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Guardianship Reform in the Spotlight: Pennsylvania's Path Forward

Guardianship can strip individuals of fundamental rights and powers most people take for granted.

By **Valerie L. Snow** | July 19, 2021



Valerie L. Snow of SeniorLAW Center. Courtesy photo

International pop icon Britney Spears has, in recent years, achieved a grimmer kind of fame: surging interest in her ongoing 13-year conservatorship (guardianship) saga has made Spears a cause célèbre for reform efforts. Speaking in open court for the first time last month, Spears publicly denounced the conservatorship, calling it “abusive.” In tones of heartbreak, frustration and anger, she described in detail her powerlessness to control nearly every aspect of her life. Spears added that she was unaware of her right to petition to end the conservatorship and had previously been unable to select her own lawyer. Her conservators and managers, she said, “should be in jail.”

Although Spears’ case is hardly typical, its high-profile nature has increased the growing spotlight on the nationwide issue of guardianship abuse, neglect and exploitation. Guardianship can strip individuals of fundamental rights and powers most people take for granted. An adult deemed “incapacitated” may be unable to decide where to live, how to spend income, whether to sell real or personal property, which health care to receive or refuse, and even which friends or family members with whom to visit. Sometimes, guardianship truly is necessary, though it should be limited in scope whenever possible. Other times, guardianships are overbroad and/or implemented without due consideration for less-restrictive alternatives, which include durable financial and health care powers of attorney, Social Security representative payees and VA fiduciaries, living wills/advance directives, Act 169 health care representatives (codified at 20 Pa. C.S. Section 5461), supportive services, and trusts.

The high stakes of guardianship carry a corresponding potential for abuse, neglect and exploitation. Most guardians, whether family members or professionals, are well intentioned and perform their responsibilities adequately; it is the outliers who attract attention and raise questions about how their misfeasance went unnoticed. Such issues have begun to take up more space in media and public consciousness. As outcry surrounding Spears’ case gained steam earlier this year, Netflix released the thriller, “I Care a Lot,” in which a manipulative for-profit guardian takes advantage of flawed systems to prey on wealthy older adults. Though the plot turns sensational, the basic premise is unfortunately not so far-fetched, as the Guardian newspaper chronicled in a story coinciding with the release of the movie. (David Smith, “99% of the world has no idea:” (<https://www.theguardian.com/film/2021/feb/17/99-of-the-world-has-no-idea-inside-the-shocking-legal-guardianship-industry>)inside the shocking legal guardianship industry.” Feb. 18, 2021).

One scandal highlighted in that piece took place in Nevada, where a bombshell investigation published in the New Yorker in 2017 greased the wheels of guardianship reform. (Rachel Aviv, “How the Elderly Lose Their Rights. (<https://www.newyorker.com/magazine/2017/10/09/how-the-elderly-lose-their-rights>)” Oct. 2, 2017). Today, Nevada represents the “gold standard” of adult guardianship across the nation. The three pillars of its successful reform efforts, which should serve as a template for Pennsylvania, are: (1) automatic statutory right to counsel for all adults facing and under guardianship; (2) a codified Protected Person’s Bill of Rights and other due process improvements; and (3) the establishment and proper funding of a State Guardianship Compliance Office.

In Pennsylvania, advocates have already taken several steps to improve the landscape of adult guardianship. Based on recommendations of the statewide Elder Law Task Force, in 2015 the Supreme Court of Pennsylvania established the Office of Elder Justice in the Courts and a corresponding Advisory Council. SeniorLAW Center (SLC) is an appointed member to both the Task Force and Council, and we are proud to be part of the transformative work led by Supreme Court Justice Debra Todd, Senior Judge Paula Ott and attorney Zygmunt Pines. Among these bodies’ most important accomplishments was the implementation in 2018 of the Guardianship Tracking System, which standardizes guardianship reporting across the commonwealth and improves guardian oversight and data collection. Additionally, potential guardians must now submit a state criminal record check from each state in which they have resided within the previous five years. And, in late 2020, the Advisory Council and others collaborated to release the Pennsylvania Guardianship Bench Book, a resource of best practices for judges, attorneys and other guardianship stakeholders. The Bench Book is accessible online at <https://www.pacourts.us/judicial-administration/judicial-education>.

These measures certainly mark progress for Pennsylvania, which recently had a guardianship scandal of its own. As reported in *The Philadelphia Inquirer*, three individuals who formerly served as court-appointed guardians in six counties stand charged with embezzling more than \$1 million from 108 victims—i.e., clients subject to guardianship. (Julie Shaw, “3 court-appointed guardians embezzled more than \$1M from 108 victims, Delco DA says (<https://www.inquirer.com/news/pennsylvania/guardian-gloria-byars-charged-theft-delaware-county-district-attorney-20191021.html>).” Oct. 21, 2019.) All three currently await trial.

Guardianship, and abuse that may occur after its implementation, can affect people of all backgrounds and circumstances. Anyone, for instance, can suffer from decisions about medical care or living arrangements made by a guardian of the person who does not have their best interest in mind. And while wealthier individuals stand to lose more money or assets at the hands of an exploitative guardian of the estate, they are also more likely to have had the resources to engage in personal and estate planning earlier in their lives. Such advance planning can protect assets and often helps avoid guardianship down the line. Furthermore, adults and families with greater resources who would like to litigate a guardianship matter can afford to hire attorneys in private practice.

Recognizing the various challenges and barriers experienced by low-income individuals facing or under guardianship, and the paucity of free legal assistance in this arena, SLC launched a project called “Access to Justice in Guardianship” in October 2020 (made possible by funding from the Independence Foundation and pro bono assistance from Stephen A. Feldman of Feldman & Feldman). SLC’s mission is to pursue justice for older Pennsylvanians, especially the most vulnerable. Our diverse staff of over 40 attorneys and advocates serves over 10,000 older adults each year in a wide variety of critical legal issues.

The purpose of the “Access to Justice in Guardianship” project is to advocate on behalf of low-income older adults who are facing guardianship proceedings or who are experiencing exploitation, neglect or other problems involving a court-appointed guardian. We provide full representation to older Philadelphians facing or subject to guardianship; we advise older Pennsylvanians with guardianship questions through the PA SeniorLAW Helpline (1-877-PA SR LAW); we advocate for legislative and policy changes to reform guardianship and improve access to justice for older adults; and we educate the community about guardianship and less-restrictive alternatives. With assistance from Penn Memory Center and other partners, SLC is now exploring how to expand supported decision-making—a practice increasingly used to avoid guardianship for “younger” adults with stable intellectual and developmental disabilities—to an older adult population that may experience progressive cognitive decline.

Already, the need for the involvement of legal services in guardianship defense matters has become clear. Among the most common issues the project addresses are unresponsive or uncooperative professional guardians, and plenary guardianship petitions filed for inappropriate reasons or supported by inadequate/poor quality medical testimony. For example, medical providers may fail to screen for reversible causes of incapacity and may fall short in assessing the adult’s true cognitive and functional abilities. Additionally, though limited guardianships would suffice in some cases—e.g., to permit gathering financial records in support of a Medicaid application, and subsequent recertification—petitions seeking plenary control of the person and estate are the rule, not the exception.

With the momentum of the Spears case and renewed media and public interest in guardianship, the time is ripe to push for reforms. Pennsylvania should start with right-to-counsel legislation, which was introduced in the 2019-2020 Senate session but then shelved. Fresh advocacy efforts will benefit from increased public awareness of the issues still plaguing the commonwealth’s guardianship systems. SeniorLAW Center invites the legal community to join in this important work.

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