



EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION
FAMILY COURTS & SERVICES CENTER
601 NORTH PECOS ROAD
LAS VEGAS, NEVADA 89101-2408

CHARLES J. HOSKIN
PRESIDING JUDGE
FAMILY DIVISION

DEPARTMENT E
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November 7, 2014

Richard W. Black
20416 Southshore Drive
Cornelius, NC 28031

RE: Your Guardianship Court Inquiry

Dear Mr. Black;

Enclosed please find the results of my investigation into the Guardianship cases you referenced. Should you have any further questions relating to the Guardianship Court policies or procedures, feel free to contact me again.

Sincerely,

A handwritten signature in blue ink, appearing to read "C. J. Hoskin", is written over a horizontal line.

Charles J. Hoskin
Presiding Judge, Family Division

Enc. 10-10102

Richard Black Case Reference Review

September 4, 2014

As you may be aware, Mr. Black sent a letter criticizing the handling of certain Guardianship cases to several individuals, including the AOC and the National Center for State Courts. Although the letter is replete with factual inaccuracies, Mr. Black did include a list of cases he claims Hearing Master "Norheim permanently denied capable family members guardianship and awarded private guardians."

The referenced cases have been reviewed to determine whether anything improper was done. What follow is a brief summary of each referenced case.

G13-038863A *Mencarelli*: This is Mr. Black's wife's case. She is Mr. Mencarelli's daughter and only child. She petitioned for guardianship, as did the ward's significant other of the last 32 years. After a year of discovery, the parties went to trial in June 2014. It was an eleven day trial. After the trial, a 19 page written decision was issued. No one objected to decision and a final Order was entered on August 6, 2014. It appears that the evidence overwhelmingly favored the appointment of the ward's significant other, Helen Natko. Mr. Black asserted that Ms. Natko stole from the ward, but evidence to make that finding was not presented. Extensive discovery was conducted in this matter, and the parties were given as much time as they requested to complete the evidentiary hearing.

G13-039270 *Jones*: This case is scheduled for trial on September 29, 2014. On October 3, 2013, Hearing Master Pro Tem Lynn Hughes appointed Denise Comastro, R.N., as Guardian Ad Litem (GAL) to investigate the medical propriety of moving the ward out of state. It appears that Mr. Hughes chose Ms. Comastro due to her experience and training in needs assessments. Through Motions, it appears that the ward has an estate plan with a nomination of a Guardian. The focus of the upcoming trial will be on the ward's capacity, in 1997, to nominate a guardian. If she had capacity, her choices should be honored, so long as the individual she chose is appropriate.

G13-039132A & G13-039133A *North*: April Parks was appointed Guardian of Mr. and Ms. North on September 26, 2013. Friends and family filed an Objection. At the hearing, they were given an opportunity to file their own competing Petition(s). During the course of the hearing, they withdrew their Objection. The wards consented to the Guardianship on the record.

G13-038316 *Gonzalez*: April Parks was appointed as Guardian on April 17, 2013. There was no Opposition to the Guardianship, and the Ward consented in Court. Harmon Rehabilitation Hospital contacted Ms. Parks due to concerns of exploitation. On November 13, 2013 the Guardianship was terminated in favor of an Estate Plan set up by the ward when he was presumably competent. There was no objection to the accounting or the requested fees.

G10-034552A *Dutton* & 01G-022364 *Berger*: These are cases in which professional Guardian; Patience Bristol stole money from the wards. Ms. Bristol was ordered to maintain blocked accounts, but managed to find a way around the statutory protections. Although Ms. Bristol has been convicted, no further action in the Guardianship cases has been initiated to recoup any stolen funds.

G11-035869A *Worthen*: This was a highly contested case between the Ward's children. There was a dispute over whether Ms. Worthen was competent and a dispute over who should be her Guardian, in the event she needed one. Ms. Worthen appeared in Court and had split loyalties among her children.

