PULLMAN &COMLEY

Could the Plot Lines of "I Care A Lot" and "#FreeBritney" be Repeated in Connecticut?

March 5, 2021

Probate courts and pop culture are an odd mix, but nothing is normal these days. First, there is the crime thriller “I Care A Lot” that portrays a ruthless, unethical court-appointed guardian and a son of one of the guardian’s wards who is held captive by manipulation of the legal and medical systems. Though the movie also involves more familiar types of bad behavior, there is no denying that it aptly exposes the potential abuses of the guardianship system, In this way, the drama is reminiscent of Rachel Aviv’s 2017 expose How the Elderly Lose Their Rights published in *The New Yorker* magazine.

However, neither of the above has the sizzle of “Framing Britney Spears,” the ”must watch” documentary about the former teen icon who has been embroiled in a legal battle against her father. The father serves as the California equivalent of a guardian, known as a conservator. Spears and her fans claim that Spears’ father has used the conservatorship process unnecessarily in order to personally profit from his daughter’s celebrity status.

Given these recent headlines, Connecticut residents may have questions about their own state’s version of the conservatorship system. In Connecticut, if the Probate Court finds by clear and convincing evidence that an individual is incapable of caring for him or herself, then the court may appoint another individual, a conservator, to manage the affairs of the person (i.e. medical decision making, issues with where they are living, etc.) or their estate (i.e. their finances). In such cases, the appointment of a conservator must be the least restrictive means of intervention available to assist the individual in managing their affairs. A conservator may also be appointed for a person who voluntarily requests such assistance.

When determining whether a conservator should be appointed the Probate Court must take into account the following: (1) The abilities of the individual; (2) the individual's capacity to understand and articulate an informed preference regarding the care of his or her person or the management of his or her affairs; (3) any relevant and material information obtained from the individual; (4) evidence of the individual's past preferences and life style choices; (5) the individual's cultural background; (6) the desirability of maintaining continuity in the individual's life and environment; (7) whether the individual had previously made adequate alternative arrangements for the care of his or her person or for the management of his or her affairs, such as the execution of a durable power of attorney; (8) any relevant and material evidence from the individual's family and any other person regarding the individual's past practices and preferences; and (9) any supportive services, technologies or other means that are available to assist the individual in meeting his or her needs.

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1. *How can a guardian get appointed without the ward even knowing there was a hearing?*

Hearings without notice and a chance to be heard—referred to as *ex parte* hearings—are reserved for the most serious of emergencies. In Connecticut, an ex parte hearing may be granted only if the court determines that the delay resulting from giving notice and appointing an attorney to represent the respondent would cause immediate and irreparable harm to the mental or physical health or financial or legal affairs of the potentially conserved individual. In those cases, the court may, without prior notice to the potentially conserved individual, appoint a temporary conservator after evaluating the evidence, provided that the court makes a specific finding in any decree issued on the application stating the immediate or irreparable harm that formed the basis for the court's determination and why such hearing and appointment was not required before making an ex parte appointment. As additional protection the court must have a follow-up hearing within three days once the ward (known as the "conserved person") has notice and the opportunity to be heard.

2. Could a ward be denied access to an attorney?

Both *I Care A Lot* and *Framing Britney Spears* highlight the practical concern of getting a potentially conserved person adequate access to an attorney of their choosing. However, the glaring absence of an attorney advocating on behalf of the patient depicted in *I Care A Lot*, for example, would not occur in Connecticut. In Connecticut, Probate Courts appoint attorneys to represent each conserved person. That attorney must meet with the conserved person and advocate to understand their wishes, if possible—at times taking a position contrary to the proposed guardian or conservator. The court-appointed attorney is the strongest protection against abuse of the system—even after the initial hearing, the conserved person has access to a court-appointed attorney should the conservator misuse funds or otherwise act improperly or unethically. It should also be noted, that even during COVID-19, healthcare facilities like hospitals and nursing homes have had to honor granting their patients access to their attorneys—however that can be accomplished safely. A conservator in Connecticut cannot prevent their ward from accessing counsel without violating the ward's rights (and almost certainly triggering a hearing for their removal).

