

STATE OF RHODE ISLAND
PROVIDENCE, SC

PROBATE COURT OF THE
CITY OF PROVIDENCE

In Re Estate of Adelaide Monaco
Resident Ward

No. 2000-044

DECISION

This matter is before the Court on a Miscellaneous Petition for Authorization to Prosecute a Claim for Support in the Family Court filed by Rayna M. Daley, Co-Guardian of the Person and Guardian of the Estate for her mother, Adelaide Monaco. The other Co-Guardian of the Person for the Ward, Raymond Monaco, her husband and Rayna's father, has filed an Objection thereto. Since the issues presented are legal and jurisdictional, the parties have not requested a hearing, but rather have submitted briefs to support their respective positions.

Pertinent Travel of the Case

The Petitioner herein and the Respondent were appointed and qualified in April 2000 as **Co-Guardians of the Person** for the ward without any limitations on their powers and duties, this court finding that less restrictive alternatives to guardianship were not applicable nor was it appropriate to limit their responsibilities in making decisions for the best interest of the ward. There is no suggestion by either party that this arrangement is not meeting the personal needs of the ward.

On October 26th 2000, the Probate Court entered an Order appointing the Petitioner sole **Guardian of the Estate** of the ward, finding that a Power of Attorney given by the ward on March 25th 1998 to her husband was not securing the ward's estate and property and that the ward needed a substitute decision maker to enforce her husband's duty to support her. This Court further found that the Respondent herein had a duty to pay the ward's outstanding nursing home bills at Hallworth House; the Guardian of the Estate was authorized to take any and all action necessary to enforce Respondent's duty to support the ward. In addition, under RIGL § 8-9-18, a citation was issued against the Respondent to appear in court with financial records ,etc. of the ward's estate and property.

Subsequently, the respondent filed a Notice of Appeal of this Order and a Motion to Vacate the entry of this Order. Thereafter, this court entered its Order on December 21st 2000 finding that the Respondent did not perfect his appeal of the October 26th 2000 Order or in the alternative, within 20 days of its entry, provide sufficient evidence to justify a vacation of this Court's Order . In addition, the Guardian of the Estate was authorized to take “**any and all action to enforce the Respondent's duty to support the ward**”.... (emphasis added) and also quashed the citation it had previously issued against the Respondent.

In January 2001, a Bed and Board Complaint for Divorce was filed by Rayna Daley as Co-Guardian of the Person and sole Guardian of the Estate for Adelaide Monaco in the Rhode Island Family Court. She verified this complaint for the ward pursuant to RIGL§ 15-5-11 as “resident guardian” and “next friend”, which is authorized by this statute in the discretion of the Family Court.

On February 21st 2001, the Honorable Jeremiah S. Jeremiah Jr. , Chief Judge of the Family Court rendered his decision as to whether the matter could proceed in the Family Court. The Court found it lacked the jurisdiction to proceed in the Divorce Case without further action by the Probate Court; the Court found that since Ms Daley and the Respondent are **Co-Guardians of the Person** , the issue as to whether a Co-Guardian has the authority to proceed for this very personal decision regarding a divorce should be left to the Probate Court. The judge also suggested that the Guardian of the Estate has other remedies available to it if the sole purpose of the divorce petition is to preserve the assets of the ward's estate, i.e contempt proceedings in the Probate Court or actions in other forums (Superior Court).

At the time that the within petition and objection were filed, the ward continues to reside at Hallworth House. No payments are being made by the Guardian or the Respondent for her living expenses and the ward has been denied Medicaid Benefits by the Department of Human Service because of excessive assets allocable to her, including the transfer of two accounts (one with Citizen's Bank and the other with Fleet Bank) in the joint name of the ward and the individual name of the Petitioner herein, by the Respondent to himself using a Power of Attorney executed by the ward in March of 1998. There is no other evidence of other transfers involving the ward's assets, the existence of accounts in the name of the ward alone or the existence of other joint accounts in the name of the ward and other persons including the Petitioner and/or the

Respondent, all though this has been alluded to by the Respondent in his brief to the Family Court in opposition to the Complaint for Bed and Board divorce and also filed herein.

Throughout this time, according to his attorney, the Respondent had serious health problems of his own, is now in poor health, and resides from time to time in the Echo Nursing Center in Providence,

Discussion

As in the Family Court, this matter is one of first impression as no reported RI cases have been found specifically on point.

The Petitioner and Respondent herein were appointed and qualified as Co-Guardians of the Person for Adelaide Monaco without any limitations and apparently have both **jointly** administered to the ward's personal needs since then. There has been no suggestion or evidence as required by RIGL § 33-15-18 presented by either party that the other is not living up to their duties as Co-Guardian. The Petitioner was appointed and qualified as sole Guardian of the Estate for Mrs. Monaco.

The **RIGL Probate Practice and Procedure** statutes do not require that the same person or entity be named as Guardian of the Person and Estate; the probate court has broad discretion to appoint the best suited person or entity to serve, given the facts and circumstances of each case. RIGL § 33-15-3.

In some cases no Guardian of the Estate need be appointed, if less restrictive alternatives are available. RIGL§ 33-15-2. This was not the case herein. The Court found that the Respondent was not acting in the best financial interest of the ward through a less restrictive alternative to guardianship, a Power of Attorney. The daughter of the ward and respondent was appointed as Guardian of the Estate. RIGL § 33-15-6.

