

PHILADELPHIA COURT OF COMMON PLEAS
ORPHANS' COURT DIVISION

Estate of Regina Kirkland, An Incapacitated Person
O.C. No 1763 IC of 2009
Control No. 105042

OPINION

Introduction

A contentious, acrimonious discord has broken out between two factions within a family over control of the health and welfare of Regina Kirkland, an incapacitated person. One family faction consists of Regina Kirkland's three daughters (hereinafter "daughters"): Nina McCall Register ("Nina"), Tiffany McCall ("Tiffany") and Pamela Kirkland ("Pamela"). The other faction is comprised of Kirkland's mother, son, Enoch McCall, brothers and sisters (hereinafter "other family members"). In January 2010, Tiffany McCall filed a petition to remove a court appointed guardian Robert E. Stump, who is highly regarded and trusted by the other family members. For the reasons set forth below, the petition to remove the guardian is denied.

Factual Background

On November 28, 2008, Regina Kirkland, 53 years of age, tragically suffered a stroke while attending church services. While she was hospitalized at Hahnemann University Hospital, her daughter Nina filed a petition seeking appointment of herself as emergency guardian for her mother to make necessary health decisions. Nina was also concerned that her mother's "financial matters cannot be addressed. There are several workers' compensation checks, each in the amount of \$249.98 made payable to respondent that can not be deposited because Ms. Kirkland is unable to endorse them."¹ After issuing a citation and scheduling a hearing, Nina McCall-Register was appointed emergency guardian of her mother. Nina subsequently filed petitions to extend her emergency guardianship, which were granted. On March 6, 2009, Nina filed a petition to have her mother adjudicated as an incapacitated person. The petition noted that since January 9, 2009, Regina Kirkland was moved from Hahnemann Hospital to Garden Springs in Willow Grove, Pennsylvania. It stated that Regina Kirkland suffered from a stroke/inter-cerebral hemorrhage. While Regina had spontaneous movements, she was not oriented and did not follow commands. According to the petition, Regina Kirkland was "totally unable to manage her

¹ 12/31/09 Emergency Petition, ¶7.

financial affairs, property and business.” It requested that her daughter, Nina McCall Register, be appointed plenary guardian of her person and estate.²

In response to Nina’s petition, a hearing was held on April 13, 2009. Unfortunately, Nina did not appear at the scheduled time, though her attorney, Douglas Earl, was present as well as Brian Dietrich for the health care facility that was caring for Regina Kirkland. According to Nina’s attorney, the healthcare facility, Garden Spring Center, wanted a new guardian appointed because it was owed money for its services to Ms. Kirkland, who was in a vegetative state. These financial issues were exacerbated by a denial of the guardian’s application for Medicaid.³ Because his client was not present, Mr. Earl requested a continuance. Mr. Dietrich did not oppose the continuance but he expressed concern about the potential lack of benefits for Ms. Kirkland. Nina McCall-Register finally appeared, late, and was asked to submit a report by the following morning concerning the status of the Medicaid application. If she failed to comply, she was advised that Robert Stump would also be appointed as a guardian.⁴ Finally, by decree dated April 21, 2009, Robert Stump was appointed plenary guardian of Regina’ Kirkland’s estate while Nina McCall Register was appointed guardian of her person.

On November 25, 2009, Robert Stump, as guardian of Regina’s Kirkland’s Estate, filed a petition to remove Nina McCall Register as guardian because of his concern “for the health, safety and welfare” of Regina Kirkland.⁵ More specifically, he asserted that the guardian of the person was “misusing, mismanaging, and misappropriating the assets and income of the incapacitated person for the Guardian of the Person’s personal gain and monetary benefit.”⁶ The petition asserted that the guardian of the person was hiding and/or withholding access to Regina Kirkland and sought to preserve her “ability to benefit and gain from the assets and income of the incapacitated person.”⁷ In particular, Stump expressed concern that Regina Kirkland was entitled to a personal injury settlement in the amount of \$56,541.94 but the whereabouts of that money was unknown. He had also been advised that Nina McCall-Register was having difficulty paying for utilities or rent for the home where Regina Kirkland resided which was critical because she was on a ventilator, which required electricity.⁸ Because Regina Kirkland required constant care and supervision, Stump urged that she be removed to a facility that could properly care for her without any threat of eviction or loss of essential electricity.⁹

² 3/6/09 Petition, ¶¶ 4, 8-9, 16.

³ 4/13/09 N.T. at 3-4(Douglas Earl).

