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Traci Adams

Escrow Officer

Order

Second Amended order for Special Guardianship of the person and the estate and setting annual review.

This page added to provide additional information required by NRS 111.312
(additional recording fee applies)



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CASE NO. 09-PB-0096
DEPT. NO. I

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DISTRICT COURT CLERK

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BY *[Signature]* DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF DOUGLAS

In the Matter of the
Guardianship of:

GENEVIEVE R. WEST,

An Adult Ward

SECOND AMENDED ORDER FOR
SPECIAL GUARDIANSHIP OF
THE PERSON AND THE ESTATE
and
SETTING ANNUAL REVIEW

THIS MATTER came before the court on March 22, 2010, for a status review hearing and petition for instructions. The ward was present with her attorney Thomas E. Perkins, Esq. The guardian Kathleen Steinert was present in court with her attorney James R. Hales, Esq. The guardian Jennifer Napoli participated by phone. The advocate Dawn King was present in court, along with the Director of the SAFE Advocate Program, John Giomi. Also present was Linda Murvin. Prior to that hearing the Court received a Report from the SAFE Advocate and written responses from various family members, all of which were filed with the Court. Based on the information provided to the Court and the arguments of counsel, this Order has been amended a second time. This second amended order follows not only the March 22, 2010 hearing, but also earlier proceedings, and for clarity, the contents of the earlier orders,



1 except as modified, are repeated herein. The modified portion of
2 the order is noted in bold typeface.

3 The matter originally came before the court on November 18,
4 2009, for the hearing on Petitioners Kathleen Steinert's ("Kathy")
5 and Jennifer Napoli's ("Jennifer") request to be appointed general
6 guardians of Genevieve R. West ("Genevieve"). Present in court
7 were: petitioners with their counsel, James R. Hales, Esq; the
8 proposed ward with her counsel, Thomas E. Perkins, Esq.; the
9 proposed ward's children, Linda Murvin and Victor West, and one of
10 her granddaughters; several of the proposed ward's friends;
11 and John Giomi, Esq., the coordinator for the court's Special
12 Advocates for the Elderly (SAFE) program. The parties stipulated
13 that this matter shall be transferred from Department I to
14 Department II of this court.

15
16 The court reviewed all the pleadings, documents and exhibits
17 in the file and offered at the hearing, including but not limited
18 to: Dr. Mikal Rahman, M.D.'s September 16, 2009, physician's
19 assessment; neuropsychologist Ted W. Young, Ph.D.'s November 16,
20 2009, competency examination of Genevieve; and the November 16,
21 2009, plan of care crafted by Carolyn Vergara, M.S.W., with
22 Creative Elder Solutions. The court heard testimony from Kathy,
23 Genevieve, and Kristen Lewis (Carson City Deputy District
24 Attorney, Criminal Division). Additionally, the court considered
25 the written exhibits offered by the parties at the hearing.
26

27 At the hearing the petitioners amended their request. They
28 sought only a special guardianship with the powers necessary to



1 implement the care plan. NRS 159.054 permits the court to order
2 a limited, or special, guardianship when a proposed ward has
3 limited capacity but is not entirely incompetent. A person has
4 limited capacity if she is able to "make independently some but
5 not all of the decisions necessary for [her] own care and the
6 management of [her] property." NRS 159.022. Limited capacity
7 must be shown by clear and convincing evidence by the
8 petitioners. NRS 159.055.

9
10 The court finds that the testimony of Kathy was credible.
11 She supported her conclusions with documentation, and showed
12 appropriate concern for her mother's well being. However,
13 Genevieve's testimony sometimes demonstrated a confused state-of-
14 mind or deflection. Her responses indicated a misunderstanding
15 of her diabetes care, confusion of several incidents, and
16 inability to respond to direct questions.

17 The evidence shows that over the last several years,
18 Genevieve has experienced declining abilities to manger her own
19 finances and to drive. Her license was cancelled by the Nevada
20 Department of Motor Vehicles. Despite this - as well as the
21 concerns expressed by her children, the Deputy District
22 Attorney, and a lengthy accident history that resulted in a
23 termination of her car insurance - Genevieve purchased and
24 illegally drove a car. Her handling of her finances revealed a
25 pattern of not comprehending the use of automatic billing and
26 debit cards, which resulted in overdrafts in her checking
27 account. Genevieve's comments to Ms. Vergara and the court
28



1 indicated fundamental misunderstandings related to managing her
2 blood sugar and perhaps her medication.

3 However, the evidence also showed that Genevieve is capable
4 of continuing to live on her own. She has a strong network of
5 friends and social activities locally, and has developed
6 alternative transportation to cope with her inability to drive.
7 It is the goal of this court, and the petitioners, to help
8 Genevieve maintain that independence and freedom in her own home
9 for as long as possible.

