

IN THE SUPREME COURT OF OHIO

IN THE MATTER OF
THE GUARDIANSHIP OF
JOHN SPANGLER

CASE NO. 2009-0121

On Appeal from the Geauga
County Probate Court of Appeals,
Eleventh Appellate District

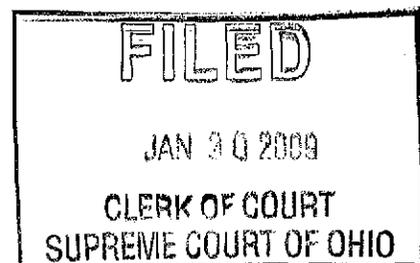
APPELLEE JOHN SPANGLER'S MOTION TO VACATE
STAY OF ELEVENTH DISTRICT COURT OF APPEALS' DECISION

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Now comes Appellee John Spangler who respectfully moves this Honorable Court, pursuant to S.Ct.Prac.R. XIV(4)(C), for an order vacating the Stay of the Eleventh District Court of Appeals' Decision (hereinafter Stay of Decision) granted by this Court on January 26, 2009.

S.Ct.Prac.R. XIV(4)(C) provides that this Court may act upon a motion before the deadline for filing a memorandum opposing the motion if the motion is for a procedural order, including an extension of time to file a merit brief, or if the motion requests emergency relief and the interests of justice warrant immediate consideration by the Supreme Court. Any party adversely affected by the action of the Supreme Court may file a motion to vacate the action. As the subject of the guardianship, John Spangler is adversely affected by the Stay of Decision.

BACKGROUND

John Spangler is a twenty-two-year-old man who has been diagnosed with autism, mitochondrial disease, and mild mental retardation. John resided with his parents until he turned eighteen years old. See, Judgment Entry, Probate Case No. 06PG000245, attached hereto and incorporated herein as Exhibit 1. John has needed significant supervision and care, which his parents have provided for most of his life. He also has relied on services arranged by his parents and provided through the Geauga County Board of Mental Retardation and Developmental Disabilities (hereinafter "Board"). See, Exhibit 1. The probate court conducted an in camera interview of John Spangler on August 9, 2007 for the purpose of determining John's wishes on this matter. See, Exhibit 1. It was John's stated wish to the court that his father serve as his guardian. *Id.*

ARGUMENT

In this case, Appellee, John Spangler, is adversely affected by the Stay of Decision because it will prevent him from advocating to the Probate Court the reappointment of his parents as guardians. Contrary to the Board's contention in its Motion for Stay, the decision of the Eleventh District Court of Appeals has not returned John back to guardianship of his parents. Rather, by Judgment Entry, the Geauga County Probate Court has ordered that a status conference be held in the guardianship case on February 24, 2009. See, Judgment Entry, attached hereto as Exhibit 2. The court has also ordered that Advocacy and Protective Services, Inc. (APSI) shall remain the guardian of John Spangler until otherwise ordered. *Id.* The Stay of Decision adversely affects and effectively prevents Appellee John Spangler from advocating to the Probate Court that it should review its determination as to whether one or both of Appellee's parents can, in Appellee's best interests, be reappointed as guardians. The appointment of APSI as guardian occurred nearly two years ago. This Court should not deny Appellee the opportunity to urge the Probate Court to reconsider what course of action would be in his best interests. The Stay of Decision unnecessarily prevents the Probate Court from reexamining the current guardianship relationship under today's, not 2007's, circumstances.

Moreover, the decisions that are being made by the Guardian in this case are personal and intimate, and include decisions regarding Appellee's medical and health care, education, and recreation, as well as Appellee's ability to visit with and maintain contact with his family and friends. Decisions such as these directly implicate John's liberty interest which has long been held to be a fundamental right of all citizens. Under the circumstances of this case, and for a person with a disability who has a guardian of the person, there are few circumstances, if any, under which a Stay of Decision could have a more adverse effect.

