

COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION

Estate of Constance Clinton,
An Incapacitated Person
O.C. No. 1537 IC of 2004
Control No. 101608

OPINION

This controversy concerns a dispute between court appointed co-guardians, Karen Thompson (“Thompson”) and James M. Tyler, Esquire (“Tyler”), with regard to the care and finances of the incapacitated person, Constance Clinton (“Clinton”). After hearings on June 29 and July 20, 2010, this Court granted the request by Tyler to remove Thompson as co-guardian of the person and evict her from Clinton’s home thereby enabling him to sell the real estate and apply the proceeds to pay for Clinton’s nursing home care and satisfy her mounting debts.

History of these proceedings

By Decree dated October 19, 2004, Tyler was appointed plenary guardian of Clinton’s estate and both Tyler and Thompson were appointed co-guardians of Clinton’s person. In January, 2010, Thompson unilaterally caused Clinton to be placed at Simpson House Nursing Home (“Simpson House”), where she resides presently receiving long term, skilled nursing home care. Although not consulted, Tyler agrees this was an appropriate placement. Uncontested medical interrogatories ordered by this Court during these proceedings document Clinton’s dire state of health. She is 85 years of age, physically dependent, requires help in all activities of daily living, is unable to walk, converses tangentially, and becomes very confused requiring 24 hour daily supervision. She has been diagnosed as suffering from dementia, a femoral fracture, osteoporosis, depression (resolved), falls, urinary incontinence and hypertension. The medical

report finds Clinton totally incapacitated with a “poor” prognosis for improvement. In particular the medical report noted that: “... nursing care is required to take care of her toileting , bathing, dressing and transfers,” while further noting that she requires “... access to physician services routinely. She can not be left alone at any time. She has to have meticulous skin care and not be left in bed beyond night and naps, as well as frequent turning to avoid pressure ulcers.”

Prior to her placement in Simpson House, Clinton lived in her home at 5702 Wynnefield Avenue in Philadelphia and was cared for by Thompson who, in lieu of paying rent, provided day-to-day care for Clinton. Tyler utilized all of Clinton’s monthly income from a pension and social security amounting to \$1,442 to pay the mortgage, taxes, utilities and maintenance expenses of the household. Thompson paid none of these, although she claims to have “put money in the home”. Although living in Clinton’s home alone since January, Thompson has refused to pay the mortgage, taxes or utilities on the home, thereby resulting in Tyler’s decision to list the property for sale in order to pay for Clinton’s care at Simpson House. Tyler has secured a Medicaid Grant, however, under the terms of that grant, he must pay Clinton’s entire monthly income to Simpson House. As a result, Tyler is unable to pay the mortgage, taxes, utility charges and balance owed Simpson House. Clinton’s debts now amount to approximately \$6,000 and will increase to approximately \$18,000 in one year with likely foreclosure on the property and loss of Clinton’s equity interest. Thompson, with limited income herself, continues to refuse to pay any household expenses and has squatted in the house refusing to leave even though she has no ownership interest in the house. She refuses to cooperate with efforts to show the house to prospective buyers and insists she has a right to remain.

A few days prior to the June hearing, Tyler advised the Court that he learned from Simpson House personnel that Thompson intended to remove Clinton over the weekend.

Thompson had specifically asked that her intentions not be communicated to her co-guardian Tyler. Upon being advised of this occurrence, the Court entered an order forthwith removing Thompson as a co-guardian of Clinton's person. While Thompson admits to these facts, she claims that she only admitted Clinton to Simpson House for a 6 month period and since that period had expired, she considered it her right to remove Clinton. Thompson's judgment and motives are questionable. It must be noted that Thompson had no medical opinion that such a move would be in Clinton's interests, that she acted again unilaterally without properly consulting with the co-guardian and that she had absolutely no care plan formulated for Clinton, whose fragile state of health demanded one.

Given the harsh nature of eviction and upon the pleas of Thompson, the Court granted her one month to formulate a practical and financially feasible home health care plan for Clinton. At the same time a current medical report was ordered for the next hearing. At the second hearing, Thompson appeared with counsel and requested a further continuance in order to develop a care plan. She offered no home health care plan and suggested that she and volunteer friends could provide the skilled care Clinton is now receiving at Simpson House. And, Thompson failed to offer any proposal to pay for Clinton's debts, to pay rent or to pay utilities and taxes on the house. It should be noted that even the net monthly income of \$1,442 would be barely sufficient to cover the household expenses plus food, clothing, and medications let alone skilled care for Clinton. Testimony from Philadelphia Corporation for Aging counsel indicated that a viable home health care plan could be formulated through various governmental program offerings, however, the waiting list for these services is a year or more and thus far too late to stave off foreclosure of the house.

The standard to be applied in these proceedings is what is in the best interests of Clinton,

not whether or how Thompson can avoid eviction. Thompson's behavior has cost Clinton's estate considerable expense, not only the mounting debts, but also the legal fees incident to Tyler's efforts and loss of fair market rental during her habitation of the house. Thompson's unilateral decision making without the consent of the co-guardian warrants her removal as does her lack of judgment in attempting to remove Clinton without a viable home health care plan in effect.

For all the reasons stated, this Court enters a contemporaneous order granting Tyler's request to remove Thompson as a co-guardian of the person and orders her eviction from Clinton's house.

BY THE COURT:

John W. Herron, J.

July 20, 2010

James Tyler, Esquire
Janice M. Sulman, Esquire for Thompson
Sanford L. Pfeffer, Esquire for PCA