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In Re: Helen C. McCurdy

IN RE: HELEN C. MCCURDY, an alleged incapacitated person
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Orphan's Court Division, No. 146 of 1999

Appointment of Plenary Guardians of the Estate and Person - 20 Pa. C.S.A. §5501 et seq.

1. Expert testimony is imperative in determining whether an individual is capable of conducting their personal and financial affairs.
2. The Court will evaluate the objective facts presented at trial to determine whether an appointment of a plenary guardian of the estate and person is necessary.
3. Although an alleged incapacitated person can converse and cognitively function, their ability to receive complex medical and financial information may still be impaired or distorted by underlying psychological and physical disorders.

Appearances:

Edward I. Steckel, Esq., *Counsel for Petitioner*

Gregory L. Kiersz, Esq., *Counsel for Helen McCurdy*

OPINION

Van Horn, J., October 12, 2000

Background

This matter comes before the Court on a Petition filed by James D. McCurdy requesting that the Court modify a previous Decree entered on November 16, 1999, by the Honorable Robert G. Bigham, specially presiding, and enlarge the original finding of limited incapacity to provide for the appointment of plenary guardians of the estate and person for Helen C. McCurdy. After pleadings were closed and two Pre-Trial Conferences were held with counsel for the parties being Edward I. Steckel, Esquire, for the Petitioner and Gregory L. Kiersz, Esquire, for Mrs. McCurdy, a hearing was held on August 31, 2000, in the Boardroom at Menno Haven where testimony and evidence was received. The matter is now ripe for disposition.

Findings of Fact

1. Dr. William Kramer has been the treating physician for Helen C. McCurdy since 1987 and specifically has treated her at Menno Haven for the past two years.
2. According to Dr. Kramer, Mrs. McCurdy suffers from the effects of a cerebral vascular accident that left her paralyzed on the left side, chronic pulmonary problems including asthma, a history of aspiration, anxiety and depression, a bowel obstruction requiring surgery, and osteoporosis among others. At Dr. Kramer's request, Dr. James Hegarty, a psychiatrist, became involved in providing

care for Mrs. McCurdy since December 17, 1999, when Dr. Kramer consulted with him concerning her psychological and psychiatric difficulties.

3. After reviewing Mrs. McCurdy's available medical records including older notes from Dr. James Gonzales, a psychiatrist who previously treated Mrs. McCurdy, Dr. Hegarty met with Mrs. McCurdy on December 17, 1999, and found her to be extremely anxious, emotionally labile, suspicious and paranoid at times during the process of the interview. She admitted multiple symptoms including major depression, sleep loss, low energy and acute weight loss but minimized the significance of these factors.

4. Mrs. McCurdy was found to be cognitively intact based on the mini-mental exam scoring twenty-eight out of a possible thirty points.

5. Dr. Hegarty concluded that Mrs. McCurdy suffered from recurrent major depression and a generalized anxiety disorder. He also concluded that there were obsessive and paranoid features in her personality.

6. Dr. Hegarty found that Mrs. McCurdy is strongly under the influence of her paranoid thoughts although she does not have difficulty in understanding or expressing language. He further found that a pathological process was likely in play regarding Mrs. McCurdy from her contact with psychiatrists over a thirty-year period, and that her paranoia likely grew out of a well-established chronic mood disorder.

7. After being requested to give an opinion as to Mrs. McCurdy's capacity, Dr. Kramer visited Mrs. McCurdy again on March 3, 2000, and found her to be much the same as his prior visit. He found that she openly expressed a lot of anger and had very limited insight into her medical problems. He was impressed by the degree of anxiety exhibited by the patient who acknowledged her depressed mood. Dr. Hegarty further found her to be very paranoid in relation to her family and quite dismissive of the quality of care received at the home despite Dr. Hegarty being aware of the impressive weight gain the patient had made since being placed at Menno Haven. Again Mrs. McCurdy scored very well cognitively on the mini-mental exam and there were no findings of serious cognitive deficits. Despite her cognitive capabilities, Dr. Hegarty concluded that the patient's paranoia so colored her judgment that she was incapable of making informed decisions. An anti-psychotic drug was recommended but the patient refused to take the medication.

8. Dr. Hegarty's next visit occurred on April 21, 2000, where he found Mrs. McCurdy remarkably similar to the two prior visits. The paranoia and depressed mood remained constant over the five-month period of his involvement. He found the patient to have "zero insight" into her psychiatric difficulties and again found her incapable of making informed decisions due to her psychotic depression.

9. Dr. Hegarty concluded that Mrs. McCurdy's degree of paranoia by definition is beyond normal fears and found that she could be controlled and manipulated and thus become a victim of designing persons. He therefore recommended the appointment of plenary guardians of both the person and the estate for Mrs. McCurdy.