There were also choice of law issues regarding the Trust. On April 11, 2011, April Parks was appointed Temporary Guardian under NRS 159.0523, at the request of one faction of the family. At the first hearing, on April 20, 2011, a neutral Guardian was appointed while the matter progressed to trial, and while Ms. Worthen had an independent cognitive evaluation. On August 17, 2011, she was found to be competent, and the Temporary Guardianship was terminated. Through a series of Stipulations and Orders, the parties came to an agreement on all financial issues and this case was closed without further decisions by the Court. The only significant decision made by the Court was to deny both Petitions after the independent doctor found Ms. Worthen to be competent. It appears that there were no objections to fees or the way money was spent, given that the parties stipulated to all issues.

G11-035590A Schoepe: This began as an uncontested guardianship with the Ward's daughter and April Parks serving as Co-Guardians. On January 23, 2013, the Guardianship Compliance officer sent a letter to the Guardians regarding the lack of a timely filed accounting. In response, April Parks filed an *Ex-Parte* request for a Temporary Restraining Order, Suspending the Letters of the Ward's daughter. She alleged the daughter had been taking money from the ward, and using the Ward's assets for her own benefit. The *Ex-Parte* Motion was granted and the matter set for hearing. At the hearing, the daughter admitted paying herself \$6,000.00 per month to care for her mother. The daughter lived in Ohio at the time, and professional caregivers were caring for the ward. There were no contested issues of fact. The admitted violations of NRS 159 required removal of the Co-Guardian. After numerous Motions and continuances, the matter appeared on the brink of resolution. The Ward's grandson, a New York attorney, offered to take over the financial control from Ms. Parks. Before this could be completed, the Ward died. This matter continues to be litigated presently. The Ward's daughter filed a Peremptory Challenge which was rejected as untimely by Judge Ritchie.

06G-029656 Passer: This was a contested case from 2006. This was a heavily litigated case, with numerous Motions and Countermotions. The primary issue was who should be appointed Guardian for the Ward. Two daughters of the Ward filed a Petition. A third daughter, in connection with a live-in caregiver also filed a Petition. The two daughters that were aligned were appointed as Co-Guardians in August of 2007. By early 2008, they were accusing each other of improprieties and requesting Removal. The Senior Law Program (then a City of Las Vegas agency) was appointed as GAL for Mr. Passer. They conducted an investigation and presented a report on April 23, 2008. The GALs felt that the enormous family discord required the appointment of a neutral Guardian. They felt that if one party were appointed, they would limit the Ward's ability to maintain a relationship with the rest of his family. Additionally, the family members had differing views on the Ward's medical treatment. The GALs requested that Jared Shafer be appointed for the Ward. The Guardianship Hearing Master recommended the removal of the two daughters and the appointment of the neutral Guardian. One of the daughters filed an Objection, asserting the investigation was incomplete. She argued that, if she would be permitted to testify at a hearing, she would be able to show that she was the only Petitioner with the Ward's best interest at heart. Judge Ritchie remanded the matter back for a trial on the merits. At trial, it was determined that the ward's best interests precluded favoring one family member over all others. The family objected to Mr. Shafer personally. The minutes indicate they were told they could get another professional, if they could transition without cost to the ward. The trial was the last contested matter in this case. The ward died on February 5, 2012. No Objection was made to any of the four annual accountings filed by Mr. Shafer.

G06-029271 Hansen: The Ward is a Desert Regional Center (DRC) client. Fran Fine, Esq. was appointed the Ward's Guardian in 2006. No objection was filed. In order to maintain the Ward's government benefits, a Special Needs Trust was created in 2007 to hold the Ward's assets. Ms. Fine brought in Susan Rousselle as Trustee. In 2009, she resigned in favor of Jared Shafer. It is the Trustee's job to make sure

that the Trust's expenditures stay within Medicaid guidelines (requiring a certain level of expertise). In November of 2013, Mr. Shafer resigned as Trustee and filed his final Accounting. At the hearing, the Ward objected to the accounting. An attorney, who was in Court that day, Elyse Tyrell, Esq. saw the difficulty the Ward was having and agreed to become the Successor Trustee at no cost. The matter was continued 60 days, at the request of the Ward, so that he could hire counsel and file an Objection. At the return hearing, nothing had been filed and the Ward did not appear. As a result, the final accounting was Approved and Granted.

