

PHILADELPHIA COURT OF COMMON PLEAS
ORPHANS' COURT DIVISION

Estate of Viola Wyze Jones,
An Incapacitated Person
O.C. No. 202 IC of 2011

OPINION SUR APPEAL

Introduction

The sole issue raised by the appeal of Edna Wheeler to this court's April 11, 2011 decree is the validity of the appointment of Gregory Wilson ("Gregory") as guardian of the person of his grandmother Viola Wyze Jones. For the reasons set forth below, this court's ruling should be affirmed because appellant fails to challenge Gregory's qualifications to serve¹ and there was no abuse of discretion in his appointment under the criteria set forth in the PEF Code.

Background

On February 10, 2011, Gregory Jones and Janice Jones filed a petition to adjudicate Viola Wyze Jones ("Viola") an incapacitated person and to appoint guardians for her person and estate. The petitioners respectively were Viola's grandson and daughter. A hearing was scheduled for March 29, 2011. In the interim, an attorney, Howard Solomon, Esquire, was appointed counsel to represent the rights, interests and person of Viola at the hearing.

Viola Jones was born on March 10, 1923 and is eighty-eight years old. She had three children: a surviving daughter, Janice Denise Jones, and two deceased children (Barbara Jones and Norman Jones). She has been living in an assisted living facility, Reed Street Presbyterian Apartments located at 1401 S. 16th Street, Philadelphia since approximately 2006.² The only issue at the hearing was who should serve as guardian of Viola's person since there was general agreement that a guardian was needed.³ Appointed counsel, Howard Solomon, agreed with petitioners on the appointment of Gregory Jones as guardian of Viola's person. He initially suggested, however, that Viola's niece, Edna Wheeler, be named as co-guardian because she had been granted a power of attorney by a document dated August 26, 2010. Counsel for petitioners

¹ See, e.g., 5/31/2011 Edna Wheeler, Statement of Matters Complained of on Appeal.

² 2/10/2011 Petition, ¶¶1-17. See also 3/29/2011 N.T. at 19 (Wheeler)(confirming that Viola lives at 1401 South 16th Street).

³ 3/29/2011 N.T. at 7 (Solomon)(stipulating to need for guardian).

disputed the validity of that document and objected to a joint guardianship. Mr. Solomon responded that he had no objection to the appointment of Gregory Jones as guardian of the person, he did not represent Edna Wheeler, and that she could speak for herself.⁴

In her subsequent testimony, Ms. Wheeler stated that she had been caring for her Aunt Viola for approximately nine years by purchasing groceries for her, taking her places, cooking and cleaning.⁵ She admitted that she did not have a good relationship with the proposed guardian, Gregory Jones.⁶ She testified that her aunt had been diagnosed with dementia. When asked whether that diagnosis had been in place at the time Viola executed the power of attorney, Ms. Wheeler stated: “I didn’t know that it was, but I’m finding out that it was.”⁷ She also conceded that Gregory Jones lives closer to Viola.⁸

Upon consideration of this record, and the assurance by counsel for petitioners that Gregory Jones and his mother, Janice Jones, are all willing to share in the care of Viola, this court appointed Gregory Jones as guardian of Viola’s person based on the agreement of appointed counsel.⁹ Unfortunately, since Ms. Wheeler stated that she does not get along with Mr. Jones, a joint guardianship could be disruptive and thus not in the best interest of Viola.

Legal Analysis

The general procedures for adjudicating a person incapacitated and for appointing a guardian are set forth in Chapter 55 of the PEF Code. Section 5511(f), which establishes guidelines for “[w]ho may be appointed guardian,” gives the court broad discretion in that selection stating that it “may appoint as guardian any qualified individual...” The only limitation this section imposes is the prohibition against appointment of a person or entity “providing residential services for a fee to the incapacitated person” or “any other person whose interests conflict with those of the incapacitated person.” 20 Pa.C.S. §5511(f). Longstanding Pennsylvania Supreme Court precedent recognizes that the selection of a guardian in these cases rests “within the sound discretion of the court to which application has been made; and [the appellate] court will not reverse unless there has been an abuse of discretion.” Heidtman Estate,

⁴ 3/29/2011 N.T. at 8-10.

⁵ 3/29/2011 N.T. at 12 & 20 (Wheeler)

⁶ 3/29/2011 N.T. at 13 (Wheeler).

⁷ 3/29/2011 N.T. at 16 (Wheeler).

⁸ 3/29/2011 N.T. at 18 (Wheeler).

⁹ 3/29/ 2011 N.T. at 24. This court by the April 11, 2011 decree also appointed John Paul Simpkins, Esquire, guardian of the estate, but Ms. Wheeler did not appeal that appointment.

452 Pa. 441, 445,306 A.2d 878, 879 (1973)(referencing “incompetent” rather than “incapacitated persons”). See also Estate of Dorone, 517 Pa. 3, 534 A.2d 452 (1987)(“The ultimate selection of a (temporary) guardian lies within the sound discretion of the hearing judge, and an appellate court will not reverse that decision except upon an abuse of that discretion”).

In her statement of matters complained of on appeal of the appointment of a guardian of Viola’s person, Edna Wheeler does not assert that the guardian appointed by this court has any interest adverse to Viola Jones. Instead, she argues that this court failed to give proper weight to such documents as Viola Jones’s power of attorney, a health care directive, and a will dated August 26, 2010 as well as a will dated June 23, 2005. There is no statutory mandate that such documents be given any particular weight in selecting a guardian of the person. Instead, section 5511(f) requires only that the court appoint a “qualified” individual.

Ms. Wheeler’s conduct in obtaining the power of attorney while knowing that Viola Jones was suffering from dementia is a very real concern to this Court and is a basis to question her suitability as a guardian. However, even more persuasive is the recommendation of Viola Jones’ court appointed counsel that Gregory Jones serve as guardian of her person and the acknowledgement by Ms. Wheeler that she cannot get along with him. Appointing Ms. Wheeler as the guardian or co-guardian would be disruptive to the family. Therefore, based on the record presented together with appointed counsel’s recommendation, this court properly concluded that Gregory Jones was fully qualified to serve as guardian of his grandmother’s person. This ruling does not preclude, of course, Edna Wheeler from continuing to care for her aunt.

Conclusion

For these reasons, the appeal by Edna Wheeler of the decree dated April 11, 2011 should be denied.

Date: _____

BY THE COURT:

John W. Herron, J.