial of access of records as requested by agencies authorized under the Act, or who otherwise spoke openly about an inherent distrust of government, government agencies, their employees, or asserted the deep-held belief in their right of privacy were to be subjected to further assessment, this Court would have insufficient time to conduct all the

hearings of those individuals. There would be scads of individuals who would be subject to allegations of incapacity. The questions raised under the Act and the direct challenges posed by Ms. Wible through her counsel are fundamental issues that have confronted our society since the time of our Founding Fathers. If one references the Declaration of Independence, the United States Constitution and the Constitution of the Commonwealth of Pennsylvania, there is guidance to the opposition raised by Sharon Wible. The drafters and signers of the Declaration of Independence noted in protest of the King of Great Britain that “he has erected a multitude of New Offices, and sent hither swarms of the officers to harass our people and to eat out of their substance.” Declaration of Independence, July 4, 1776. Amendment IV of the United States Constitution provides persons and houses to be secured from unreasonable searches and seizures. The Fourth Amendment provides that “the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures should not be violated.” U.S. Constitution, Amendment IV. Moreover, the people of the Commonwealth of Pennsylvania did ordain and establish a constitution in 1968. Under Article I, Declaration of Rights, it states “that the general, great, and essential principles of liberty and free government may be recognized and unalterably established, we declare that Inherent Rights of Mankind. Section 1. All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.” Pennsylvania Constitution, Article I. Under Article I, Section 8, of the Pennsylvania Constitution, Security From Searches and Seizures, “The people shall be secure in their persons, houses, papers, and possessions from unreasonable searches and seizures, and no warrant to search any place or to seize any person or thing shall issue without describing them as nearly as may be nor without probably cause supported by oath or affirmation subscribed by the affiant.” Pennsylvania Constitution, Article I, Section 8.

This Court finds that these fundamental principles of privacy must be adhered to in a case such as this. The Court is hesitant to conclude that Ms. Wible is at risk of losing substantial assets or facing serious bodily injury or immediate harm. Furthermore, there is no evidence offered to establish that Ms. Wible is somehow making decisions to dispose of assets in a manner that is not knowing or involuntary. Furthermore, this Court questions why anyone should be concerned about an individual who appears to be competent to dispose of her own assets. Obviously, there are risks involved in any person dissipating their assets or making themselves a pauper. The Court cautions Ms. Wible and asks that her counsel advise her that if she were to prematurely dispossess herself of assets, she may prevent herself from securing valuable public benefits established by Congress, including Medicare and Medicaid benefits.

An order is attached.

Order of Court

Upon request of the Agency for Access of Records to require Sharon Wible to submit to mini-mental health assessment or other assessment or appointment of plenary guardian of the person or estate as defined under the Older Adult Protective Services Act, the requests for relief by the Agency are denied.