

Guardianship of adults can be tricky and contentious, local family finds

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In the summer of 2007 Rita Denmark, a widow living with one of her Bradford daughters, was a fit 76-year-old who walked miles every day. She had cross-country skied in the winter. Her memory was not what it used to be, so she had given another local daughter, Holly Pepper, durable power of attorney responsibility, and Pepper managed her finances and bills in consultation with her mom.

An Office of Aging social worker recommended that a guardianship be arranged. The Orphan's Court of the McKean County court system would be the court to grant that.

Thinking was that in time, as the elderly woman's memory loss progressed, there should be something in place to safeguard her interests. Often guardianship of an adult is based on that individual's inability to handle his/her own affairs due to diminished capacity—typically, memory loss or dementia.

A court considers guardianship of an adult on the basis of the person's need for such assistance and protection. Sometimes the elderly, particularly those living alone, are preyed upon by unscrupulous lenders or vendors or service providers, and con artists in general. Granting a trusted person power of attorney may offer some convenience to the elderly or impaired person, but does not keep that person from entering into business arrangements or handing over money or other assets to unscrupulous types. Guardianship is a far better protection.

Accordingly Pepper set about getting guardianship in place by filing the appropriate petition in Orphan's Court.

Even as the procedure was getting underway, two other adult children stepped in.

The other Bradford daughter with whom she had been living took Mrs. Denmark to Florida to visit her son.

Early in that visit Mrs. Denmark was taken to see an attorney who had been lined up by the son she was visiting. She signed an affidavit which indicated that she had moved to Florida.

The Florida attorney hired a McKean County attorney, Mark Hollenbeck, who notified the McKean County Orphan's Court that he was representing Mrs. Denmark. He presented the affidavit purporting to show that Mrs. Denmark had shifted her residence and domicile to Florida.

Meanwhile, back in Florida, the Florida attorney hired another Florida attorney, apparently one affiliated with him, to represent Mrs. Denmark. Within weeks there was a guardianship petition being considered in a Florida court. The attorneys involved were the son's, and that attorney's associate as counsel for the mother.

In more recent actions in McKean County Orphan's Court, Pepper has maintained that Mrs. Denmark was tricked into her part in the proceedings, and had no intention of moving to Florida—only meaning to visit a son she had had little recent contact with.

Pepper is convinced her mother was tricked into saying she was a Florida resident. She considers the guardianship proceedings in Florida to have been based on a fraud on the court there, and the representations in McKean County Orphan's Court to have been fraudulent as well, all intended to support the contention that the Florida court had jurisdiction in the matter.

Pepper says jurisdiction should have remained in McKean County, and the decision of the Florida court should be declared a nullity or should be overturned somehow.

As for Mrs. Denmark, she has been appointed a "professional guardian" who has worked with the two Florida attorneys. They placed Mrs. Denmark in an assisted living facility (or possibly a nursing home). Also, the attorneys and guardian got court approval of a no contact/no visitation order which keeps Pepper from having access to her mother.

"My mother is being criminally confined behind the locked and secured doors of a Florida elder care facility," Pepper wrote to U.S. Attorney David J. Hickton, based in Pittsburgh, in September. "She is being held against her will and she wishes to return home to Pennsylvania. There is substantial, clear and convincing evidence that my mother is a lifelong domiciliary and resident of Pennsylvania."

The Florida guardian, Jetta

Getty, assisted by others, came to Bradford and took custody of Mrs. Denmark's valuables, antiques, car and jewels. Previously they had obtained Pepper's assistance in packing up some of the items, and transferring over \$240,000 in Mrs. Denmark's funds from Hamlin Bank to a Florida bank.

Pepper says she cooperated with Getty because Getty told her this would be the most efficient way to get things in order so that Mrs. Denmark could come home.

Pepper says her mother's condition has deteriorated in the facility where she is "confined." A family connection who visited Mrs. Denmark there told Pepper that Mrs. Denmark seems heavily medicated, "like a zombie," and is emaciated.

Still, Pepper believes there is no medical necessity for her mother to be in such a facility, or at least no proof that such a setting is warranted or in her mother's best interest.

Most of all, "I just want my mother to be able to come home," Pepper said in a hearing before Senior Visiting Judge H. William White in a hearing last Friday. The hearing was on her motion to have the court overturn its June ruling in the matter, where Getty's guardianship was not overturned. Pepper had filed a number of exceptions to that ruling.

Judge White is mulling over the many exhibits, including large charts and a plethora of documents, and plans to rule this Friday. He suggested that he would like to be able to discuss the history of the matter with the Florida judge who granted that guardianship.

Attorney Ronald Langella, representing Getty (who was not present) stated firmly that Judge White does not have authority to engage in such a judge-to-judge discussion. Still, White was clearly intrigued concerning the tangled sequence of events, and by the jurisdictional matter.

Was there fraud upon either or both courts? How could that be determined? Pepper, representing herself, maintained that there was fraud, and offered case law to support such a conclusion.

White said he would look at those cases and consider whether the issues raised had in fact been raised in some guise in the earlier proceedings which had led to his ruling in June, and whether they are germane to the issues raised in

Peffer's exceptions.

Peffer's hopes for her mother's return are pinned to the judge's decision. But there are others interested in the outcome as well: activists who are seeking changes in how guardianship of adults is handled, across the United States. One such group sent had several members present in Friday's hearing.