

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

In the Matter of:)
)
The Fitness of Cache Integrity Services and)
Thomas McDuffie as Guardian or Conservator)
Joint Hearing,)
)
_____)

Case No. 3AN-23-02292PR

ORDER RELIEVING CACHE INTEGRITY SERVICES AS
GUARDIAN/CONSERVATOR AND APPOINTING SUBSTITUTE
GUARDIAN/CONSERVATOR

Summary

On October 24, 2023, Presiding Judge Thomas Matthews issued an order for joint hearing on the common question of the fitness of Cache Integrity Services and Thomas McDuffie to as guardian or conservator in any case. Over the past four weeks the court has conducted review hearings in 67 cases.¹ Some of the cases were in good order, meaning that the current of the address of the protected person was known, benefits were intact (e.g. Medicaid waiver), housing was stable, necessary medical services intact, and personal needs being met. Some of the cases presented real questions whether or not they were in good order and further review by the Court Visitor was necessary. Some of the cases were in very poor order or critical due to a lapse in Medicaid waiver, neglect of medical needs, unstable housing or unhoused, location of the protected person unknown,

¹ The initial case assignment totaled 114 cases. 8 cases have been closed or are otherwise no longer part of the review. All other cases that haven't yet had a hearing, have a future hearing set within the next one to three weeks.

and/or the protected person had never met Mr. McDuffie.² In all but one case, the public guardian (OPA) had been previously appointed as guardian/conservator. In several of the cases, the public guardian is still in control of the ward's finances even though orders had issued approving the transfer of the case to Mr. McDuffie and Cache Integrity Services.

Mr. McDuffie was present at all hearings and responsive to all questions asked. He accepted the court's prioritization of his caseload in an attempt to address those with the most urgent needs first. It was the court's impression that Mr. McDuffie, given some time, could get each case ready for transfer to a new guardian (i.e. the case was in good order) and be in a position to properly manage the remaining cases assigned to him in either capacity as guardian or conservator.³ Unfortunately, there has been a drastic change in circumstances requiring the court to take urgent action.

Change in Circumstances

On Monday, November 20, 2023, requests for review were filed in 53 of the Cache cases by the respective court visitor. The requests each described that Mr. McDuffie was experiencing a medical emergency, that he felt unfit to continue his guardianship duties, and that he intended to surrender his license on Monday, November 20, 2023. Each notice had a copy of an email from Mr. McDuffie's dated November 19, 2023 explaining his hospitalization and intent to surrender his professional license.

² The information presented by the Court Visitor in those cases described as being in crisis, sufficiently establishes probable cause that the ward's physical well-being or safety is in imminent danger.

³ No evidence had yet been received by the court and no hearing had yet been conducted in this overarching Fitness Review case. Mr. McDuffie's fitness to act as a guardian or conservator in the future remains an open question.

On November 27, 2023, a court visitor filed notice in this case that she had confirmed with the state licensing office that Mr. McDuffie had indeed surrendered his professional license.

Change in Guardianship and Conservatorship

AS 13.26.286 (a) allows that a petition to review the guardian decision based on the motion of an interested person or on the court's own motion. AS 13.26.286 (c) requires that before changing a guardianship the court is to follow the same procedures as the initial petition for guardianship to safeguard the rights of the ward. AS 13.26.286 (e) states the court can take whatever action is necessary to protect the ward if there is probable cause to believe there is an imminent danger to the physical health or safety of the ward.

AS 13.26.490 gives the court the authority to remove a conservator for good cause upon notice and hearing, or accept the resignation of a conservator. The court may then appoint a new conservator. AS 13.26.495 allows any person interested in the welfare of the person to file a petition to replace the conservator.

In all of these cases, the ward (i.e. protected person) has been appointed counsel and a court visitor has been appointed in the case. The Court Visitors' requests for review have given notice to the current guardian/conservator, the ward and his/her attorney of the request to change the guardian/conservator. For all other Cache cases, this order serves as notice as the court's intent to change the guardian/conservator. In each of

these cases, the prior court's finding of incapacity of the ward and subsequent need for a guardian/conservator is hereby incorporated by reference. In each case, however, the ward has the right to file an objection to the continued need of a guardian or conservator.

