

Matter of Wright

2016 NY Slip Op 32020(U)

June 28, 2016

Surrogate's Court, Nassau County

Docket Number: 322132

Judge: Margaret C. Reilly

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

**SURROGATE’S COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

-----X

**Proceeding to Authorize the Guardian of the property
JOHN WAYNE WRIGHT III, an infant over the age
of 14 years, to draw and apply guardianship funds for
Support and Education.**

**DECISION
File No. 322132
Dec. No. 31634**

-----X

**Proceeding to Authorize the Guardian of the property
ROBERT JOHN WRIGHT, an infant over the age
of 14 years, to draw and apply guardianship funds for
Support and Education.**

**File No. 322133
Dec. No. 31633**

-----X

PRESENT: HON. MARGARET C. REILLY

The following papers have been read on the guardian’s petitions:

Verified Petition in Support and Exhibits	1
Verified Petition in Support and Exhibits	2

Upon the foregoing papers, it is ordered that the petition is decided as follows:

In these two related petitions pursuant to SCPA §1713 [1] [a], the guardian, Martha O. Wright (the “Guardian”), who is the mother of John Wayne Wright III (“John”) [DOB August 21, 2001] and Robert John Wright (“Robert”) [DOB May 13, 1999], requests orders from the court authorizing the use of guardianship funds for the support and education of John and Robert. The Guardian was appointed guardian of the property of John and Robert by separate orders dated February 20, 2002. The wards consent to the relief requested.

Each petition sets forth that the family lives in a single family dwelling owned by the guardian valued at \$650,000.00 [with a \$103,000.00 mortgage]. The guardian is a self-employed physical therapist. Her 2014 tax return is on file with the court. In addition to John and Robert, the guardian has an 18-year old daughter. The children’s father was killed in the

9/11 attacks. He was an employee of Sandler O'Neill and each of the wards will receive a full four year college scholarship from the Sandler O'Neill Assistance Foundation. In addition to the guardianship bank accounts maintained at Astoria Bank, John and Robert have UGMA accounts created with funds received from the Victims Compensation Fund which were invested and set up as structured settlements paying out to John and Robert from ages 18-33. Total value for the three children is stated to be approximately \$7 Million.

The family's annual budget estimates are listed as: (1) cost of mortgage, taxes and insurance is \$69,145.00; (2) utilities - \$8,021.00; (3) mortgage pay down - \$65,000.00; (4) other home costs - \$8,898.00; (5) food - \$22,100.00; (6) clothing \$12,000.00; (7) medical [including insurance] - \$33,663.00; (8) all other¹ - \$104,763.00, for total of \$323,590.00. All proposed expenditures are fully documented.

The family budget sets forth annual income of \$142,864.00: earnings - \$20,000.00; dividend and interest income - \$50,000.00; social security for parent - \$13,416.00; social security for three children - \$40,248.00; workman's compensation - \$19,200. The guardian's 2014 tax return shows \$130,303.00 in ordinary dividend income, \$2,860.00 in tax refunds, \$11,267.00 in business income and \$9,891.00 in non taxable social security income.

The guardian's petition reflects that Robert's funds are to be used for medical/dental - \$13,174.00; parochial school related costs - \$18,508.00; college related - \$2,270.00; car related - \$3,888.00; cell phone - \$698.00; for a total of \$38,538 less anticipated scholarship aid of \$10,000.00 or \$28,538.00 which is approximately \$2,300.00 per month. John's funds are to be used for medical/dental - \$8,534.00; school related \$12,013.00; clothes - \$2,146.00;

¹ This item is broken down in a schedule attached to the petitions.

school lunch - \$300.00; summer tutors - \$1,500.00; cell phone - \$698.00; for a total of \$25,191.00 or approximately \$2,100.00 per month.

Robert's cash assets are on deposit with Astoria Bank. The current value of the guardianship account is reported as \$54,735.00. Robert's monthly income consists of \$878.26 in interest income; \$13,416.00 in social security benefits and \$2,888.00 in workman's compensation for a total of approximately \$17,182.00.

Respecting Robert, the guardian is seeking budget approval for the year commencing April 1, 2016 and ending March 31, 2017 in the sum of \$27,600.00 to be paid in monthly installments of \$2,300.00. The request is similar to what has been previously approved by the court. The court has approved annual budgets of \$26,400.00 for 2015-2016, by order dated March 12, 2015; \$25,200.00 for 2014-2015, by order dated April 1, 2014; \$25,200.00 for 2013-2014, by order dated March 21, 2013; and \$18,000.00 for 2012-2013, by order dated March 19, 2012.

The guardian's petition reflects that John's cash assets are on deposit with Astoria Bank. The current value of the guardianship account is reported as \$71,629.31. John's annual income consists of social security disability of \$13,416.00; interest income of \$1,058.00; and workman's compensation of \$2,888.00, for a total of \$17,362.00.

Respecting John, the guardian is seeking budget approval for the year commencing April 1, 2016 and ending March 31, 2017 in the sum of \$25,200.00 payable in monthly installments of \$2,100.00. The request is similar to what has been previously approved by the

court. The court approved annual budgets of \$22,800.00 for 2015-2016, by order dated March 12, 2015; \$21,600.00 for 2014-2015, by order dated April 1, 2014; \$19,200.00 for 2013-2014, by order dated March 21, 2013; and \$14,400.00 for 2012-2013, by corrected order dated April 3, 2012.