⁴ 4/13/09 N.T. at 10-11.

⁵ 11/25/09 Petition to Remove Guardian, ¶4.

⁶ 11/25/09 Petition to Remove Guardian, ¶ 5.

⁷ 11/25/09 Petition to Remove Guardian, ¶ 7-8.

⁸ 11/25/09 Petition to Remove Guardian, ¶¶12-18 & 24-25.

⁹ 11/25/09 Petition to Remove Guardian, ¶ 25-26.

In response to the serious issues raised in this petition, a hearing was held on December 9, 2009. The daughters failed to appear or contest these proceedings. Stump testified that Regina Kirkland was still in a vegetative state on a ventilator and feeding tube. Her daughters lived with her but none of them were nurses.¹⁰ He stated that he had made several attempts to meet with the daughters to discuss their mother's financial issues, but each time the youngest daughter berated him, called him stupid, challenged his motives, screamed and yelled profanities and denied him access to both financial information and to Regina Kirkland.¹¹ He was concerned because there was only 62 cents in Regina Kirkland's account. The rent had been paid only up to the end of October and he received a letter from Grand Real Estate Associates that the rent was overdue and an eviction notice would be issued soon. He reported that the overdue electric bill was \$1,333.36, while the water bill was approximately \$700.¹² Obviously, any cut off in electricity for nonpayment would cause a catastrophic shut off of the ventilator, which Regina Kirkland depended on for survival. Stump stated that both daughters were unemployed and refused to contribute any of their unemployment compensation/welfare benefits towards household expenses. When he raised these issues with the daughters Stump testified: "Their answer to me was, well, we take care of our mother so we can have her money. I said, no, it doesn't work that way."¹³ Stump testified credibly that the daughters "make everything hard and I just can't in all good conscience anymore go down there and watch this lady lay in a small little room in the dark on a vent and a feeding tube being told, well, my mother is getting better."¹⁴

The evidence convincingly supported the need for drastic action, and by a December 10, 2009 Order, Nina McCall Register was removed as guardian of the person. She was ordered to file an accounting of all assets and income for the incapacitated person beginning from the date of her appointment as guardian. She was ordered to produce Regina Kirkland for an evaluation and inspection by the guardian of the estate. She was also ordered to submit a detailed report regarding the medical condition, treatment and physical location of Regina Kirkland. She was ordered to account for all monthly income of Regina Kirkland, including but not limited to social security and pension income. Robert Stump was appointed to replace her as guardian of the person and estate. In addition he was granted authority to remove Kirkland, by force if necessary, and obtain proper nursing care for her.¹⁵ The daughters attempted to thwart this authority by removing Kirkland to Nina's residence nearby; however, in early January with police assistance, Stump succeeded in removing Regina Kirkland to Chester

¹⁰ 12/9/09 N.T. at 7 (Stump).

¹¹ 12/9/09 N.T. at 7-8 (Stump).

¹² 12/9/09 N.T. at 8-9 (Stump).

¹³ 12/9/09 N.T. at 9 (Stump).

¹⁴ 12/9/09 N.T. at 9 (Stump).

¹⁵ 12/9/2009 Decree.

Hospital by ambulance in a dehydrated state with a urinary tract infection and little cognitive function. A week later she was transferred to a nursing home where she resides now. Her health has greatly improved, the urinary track infection has been cured and she is responsive to commands. She is receiving the equivalent of 24 hour nursing care costing \$8,000 to \$10,000 per month.

In retaliation for removing her mother, Tiffany filed a petition to remove Stump. Ironically, her petition provided further documentation to support Stump's concerns. Not only did Tiffany attach a "Ten Day Shut Off Notice" from PECO alerting that the gas/electric may be discontinued, but she also submitted a past due rent notice.¹⁶ A hearing on this petition was held on February 8, 2010 during which the daughters, other family members and Stump all testified. Much of the testimony was focused on a birthday visit to Kirkland on February 7, 2010. By all credible accounts, the daughters entered the nursing home and loudly and profanely derided the attending nurses, the home administrator, Stump and the other family members. At one point they locked themselves in Kirkland's room and refused to leave. Police were summoned and forcibly removed them. The other family members praised Stump for his care of Kirkland and confirmed the abusive and obscenity laced language of the daughters.