G12-037449 Stein: Ms. Stein's sons are her Guardians. They have accused their step-father, the ward's husband of financial improprieties. A Recovery Petition was filed and is pending. The ward's counsel (appointed as GAL because the ward was not cognitively able to provide clear direction) is reviewing the husband's accounting to give the ward's input into the matter. The scheduled hearing date is September 17, 2014. The Court spent a year trying to make the situation work with Mr. Stein. Ultimately, he could not get along with doctors and caregivers, to the detriment of the Ward. The Ward's sons also appear to be unhappy with the multiple accommodations given to Mr. Stein.

06G-029530 Dudeck: Ms. Dudeck's case was a heavily contested battle between her son and daughter. GALs were appointed from the Senior Law Program to speak for the Ward's best interest. Numerous allegations of financial improprieties were made against each of the children. The matter resulted in an evidentiary hearing. Ultimately, the Court found the need for a neutral Guardian. The GALs recommended Jared Shafer on behalf of their client. The daughter's response was to kidnap the ward and hold her in a van in California for weeks. When the Ward was located and placed in California, she was too frail to be safely transported back to Nevada. The son's response was to kidnap the Ward and bring her back to Nevada. She died shortly thereafter. While in California, the daughter filed motions in several Courts seeing TPOs on behalf of the ward. She also filed for Guardianship in California as well.

05G-028163 Olivera: In 2005, the Ward's wife was appointed as his Guardian in an uncontested case. After the wife's passing, in November of 2009, the ward was exploited by a caregiver. The ward's daughter hired Jared Shafer to Petition to be Successor Guardian. In March of 2010, the Ward's daughter Petitioned to Remove Jared Shafer and have her appointed. The Petition did not assert a *prima facie* case under NRS 159.185. A dispute arose between the daughter and Mr. Shafer over whether the ward wanted to remain at the VA in Boulder City, or whether he wished to move in with his daughter in California. On April 28, 2010, GALs from the Senior Law Program were appointed to meet with the ward and determine what he wanted. The ward told his GALs that he wanted to remain in Nevada. Ultimately, the Court found that no evidence had been presented of malfeasance, or that the best interests of the Ward would be served by the removal of the Guardian as required by NRS 159.185. The daughter was told she could re-file if she had a *prima facie* case under any of the Removal subsections. The matter went up on Objection. For the first time, the daughter raised the issue that Mr. Shafer should be removed because of a failure to comply with VA rules contained in NRS 160. This issue alone was remanded back to the Hearing Master for further consideration. At the Remand hearing, the Court found no conflict between NRS 159 and NRS 160 requirements. Further complaints were made about Mr. Shafer and it was again asserted that the Ward wished to move to California. The daughter did not want the Senior Law Program to continue to be involved and a new GAL, Denise Comastro, was retained to meet with the ward and assess his desires. The family and Mr. Shafer were ordered to stay away from the ward for 28 hours prior to her meeting with the Ward, to limit the chances of undue influence. Prior to the meeting with Ms. Comastro, the parties stipulated to using Louise Sherk, who is both a Medical Doctor and an Attorney, to assess the ward's desires and best interests. Prior to Dr. Sherk's evaluation, the daughter abducted the ward and took him to California. Years of Motions, both in Nevada and California were filed in an attempt to get him back to Nevada or, in the daughter's case,

to have California assume jurisdiction. A bench warrant was issued for the daughter's arrest. The daughter hired an attorney to represent the Ward in Nevada. Ultimately, he was able to resolve the matter by having California take jurisdiction and appoint a neutral Guardian. The case was transferred to California in early 2013. The daughter complains that the Court did not listen to her father. The problem is that her father gave different stories depending on who was asking the question. Moving someone with dementia is often quite traumatic to the ward. Familiarity with surroundings helps soothe the Ward through the loss of memory and cognitive functioning. Prior to granting a relocation the Court must determine that it is in the Ward's best interest. The daughter apparently grew impatient and took the law into her own hands.

96G-17772 Gaule: This was a Public Guardian case from 1996, which closed in 2005. Hearing Master Jennifer Henry heard only the unopposed final accounting. All other matters were heard by the District Court Judge assigned to the case at the time.

92G-015052 Goorjian: Hearing Master Norheim was the Ward's GAL for less than six months while in private practice. He was appointed by the Judge to evaluate in-patient treatment options for the Ward. Because of Norheim's involvement in the case, Jennifer Henry kept this case until the Ward's death.