10. Sondra Schutz, a clinical social worker employed by Summit Behavioral Health, began providing psycho-therapy services on January 14, 2000, and continued through May 5, 2000, seeing her on usually a weekly basis. After trying numerous methods of assisting Mrs. McCurdy, Ms. Schutz determined that it was a waste of resources to continue providing services since she did not feel there would be a change in Mrs. McCurdy's behavior. Ms. Schutz expressed an opinion that Mrs. McCurdy did not appear to have any insight into the seriousness of her medical condition.

11. Jamie Nye, Director of Social Services at Menno Haven through the time of Mrs. McCurdy's stay at the facility until June 13, 2000, when Ms. Nye left employment, testified as to the conscientious care provided to Mrs. McCurdy by her three children, Jake, Judy and Patty. It was her opinion that the three children demonstrated actions consistent with their wanting the best for their mother and that Mrs. McCurdy remained suspicious and unable to come to terms with her condition.

12. James D. McCurdy, also known as Jake, has served as guardian of the person of his mother along with his aunt, Mary Louise Harshman (Mrs. McCurdy's sister), pursuant to a Power of Attorney executed by Mrs. McCurdy on March 27, 1997.

13. In early 1998, Jake and Mrs. Harshman began to assume duties under the Power of Attorney that had previously been granted by Mrs. McCurdy based on the advice of the family's legal counsel, Robert Schollaert, Esquire.

14. Prior to 1998, Jake occasionally assumed financial responsibility for both his Mother and Father when they were out of town on vacation.

15. Mr. McCurdy's father died on March 4, 1997, and Jake managed his mother's affairs until April 4, 2000, when his mother executed a document revoking her designation of Jake as Power of Attorney. Jake testified as to the assets owned by Mrs. McCurdy and her difficulty in grasping the significance of her finances. Jake involved his two sisters in making decisions regarding their mother's care and finances. Jake has visited his mother weekly at Menno Haven except when he is out of town on vacation and sees to her personal needs by bringing her items that she has requested.

16. The siblings are totally united in providing care for their mother and divide some responsibilities with Judy assuming responsibility for insurance matters.

17. Jake testified that he did not request a plenary guardian in the fall of 1999 since his main goal was to make certain that his mother remained in care at Menno Haven despite her attempts to terminate that housing and care relationship. He felt that her financial matters were taken care of by the Power of Attorney previously in place. However he has seen his mother's condition deteriorate since that time as evidenced by Dr. Kramer's independent conclusion to call in the help of a psychiatrist in December of 1999. After the revocation of the Power of Attorney on April 4, 2000, he was prompted to file this Petition since he does not feel that his mother has the ability to manage, invest and plan for disposition of her finances.

18. Jake requests to be appointed as the co-guardian of his mother's estate with Farmers and Merchants Trust Company and to be appointed plenary guardian of her person. This matter has been difficult on Jake who indicated that he was attempting to follow his Father's wishes expressed three months before he died to take care of his mother and that he wants what is best for her.

19. Testimony was received from Mary Louise Harshman, Mrs. McCurdy's sister, who indicated that she did not feel Helen is capable of making sound decisions and believes that Jake along with F&M Trust Company should be appointed to handle her financial resources.

20. Virginia Niswander, another sister of Mrs. McCurdy, appeared under subpoena and provided information to the Court indicating that she has noticed changes in the behavior and condition of Mrs. McCurdy over the past several months and her revelation to Mrs. Niswander that she would give her home to her granddaughter if her granddaughter would get her out of Menno Haven. Ms. Niswander was concerned that her sister would promise to give her home away to someone who would take her out of Menno Haven.

21. Patricia McCurdy, the youngest daughter of Mrs. McCurdy, confirmed the joint efforts of the three siblings in caring for their mother by visiting and checking with the staff of Menno Haven on a regular basis. She feels that her mother's mental condition has deteriorated greatly over the past several months. She further expressed an opinion that she fully supported Jake's handling of financial matters with honesty, integrity and clarity and does not feel there is a need for bank involvement.

22. Judy Daniels, the oldest daughter of Mrs. McCurdy, testified and confirmed the joint efforts of the siblings in caring for their mother. She described her brother Jake as possessing a lot of wisdom, strength and courage in this difficult situation and offered the opinion that her mother seemed more suspicious and accusatory in recent months. She expressed total confidence in Jake's ability to provide capable administration of his mother's affairs and felt that a co-guardianship of the estate with F&M Trust Company would be best. She further expressed her thoughts that Jake was not trying to harm their mother or take her money in any way and that she is saddened and pained by this situation feeling that her mother is extremely vulnerable.

