

Matter of Newman (Teitelbaum)
2018 NY Slip Op 30688(U)
April 17, 2018
Supreme Court, New York County
Docket Number: 152347/2018
Judge: Eileen A. Rakower
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 6

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Matter of the Application of,

CAROLINE TEITELBAUM and RUTHY PARNES

Index No.
152347/2018

Petitioners,

**DECISION
and ORDER**

to be appointed Guardians ad Litem for TAMMY
NEWMAN, an adult incapable of adequately
prosecuting her rights,

Respondent,

Mot. Seq. 001

for the purpose of her bringing a claim for medical
malpractice against Mt. Sinai Hospital and handling all
matters ancillary.

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HON. EILEEN A. RAKOWER, J.S.C.

By Order to Show Cause, petitioners Caroline Teitelbaum ("Teitelbaum") and Ruthy Parness ("Parness") move pursuant to CPLR 1202 to be appointed as joint guardians ad litem for Tammy Newman ("Newman"). Teitelbaum and Parness, who are sisters, seek this appointment so that they may commence a medical malpractice action on behalf of Newman, their mother.

The petitioners allege that Newman presented to Mount Sinai Hospital (Mt. Sinai") on or about November 29, 2016. Although Newman's symptoms included weakness, diarrhea and confusion, petitioners claim that Mt. Sinai failed to diagnose Newman's Wernicke's Syndrome. As a result, Newman suffered an anoxic brain injury, specifically Wernicke's encephalopathy. Upon stabilization, Mt. Sinai discharged Newman.

Presently, Newman resides at Henry J. Carter Specialty Hospital & Nursing Facility, located at 1752 Park Avenue. She is bedridden, intubated, on feeding tubes, and on a Peripherally Inserted Central Catheter (PICC) line for Total Parenteral Nutrition (TPN). The Order to Show Cause alleges that Newman is unable to speak or make decisions for herself. At times, her eyes open and she can sometimes track

movement. However, she is “physically and mentally unable to participate in a lawsuit o[n] her own behalf.” (Order to Show Cause at 2)

In support, Teitelbaum and Parness submit Newman’s medical records. Certain consult notes dated “12/08/16” and created by Rachel Turchin, M.D., at Mt. Sinai indicate “MRI Brain showing c/f/ *severe fulminant Wernicke encephalopathy* +/- PRES +/- underlying ischemic changes.” (Teitelbaum and Parness’ exhibit B) Petitioners also submit Newman’s New York Statutory Short Form Power of Attorney designating Teitelbaum and Parness as agents authorized with respect to “claims and litigation” among other “subjects.” (Teitelbaum and Parness’ exhibit B) Teitelbaum and Parness also submit separate affidavits wherein they aver,

“I wish and consent to being appointed as Guardian ad Litem for my mother for the purposes of handling her medical malpractice and related issues such as Medicare liens. I am fully competent to appreciate and protect my mother’s rights. I do not have any interests adverse to my mother. I am not connected in anyway with any adverse party or their attorneys. I have sufficient financial ability to answer to my mother for any damages which may be sustained by my negligence or conduct in the aforesaid actions. I am the Power of Attorney of my mother’s affairs . . . Based upon the foregoing, I request that my sister . . . and I, be appointed to represent my mother for purposes of this case as . . . guardians ad litem. I am able to testify in the case and I have personal knowledge of my mother’s care and treatment at Mt. Sinai as well as my mother’s health condition.

(affirmation of Teitelbaum at 3; affirmation of Parness at 3)

Petitioner’s also submit affidavits of service indicating that Newman, Risk Management at Henry J. Carter Specialty Hospital & Nursing Facility, and Risk Management at Mt. Sinai were served the instant Order to Show Cause. (affirmation of Ribeiro; aff of Sean Alexander)

Standards

CPLR 1201 and 1202

CPLR 1201 provides in relevant part, “A person shall appear by his guardian ad litem . . . if he is an adult incapable of adequately prosecuting or defending his rights.” “The court . . . may appoint a guardian ad litem at any stage in the action upon . . . the motion of . . . a relative . . .” (CPLR 1202 [a] [2]) “Notice of a motion for appointment of a guardian ad litem for a person shall be served . . . if he has no such guardian [of his property], committee, or conservator, upon the person with whom he resides.” (CPLR 1202 [b]) “Notice shall also be served upon the person who would be represented if he is more than fourteen years of age and has not been judicially declared to be incompetent.” (CPLR 1202 [b])

CPLR 1202 (c) further provides that, “No order appointing a guardian ad litem shall be effective until a written consent of the proposed guardian has been submitted to the court together with an affidavit stating facts showing his ability to answer for any damage sustained by his negligence or misconduct.”

“In civil proceedings, the court can appoint a guardian ad litem for a party who cannot understand the proceedings, defend his or her rights or assist counsel.” (*Julie G. v. Yu-Jen G.*, 81 AD3d 1079, 1081 [3d Dept 2011].) When moving to appoint a guardian ad litem, a party should “present evidence tending to show that plaintiff was incapable of either prosecuting or defending his rights.” (*Nova v Jerome Cluster 3, LLC*, 46 AD3d 292, 293 [1st Dept 2007].)

Discussion

Pursuant to CPLR 1202(a)(2), this Court may appoint a guardian ad litem upon the motion of Newman’s daughters, Teitelbaum and Parness. In accordance with CPLR 1202 (b), the instant Order to Show Cause was served upon Newman who has not been judicially declared incompetent, Risk Management at Henry J. Carter Specialty Hospital & Nursing Facility, and Risk Management at Mt. Sinai. The petition comports with CPLR 1202 (c) because Teitelbaum and Parness submit affidavits wherein they consent to their appointments as guardians ad litem and aver that they have the financial ability to answer for any negligence or misconduct. (affirmation of Teitelbaum at 3; affirmation of Parness at 3)

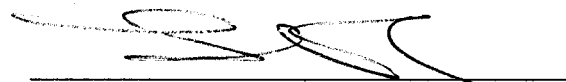
By submitting Newman's medical records and their affidavits, Teitelbaum and Parness have presented evidence "tending to show that [Newman] [is] incapable of either prosecuting or defending h[er] rights." (*Nova v Jerome Cluster 3, LLC*, 46 AD3d 292, 293 [1st Dept 2007].) Because Newman is unable to speak, bedridden, in need of feeding tubes and a Peripherally Inserted Central Catheter, and only able to open her eyes and track movement as a result of her anoxic brain injury, Newman cannot defend her rights or assist counsel. (*Julie G. v. Yu-Jen G.*, 81 AD3d 1079, 1081 [3d Dept 2011].)

Wherefore it is hereby,

ORDERED that Petitioners Caroline Teitelbaum and Ruthy Parness' Order to Show Cause pursuant to CPLR 1202 seeking appointments as joint guardians ad litem for Tammy Newman is granted.

This constitutes the Decision and Order of the Court. All other relief requested is denied.

Dated: APRIL 17, 2018



Eileen A. Rakower, J.S.C.