Furthermore, the Board's primary argument in support of its Motion for a Stay of Decision is that this case was incorrectly decided by the Eleventh District Court of Appeals. In fact, nearly half of its Motion is directed to argument on the merits of this case. Notwithstanding the fact that argument on the merits appears to be premature, S.Ct.Prac.R. XIV4(C) does not contemplate a request for a stay based on the merits of a case. Within the Board's merits argument, the Board claims that the Eleventh District Court of Appeals' decision will have a "chilling effect" in regard to other boards that may file similar actions. To accept the Board's argument here would be tantamount to recognizing a "chilling effect" and consequent need for a stay in any case decided by a district court of appeals. To the contrary, District Courts of Appeals in the State of Ohio routinely issue decisions on the merits of cases, and other courts in Ohio exercise their discretion in deciding the scope and weight of those decisions.

For all of the foregoing reasons, Appellee respectfully requests this Honorable Court to vacate the Stay of Decision of the Eleventh District Court of Appeals.

Respectfully Submitted,



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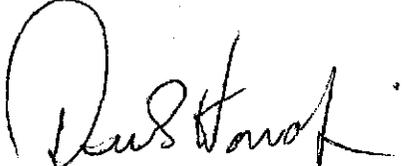
CERTIFICATE OF SERVICE

A copy of the above-styled Motion to Vacate Stay of the Eleventh District Court of Appeals' Decision was served upon the following by ordinary U.S. Mail on this 3rd day of January, 2009.

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FILED
IN COMMON PLEAS COURT

IN THE COURT OF COMMON PLEAS
PROBATE DIVISION
GEAUGA COUNTY, OHIO

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FRANKLIN COUNTY
DIVISION
GEAUGA COUNTY, OHIO

IN THE MATTER OF:)

CASE NO. 06PG000245

THE GUARDIANSHIP OF)
JOHN SPANGLER)

JUDGE CHARLES B. HENRY

JUDGMENT ENTRY

This matter came on for hearing on the motion filed by the Geauga County Board of Mental Retardation and Developmental Disabilities (GCBMRDD) asking for the removal of Gabriele Spangler and Joseph Spangler as guardians for John Spangler, and the motion filed by Gabriele Spangler and Joseph Spangler asking for the removal of Advocacy and Protection Services, Inc. (ASPI) as temporary guardian for Joseph Spangler. Hearings on said motions took place on April 25, 2007, June 13, 2007, and July 24, 2007. The Court conducted an in camera interview with John Spangler on the 9th day of August, 2007. After considering evidence presented at the time of the hearings, the Court makes the following findings of fact and conclusions of law:

John Spangler, date of birth November 12, 1987 is a nineteen year old young man who has been diagnosed with autism, mitochondrial disease, and mild mental retardation. Joseph's mother, Gabriele Spangler, was appointed as Joseph's emergency guardian of the person on the 15th day of June, 2006. After conducting a hearing on the emergency guardianship application, the emergency guardianship was extended by Judgment Entry filed on the 19th day of June, 2006 with special instructions to the guardian to complete the individual service plan process and cause a copy of the ward's individual service plan to be filed with the Court. The emergency guardian was ordered to cooperate with county and state agencies in order to secure funding for services.

The permanent guardianship of the person was established by Judgment Entry filed on the 18th day of July, 2006 appointing both Joseph Spangler and Gabriele Spangler, John Spangler's parents, as guardians for his person.

On the 25th day of October, 2006 the Court granted an emergency ex parte motion filed by GCBMRDD to remove the guardians and appointed APSI as the temporary guardian of John Spangler pending further hearing. The Court scheduled a hearing on the

EXHIBIT

emergency motion to take place on the 31st day of October, 2006. Prior to the commencement of the hearing, the parties entered into an agreement which was approved by the Court whereby the Court continued APSI as temporary guardian. Joseph and Gabriele Spangler were ordered to complete psychiatric assessments and drug and alcohol assessments and cause the assessments to be forwarded to the Court prior to the next scheduled pretrial. By agreement of the parties, the matter was then scheduled for a pretrial to take place on the 24th day of April, 2007.