10 The court finds that, pursuant to NRS 159.022, Genevieve
11 West has limited capacity. She can independently make some, but
12 not all, decisions needed to manage her property and personal
13 care. Although there is still some question of whether Genevieve
14 has dementia, the only medical evaluation offered is that she
15 does have dementia. The court's finding is not dependent upon a
16 diagnosis of dementia, however, the evidence indicates that
17 Genevieve needs assistance in financial matters and making
18 decisions regarding her personal card.

19 However, as the petitioner recognized, Genevieve is not
20 incapacitated at this time. A full general guardianship is not
21 appropriate.

22 Following entry of the original Order for Special
23 Guardianship of the Person and the Estate and Setting Annual
24 Review, on November 20, 2009, it appears that the special guardians
25 encountered a problem marshaling certain assets of the ward and the
26 trust. On December 11, 2009, the special guardians sought to amend
27
28



1 the order. The ward offered her response on December 14, 2009.
2 The court has considered all the evidence presented and hereby
3 amends the original order. The court finds that amendments to the
4 original order are necessary to achieve the intention of the court.

5 Accordingly, based upon the evidence and the recommendations
6 of the care plan, and the post-hearing pleadings and proceedings
7 the court makes the following orders:

8 (1) Petitioner Kathleen Steinert and Jennifer Napoli are
9 appointed special guardians pursuant to NRS 159.054(2) of
10 Genevieve R. west, date of birth May 15, 1928. No bond is
11 required. Letters of special guardianship shall issue.

12 Kathleen is also the sole successor trustee under Genevieve's
13 family trust, the West Family Living Trust, executed on March 9,
14 1990, and as amended on October 25, 1999 (Exhibit 13 to the
15 hearing). Per the terms of the West Family Living Trust,
16 Petitioner Kathleen M. Steinert shall act as the sole successor
17 Trustee due to the grantor Genevieve West's incapacity. See *The*
18 *West Family Living Trust, Declaration of Trust* at § 4 and § 2 (as
19 amended).

20 (2) Petitioners are directed to file a verified
21 acknowledgment of their obligations as guardians with the court
22 within fifteen (15) days of this order, and a verified inventory
23 pursuant to NRS 159.085 within sixty (60) days. If trust assets
24 are disclosed, such document shall be sealed by the Clerk of the
25 Court.

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1 (3) Genevieve is directed not to drive an automobile without
2 permission of the court. She is further ordered not to purchase,
3 rent, or lease an automobile.

4 (4) Pursuant to NRS 159.054(2) and 159.0785, the Guardians
5 have only the authority to do the following:

6 (a) Sell any vehicles titled in the ward's name and to
7 reinvest the funds for the ward's benefit.

8 (b) To maintain the ward in her home at 1441
9 Edlesborough Circle, Gardnerville, Douglas County, Nevada. The
10 guardians are not permitted to move Genevieve without her consent
11 or prior permission of the court.

12 (c) To marshal and control the major assets of the ward,
13 including but not limited to her home, retirement/investment
14 accounts, and stocks, and to manage those for the ward's best
15 interest as a fiduciary.

16 (i) Special Guardians Kathleen Steinert and
17 Jennifer Napoli shall assume sole control and responsibility for
18 all of the ward's bank accounts and retirement/investment accounts,
19 except for her checking account (GNCU account #391228650). Because
20 Greater Nevada Credit Union would not open an account under the
21 West Family Trust with Kathleen Steinert and Jennifer Napoli as
22 signors, they opened an account at Charles Schwab Bank. The
23 guardians report to the court that this bank is insured by FDIC and
24 is located with a branch in Reno, Nevada. The court confirms the
25 transfer of the funds to this account. They shall deposit into the
26 guardianship account all money other than Genevieve's monthly
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1 pension, annuity and social security. Any funds over and above
2 this monthly income may be transferred from Genevieve's existing
3 account and maintained in the guardianship account except that the
4 guardians must leave a minimum balance of \$1,000 in Genevieve's
5 account at the end of the month, following any "sweep" of excess
6 funds from her accounts to the guardianship account.

7
8 (ii) The guardianship account shall be set up in
9 the name of the West Family Trust with Kathleen Steinert and
10 Jennifer Napoli as the sole and exclusive signatories on the
11 account.

12 (iii) The existing Greater Nevada Credit Union
13 account [REDACTED] 8650 shall remain in the name of Genevieve West, with
14 Kathleen Steinert and Jennifer Napoli as joint signators. The
15 Credit Union will not allow the account to be held in the Trust
16 since Genevieve is not a Trustee. The current monthly deposits of
17 Genevieve's pension to her checking, social security and annuity to
18 her savings shall remain intact. All amounts above the monthly
19 income shall be transferred as stated in (c)(i) above. The special
20 guardians shall transfer to GNCU account # [REDACTED] 8650 as needed to
21 pay Genevieve's real property taxes and quarterly federal tax
22 payments. Additional expenses for the benefit of Genevieve may be
23 administered from this account at the direction of the guardians,
24 upon Genevieve's request.

