

ORIGINAL

In the
Supreme Court of Ohio

IN THE MATTER OF THE : Case No. 2009-0121
GUARDIANSHIP OF JOHN SPANGLER :
: On Appeal from the
: Geauga County Court of Appeals,
: Eleventh Appellate District
:
: Court of Appeals Case
: Nos. 2007-G-2800/2802

**MERIT BRIEF OF *AMICUS CURIAE* STATE OF OHIO IN SUPPORT OF
APPELLANT GEAUGA COUNTY BOARD OF MENTAL RETARDATION
AND DEVELOPMENTAL DISABILITIES**

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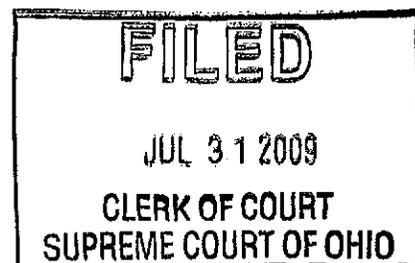
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INTRODUCTION

The probate court appointed Gabriele Spangler and Joseph Spangler as permanent guardians for their mentally retarded adult son, John Spangler, in July 2006. Several months later, John's care providers began to complain that the Spanglers were unduly interfering with John's treatment—a charge that the Spanglers disputed. Concerned with this situation, the Geauga County Board of Mental Retardation and Developmental Disabilities (“the county MRDD board”) filed a motion with the probate court requesting the removal of the Spanglers as guardians.¹ The probate court agreed, finding that the Spanglers had not demonstrated sufficient emotional stability to continue as guardians for John.

On appeal, the parties and the Eleventh District lost sight of that central issue, focusing instead on whether the county MRDD board had standing to file a motion with the probate court. The lead opinion catalogued the statutory powers and duties of county MRDD boards, noting that the power to file a removal motion is not listed. The concurring opinion discussed the statutory rights and remedies provided to next-of-kin and interested parties in guardianship proceedings. The concurring judge observed that removal motions are not mentioned in the list of requests and motions that these parties can file.

The Eleventh District looked to the wrong code provisions. The relevant question turns not on the enumerated powers and duties of county MRDD boards, but on the powers and duties of the probate court. Under Ohio law, the probate court is “the superior guardian” of wards like John Spangler, and appointed guardians “shall obey all orders of the court that concern their wards or guardianships.” R.C. 2111.50(A)(1). The probate court also has “exclusive

¹ On July 7, 2009, the Governor signed legislation requiring all county boards of mental retardation and developmental disabilities to drop “mental retardation” from their agency name. Because that law has not yet taken effect, the State will refer to appellant as the county MRDD board.

jurisdiction” to “remove guardians.” R.C. 2101.24(A)(1)(e). The law is clear on how the court should exercise that authority: “The probate court has *plenary power* at law and in equity to dispose fully of any matter that is properly before the court, unless that power is expressly otherwise limited or denied by a section of the Revised Code.” R.C. 2101.24(C) (emphasis added). And the appeals courts review those removal decisions for an abuse of discretion.

In this case, the county MRDD board filed a motion seeking the removal of the Spanglers as guardians, complaining that the Spanglers were not acting in the best interests their son. The probate court acted within its statutory authority when it entertained, and then acted upon, the information in that motion. The court’s “plenary power” to supervise and remove guardians necessarily includes the discretion to receive relevant information concerning the guardians, no matter the source. Nor does the form of the complaint matter; it could come in a motion, an informal letter, or a phone call. The fact remains that when a probate court receives information that a guardian is not acting in the best interests of the ward, the court has clear discretion under state law to consider that information, schedule a hearing, and, if necessary, remove the guardian.

The State of Ohio urges the Court to reverse the Eleventh District’s decision, confirm the probate courts’ broad authority to act upon information concerning the suitability of a guardian, and remand the case for further proceedings on the central issue in dispute—the probate court’s finding that “neither Gabriele nor Joseph Spangler are suitable to serve as John Spangler’s guardian.”

STATEMENT OF AMICUS INTEREST

The State of Ohio, through its system of probate courts, is “the superior guardian” of, and therefore responsible for, the health, safety, and welfare of wards in the state. R.C. 2111.50(A)(1). The State has a strong interest in defending the authority of the probate courts to

receive, investigate, and, ultimately, act upon information that an individual is not suitable to continue in his role as a guardian.

