Matter of Caterina A.
2020 NY Slip Op 34494(U)
March 6, 2020
Surrogate's Court, Bronx County
Docket Number: 46G2007/A
Judge: Nelida Malave-Gonzalez

SURROGATE'S COURT, BRONX COUNTY

March 6, 2020

IN THE MATTER OF THE GUARDIANSHIP OF

CATERINA A., also
known as CATHERINE A.
Pursuant to SCPA Article 17-A
File No.: 46G2007/A

In this contested proceeding, the petitioner, the respondent's caretaker who was appointed successor guardian of her person pursuant to the order of this court dated January 25, 2013, filed an order to show cause seeking to transfer this court's guardianship file to the Surrogate's Court, Dutchess County. Jurisdiction was obtained over the respondent, Mental Hygiene Legal service, First Department (MHLS), New York Lawyers for the Public Interest (NYLPI) and Office of Mental Retardation and Developmental Disabilities (OMRDD). Thereafter, the New York Attorney General and the New York Civil Liberties Union (NYCLU), which, along with the Consumer Advisory Board (CAB), represents and monitors the interest of the protected class of which the respondent is a member pursuant to the Willowbrook Permanent Injunction (Permanent Injunction) issued by the United States

District Court, Eastern District of New York on January 3, 1992 (Bartels, U.S.D.J.), appeared and filed opposition, and MHLS indicates that it no longer represents the respondent, as the group residence maintained by the petitioner is not a facility supervised by OMRDD. On the adjourned date of the order to show cause counsel for the petitioner, NYCLU, the Attorney General, NYPLI and the guardian ad litem appeared. After oral argument was had, the matter was marked "submitted."

The respondent's parents, who were Bronx residents, petitioned to be appointed guardians of her person on October 1, 2008. At that time the respondent resided at a facility in Westchester. The petition was then amended to reflect that the ward resided with the petitioner in Fishkill, New York and continues to do so. By decree dated June 23, 2009, the court adjudicated the respondent to be an intellectually disabled person and appointed the parents guardians of her person, and the petitioner and the CAB were appointed standby co-guardians. Upon the death of the respondent's mother, the respondent's father sought leave to resign and the appointment of the petitioner as sole guardian of the person. The father then deceased. Pursuant to an order dated January 25, 2013, the court revoked the parents' letters of guardianship, removed the CAB as standby guardian, appointed the petitioner successor guardian of the person of the respondent and the petitioner's two daughters respectively as successor standby and first alternate standby guardians, and the CAB was permitted to continue to advocate for and on behalf of the respondent pursuant to the Permanent

Injunction. Substantial settlement proceeds of a Willowbrook class action were deposited into a pooled "Medicaid exemption trust" ("pooled trust") maintained for the respondent's benefit into which monthly annuity payments are deposited pursuant to the order of the Supreme Court, Bronx County, which appointed NYSARC Trust Services, located in Albany County (NYSARC), as trustee.

In support of the application, the petitioner's attorney notes that the respondent is partially paralyzed and uses a wheelchair, and counsel for the petitioner as well as the pooled trust trustee are located in Albany County, and the respondent's treating neurologist, as well as the respondent and the petitioner, are located in Dutchess County. Although there are no anticipated proceedings, it is extremely inconvenient for all of them to travel to Bronx County. As requested by the court, the petitioner presented a response from the Dutchess County Surrogate's Court that it will accept transfer of this matter, should the application be granted.

In opposition, NYCLU notes that the order to show cause was not served upon it, nor on CAB or the Attorney General, and it only appeared after being furnished "courtesy copies" by the petitioner's attorney. Given that proceedings were had in the Surrogate's and Supreme Courts of Bronx County for over a decade, and the familiarity of this court, which determined the respondent's incapacity, with the respondent's history and her rights and entitlements under the Permanent Injunction, and that this long-settled guardianship is not likely to generate any further proceedings requiring the

presence of the parties before the Court, a change of venue would not be in the respondent's best interests. It notes that throughout the guardianship proceedings, the respondent always resided with the petitioner outside of Bronx County and the Bronx Supreme Court appointed NYSARC as trustee many years before the guardianship proceeding was commenced. In any event, the convenience of the parties and counsel should not outweigh the respondent's interests in having a court well-versed in her past legal proceedings to continue to preside over this guardianship. Any issues concerning the parties' mobility challenges could be accommodated by the court in the unlikely event that the parties would have to appear in person. It concludes that the objection to transfer of venue has nothing to do with NYCLU's or CAB's convenience, as its attorneys travel statewide to appear in person at legal proceedings throughout New York State on behalf of the Willowbrook Class members.

