

Matter of Amber M.
2016 NY Slip Op 31804(U)
September 30, 2016
Surrogate's Court, New York County
Docket Number: 2015-1498
Judge: Rita M. Mella
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SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

New York County Surrogate's Court

Date: September 30, 2016

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In the Matter of the Guardianship of the Person
and Property of

AMBER M.,

DECISION

Pursuant to SCPA Article 17-A.

File No.: 2015-1498

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M E L L A, S.:

Patrice M. has applied for letters of guardianship of the person and property of her severely disabled sister, Amber M., pursuant to Article 17-A of the Surrogate's Court Procedure Act. Based on the evidence presented at a hearing before this court, and the reports of a guardian ad litem, the court finds that it is not in the respondent's best interests for the petitioner to be appointed guardian of her person or property.

Background

Amber M. is a 24-year-old woman with severe intellectual and physical disabilities, including cerebral palsy. She is non-verbal and non-ambulatory. Shirley M., the mother of Amber M. and Patrice M., had moved with her family to New York from Maryland in 2013. Shirley M. began the process of applying for SCPA 17-A guardianship of Amber M., but died in April of 2015 before its completion. Five days after her mother's death, Patrice M., age 26, petitioned *pro se* to become the guardian of Amber M.'s person and property pursuant to SCPA 17-A including the request that she be given the authority to make end-of-life decisions pursuant to SCPA 1750-b. Patrice M. did not nominate a standby guardian in her petition.

The matter came before this court at a hearing of August 26, 2015. At the hearing, the severity of Amber M.'s disabilities left the court with no doubt that she would benefit from the

appointment of a guardian of her person and property insofar as she had little ability to advocate on her own behalf. And based on the testimony and demeanor of Patrice M., and the testimony of a home-care attendant, there was no reason, at that time, to question Patrice M.'s qualifications to serve as guardian. Decision of this matter was reserved pending the receipt of the findings of a child abuse registry from the State of Maryland. A letter, dated October 31, 2015, was subsequently received from the Maryland Human Services Agency, an agency within the Maryland State Department of Human Resources, which found no reports of abuse or neglect involving Amber M. or Patrice M.

Several days prior to the receipt of the Maryland report, and before a decision had been rendered, the clerk of the court received an unsolicited call and later a letter from a caseworker at Adult Protective Services ("APS"), an agency within the New York City Human Resources Administration. Included with the letter was a three-page report which contained serious allegations regarding the care that Patrice M. was providing for Amber M. and the condition of the New York City Housing Authority ("NYCHA") apartment in which they were residing, as well as descriptions of complaints made to NYCHA personnel concerning the behavior of Patrice M. and her boyfriend, Kurran R.¹ The allegations of the APS caseworker were of such concern that this court appointed a guardian *ad litem* ("GAL") to investigate and report on whether it was in Amber M.'s best interests to grant the petition. The court appointed Thomas Sciacca, Esq., as GAL² and scheduled the guardianship proceedings for a continued hearing on December 2, 2015.

¹ According to the APS caseworker, NYCHA had initiated eviction proceedings as a result of the ongoing complaints.

² Sciacca agreed to represent Amber M. on a *pro bono* basis and to expedite his investigation and the filing of a report. The court thanks Mr. Sciacca for the services he rendered

At this hearing, Sciacca called as a witness Audrey Ratchford, the APS caseworker who had written the report received by the court. Ratchford testified that APS opened an investigation into Amber M.'s household in August 2015 because of reported abuse perpetrated by Patrice M. Although at the first home visit there was a home attendant present and everything in the apartment was clean and in order, at a subsequent visit, in October, she reported "the environment was very different." According to Ratchford, there were "bags of laundry in the living room, all over the place, dirty clothes, there was garbage all over the place, there were used diapers in the bathroom, there was dog feces in the kitchen, and [Amber M.] was sitting in the chair naked with a bed pad over her." Ratchford testified that Patrice M. and her boyfriend were present in the apartment at the time of her visit. She further testified that she did not believe that Amber M. would be in imminent danger if she stayed in the apartment. Admitted into evidence was the APS report and Ratchford's case notes.

On cross-examination, Patrice M. acknowledged that she had terminated the services of the home-care attendant and that her boyfriend Kurran R. had applied for and become Amber M.'s personal assistant, a position for which he was compensated through a home-care agency. She also testified that she had rejected any recommendation for a day program or other agency involvement for Amber M., stating that she could provide all such services herself.³

and for the diligence with which he approached the assignment.

³ In an interim GAL report submitted by Sciacca shortly after the second day of hearing, he reported on an announced visit he made to his ward and petitioner on November 27, 2015, and recommended that the petitioner not be granted full guardianship given his concern regarding the cleanliness of the apartment and Patrice M.'s refusal to consider a day program for Amber M. A day program, he wrote, would "provide my ward with a structured day, access to social workers, routine coordination of her medical needs, instruction on life and communication skills, etc."