It is the intent of the court to comply with the notice and hearing rights of the protected person and interested parties as provided in Title 16, Chapter 26, however, the number of cases and the urgency in which the court must act to ensure the benefits and housing for each protected person stays intact, the court must exercise its discretion to act first to change guardians and/or conservators and then provide hearings should objections be raised.

Based upon the review hearings the court has conducted thus far, there are approximately 20 cases in which the ward's physical health or safety is in imminent danger without the assistance of a guardian. In those cases, the Court Visitors' reports described the immediate potential for loss of housing and no viable emergency housing other than shelters, unattended health needs, and the distress of the ward having no contact with their guardian. In at least 20 other cases the status of benefits, timely payment of expenses such as housing, and timely medical care was in question. Based on the record created during the review hearings, it is reasonable to conclude that without a guardian the ward's physical health or safety may be comprised in as little as 30 – 60 days. Regarding the other 20 plus cases it did not appear as if the ward would be in crisis in the short term. As to the approximately 40 cases that have not been reviewed, the court does not have information upon which to make informed conclusions. It is this court's

concern that those 40 cases are in roughly the same shape as the 67 cases the court has reviewed: some are stable, some may be stable, some are in likely in crisis.

The decision to appoint a guardian/conservator without first having a hearing is not made lightly. The certainty of some wards being in harms way requires immediate action which is permitted by AS 13.26.286(e). As to those other cases, waiting to conduct an individual hearing first unnecessarily delays what this court sees as the inevitable result. Almost all of the cases assigned to Mr. McDuffie came from the public guardian (OPA). Returning these cases to a guardian/conservator that was previously approved and had not been removed for cause risks little or no harm to the ward. In many of the cases the court has reviewed, the ward requested a return to OPA. As explained above, delaying appointment of a new guardian/conservator almost certainly will cause harm in some cases.

Last, leaving the cases in their current state without a functioning guardian/conservator only invites the risk of abuse or harm to the ward. Any harmed created by not first holding a hearing can be easily and quickly cured by the ward filing an objection and the court holding the necessary hearing. The court currently has 73 of the cases scheduled for a review hearing between November 29, 2023 and December 15, 2023.⁴ Of the remaining cases, those cases can easily be added to the court's calendar

⁴ These are not scheduled due to an objection being filed, but due to a request by the assigned court visitor.

within that same three-week timeframe. In the end, the risk of harm to each ward being left unattended greatly outweighs the risk of harm from not first having a hearing.

Pursuant to AS 13.26.311, the public guardian is the option of last resort and as such, the court will be prioritizing placement with guardians other than the public guardian if possible.⁵ But the law is clear, if a person is incapacitated and is in need of protection, the public guardian must fill that role of guardian/conservator if no other person is available.

Protective Order

AS 13.26.435 (c) grants the court broad powers to protect the financial affairs of a protected person. AS 13.26.505 and AS 13.26.510 require the conservator to keep suitable records and to provide an annual accounting to the court of income and expenditures.

In many of the cases reviewed by the court the necessary inventory and implementation report had not been filed. In other cases, the Court Visitor questioned the annual report due to an inability to verify the accounting of the conservator. To ensure that the finances of the protected person are properly protected the court is prohibiting Cache Integrity Services, Tom McDuffie, and any Cache Integrity Services employee from transferring any of the funds in its control for the purpose of reimbursing or paying

⁵ Seven of the cases are being expedited for review hearings because a family member has expressed an interest in serving as the guardian/conservator.

Cache Integrity Services, Tom McDuffie, or any Cache Integrity Services employee for moneys spent, services rendered, of any administrative charge or fee without court order expressly authorizing such payment.

To the extent Cache Integrity Services and/or Tom McDuffie still maintains control of funds for each of its wards, continued payment of their personal bills shall continue until a new conservator can take over control of the funds.

Tom McDuffie, Cache Integrity Services and any employee of Cache Integrity Services shall maintain accurate and complete documentation of any funds received, any funds spent/distributed, and any assets moved, transferred or depleted.

Public Order

AS 13.26.021(a) grants public access to dispositional or modification of dispositional orders. Probate Rule 14(d) states similar guidance.