The other family members testified that Kirkland was kept in squalid and unsanitary conditions in the family home where there was dirty water. Regina Kirkland's brother, Lewis Kirkland, stated that Regina looked very good in the nursing home and that Stump, who was doing a good job, had to apologize to the nursing staff for the daughters' behavior. Regina's sister, Gloria Jean Woodard, likewise agreed that Regina looked the best she had seen her, and that the daughters had been abusive to Stump. Susana Kirkland, Regina Kirkland's mother, testified that once while Regina was living with her daughters, she had purchased a fan to cool her incapacitated daughter. But when she returned for another visit, the fan had been removed from Regina's room. She noted that the daughters had removed Regina to Chester away from her other family members. At first, the family did not know where to find Regina; in addition, they were instructed to call before visiting. She concluded with the hope that Regina remain in the nursing home because of Regina's need for professional care which the daughters are incapable of giving her. She stated that she trusted Stump and did not want him removed. In sum, all of family members who were witnesses noted the greatly improved health of Kirkland in the nursing home and urged the continued involvement of Stump.

Stump testified that the nursing facility provides round the clock nursing care for Regina Kirkland and her condition has improved. Family visits have unfortunately created a problem for the nursing staff. He was informed that Tiffany has threatened the staff, refused to leave, and shut her mother's door to keep nurses out. The services given to Regina have an estimated cost of \$7,000 to \$8,000, but the facility is agreeable to keeping her because a Medicaid application is pending. Throughout these proceedings,

¹⁶ 1/28/10 Tiffany McCall Petition, Ex. C.

Stump has continued to serve without compensation. He has proceeded with the medical assistance application and has applied for Medicaid benefits and social security disability; however, his efforts to obtain financial information from Nina in furtherance of these applications has been stonewalled.

Not surprisingly, Tiffany and Nina disagreed. Tiffany, in rambling, vitriolic and confrontational fashion, criticized all health care givers, Stump and the other family members. At one point in asking that her mother be returned to the family home, she suggested that if Stump cared so much he should pay the overdue electric, water and rent bills out of his own funds. This testimony simply can not be credited or relied upon in the face of so many witnesses who testified otherwise. Tiffany's Petition, paragraph 4, avers that Stump should be removed for "...wasting and mismanaging the estate...". All credible evidence is exactly to the contrary. Her Petition at paragraph 5.(c) avers that Stump should be removed because he "...did not pay any of [Kirkland's] bills (gas, electric, water, personals, etc.)...". Again, all evidence is exactly to the contrary as Stump did in fact pay all bills until the accounts were depleted and has been frustrated in paying overdue bills by Nina's contumacious refusal to provide an accounting. Moreover, the financial morass has been exacerbated by the daughters' refusal to pay any expenses as they continue to reside in the home rent free. Absolutely no evidence was adduced confirming any of the frivolous and scurrilous accusations leveled against this very caring and concerned guardian.

Nina McCall Register conceded that she had not filed an account nor had she filed a report of her mother's monthly income as required by the December 9, 2009 decree. She was therefore found in contempt at the February 8, 2010 hearing for her continued obdurate behavior in not complying with orders or cooperating with Stump's reasonable requests.

Conclusion

In the last analysis, there is no question that all the family members dearly love Regina Kirkland, including her daughters. This court's primary responsibility is to safeguard the well being of Regina Kirkland, an incapacitated person. For incomprehensible reasons and perhaps an economic motive, the daughters insist that their mother be removed from the nursing home where she is thriving to return to their home where she lived in squalor, unsanitary conditions and developed a urinary tract infection and dehydration. Obviously, any financial proceeds from social security disability payments, medical assistance grant, workmen's compensation or other income streams belonging to Regina Kirkland will go to the nursing home to partially defray the huge monthly maintenance costs for Kirkland. Those funds will not be available to support the daughters as before. Sadly, this appears to be one of the daughters' motivating factors in seeking their mother's return to their house. Although possessing no medical knowledge or training, the daughters nevertheless argue that they can care for their mother better than the 24 hour trained nursing staff. In their battle to "win," they have complained about every professional who has disagreed with them and in the process somehow lost their way to understanding or appreciating how

much all involved have done to improve and safeguard their mother's life and well being. If, as time passes, there is no further behavior by the daughters that disrupts the care of their mother, this court will adjust the visitation schedule as they request so long as it coincides with the rules and regulations of the nursing home and does not impede the care and well being of Regina Kirkland.

In consideration of the overwhelming weight of the evidence, this Court herewith enters a final Decree denying the Petition to Remove Robert Stump as Guardian and further ordering restricted and supervised visits by the daughters.

Date: _____

BY THE COURT:

John W. Herron, J.