23. Sherry Stains, a former care giver for Mrs. McCurdy in 1995, testified as to her visits with Helen which mostly occur by telephone on an almost daily basis. Ms. Stains testified that she had not observed any unsoundness of mind or irrational behavior and feels that Mrs. McCurdy can hold a conversation just fine.

24. Helen McCurdy provided testimony clearly demonstrating that her cognitive abilities are intact with remarkable attention to dates and details. However, she did experience difficulty in attempting to read various balances on a bank statement provided by her legal counsel. She expressed extreme suspicion of her children, their activities and their motives and asked that Darlene Niswander at Orrstown Bank be permitted to assist her in managing her financial affairs. She also

commented that she doesn't get any care at Menno Haven.

25. Mrs. McCurdy confirmed her long-standing relationship with F&M Trust Company and her recent desire to first appoint a Trust Officer at a bank in Greencastle followed by Darlene Niswander at another bank in Greencastle and upon Ms. Niswander's move to Orrstown Bank to appoint Orrstown Bank to assist her with managing her finances.

26. Dr. David Gonzales testified on behalf of Mrs. McCurdy after being qualified as a psychiatrist. He confirmed the need of Mrs. McCurdy for skilled nursing care due to her physical limitations. He also found only a small cognitive defect with Mrs. McCurdy scoring 28 out of 30 on the mini-mental examination. He relayed her struggle with depression and anxiety for several years and her expressed suspiciousness.

27. Dr. Gonzales expressed the opinion that Mrs. McCurdy is not absolutely incapacitated and that while she could cognitively handle her own finances, she expressed her plan to have assistance from Orrstown Bank.

28. Margaret Carll, caseworker with the Franklin County Office of Aging, testified as to the Agency's willingness to be appointed as guardian of the person of Mrs. McCurdy if the Court should so determine.

29. Helen McDonald, volunteer parish nurse from Salem Lutheran Church, testified as to knowing Mrs. McCurdy all of her life. In the past three years, she has visited Helen every other week and has found her to be alert and capable of making her own decisions. She declined to express an opinion as to whether she was opposed to Jake being appointed.

30. Beth Ehlert, Helen's granddaughter and Jake's daughter, testified that Helen is fine based on her knowing Beth and her children when they visit and her never forgetting birthdays and holidays.

31. Bertha Kuhn, Helen's sister-in-law, supported Helen's ability to make her own decisions.

Conclusions of Law

Pursuant to 20 Pa. C.S.A. Section 5512, the Court makes the following Conclusions of Law:

1. Helen C. McCurdy suffers from paranoia growing out of a well-established chronic mood disorder which paranoia has become generalized and dominant thereby affecting her decision-making capabilities.
2. Because of Helen's mental condition, she could be taken advantage of by unscrupulous persons.
3. It is appropriate to appoint family members who have demonstrated an approved pattern of service over the years along with the financial institution in which the family placed their confidence as guardians rather than a county agency and financial institution with whom Mrs. McCurdy has only recently, after introduction by her legal counsel, expressed a preference.
5. A full plenary guardian of the person and a full plenary guardian of the person for Helen C. McCurdy are needed to ensure the proper management of her financial resources and to meet essential requirements for her physical health and safety. 20 Pa. C.S.A. Section 5501.

Discussion

The matter before the Court for decision involves a very serious determination regarding the rights of Helen C. McCurdy. To be balanced against those rights is the responsibility conferred upon this Court to make determinations for her ultimate welfare. In this case, the testimony of the experts involved is given great weight since those with the necessary training and experience have made independent evaluations after lengthier exposure to Mrs. McCurdy.

Dr. Kramer, her family doctor for twelve years, recognized the need to obtain psychiatric care for Helen in December of 1999 and called upon the services of Dr. James Hegarty. His testimony was particularly illuminating given his three visits with Mrs. McCurdy in December of 1999, March and April of 2000. He found that her paranoia, which had grown out of a well-established chronic mood disorder, had become generalized and dominant in her thinking patterns, thus driving her decision-making. While she can converse and cognitively function, her understanding is distorted by the paranoia. He expressed serious concerns about her inability to receive complex medical and financial information and make an appropriate decision which absolutely subjects her to being the victim of designing persons.