25
26 (iv) The guardians shall provide Genevieve with
27 copies of all statements related to guardianship or trust property
28 within 15 days of receiving such statements.



1 (d) To ensure that the ward has access to her monthly
2 pension, social security payments, and the annuity as set forth in
3 paragraph (c)(iii) above. The ward shall have the right to manage
4 her personal finances, household expenses and travel expenses
5 within the budget of this monthly income. However, the guardians
6 shall have full access to all information related to the ward's
7 financial activities, including but not limited to, access to
8 billings and account information from creditors and/or financial
9 institutions. Additionally, at the guardians' discretion, the ward
10 may continue to use a debit and credit card. The guardians are to
11 promptly return the ward's checkbook to her.
12

13 (e) The guardians, in consultation with the Ward
14 respectfully keeping in mind the ward's desire to maintain
15 independence and minimum intrusion in her life, may personally, or
16 designate family members, to assist the Ward with activities of
17 daily living to include but not be limited to: setting medical
18 appointments, arranging transportation to and from medical
19 appointments, assisting with grocery shopping, errands, meal
20 preparation and nutrition, the filling of prescriptions, diabetic
21 or blood pressure testing, medication reminders, and housekeeping
22 duties (including removing tripping hazards and other dangerous
23 conditions). The SAFE may perform this role.
24

25 (f) The guardians, with respect to the Ward's desire to
26 maintain independence and minimum intrusion in her life, may assist
27 the ward with activities of daily living by employing professional
28 caregivers to assist the ward in her home up to a maximum of two



1 (2) hours per day, up to a maximum of two (2) times per week,
2 unless Genevieve consents to more time. Such caregiver may assist
3 with transporting the ward to medical appointments, grocery
4 shopping, errands, meal preparation and nutrition, filling
5 prescriptions, diabetic or blood pressure testing, medication
6 reminders, and housekeeping duties (including removing tripping
7 hazards and other dangerous conditions). The SAFE may perform this
8 role.
9

10 (g) The guardians may, upon the recommendation of the
11 ward's primary care physician, after consulting with the ward,
12 have her complete a CAT scan or MRI, or complete an evaluation
13 with an appropriate neurologist, to evaluate the ward's cognitive
14 deficits and to develop a plan of care to assist in treatment of
15 any diagnosed cognitive deficit.

16 (h) The guardians shall assist Genevieve, if she so
17 desires, to continue her participation with St. Gall Catholic
18 Church and the Veteran of Foreign Wars (VFW). Nothing in this
19 order prohibits her ability to travel related to these activities.
20

21 (i) The guardians shall arrange for the installation of
22 a LifeLine Emergency telephone system, or the like, at
23 Genevieve's home.

24 (j) Upon presentation of this order to any hospital,
25 care facility or residence, financial institution, or human
26 service agency, physician, psychologist, psychiatrist, mental
27 health clinic, or other health care provider, or other agency or
28 individual providing placement, care treatment, or services to



1 the ward, including records of protected health information under
2 the provisions of the Federal Health Insurance Portability and
3 Accountability Act (HIPAA) of 1996, the guardians shall:

4 (i) Be permitted to inspect and/or copy any record
5 relating to the ward;

6 (ii) To discuss the ward's care with any
7 appropriate medical professional or institution; and

8 (iii) To discuss the ward's financial condition
9 with any appropriate professional or institution.

10 (k) Except in an emergency, and only after consultation
11 with Genevieve and her medical professionals, if the guardians
12 determine that important medical directions are not being
13 complied with by Genevieve, they may petition the court for
14 permission to aid Genevieve in complying with those instructions.
15 See NRS 159.0801(1).

16 (l) Ms. West shall keep the guardians informed of the
17 name and contact information of all medical providers from whom
18 she is receiving treatment. If Ms. West retains a new medical
19 provider, she shall provide the information to the guardians within
20 seven days.
21

22 By separate order, the court will appoint a Special Advocate
23 for the Elderly.
24

25 This matter is set for the annual review hearing and
26 accounting on Monday, October 25, 2010, at 1:45 p.m. The
27 guardians are directed to file their annual accounting, and serve
28 it on all interested parties no later than October 4, 2010.



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IT IS SO ORDERED.

Dated this 15 day of April, 2010.

MICHAEL P. GIBBONS
DISTRICT JUDGE

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CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original in file and of record in my office.

DATE 4/7/10

TED THRAN Clerk of the 9th Judicial District Court of the State of Nevada, in and for the County of Douglas.

By [Signature] Deputy