Immediately following the hearing, and after receiving assurances from Patrice M. that she would secure once again the services of an agency-employed home attendant, the court granted Patrice M. letters of temporary guardianship for a six-week period and set the matter down for a continued hearing.

On January 11, 2016, the court received a GAL report from Sciacca. Sciacca indicated that he had scheduled a second home visit to see his ward.⁴ Sciacca verified during this visit that Patrice M. had reinstated the services of a home health aide (12 hours a day, 7 days per week) and reported that the home was clean. When Sciacca again inquired about enrolling Amber M. in a day program, Patrice M. reportedly became upset, accusing Sciacca of trying to take Amber M. away from her family. Sciacca also reported a conversation that he had with Ratchford, the APS caseworker, who advised him that on a recent unannounced visit the apartment was again strewn with soiled diapers, and she observed dog feces in the bedroom. According to Sciacca, there appeared to have been further complaints to and by NYCHA about smell, vermin, and other hygiene-related issues coming from the apartment. Sciacca indicated his concerns that, if petitioner was granted letters of guardianship, she would terminate the home health aide and reinstate her boyfriend as personal assistant and the home would revert to its earlier state. Sciacca concluded by recommending that Patrice M. not be granted letters of guardianship of the person and property of Amber M., in light of the unhygienic conditions of the home environment and the failure of Patrice M. to consider a day program for Amber M. Sciacca also expressed his

⁴ Sciacca reported that Patrice M. had contacted him to say she had hired a home health aide and wanted him to do the visit that week. When he told her he was unable to make it that week, according to Sciacca, she became argumentative and said she would call the court to request a new guardian ad litem.

belief that Amber M. was likely to suffer harm were she to remain under the exclusive care of Patrice M. He asked for a continuation of the hearing so that an appropriate guardian for Amber M. could be identified or in the alternative recommended, if the court was to deny the petition, that APS commence an Article 81 guardianship proceeding in New York County Supreme Court.⁵

The hearing was, in fact, continued on May 18, 2016. An APS supervisor, Phyllis Echols,⁶ testified that she had made a planned home visit on April 12, 2016, and that the apartment seemed to have just been cleaned. She attempted to make an unplanned visit on May 12, 2016 at 8:30 in the morning, but there was no answer. She confirmed that the home attendant services were still in place.

At the conclusion of the hearing, the court reserved decision on whether Patrice M. should be granted full letters of guardianship of the person and property of Amber M.

Findings

The appointment of a guardian of a person with intellectual and/or developmental disabilities pursuant to SCPA 17-A requires a determination that such appointment is in that person's best interests (SCPA 1754[5]). In making such a determination, the court must first be satisfied that the respondent is a person with an intellectual or developmental disability and that he or she would benefit from the appointment of a guardian. The court must also be

⁵ Due to the pending housing-related proceedings with NYCHA, Sciacca did request that the court grant Patrice M. the power to renew the apartment lease on Amber M.'s behalf. On January 25, 2016, the court issued an order granting petitioner temporary letters of guardianship of the property with the letters limited to the guardian's authority to take any action or perform any act necessary to preserve Amber M.'s rights and interest in the apartment.

⁶ On May 18, 2016, Ratchford was no longer employed at APS.

convinced that the proposed guardian is capable of promoting the best interests of the respondent (*Matter of Nicholas L.*, NYLJ, Feb 28, 2014, at 31 [Sur Ct, Suffolk County]) and is both qualified and suitable to serve in that important fiduciary capacity (*see In re Guardianship of Darius Ignatius M.*, 202 AD2d 1 [1st Dept 1994] [“evidence of poor judgment on the part of a prospective guardian, whatever the family relationship, should be a factor precluding appointment”]).

Based on the evidence adduced at the hearing, this court finds that Amber M. is a young woman with severe developmental disabilities who is unable to advocate in her own best interests and may benefit from the appointment of a guardian of her person and property. It is without question that there is a deep, loving bond between Amber M. and her sister Patrice M. The court finds, however, that Patrice M. is not suitable to act in the role of a fiduciary and that it is not in the best interests of Amber M. to have Patrice M. appointed the guardian of her person and/or property. It is the court’s hope and expectation that the bond between these two sisters will continue to grow during their lives regardless of the outcome of this proceeding.

The letters of temporary guardianship of the person and property issued to Patrice M. are hereby revoked. It is anticipated, from the testimony of the APS worker at the hearing that Amber M. will continue to be monitored by APS and that the agency will pursue the appointment of a guardian for Amber M. pursuant to Mental Hygiene Law Article 81.

This decision constitutes the order of the court. Clerk to notify all parties including Adult Protective Services.

Dated: September 30, 2016


SURROGATE