

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

IN THE MATTER OF	:	
MECHELLE A. WARREN	:	No. 41-99-0190
An incapacitated person	:	Orphans' Court Division

OPINION AND ORDER

This matter involves the appointment of a plenary guardian for the person and estate of Mechelle Warren, an incapacitated person. Ms. Warren has a degenerative neurological disease which impairs her ability to function, and to make and communicate decisions. Ms. Warren's husband, David Warren, was appointed plenary guardian of her estate and person on July 19, 1999. After initiating divorce proceedings against his wife, Mr. Warren petitioned the court to appoint Denise L. Dieter, Esq. as her Temporary Limited Guardian, for the limited purpose of representing her interests in the divorce litigation and any ancillary issues arising out of the divorce proceedings. Under Mr. Warren's plan, once the divorce is finalized and the issues are resolved, Mr. Warren would then resume his role as his ex-wife's plenary guardian. Ms. Warren's mother, Shirley Davis, has also petitioned the court, requesting that she be appointed Ms. Warren's permanent plenary guardian of her person and estate.

Mr. Warren's scheme is curious, to say the least. One would not ordinarily expect an ex-husband to be the most appropriate person to be in charge of the affairs of his former wife, especially when it was the husband who initiated divorce proceedings. Moreover, the individual he proposes as temporary guardian, while extremely qualified in both guardianship and family law matters, is not a relative of Ms. Warren's. She is a disinterested third party. Where, as here, there exists a close blood relative who has

demonstrated a great deal of love and compassion for the incapacitated person, and is willing and able to act as guardian, there is no question the blood relative should be appointed over a stranger.

The testimony showed that since Ms. Warren was admitted to a nursing home facility in Watsontown four years ago, Ms. Davis has visited her daughter at least once a week—far more than Mr. Warren, who has shown scant interest in his wife and has seldom, if ever, taken the couple’s minor children to visit her. The testimony also demonstrated that if appointed guardian, Ms. Davis would obtain competent divorce counsel and would diligently strive to make decisions which are in her daughter’s best interest. Ms. Davis also testified she would move Ms. Warren into her own home and care for her if the physicians approved and if they did not approve, she would move her daughter to a nursing home closer to her own residence in Muncy. The court was extremely impressed with Ms. Davis’s dedication to and love for her daughter, and is satisfied that she will work hard to secure the maximum benefit for her daughter in the divorce proceedings as well as in other matters.

Mr. Warren’s objection to Ms. Davis’s appointment centered around his concern that the divorce would be more difficult for him, and that after the divorce, Ms. Davis would make decisions which conflict with his own opinion on various matters. While those concerns are understandable when viewed from Mr. Warren’s own selfish perspective, it is Ms. Warren’s interests which are to be considered in this proceeding—not those of her husband.

In conclusion, the court finds Ms. Davis has shown by clear and convincing evidence that appointing her as guardian would best serve the interests of Ms. Warren.

ORDER

AND NOW, this 25th day of September, 2003, for the reasons stated in the foregoing opinion, the Amended Petition for Temporary Limited Guardian filed by David M. Warren is dismissed and the petition filed by Shirley Davis is granted. It is hereby ORDERED that:

1. Shirley Davis is appointed Plenary Guardian of the Person and Estate of Mechelle A. Warren.
2. Shirley Davis shall, in the least restrictive manner possible, provide for the following:
 - A. The making of health care decisions and the authorization of medical and surgical procedures and the administration of drugs for the person of the incapacitated to the same extent the incapacitated could make decisions for herself if she had the capacity to do so.
 - B. The making of decisions regarding the available income to benefit the estate and to authorize any contracts or agreements for Public Assistance or other benefits.
 - C. To do estate planning and long term healthcare planning and to execute all documents required to effectuate such plans, to qualify for and receive government benefits including, but not limited to, Medicaid, and assistance and to do any other acts allowed by the PE.F. Code 20 Pa. C.S.A. §5602 et seq.
 - D. To make any financial decision required to safeguard her assets including, but not limited to, the opening and closing of banking

accounts, to enter safe deposit boxes and to buy, sell or transfer stocks and bonds, and to liquidate, change ownership of life insurance policies, and/or to create a trust of any nature.

E. To provide for and arrange for provision of services sufficient for the care of the incapacitated, with full power and authority to take the following actions:

- (1) Obtain medical and health care records and any other information regarding the incapacitated person's physical or mental health,
- (2) Execute on the incapacitated's behalf all documents that may be required in order to obtain such information and to consent to the disclosure of such information to others.
- (3) Execute any document necessary to implement the health care decisions made by the Guardian of the Person,
- (4) Employ or discharge medical, social service, and other support personnel responsible for the incapacitated person's care,
- (5) Seek and obtain court authorization regarding withholding or withdrawal of medical treatments,
- (6) Authorize the incapacitated person's admission to a medical, nursing, residential, or similar facility, and enter into agreements for the incapacitated person's care,
- (7) Execute any waiver or release from liability that the guardian determines to be appropriate.

- F. Shirley Davis shall have the authority to consent to the divorce of
Mechelle A. Warren from David M. Warren.
3. Shirley Davis shall have full power and authority to employ or contract the
services of health care, social service, and other professionals to provide
services specifically enumerated in paragraph 3 of this Order or any other power
authorized by 20 Pa.C.S.A. §5521 as the same may be amended hereafter from
time to time.
4. Shirley Davis shall not be required to post bond.
5. Shirley Davis shall file all reports necessary to be in compliance with 20
Pa.C.S.A. §5521, including an initial report and one every twelve months
thereafter.

BY THE COURT,

Clinton W. Smith, P.J.

cc: Dana Jacques, Esq.
Hon. Clinton W. Smith
Joy McCoy, Esq.
Richard Scheib, Esq.
Gary Weber, Esq.