STATEMENT OF THE CASE AND FACTS

John Spangler is a twenty-one-year-old man who has been diagnosed with mild mental retardation, autism, and mitochondrial disease. *In re Guardianship of Spangler* (11th Dist.), Nos. 2007-G-2800 and 2007-G-2802, 2008-Ohio-6978 (“Slip Op”), ¶ 2. John lived with his parents, Joseph and Gabriele Spangler, as a child. *Id.* ¶ 3. Due to his fits of violent behavior, John was placed outside the home at age 18. *Id.*

On July 18, 2006, approximately seven months after John’s eighteenth birthday, the probate court appointed the Spanglers as John’s permanent guardians. *Id.* Within months of that appointment, the relationship between the Spanglers and John’s service providers deteriorated. *Id.* ¶ 2. The Spanglers expressed their dissatisfaction, repeatedly requesting new placements and different services. *Id.* The service providers, for their part, voiced concern that the Spanglers’ frequent requests for changes to John’s care were disrupting the structured environment that John’s medical condition required. *Id.*

In October 2006, Mrs. Spangler expressed her intent to move John from his residential placement. *Id.* ¶ 4. Concerned about the disruptive effect that this would have on John, the county MRDD board filed a motion with the probate court to remove the Spanglers as guardians. *Id.* The court granted the motion and appointed Advocacy and Protection Services, Inc. (“APSI”) as John’s temporary guardian. *Id.* All parties entered a court-approved agreement that APSI would continue as temporary guardian during the proceedings, and that the Spanglers would submit to psychiatric, drug, and alcohol assessments. *Id.* ¶ 5.

The parties thereafter filed a series of motions. The Spanglers asked the probate court to remove APSI as John’s temporary guardian, alleging that APSI had breached its duty to provide

John with a safe environment. *Id.* ¶ 6. The Spanglers also filed a motion to dismiss the county MRDD board's motion to remove them as guardians, claiming that the board lacked standing to make such a request. *Id.* at ¶ 8.

The probate court then held a series of hearings. *Id.* ¶ 9. It also joined the county MRDD board as a party for purposes of prosecuting the motion to remove the Spanglers as John's guardians. *Id.* at ¶ 10.

On August 15, 2007, the probate court filed a judgment entry removing the Spanglers as guardians. *Id.* at ¶ 12. Specifically, the court found that Gabriele Spangler "has repeatedly, impulsively sought changes in John's placements and services without giving due consideration to the opinions of professionals working with John and without having first secured alternative more appropriate services." Judgment Entry, *In re John Spangler*, No. 06-PG-245 (Aug. 15, 2007), at 4. It also determined that "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." *Id.* The probate court further noted that "John's contact with family members serves as a trigger for [his] violent and destructive behaviors." *Id.* The court ordered APSI to "continue on as the guardian" for John, but specified that the Spanglers could "fully participate in treatment team meetings so long as [they] . . . are not disruptive." *Id.*

The Spanglers and John each appealed the probate court's order to the Eleventh District. In a divided opinion, the court held that the county MRDD board lacked standing to ask the probate court to remove the Spanglers as guardians. Slip Op. ¶ 59. The lead opinion examined the powers and duties of county MRDD boards under R.C. Chapter 5126, and those powers did not include "the power to move the probate court to remove an incompetent's guardian." *Id.* ¶ 40. The concurring opinion listed the eight different types of motions that an "interested party" can

file in guardianship proceedings under R.C. Chapter 2111, and noted that a motion to remove a guardian was not listed. *Id.* ¶ 74 (Trapp, J., concurring).

The dissenting judge concluded that the county MRDD did have standing to make such a motion. He referenced a statutory provision that allowed an “interested party” to file objections with the probate court to a guardian’s decisions concerning the medical, health, or other professional care of the ward. *Id.* ¶ 87 (Cannon, J, dissenting) (citing R.C. 2111.13(C)).

The county MRDD board appealed, and this Court accepted jurisdiction on June 3, 2009.

ARGUMENT

Amicus Curiae State of Ohio’s Proposition of Law:

The probate court may consider information from any source, including a county MRDD board, when determining whether to exercise its discretion to remove a guardian.

In proceedings below, the parties and the Eleventh District focused on the role of county MRDD boards specifically, and third parties generally, in guardianship proceedings—what powers they have, what motions they could file, and what remedies they may request. All of that is beside the point. This case turns not on the powers of the county MRDD boards or third parties, but on the authority of the probate court to supervise guardians and wards within its jurisdiction.

In Ohio, the probate court is “the superior guardian of wards who are subject to its jurisdiction.” R.C. 2111.50(A)(1). Although the court usually appoints individuals to act as guardians for those wards, see R.C. 2111.50(A)(2)(b), it retains supervisory authority “[a]t all times,” R.C. 2111.50(A)(1). Or, as this Court has stated in clear terms, the probate court has “authority over guardians in all respects,” including “the ultimate authority to approve and direct the actions of guardians subject to their jurisdiction.” *In re Guardianship of Hollins*, 114 Ohio St. 3d 434, 2007-Ohio-4555, ¶ 17.

