

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT

MERRIMACK COUNTY

6TH CIRCUIT - PROBATE DIVISION - CONCORD

In Re. Guardianship of
Case No. 317-2010-GI-00337

In Re. Special Needs Trust of
Case No. 317-2010-TU-00853

ORDER

The above referenced matters were before the Court on July 18, 2014. The ward, [redacted] appeared telephonically and was represented by counsel, Attorney Richard Heiser. Also in attendance were Jeannette Marino, M.S., guardian over the ward's estate and Trustee of the [redacted] Special Needs Trust of 2010, Attorney Tracy Culberson, guardian over the ward's person, and Paul Chudzicki from the Office of Public Guardian (OPG), the proposed successor guardian. Also in attendance was Attorney Molly Lynch of DHHS.

The Court heard from the interested parties regarding numerous pending matters in these cases. This Order exclusively addresses: (1) the ward's request for successor guardian over her person and estate/special needs trust; and (2) the resignation of fiduciaries with respect to guardianship over the estate. The issue concerning the Guardian's 3rd Accounting and the reasonableness of Ms. Marino's fees (Index #57) were substantially heard on February 7, 2014 and will be addressed in a separate Order by Judge [redacted].

The ward, [redacted], seeks the removal of Tracy Culberson as her guardian based upon what she calls "irreconcilable differences." Ms. [redacted] read a letter to the Court clearly expressing her concerns and issues with Attorney Culberson's ability to adequately serve as the guardian over her person. Attorney Culberson meets with her quarterly or on an as needed basis. She also claims that he is not receptive or responsive to her requests. It is clear that Ms. [redacted] desires a guardian who will be able to visit and contact her on a regular basis and a consistent advocate on her behalf. Ms. [redacted] specifically requests that the Office of Public Guardian be appointed to serve as successor guardian. Ms. [redacted] has come to know Paul Chudzicki of OPG during his visits to Glenclyff Home to meet with other individuals over whom he serves as guardian. Mr. Chudzicki testified that he is a full-time guardian for OPG and is a nationally certified guardian. He typically visits other individuals for whom he serves as guardian at Glenclyff Home, approximately three (3) times per month. It is apparent to the Court that Mr. Chudzicki has developed a positive relationship with Ms. [redacted].

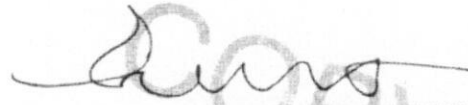
Based upon the testimony and information provided to the Court, including OPG's willingness to accept appointment as successor guardian over Ms. [redacted] person, the Court finds it is in the Ward's best interest for Attorney Culberson to be removed as guardian and for OPG to be appointed successor guardian. RSA 464-A:39. The Court further finds that OPG is suitable and appropriate to serve as successor guardian over Ms. [redacted]. The Court is confident that Mr. Chudzicki and other guardians with OPG will provide for Ms. [redacted] essential needs. The Court is not concerned with the fact that Ms. [redacted] may ultimately leave Glenclyff to live elsewhere thereby resulting in someone other than Mr. Chudzicki being assigned to work with her. OPG provides services throughout the State of New Hampshire and other representatives from OPG will be able to meet her physical and psychological needs while placing the least amount of restrictions on her civil liberties.

Ms. [redacted] also seeks the removal of Jeannette Marino as the guardian of her estate and as the Trustee of her special needs trust and as trustee of the [redacted] Special Needs Trust of 2010 because she is dissatisfied with Ms. Marino's management of her financial matters. Ms. Marino has moved for termination of guardianship over the estate because all matters have been resolved and guardianship over the estate is no longer necessary. The Court holds that given the reasons provided by Ms. Marino, termination of the guardianship over the estate only is appropriate. Ms. Marino objects to being removed as trustee because the financial matters of the special needs trust and the related family trusts are complicated. She has worked on these matters since 2010. As noted above, the Court has ongoing concerns about the ongoing excessive and unreasonable fees being charged by Ms. Marino for her work in both the guardianship and the trust matter. The Court is also concerned that counsel for DHHS claims that Ms. Marino has been unwilling to provide copies of requested information that the State of New Hampshire is entitled to receive given that Ms. [redacted] is a recipient of State benefits (though the Court recognizes that there may be legitimacy to Ms. Marino's claims that she is unable to provide all the information sought by DHHS). In any event, the Court holds that removal of Ms. Marino as Trustee of the Special Needs Trust of 2010 is appropriate given the above. The Court hereby removes Ms. Marino as trustee and appoints OPG as successor trustee. OPG has the ability and knowledge to provide appropriate trustee services and in light of the fact that OPG is being appointed guardian over Ms. [redacted] person, the Court determines that this would be in Ms. [redacted] best interest.

So Ordered.

August 11, 2014

Date



Hon. Elizabeth M. Leonard