Dr. David Gonzales offered expert psychiatric testimony on behalf of Mrs. McCurdy. He reached many of the same conclusions as did Dr. Hegarty by finding only a small cognitive defect and expressing concern about her ability to make appropriate decisions regarding her medical care. While she is oriented as to time, place and person and can remember current events, he did feel that she could be taken advantage of by unscrupulous persons. He confirmed that Mrs. McCurdy has a lot of "suspiciousness" and noted that it was difficult to say whether it's a result of her paranoia or is exacerbated by the circumstances, particularly her concern that her family is not handling her finances appropriately and is unwilling, in her mind, to share information with her. He concluded that Mrs. McCurdy is not absolutely incapacitated but acknowledged that she is unrealistic about the amount of care that she needs and that Menno Haven as a skilled nursing facility is an appropriate choice at this time. Similarly, while she could handle her finances, it would be difficult and he acknowledged a degree of comfort in offering this testimony given Mrs. McCurdy's expressed desire to have someone else actually manage her finances.

While the Court certainly sympathizes with Mrs. McCurdy's desire to feel in control of the situation, the objective facts as presented fully support the appointment of plenary guardians of both the person and the estate. All three of her children and the sister in whom she placed authority by granting a co-power of attorney feel that Jake should continue to serve as guardian in all aspects of his mother's care. One daughter feels that Jake alone should handle the finances while the other concurs with Jake's request to have F&M Trust Company appointed as co-executor of their mother's estate. The Court relies upon the united front expressed by the children in making the determination as to what is in Mrs. McCurdy's best interests at this point in time. Furthermore, it is clear that Jake was the choice of both parents in handling matters while they were both living. No evidence was presented to objectively support any contention that Jake is not the proper person to serve as plenary guardian of the person. He is not a person inclined to abuse his power given his first limited request for partial guardianship to ensure that Mrs. McCurdy remain in the skilled nursing home and the filing of the instant matter only after Mrs. McCurdy revoked the power of attorney under which he had been operating jointly with his aunt.

It is troubling to the Court that Mrs. McCurdy would now somewhat acknowledge the need for assistance with her financial matters but express a preference for a banking institution with which she had no established ties prior to the filing of this matter. Even more telling is her shifting of choice to three different institutions most likely at the suggestion of her legal counsel. While the Court certainly is not implying an improper influence by counsel, of importance is the pattern established of Mrs. McCurdy's rather sudden reliance on an individual with whom she has had a rather short relationship. This underscores the need to protect her from unscrupulous persons through the appointment of plenary guardians and the Court will appoint the individual, her son, to whom her husband looked for help towards the end of his life and to whom she looked for help, and F&M Trust Company with whom the family has enjoyed a long-standing relationship.

The Court declines to place specific limitations on the powers of the guardian regarding matters relating to the day-to-day care of Mrs. McCurdy since there does not appear to be a reasonable, supportable basis to do so.

The Court also declines to order the turning over of legal documents, even for an in camera review, since that matter is not properly before the Court and testimony as to suspected issues of capacity, lucid moments and undue influence was not presented. The Schell case referred to by counsel for the Petitioner, *In re: Schell*, 17 Fiduciary Reporter 215 (Juniata County, 1995), references numerous hearings and testimony regarding periods of lucidity and undue influence. That certainly is not the case in the instant matter.

ORDER OF COURT

And now this 9th day of October, 2000, after review of the pleadings filed in this matter and the testimony presented at hearing on August 31, 2000, it is hereby ordered and decreed that Helen C. McCurdy is adjudicated a totally incapacitated person as of August 31, 2000, the date of the hearing.

Said adjudication of total incapacitation is based upon 20 Pa. C.S.A. Section 5501 and the Court's determination that a plenary guardian of the person is necessitated by the total incapacity of Mrs. McCurdy pursuant to 20 Pa. C.S.A. Section 5512.1 (c) and (e) requiring the appointment of both a plenary guardian of the person and a plenary guardian of the estate.

It is further ordered that James D. McCurdy is hereby appointed plenary guardian of the person of Helen C. McCurdy and that James D. McCurdy and Farmers and Merchants Trust Company are hereby appointed plenary co-guardians of the Estate of Helen C. McCurdy. The co-guardians of the Estate shall not be required to post bond.

The guardian of the person shall have authority and responsibility for providing for the general care,

maintenance and custody of Helen C. McCurdy including but not limited to designating the place for Helen C. McCurdy to live. The Court determines that the present selection of Menno Haven as a residence for Helen C. McCurdy is appropriate. Further, the guardian of the person shall have authority and responsibility to authorize and consent to necessary medical, psychological and social treatment as deemed appropriate for Helen C. McCurdy after consulting with all professionals providing services to her.

The co-guardians of the estate shall have the authority and responsibility to manage and use Helen C. McCurdy's property primarily for her benefit in accordance with 20 Pa. C.S.A. Section 5536. The co-guardians of the estate shall file within ninety (90) days of this Order of Court an accounting of the management and disposition of Helen C. McCurdy's real and personal property from January 1, 2000, to the present. Thereafter annual reports shall be filed by the co-guardians pursuant to 20 Pa. C.S.A. Section 5521(c).