On January 24, 2007 Gabriele and Joseph Spangler filed an emergency motion for the removal of APSI as guardian of Joseph Spangler. By Judgment Entry filed the 7th day of February, 2007, the Court converted the pretrial scheduled for the 24th day of April, 2007 to a full hearing on the issue of whether Joseph and Gabriele Spangler would be permitted to continue to serve as guardians for John Spangler or whether the Court would continue the appointment of APSI as John Spangler's permanent guardian. During the course of the proceeding, Gabriele Spangler withdrew her request to continue on as guardian and asked that Joseph Spangler be permitted to serve as John's sole guardian.

There is very little statutory guidance regarding the removal of a guardian for an incompetent ward. Ohio Revised Code Section 2111.46 provides broad authority for the Probate Court to remove a guardian of a minor for "good cause". The Courts have interpreted general language contained in a previous version of Ohio Revised Code Section 2109.24 which allowed for the removal of a fiduciary "because the interest of the trust demands it", as granting broad discretion to the Probate Court for determining when it is in the best interest of an incompetent ward to remove a guardian. However, Ohio Revised Code Section 2109.24 was amended effective January 1, 2007. The general language contained in the previous version of the statute was amended to refer specifically to the property interest that the fiduciary was responsible for administering. This language can no longer be relied on as a grant of broad discretionary authority to the Court for determining when a guardian of the person of the ward can be removed.

Ohio Revised Code Section 2111.50 codifies that the Probate Court is the superior guardian of wards who are subject to its jurisdiction. Ohio Revised Code Section

2151.50 (A)(2)(a) provides that "for good cause shown", the Probate Court may limit or deny, by order or rule, any power that is granted to the guardian by a section of the Ohio Revised Code or relevant decisions of the courts of this state. It stands to reason, that if the Court, for good cause shown, can limit or deny any power that is granted to the guardian, the Court, for good cause shown, has the authority to deny all of the power that it has granted to the guardian and cause that guardian to be removed.

John Spangler, through counsel, and Gabriele and Joseph Spangler have asked the Court to dismiss the motion filed by GCBMRDD due to the agency's lack of standing. They argue specifically that the agency is neither an interested party nor next of kin. However, this Court finds that Ohio Revised Code Section 5126.15 (B) imposes obligations on the agency owed to John Spangler that are fiduciary in nature and as such the agency has standing as a next friend and real party of interest to file a petition for the removal of a guardian when the agency perceives the actions or omissions of the guardian are interfering with the ability of the ward to receive services and putting the ward at risk of physical or emotional harm. GCBMRDD has an obligation to bring to this Court's attention situations in which it perceives that a guardian is not acting in the ward's best interest.¹ The motions to dismiss for lack of standing were denied by the Court.

John Spangler is a young man who resided with his parents until he turned eighteen years old. Throughout John's life, John's mother has taken the lead in advocating for services for John. His mental disabilities cause him to need almost constant supervision and care. When he began to reach the age of puberty, his family reports that he became more and more difficult to manage. His condition causes him to need a great deal of structure and consistency in his life. He does not deal well with change. When John gets upset, he can act out violently. He has been known to cause significant property damage. One of the primary reasons he was placed outside of his parents' home was because of concern he may do harm to his mother and his younger sister. Certain events can trigger these violent episodes, including, on occasion, contact with family members, particularly his mother.

¹ This same issue was discussed in a decision decided by the Sixth District Court of Appeals, but was not decided on the merits because the case was decided on other procedural issues. See In Re: Guardianship of Ricardi, Sixth District Court of Appeals, 2006-Ohio-24. See also In Re: Guardianship of Bussey, Eighth District Court of Appeals, 2004-Ohio-6617 in which Cuyahoga County Dept. of Senior and Adult Services was permitted to intervene in a guardianship proceeding as an interested party.