3. Can a ward's access to things like cell phones or visits from family members be limited?

Maybe. Under certain circumstances these types of restrictions may be permitted. However, Connecticut law requires that conservators use the least restrictive means possible. Therefore, in order to restrict access to a phone or visitors, the conservator would have to have a compelling reason, and if the conserved person thought the conservator was overreaching, this could be challenged by the conserved person's court-appointed attorney.

Furthermore, patients in care facilities, conserved or not, are entitled to statutory protections known as the "Patients' Bill of Rights" which include the right to "associate and communicate privately with persons of the patient's choice, . . . receive the patient's personal mail unopened and make and receive telephone calls

privately, unless medically contraindicated." (Conn. Gen. Stat. §19a-550) It is also possible that a conservator could restrict visitation from family members, however, only under circumstances where such restrictions are reasonable or necessary to protect the conserved person. For example, if a family member has a demonstrated history of taking advantage of a conserved person by asking for money or upsetting them, then they may be restricted from visiting or only allowed supervised visits. However, this will generally only be tolerated if it is in the best interests of the conserved person and typically must be supported by the conserved person's medical record.

4. *Is it easy to commit someone to a locked psychiatric unit in Connecticut?*

No. While things like the mental breakdown of a worldwide celebrity or an everyday person may be likely to result in a psychiatric evaluation, it's not a one-way ticket to a locked psychiatric unit. First, in Connecticut, a conservator cannot order a ward into a psychiatric unit as depicted in *I Care a Lot.* Instead, psychiatric confinement requires a separate court order. Connecticut Probate Courts also require the evaluation of two (2) independent psychiatrists and, based on all the evidence presented over the course of at least two hearings, must find by clear and convincing evidence that the person is either a danger to himself or others or is gravely disabled. And even then, the psychiatric hospitalization must also be the least restrictive placement for the individual and the psychiatric hospital is obligated to release the patient once they improve and hospitalization is no longer required. A committed individual can still request a hearing of the Probate Court if they believe that their commitment is no longer warranted and any commitments longer than a year must be re-evaluated by the court on an annual basis or whenever requested by the conserved person.

5. Could a conservator be appointed and make decisions on behalf of a person whom they don't know or is unidentified?

Yes. In Connecticut, patients with no known decision maker who require care will be subject to conservatorship until they recover and regain capacity to make their own decisions. However, Connecticut Probate Courts require significant due diligence to determine the identity of the person and contact their family members before appointing a conservator. If family members later emerge, they can petition the court to remove a conservator and reappoint someone more appropriate, such as a family member.

6. *Do Conservators or Guardians get paid?*

Yes and no. Following the appointment of a conservator of an individual who is, for example, elderly and in need of assistance in helping to manage their finances and health care decisions, a conservator can apply to the state's Probate Administration for hourly payment. However, payment for conservators is capped at certain amounts. Additionally, so-called Contract Conservators are paid a fixed monthly fee (currently $90) per client through a program intended to improve efficiency by replacing hourly billing with a simple flat-fee

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alternative for conservators who take on a high number of cases representing varying degrees of complexity.

The idea behind paying the conservator is that skilled, professional individuals, including attorneys, will be motivated to assist those who are most vulnerable. Even so, these sums are modest, and conservators do not get paid based on the amount of the conserved person's assets or to the extent they manage significant business affairs, as in the Spears case where the conservator tried to get court approval for a raise.

However, a glaring hole in the system exists for those in need who have an intellectual disability. In Connecticut, these individuals are required to have a guardian appointed on their behalf, but there is no method for compensating these guardians, who instead act as volunteers. While this assures that there is no financial gain to be had, oftentimes it makes it difficult to find appropriate guardians who are willing and capable of helping, but who cannot do so because they are not being compensated for what could be a very significant requirement of time and effort.

If you have questions regarding probate litigation matters, please contact one of the following attorneys who deal with issues relating to conservatorships: David Bussolotta, Thomas S. Lambert, Amy Murray and Kelly F. O'Donnell.