The **RIGL Probate and Practice** statutes dealing with adult guardians do not expressly authorize **any adult Guardian** (Person and/or Estate) to commence an action for divorce on behalf of his or her ward; however, **RIGL § 15-5-11** contained in the **Domestic Relations** title gives the Family Court the **discretion** to allow a complaint for divorce to be verified and brought by a "resident guardian."

The Petitioner herein relies on the contents of paragraph 5 of the December, 2000 Order from this court authorizing the **Guardian of the Estate** to "take any and all action necessary to

enforce the Respondent's duty to support the ward in courts and /or agencies of *competent jurisdiction*" as well as the directives contained in RIGL § 33-15-29, 33-15-31 and 33-17-1(3) as its authority to sue for divorce on behalf of the ward. Petitioner is apparently attempting to use the proceeding in the Family Court to reach the proceeds from the joint accounts formerly in the name of the ward and the Petitioner individually, and transferred by the Respondent to himself. If allowed to proceed in that forum on behalf of the ward, the Petitioner could then file for an allowance from the Respondent and hopefully recover sufficient funds to pay the ward's outstanding obligations at Hallworth House and such other further relief as the Family Court deems appropriate.

As stated by the Respondent in his brief, several jurisdictions hold that a Guardian does **not** have the authority to sue for divorce or dissolution of the marriage, absent a specific statutory authorization. The reason is that divorce is so personal and volitional that only a party to the marriage may bring such an action¹. There is no reference noted as to whether the cited jurisdictions differentiate and separate the roll and duties of Guardians of the person and the estate as can be accomplished in this jurisdiction.

Those jurisdictions that allow a Guardian to proceed for divorce for the ward without specific statutory authority do so only after certain steps and standards are applied. Some jurisdictions require that the ward be capable of exercising reasonable judgment, as to personal decisions, understands the nature of the action and is able to express unequivocally a desire to apparently dissolve the marriage². Other jurisdictions have held that before a Court can authorize a Guardian to sue for divorce, inquiry must be made by the court as to the ward's preferences and general values regarding marriage and divorce, the ward's views in general as to the permanence of marriage and the best interest of the ward, and not any personal antipathy that the Guardian may have to the Ward's spouse.³ The New Jersey Appellate Court allowed the guardian to proceed after a hearing to determine if the ward were competent would she have filed suit against her husband and inquired as to whether it was in the best interest of the ward to allow the guardian to obtain a divorce.⁴

¹ Power of Incompetent Spouse's Guardian or Representative To Sue for Divorce 32 ALR5th 673; Divorce and Separation, Sec. 265, Incompetent Persons, 24 Am Jur 2d (1985)

² Syno v. Syno 600A2nd 307 (Pa. 1991); In Re Marriage of Higgason 516 P2nd 389 (Cal. 1973).

³ Ruvalcaba vs. Ruvalcaba 850 P2nd 674 (Ariz., 1993); Nelson vs. Nelson 878 P2d 335 (NM, 1994)

⁴ Kronberg vs. Kronberg 623 A2d 806 (NJ, 1993)

It is apparent to this court that the legislators envisioned circumstances wherein a Guardian could verify and bring forward a complaint for divorce on behalf of the ward; otherwise they would not have enacted **RIGL § 15-5-11**. There is not any specific statutory authorization in the RIGL Probate Practice section and since the Probate Court has exclusive jurisdiction for adult Guardianships by **RIGL § 8-9-9**, it is this Court's opinion that a Guardian may proceed for divorce on behalf of its ward under certain limited circumstances, for just cause shown and after a hearing to present sufficient evidence to justify the grant of authority to so proceed. (It remains discretionary on the part of the Family Court as to whether it will allow the matter to go forward and by no means does this court purport to advise the Family Court on how it should exercise its discretion). It is this Court's finding that the proper entity to request permission to file a complaint for divorce is the Guardian of the Person, since marriage and its dissolution are of the most personal of an individual's rights, even though there may be financial implications to the action.

In determining if a guardian should be authorized to file for any relief under the RIGL Domestic Relations Statute, the Probate Court should, at the very least, conduct a hearing to examine the following:

- the relationship of the person acting as Guardian of the Person to the ward and to the potential defendant.
- The duration of the marriage, the views of the ward towards the institution of marriage and divorce to insure that the Guardian is not substituting his or her will for that of the ward.
- The ultimate result gained is the overall well being of the ward.

See standards set forth in forth in the Kronberg case, *supra*.

Findings

In this case, the Court need only to look at the relationship of the parties herein (mother, father and daughter), the duration of the marriage of the ward and Respondent herein (over 50 years), the fact that the Petitioner and Respondent are **Co-Guardians of the Person** for the ward (**both** would have to join in a request for permission to sue for divorce) and the obvious antipathy between the Co-Guardians in denying permission to one of the Co-Guardians of the person of Adelaide Monaco to sue for divorce on behalf of her ward. In the absence of very

exceptional circumstances, a spouse is entitled to the society of her spouse, free of restraint from any third persons.⁵

The Court understands the frustration and concerns of the Guardian of the Estate in resolving the financial issues relative to the care of the ward and in complying with the statutory requirements of RIGL § 33-17-1 (3), 33-15-29, 33-15-31; however, this court in its December, 2000 order did not, and does not now, authorize the Guardian of the Estate to proceed for a divorce in the Family Court on behalf of her ward. Therefore, the miscellaneous Petition for authorization to affirm and ratify the Petitioner's actions in the Family Court is denied. The issue of payment attorney fees by the respondent is held open, pending further hearings in the Probate Court.

ENTER: _____ BY ORDER: _____

⁵ In Re Chace 26 RI 351