This order modifies the current dispositional order in each of these cases by removing Mr. McDuffie as the guardian/conservator and in most cases, reappointing the public guardian. To the extent necessary, this court finds good cause to grant public access to this order. A large number of protected people are impacted, as well as their families, the public agency that provides representation to the protected person, and the public guardian. Furthermore, allowing public access will facilitate notice to family members and other persons who may be interested in serving as a guardian/conservator for one of the affected wards.

IT IS HEREBY ORDERED:

1. Thomas McDuffie is relieved of his authority to act as guardian and/or conservator in any case, present or future, except as otherwise stated in this order. If at some time he wishes to act as guardian or conservator in any case, he must first make that request in this case and be prepared to demonstrate his fitness to act as a guardian or conservator.
2. Cache Integrity Services and Thomas McDuffie shall continue to facilitate the payment of the bills for their former wards until such time as they are relieved by the newly appointed guardian/conservator.
3. Cache Integrity Services and Thomas McDuffie must fully comply and cooperate with requests of Court Visitors and the guardian/conservator who is replacing Mr. McDuffie as the guardian/conservator, for access to financial records, both electronic and physical.
4. The Court Visitor and Respondent Attorney appointments shall continue as previously ordered in each individual case.
5. The Public Guardian is appointed in all cases listed in Attachment A as guardian/conservator. This appointment is being made prior to a hearing on the question of whether an appointment is necessary and who is available and best qualified to act as guardian/conservator. All interested parties retain their right(s) as provided by statute to object to this appointment order. Any objections must be filed within 10 days from the date this order is distributed. Objections must be filed within the individual case unless otherwise specified by this order.

6. The public guardian/conservator is authorized to act with the same authority previously granted Mr. McDuffie. The guardianship/conservatorship plan as previously order is incorporated by reference as the continuing plan for the protected person. Any requests for changes to the plan or to the guardian/conservator's scope of authority must be made within the individual's probate case. A new appointment order will issue for each individual within the individual's probate case. Until that new appointment order is issued, this order shall serve as the court's appointment order.

7. Several of the affected cases may already have had a review hearing by the time this order has been distributed. Any orders issued within an individual case, to the extent they conflict with this order, will supersede this order.

8. In each of these cases in which the public guardian has just been appointed, all deadlines for an implementation report, annual report or three-year review are suspended. The deadline for those reports will be addressed within each case individually. The priority in each of these cases is to contact the protected person, ascertain whether benefits, housing, and medical services are intact, and then act as necessary. The public guardian is invited to ask the court's assistance, inclusive of the court visitor and respondent, to help triage the needs of these cases.

9. If the ward does not object, the appointment will be final without a hearing.

10. In cases where a timely objection to this appointment order is filed by the ward, a hearing will be scheduled as necessary.

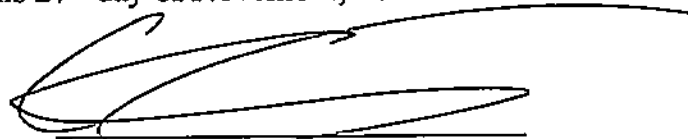
11. Any blanket objections raised by the Office of Public Advocacy, Public Guardian, must be filed within this case. A copy of such objection, if filed, will be placed in each individual file.

12. In the cases listed in Attachment B, the appointment of a substituting guardian/conservator is pending a review hearing. In each of these cases the protected person has identified their preference for a guardian/conservator other than the public guardian or a family member has expressed interest in being appointed guardian/conservator.

13. To the extent an interested person was entitled to notice of this appointment order but was not served, their right to object is preserved until notice has been properly given.

14. The fitness review of Tom McDuffie, Cache Integrity Services, and employees both past and present, remains open and this court retains jurisdiction over the same.

Dated at Anchorage, Alaska this 27th day of November, 2023.



Eric A. Aarseth
Superior Court
Senior Judge

I CERTIFY THAT ON 11/27/23
COPIES OF THIS FORM WERE SENT

TO OPA/AJR, A. Porter, L. Jones, OPA/PG, V. Brogden, T. Hazley, L. Wawrzonek,
CLERK S. Marz, C. McAllen, C. Percy, T. McDuffie,
PJ Matthews, T. O'Connor, B. Gillis, B. Cloud, B. Boswell,
R. Mcier, R. Johnson, C. Duncan, PJ Haas