As part of this authority, the General Assembly conferred “exclusive jurisdiction” on the probate court “[t]o appoint and remove guardians.” R.C. 2101.24(A)(1)(e); accord R.C. 2111.50(A)(2)(c); *In re Love* (1969), 19 Ohio St. 2d 111, 113 (“[T]he Probate Court has plenary, exclusive and original jurisdiction in the matter of the appointment and removal of guardians.”). The court has great latitude in exercising that authority: “To warrant a removal, the probate court need only find that the best interests of the ward will be served by the guardian’s removal.” *In re Guardianship of Escola* (5th Dist. 1987), 41 Ohio App. 3d 42, 44. And the appellate courts review a probate court’s decision to remove a guardian for an abuse of discretion. See, e.g., *In re Guardianship of Salaben* (11th Dist.), No. 2008-A-37, 2008-Ohio-6989, ¶ 42; *In re Guardianship of Brady* (8th Dist.), No. 88294, 2007-Ohio-2119, ¶ 12; *In re Guardianship of Zornes* (4th Dist.), No. 96-CA-35, 1997 Ohio App. Lexis 3549, *13; *In re Guardianship of Meyer* (9th Dist.), No. 17245, 1996 Ohio App Lexis 33, *6.

The General Assembly did not specify how a probate court is to investigate complaints about a guardian or adjudicate requests that a particular guardian be removed. In fact, quite the opposite. The legislature stated that “[t]he probate court has plenary power at law and in equity to dispose fully of any matter that is properly before the court, unless the power is expressly otherwise limited or denied by a section of the Revised Code.” R.C. 2101.24(C). This capacious grant of statutory authority is consistent with the Court’s earlier pronouncements. The Court has long stated that “[a] guardian is an officer of the court appointing him.” *In re Clendenning* (1945), 145 Ohio St. 82, 92. And courts have inherent authority to discipline or dismiss individuals who are officers of the court. See, e.g., *In re Thatcher* (1909), 80 Ohio St. 492, 655.

Put simply, the probate court’s discretionary power to remove a guardian necessarily affords discretion to examine and investigate complaints about the fitness of that guardian. The

only question is whether the probate court in this case abused its discretion by entertaining a complaint from the county MRDD board. It did not.

As part of its “plenary power” over guardianship matters, the probate court can receive relevant information about the suitability of a guardian from any knowledgeable source—a doctor, a therapist, a caregiver, a neighbor or, in this case, a county MRDD board. See Slip. Op. ¶ 96 (Cannon, J, dissenting) (“Anyone can ask the probate court to address problems with a guardian.”). The Spanglers concede as much. In their Memorandum in Opposition to Jurisdiction, they admit that “a Board employee that has concerns about the guardian/ward relationship could . . . send a letter to the Probate Court to explain the circumstances that it feels are creating a harmful situation for the ward.” Gabriele and Joseph Spangler Opp Jur. at 2. Upon receipt of that letter, “[t]he Probate Court, as the superior guardian, is certainly then empowered to take whatever steps in feels are appropriate, including . . . remov[al of] the guardian if necessary.” *Id.* In other words, the Spanglers do not dispute the county MRDD board’s ability to contact the probate court and register its concerns, nor do they challenge the probate court’s authority to take appropriate action in light of those concerns.

Rather, it appears that the Spanglers’ objection is limited to the fact that the county MRDD board here registered its concerns to the probate court in a formal “motion,” as opposed to a letter. But a motion is no different than a letter, but for the fact that the motion contains a case caption. Courts often construe informal letters as motions. See, e.g., *Vasko v. Vasko* (5th Dist.), No. 04-CA-14, 2005-Ohio-3188, ¶ 11 (letter to court construed as a motion for relief under Civ. R. 60(b)); *State v. Allen* (11th Dist.), No. 99-A-50, 2000 Ohio App. Lexis 4356, *8 (letter to court construed as a motion to remove counsel). Whether in the form of a letter or a motion, the party presents its concerns and asks the probate court to take appropriate action. The law then

gives the probate court discretion to investigate or act on that information, regardless of the vehicle in which it arrives.

In this case, the probate court concluded that the Spanglers were not suitable to serve as guardians for John. The Eleventh District should have reviewed the merits of that question. Instead, it disposed of the appeal by saying that the county MRDD board had no legal right to request the removal of a guardian. In doing so, the appeals court wrongly (and dangerously) limited the probate court's authority to supervise guardians by restricting its ability to receive relevant information about the competence of those guardians. The Court should reverse that ruling and remand the case to the Eleventh District for further proceedings on the central issue in dispute—the suitability of the Spanglers of act as guardians for John.

CONCLUSION

For these reasons, the State of Ohio asks the Court to reverse the judgment of the Eleventh District.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Merit Brief of *Amicus Curiae* State of Ohio in Support of Appellate Geauga County Board of Mental Retardation and Developmental Disabilities was served by U.S. mail this 31st day of July, 2009, upon the following counsel:

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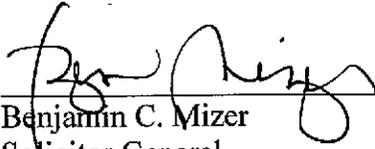
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