

VERMONT SUPERIOR COURT
CHITTENDEN UNIT

PROBATE DIVISION
DOCKET NO. 645-4-16Cnpr

IN RE: GUARDIANSHIP OF ELEANOR F. MCDONALD

ORDER OF GUARDIANSHIP

The above referenced matter came on for hearing on June 14, 2016, for hearing of a Petition to Appoint a Guardian for Eleanor F. McDonald. The Respondent was not present and was represented by Dianne R. Pallmerine, Esquire. Petitioner, Patricia Sundberg, was represented by Kurt M. Hughes, Esquire. Proposed co-guardian, Gail E. Welch, was present. The Respondent's son, John McDonald, was present with Peter Langrock, Esquire. Walter Decker of the Office of Adult Protective Services was also present. Based upon the evidence presented the Court hereby finds as follows:

Findings of Fact

Eleanor F. McDonald is a 92-year-old woman currently residing in her own home in Burlington, Vermont. Ms. McDonald was evaluated by William B. Nash, Ph.D, of Essex, Vermont, in accordance with 14 V.S.A. §3067. The evaluator's report was admitted into evidence and the conclusions set forth therein have been considered by the court.

Eleanor McDonald had been living independently with the assistance of her two daughters, Gail Welch and Patricia Sundberg, until April 2016, when Ms. McDonald's son, John McDonald, abruptly suspended contact between his mother and his sisters. Concerns were further raised when the proposed Co-Guardians learned that John McDonald had arranged to put his name on all his mother's accounts and the Power of Attorney she had put into effect naming Patricia Sundberg as agent had been terminated. Petitioner further learned that Ms. McDonald had quitclaimed her home to John McDonald in 2015. Patricia Sundberg and Gail Welch were appointed as temporary guardians for their mother by Order dated April 27, 2016.

During the evaluation performed by Dr. Nash, Ms. McDonald was attentive and in a pleasant mood. She was not able to identify the name of her son, but noted that "he hangs out around here a lot." She reported that she was married, but could not identify the name of her husband. She was unable to name any of her children and was not oriented in any sphere. It was apparent to Dr. Nash that Ms. McDonald requires the assistance of a guardian to assist in the management of her personal, medical and financial affairs.

On the basis of the forgoing, the court finds that Eleanor R. McDonald is a person in need of guardianship, and she would benefit from the assistance of a guardian with authority to assist in the management of her general supervision, financial and medical affairs. Patricia Sundberg and

Gail Welch are the Respondent's daughters. They not employed by their mother's care providers and are qualified to serve in this matter in accordance with 14 V.S.A. 3072. Attorney Langrock opposes the appointment of Ms. McDonald's daughters as co-guardians because they have an interest in her estate and may be motivated by a desire to increase their own inheritance rather than Ms. McDonald's best interests. Attorney Pallmerine supports the appointment of Ms. Sunberg and Ms. Welch, however, as she has been able to work cooperatively with them thus far and has not seen anything in their actions that would make her believe an independent guardian is necessary at this point. Adult Protective Services has an open investigation ongoing and also supports the appointment of Ms. Welch and Ms. Sunberg as co-guardians.

The proposed co-guardians should be granted a guardianship with those powers set forth in 14 V.S.A. 3069(c)(1)&(3) - (6), along with the power to make medical decisions for the respondent pursuant to 14 V.S.A. 3069(c)(2), subject to any constitutional right of the person under guardianship to refuse treatment.

Guardianship bond in the principal amount of Ten Thousand Dollars (\$10,000.00), with personal surety is appropriate to secure performance of the duties of the guardian. Bond shall be filed with the Court on or before June 30, 2016.

Conclusions of Law

Based upon the evidence presented the court finds by clear and convincing evidence that Eleanor F. McDonald is a person in need of guardianship in accordance with 14 V.S.A. 3061. Gail E. Welch and Patricia A. Sundberg are suitable co-guardians under the terms of 14 V.S.A. 3072. The co-guardians shall have those powers set forth in 14 V.S.A. 3069(c)(1)-(6).

Order

Gail E. Welch and Patricia A. Sundberg are hereby appointed as co-guardians for Eleanor F. McDonald until further Order of this court. The co-guardians shall have those powers set forth in 14 V.S.A. 3069(c)(1)-(6), as follows:

(1) the power to exercise general supervision over the person under guardianship. This includes care, habilitation, education, and employment of the person under guardianship and choosing or changing residence, subject to the requirements of sections 2691, 3073, and 3074.

(2) the power to seek, obtain, and give or withhold consent to the initiation or continuation of medical or dental treatment, subject to the provisions of section 14 V.S.A. 3075 and any constitutional right of the person under guardianship to refuse treatment, provided that the court in its discretion may place limitations on the guardian's powers under this subdivision if appropriate under the circumstances, including requiring prior court approval for specific surgeries, procedures, or treatments;

(3) the power to exercise general financial supervision over the income and resources of

the person under guardianship. This includes the power to seek or apply for, receive, invest, and expend all wages, compensation, insurance benefits, public benefits, and pensions for the benefit of the person under guardianship, to liquidate personal property for the benefit of the person under guardianship, to settle accounts, demands, claims, and actions by or against the person under guardianship, and to take any other action reasonably necessary to secure preserve, protect, and defend the financial interests of the person under guardianship;

(4) the power to approve or withhold approval of any contract, except for necessities, which the person under guardianship wishes to make;

(5) the power to approve or withhold approval of the sale or encumbrance of real property of the person under guardianship subject to the requirements of sub chapter 6 of Title 14 of the Vermont Statutes Annotated. 14 V.S.A. 2881, et seq.

(6) the power to obtain legal advice and to commence or defend against court actions in the name of the person under guardianship.

The co-guardians shall exercise supervisory powers over Ms. McDonald in a manner which is least restrictive of her personal freedom consistent with the need for supervision. The co-guardians shall maintain close contact with their mother and encourage maximum self-reliance on her part.

The co-guardians shall encourage Ms. McDonald to participate in decisions, to act on her own behalf when practicable, and to develop or regain the capacity to manage her own personal affairs to the maximum extent possible. The wishes, values, beliefs, and preferences of the person under guardianship shall be respected to the greatest possible extent in the exercise of all guardianship powers.

The authority of the agent in any Power of Attorney executed by the Respondent prior to this date shall remain in effect unless the probate court expressly orders otherwise in a petition for review of the advance directive under 18 V.S.A. 9718 or a motion to suspend or terminate a Durable Power of Attorney in accordance with 14 V.S.A. 3509.

Nothing in this Order shall give the guardian authority to place Ms. McDonald in a state hospital or school except pursuant to section 7601 et seq. or section 8801 of Title 18; consent to an involuntary treatment or medication petition pursuant to chapter 181 of Title 18; consent to sterilization or to a petition for involuntary sterilization pursuant to chapter 204 of Title 18; or consent to a petition for custody, care, or habilitation filed pursuant to chapter 206 of Title 18.

No action shall be taken to remove Mr. McDonald from his mother's home without authorization from the Court, and he shall not be denied contact with his mother. The Guardianship Order may be amended to appoint a disinterested individual as guardian should the Court find that a disinterested person as guardian would help the parties resolve their differences and would promote Ms. McDonald's best interests.

The guardian shall file an annual financial accounting and personal status report on

or before June 14th each year. Failure to file reports in a timely fashion may result in removal of the co-guardians or other sanctions.

Dated at Burlington, Vermont, this 14 day of June 2016.



Susan L. Fowler, Judge
Chittenden Superior Court
Probate Division