Over the past year John's mother has frequently been at odds with case workers and care providers that are providing services for John. She has repeatedly, impulsively sought changes in John's placements and services without giving due consideration to the opinion of professionals working with John and without having first secured alternative more appropriate services.

Joseph and Gabriele Spangler seem not to appreciate that there are times when John's contact with family members serves as a trigger for John's violent and destructive behaviors. There is disagreement at times between family members and care providers over the nature and extent of contact that John should have with various family members. Over the course of the past year Joseph Spangler has shown that he is either unable or unwilling to intercede objectively and assertively in disputes that have arisen between care providers and his wife.

Based on evidence presented at the time of the hearing, the Court finds that there is good cause and that it is in John's best interest that the removal of Gabriele and Joseph Spangler as guardians for John Spangler continue and that ASPI continue as the legal guardian for the person of John Spangler. In reaching this decision the Court acknowledges that it is the strong preference of the Court to appoint a suitable family member to serve as the guardian of a ward when a suitable family member is available. In this case, neither Gabriele nor Joseph Spangler are suitable to serve as John Spangler's guardian. There may come a time in the future when John's parents can demonstrate enough emotional stability that they can thoughtfully and rationally interact with service providers in a manner that they can take over the responsibility of serving as their son's guardian. However, at the present time there is a need for an objective guardian that can intercede on behalf of John Spangler to settle conflicts between service providers and John's parents and at times limit contact between John and his parents and other family members so as to avoid unnecessary disruptions in John's services and placements.

It is ordered that ASPI continue on as the guardian of the person of John Spangler. Said appointment is indefinite. The Court orders and instructs ASPI to sign releases necessary so that John's parents can fully participate in treatment team meetings so long as John's parents' participation in those meetings are not disruptive. This is not to be interpreted as preventing John's parents from expressing their opinions regarding John's

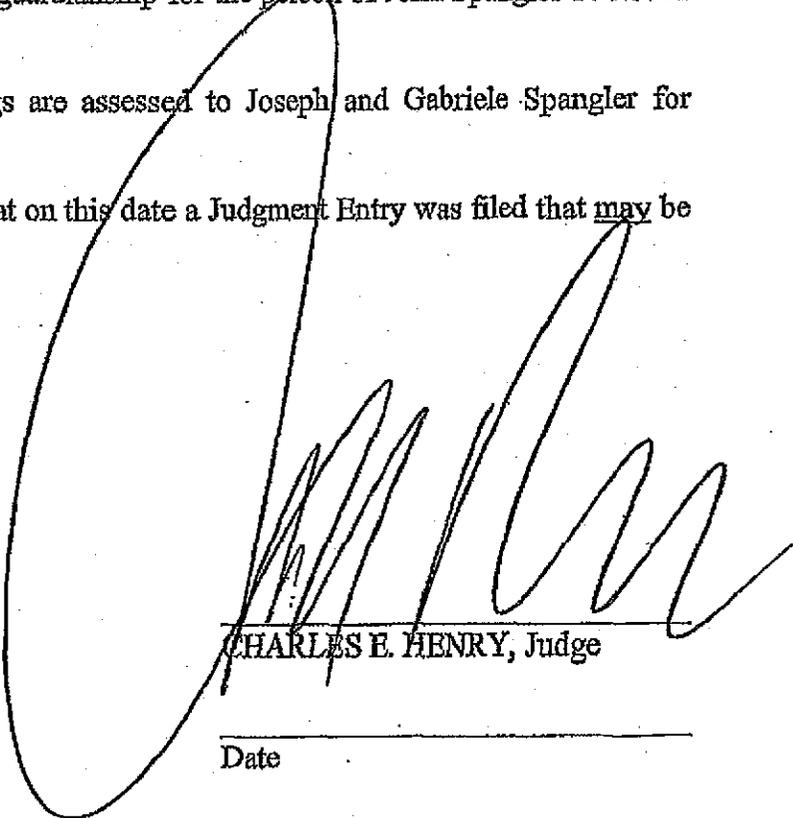
needs. ASPI shall also sign necessary releases so that John's parents can receive periodic updates on John's progress in treatment and so that they can be timely made of aware of any critical incidents involving John.