In further opposition, the Attorney General avers that it was not served with the order to show cause and that, although it may be more convenient for the petitioner to have the case moved to her county of residence, it defeats the continuity of judicial oversight over the respondent throughout the last three decades. If the petitioner had wanted to change venue, the time to have done so was in 2008 when the original guardianship petition was brought. Moreover, the general case law indicates that a change of venue is for the convenience of material non-party witnesses and not for the convenience of the parties, and the petitioner has not provided

any examples of anticipated future appearances. The Attorney General concludes that the suddenness of this application, that contains no information as to why such forum change is necessary or how it benefits the respondent, raises suspicion.

The guardian ad litem reports that the respondent suffers from profound intellectual disability, `has been non-verbal since birth, and cannot meaningfully participate in a judicial proceeding. Therefore, the request to change venue is for the convenience of the party witnesses (see CPLR § 510 [3]), who are highly unlikely to make future appearances given the apparent infrequency of the guardianship proceedings. He notes that NYSARC and the neurologist are located outside of Dutchess County and would have to travel in any event should their appearance be necessary. He objects to a change of venue and recommends that the court deny the application.

The petitioner's attorney replies that the petitioner and the respondent have not resided in the Bronx in decades, the inconvenience of traveling to the Bronx is obvious, and it does not matter that the court is well-versed in past proceedings, as court employees would have to be "brought up to speed on this dormant matter." He concludes that "keeping the matter venued in Bronx County does not necessarily conserve judicial resources. . . and denigrates the abilities of the Dutchess County Surrogate's Court."

After the appointment of a guardian, standby guardian, or alternate guardians, the court will have and retains general jurisdiction over

the intellectually disabled or developmentally disabled person for whom such guardian has been appointed . . . and take and adjudicate such steps as necessary or proper for such person (see SCPA 1758 [2]; Matter of Kevin Z., 105 AD3d 1269 [3d Dept 2013; lv denied 21 NY3d 1033 [2013]; Matter of Mira I., NYLJ, Feb. 25, 2013 at 22, col 5 [Sur Ct, Bronx County 2013]; Matter of Yvette A., 27 Misc 3d 945 [Sur Ct, NY County 2010]). It is utterly implausible to expect that a case should be transferred from county to county every time a ward is moved. To do so would sabotage the continuity by the court . . . to properly and efficiently administer a guardianship case throughout many years (see Matter of Judy F., 10 Misc3d 1145 [A], 2008 NY Slip Op 51169 [U] Sup Ct, Queens County 2008]).

That this court has already expended a great deal of time and effort on the matter, the ward and petitioner resided outside of Bronx County prior the inception of the guardianship proceeding, there are no other pending or contemplated guardianship matters, and, although the petitioner was informed that it was not necessary to appear with the respondent since both are represented by counsel, they were both present in the courtroom during oral argument but did not participate herein, the petitioner fails to demonstrate that the convenience of material witnesses or the ends of justice would be served by the transfer of venue or that transfer is in the respondent's best interests (see Matter of Beasley, 234 AD2d 32 [1st Dept. 1996]). Given that the NYCLU and the Attorney General appeared and the NYCLU asserted opposition on behalf of CAB and the guardian ad litem

reports that jurisdiction is complete, the assertions by NYCLU and the Attorney General concerning lack of jurisdiction are disregarded as moot. However, the NYCLU, the Attorney General and the CAB are to be served in any future appropriate proceeding.

On this state of the record, and given the strenuous opposition presented, the request for change of venue is denied. The guardian ad litem may settle an order providing for payment of his services herein from the pooled trust fund.

The Chief Clerk is to mail copies of this decision, which constitutes the order of the court, upon counsel for the petitioner, the guardian ad litem, NYCLU, CAB, NYPLI, NYSARC, the Attorney General and OMRDD and MHLS 1st Department.

Settle order and proceed accordingly.

HON. NELIDA MALAVE-GONZALEZ
SURROGATE