

STATE OF VERMONT

SUPERIOR COURT  
Chittenden Unit

PROBATE DIVISION  
Docket No. 645-4-16 Cnpr

IN RE: McDonald, Eleanor F.

ENTRY REGARDING MOTION

Vermont Superior Court

Count 1, Guardianship-Adult Involuntary (645-4-16 Cnpr)

JUN 7 2017

Title: Motion Review of Advanced Directive (Motion 9)  
Filer: Patricia A. Sundberg  
Attorney: Kurt M. Hughes  
Filed Date: May 4, 2017

Chittenden Unit

Response filed on 06/01/2017 by Attorney Kurt M. Hughes for Guardian Gail E. Welch  
Response filed on 06/07/2017 by Attorney Peter F. Langrock for Interested Person John J. McDonald

The motion is GRANTED.

This matter came before the court on June 20, 2017. The Respondent (Eleanor F. McDonald, age 93) was not present and was represented by Diane Rosen Pallmerine, Esq. The co-guardians, Patricia Sundberg and Gail Welch, were both present and represented by Kurt M. Hughes, Esq. John McDonald, Interested person, was present and represented by Peter F. Langrock, Esq.

The co-guardians wish to fully exercise medical decision-making powers pursuant to 14 V.S.A. § 3069(c)(2). However, John McDonald, Respondent's son, has been acting as Respondent's health care agent under an Advance Directive on Health Care, since February 2016. See Co-Guardians' Exhibit A. The co-guardians allege that Respondent lacked capacity to execute that directive, at the time of its execution.

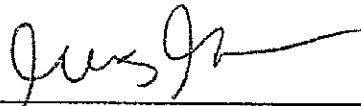
Peter Gunther, M.D, Respondent's long-time primary care physician, testified that Respondent has had moderate to severe Alzheimer's Disease since at least 2009. Respondent's memory loss issues became evident before then, about 2004-2005. Dr. Gunther also testified that, in his medical opinion, Respondent lacked capacity to competently execute an Advance Directive in February 2016. Dr. Gunther sees Respondent about once a month. He is very familiar with her health, and has been for many years. He also testified that Respondent was not even aware that her husband had died (in 2014). Dr. Gunther testified that the late Mr. McDonald provided Respondent "tremendous support, loved her, took care of her, yet she could not recall his death. Generally, in 2014 and 2015, leading up to the execution of the Advance Directive, Dr. Gunther testified Respondent became "more withdrawn" and "less vocal," and her overall condition "worsened and declined." Presently, she presents as barely able to speak, and not able to provide appropriate answers to questions, according to Dr. Gunther.

Dr. Gunther's testimony was credible and essentially uncontroverted. While Dr. Gunther did not evaluate Respondent on the date that the document in question was executed, there is otherwise clear and convincing evidence that Eleanor McDonald lacked the capacity to understand the nature of the Advance Directive which bears her signature. See 18 V.S.A. § 9718(b)(1).<sup>1</sup>

Based on the foregoing, the Advance Directive on Health Care of Eleanor F. McDonald, dated February 4, 2016, is revoked.

So ordered.

Dated at Burlington this 21<sup>st</sup> day of June, 2017.

  
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Gregory J. Glennon  
Judge

Notifications:

Dianne Rosen Pallmerine (ERN 4998), Attorney for Ward Eleanor F. McDonald  
Peter F. Langrock (ERN 3502), Attorney for Interested Person John J. McDonald  
Kurt M. Hughes (ERN 4022), Attorney for Guardian Patricia A. Sundberg  
Kurt M. Hughes (ERN 4022), Attorney for Guardian Gail E. Welch  
Walter Decker, Dept. of Aging and Independent Living/APS

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<sup>1</sup> Patricia Sundberg (Respondent's daughter and co-guardian) also testified. Her testimony about Respondent's condition in February 2016 was consistent with Dr. Gunther's testimony. Walter Decker, Investigator with the Dept. of Aging and Independent Living/Adult Protective Services testified that he met with Respondent two times, in May 2016, and she presented to him in a fashion also consistent with Dr. Gunther's testimony, and Patricia Sundberg's testimony. The court also notes that John McDonald is presently charged with financial exploitation of Eleanor McDonald in the criminal division (No. 1646-5-17 Cncr). A condition of Mr. McDonald's pretrial release in that case is no contact with the Respondent, except for visitation purposes. The no contact Order in the criminal case (while it remains effective) would appear to make it logistically difficult, if not impossible, for Mr. McDonald to carry out the duties of health care agent.