It is ordered that letters of guardianship for the person of John Spangler be issued to ASPI.

Costs of these proceedings are assessed to Joseph and Gabriele Spangler for which execution may now render.

You are hereby notified that on this date a Judgment Entry was filed that may be an "appealable" order.

IT IS SO ORDERED.



CHARLES E. HENRY, Judge

Date

cc: Prosecutor
Derek Hamalian
Shane Egan
Pamela Makowski

IN THE COURT OF COMMON PLEAS
PROBATE DIVISION
GEAUGA COUNTY, OHIO

2009 JAN 12 PM 1:27

PROBATE-JUVENILE
DIVISION
GEAUGA COUNTY, OHIO

IN THE MATTER OF:)	CASE NO. 06PG000245
)	
THE GUARDIANSHIP OF)	JUDGE CHARLES E. HENRY
JOHN SPANGLER)	
)	JUDGMENT ENTRY

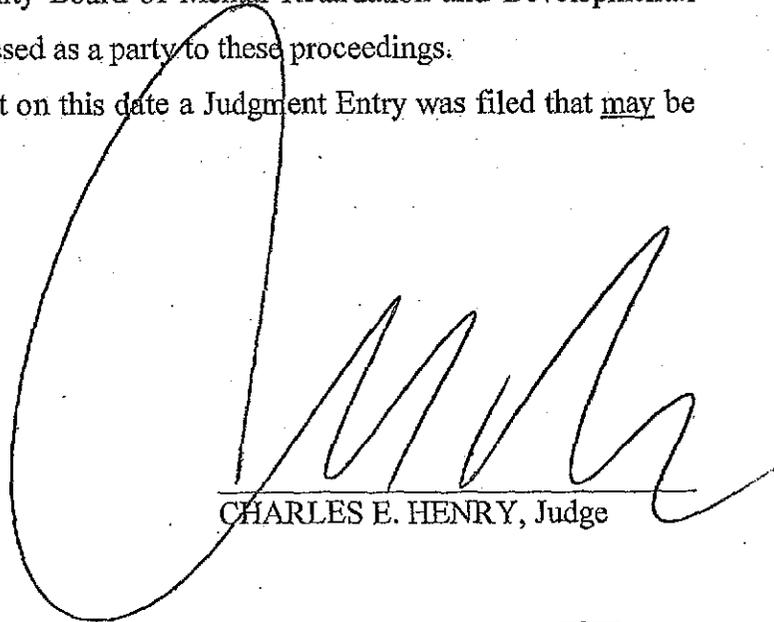
The Court finds the Judgment Entry this Court issued on the 15th day of August, 2007 has been reversed by the Eleventh District Court of Appeals and remanded to this Court for further proceedings. The Court, having considered evidence that was presented on the 25th day of April, 2007, the 13th day of June, 2007, and the 24th day of July, 2007, on its own motion, orders that Adult Protective Services, Inc. (ASPI) continue to serve as the guardian of the person of John Spangler pending further proceedings in this matter on remand.

The Court orders that this matter be scheduled for a status conference to take place on the 24th day of February, 2009 at 9:30 AM.

In conformity with the decision of the Eleventh District Court of Appeals, the Court orders that the Geauga County Board of Mental Retardation and Developmental Disabilities (GCBMRDD) is dismissed as a party to these proceedings.

You are hereby notified that on this date a Judgment Entry was filed that may be an "appealable" order.

IT IS SO ORDERED.



CHARLES E. HENRY, Judge

cc: Prosecutor
Derek Hamalian
Shane Egan
Pamela Makowski

EXHIBIT
2