The guardian is required to request a maintenance order if the child is not being fully supported by his or her parents. If the parents are not alive or cannot support the infant, the court can direct that the child's property be used to do so. The petitioner must state the amount of the child's property, whether the parents are alive and able to support the infant and whether the guardian ever asked for similar relief before. The court will allow the expenditure out of income or principal if it is "reasonable, proper and just" and if the parents are unable to pay it. In making such a decision, the court considers the ability of the parents to provide the money out of her own funds and the proportion of the child's property the expenditure represents.

SCPA §1713 entitled "Administration of an Infant's Property," reads in relevant part, as follows:

(1) Upon the petition of the guardian or of the infant or of any person in his behalf, the court, upon notice to such persons, if any, it deems proper, may by order direct the application by the guardian of the infant's property to

(a) the support and education of the infant . . .

2. In all cases, the Court may determine the amount of expenditure of the infant's funds that is reasonable, proper and just under the circumstances, taking into consideration the liability, if any, of any other person to pay such expenses, his financial ability to pay and all other relevant facts. The payment

may be made from income or principal. No payment for the funeral expense of any person shall be authorized unless the Court finds that the estate of such person is insufficient to pay it.

SCPA §1713 (1) (a) authorizes the expenditure of an infant's funds for support and education, if the Court deems the application proper (*see In Matter of the Guardianship of S.B., An Infant*, 33 Misc 3d 440, Surrogate Court [Dutchess County, 2011]). SCPA §1713 (2) further provides that the "Court may determine the amount of expenditure of the infant's funds that is reasonable, proper and just under the circumstances, taking into consideration the liability, if any, of any other person to pay such expenditure expenses, his financial ability to pay and all other relevant factors" (SCPA §1713 [2]).

The Court must be mindful of its statutory duty to preserve the infant's estate until his majority and to permit withdrawal only to the extent required for necessities and education, that cannot otherwise be provided (*see In the Matter of Dior Polo G.* [anonymous], 78 AD3d 941 [2d Dept 2010]). "Withdrawal of funds for support from the corpus of an infant's funds is not favored, absent unusual circumstances" (*In the Matter of the Guardianship of S.B., An Infant*, 33 Misc 3d 440, 442, *supra*). A factor to be taken into consideration by the Court is the proportion of the child's property to the requested expenditure (*see In the Matter of the Guardianship of S.B., An Infant, supra*).

A parent, in New York, has an obligation to support their minor child, taking into consideration, among other factors, the financial resources of the child (*see Family Court Act 413[I] [f] [1]*, *see also Domestic Relations Law §240 [1-b] [f]*). The parent's duty of support

is measured by the child's need in relation to the parent's ability to provide support (*see In the Matter of the Guardianships of Summer M.R. Bilick and Others, Infants*, 176 Misc2d 293 [Sullivan County, 1998]).

As a fiduciary, a guardian is charged with the proper stewardship of monies belonging to the infant until the infant attains majority. This notwithstanding, permission to withdraw monies from a guardianship account remains in the sound discretion of the court (*see SCPA §1713 [2]*); *Matter of Polinsky*, 33 Misc 2d 1002 [Sur Ct, Kings County 1962]). The court may grant a withdrawal from infant's funds where parents are unavailable to provide for the infant, and it is necessary for the infant's care, support and education. The court's ultimate responsibility, however, is to preserve the infant's funds and to deliver the funds intact to the infant upon the infant attaining majority. Absent unusual circumstances, withdrawal of funds for support from the corpus of an infant's funds is not favored (*see Matter of Bilick*, 176 Misc 2d 293 [Sur Ct, Sullivan County 1998]). Therefore a court's discretion in permitting withdrawals must be exercised scrupulously and sparingly (*see Ahders v Southampton Hosp.*, 90 AD2d 508 [2d Dept 1982]; *Matter of Darlene C.*, 96 Misc 2d 952 [Sur Ct, Bronx County 1978]).

The courts consider all the circumstances and can fashion appropriate relief when granting a guardian's request to spend guardianship money (*see eg, Matter of J.M.M.*, NYLJ, June 8, 2006, at 35, col 3 [Sur Ct, Bronx County]; *Matter of Fraietta*, NYLJ, July 12, 2000, at 31, col 5 [Sur Ct, Westchester County]).

As indicated above, the court has reviewed the annual anticipated expenses for John for the coming year and finds the budget reasonable. Based on the facts and circumstances presented, the court finds the requests with respect to John to be reasonable, proper and just and approves an annual allowance of \$12,000.00 for the period April 1, 2016 through March 31, 2017, retroactive to April 1, 2016, to be drawn down \$1,000.00 per month.

Likewise the court has reviewed the annual anticipated expenses for Robert for the coming year and finds the budget reasonable. Based on the facts and circumstances presented, the court finds the requests with respect to Robert to be reasonable, proper and just and approves an annual allowance of \$12,000.00 for the period April 1, 2016 through March 31, 2017 retroactive to April 1, 2016, to be drawn down \$1,000.00 per month.

Settle separate decrees.

Dated: June 28, 2016
Mineola, New York

E N T E R:

HON. MARGARET C. REILLY
Judge of the Surrogate's Court

cc: Martha Wright
18 Amherst Court
Rockville Centre, New York 11570