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IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM BAUER; AND AMY BAUER,)
PETITIONERS,)
vs.)
IN THE SECOND JUDICIAL DISTRICT)
COURT OF THE STATE OF NEVADA,)
IN AND FOR THE COUNTY OF)
WASHOE; AND THE HONORABLE)
EGAN K. WALKER, DISTRICT JUDGE,)
Respondents,)
and)
in the matter of guardianship)
ELIZABETH ELAINE BAUER, ADULT)
WARD)
Real Party in Interest.)

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ANSWER TO PETITION FOR WRIT OF MANDAMUS
OR, IN THE ALTERNATIVE, WRIT OF PROHIBITION

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I. STATEMENT OF FACTS

On May 29, 1998, William and Amy Bauer (hereinafter Guardians) filed a Petition for Guardianship of Elizabeth Elaine Bauer, their adopted child, (hereinafter Elisa). (Petitioner's Exhibit B, page 3). Elisa was at that time one day short of her eighteenth birthday. (Petitioner's Exhibit A, page 3).

The Guardians had adopted Elisa and her siblings from Costa Rica several years earlier, when Elisa was twelve. (Ibid).

The guardianship petition was granted on July 28, 1998. (Petitioner's Exhibit B, pages 1-2).

1 As of September 27, 2012, no annual report had been filed
2 for 2011. (Petitioner's Exhibit C).

3 Judge Walker was alerted to the fact that Elisa was
4 pregnant on September 27, 2012 by an informal contact with
5 Washoe County Adult Protective Services on that date. (Ibid.)
6 He was advised that there were potential issues regarding the
7 effects of the various medications Eliza takes on the
8 pregnancy and fetus, as well as the potential for a difference
9 of opinion between Elisa and the Guardians regarding whether
10 the pregnancy should continue. Judge Walker also determined at
11 that time that no annual report had been filed by the
12 Guardians for 2011. (Ibid). Judge Walker immediately issued
13 an Order which set forth the facts of the contact from Social
14 Services, the concerns raised by the report as well as the
15 fact that no annual report for 2011 had been filed. In that
16 order he set the matter for a status conference for October 9,
17 2012, some twelve days later. (Ibid). In that order he invited
18 the participation of Social Services and Elisa's treating
19 physicians. The order was sent by first class mail to Elisa,
20 the Guardians and Washoe County Social Services. (Ibid, page
21 3).

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23
24 Thereafter, on October 4, 2012, the Guardians filed an
25 Annual Report. (Petitioner's Exhibit D). In that report they
26 note that "Elisa's health has remained about the same although
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1 she was diagnosed as pregnant the week of September 2, 2012,
2 last week (sic). We do not view pregnancy as a harmful health
3 status, but as an occasionally normal health status for a
4 physically adult woman." (Ibid, page 2). They further state
5 that "[a]n abortion of the baby is not being considered by
6 us." (Ibid, page 3).

7
8 Elisa, the Guardians and Social Services appeared at the
9 Status Conference. The Guardians appeared without counsel
10 (Real Party In Interest's Exhibit D).

11 At that Conference Amy Bauer indicated that Elisa was
12 pregnant and that medical information indicated risks of
13 difficulties due to medications.(Ibid.) She also indicated
14 that Elisa had changed her mind regarding carrying the fetus
15 to term. (Ibid).

16 As a result of that conference, Judge Walker entered an
17 order appointing the Washoe County Public Guardian's office as
18 investigator, pursuant to NRS 159.046, into Elisa's personal
19 circumstances including medical and psychiatric/psychological
20 conditions, care, maintenance and placement. (Petitioner's
21 Exhibit F).

22
23 That office was directed to file a report detailing the
24 results of its investigation regarding the current condition
25 of Elisa prior to the continued status conference of October
26 16,2012. The Notice of Entry of Order was mailed to the
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1 Guardians on October 11, 20-12. (Real Party In Interest's
2 Exhibit C).

3 In addition, the Court appointed Karen Sabo, Esq. as
4 counsel for Elisa. (Petitioner's Exhibit G).

5 Finally, a Notice of Hearing was prepared and personally
6 served on the Guardians on October 9, 2012 advising that the
7 next hearing on the matter was set for October 16, 2012. (Real
8 Party In Interest's Exhibit B).

9
10 On October 16, 2012 the continued Status Conference
11 convened. Present were the Guardians, their attorney, Mr.
12 Guinasso, Elisa, Deputy District Attorney Dania Reid and a
13 representative from the Washoe County Public Guardian's
14 office. (Petitioner's Exhibit K). As Karen Sabo, Esq., counsel
15 for Elisa could not be present the matter was continued over
16 to October 25, 2012. (Ibid).

17 Thereafter, the Guardians filed an Amended Hearing
18 Statement (Petitioner's Exhibit M.)

19
20 The Court appointed undersigned counsel to represent
21 Elisa as her attorney on October 29, 2012. (Petitioner's
22 Exhibit N). The Court also appointed Karen Sabo, Esq., to act
23 as guardian ad litem for Elisa on the same date (Real Party In
24 Interest's Exhibit E).

25 At the center of this controversy is Elizabeth "Elisa"
26 Bauer. She is a thirty-two year old woman who has been
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1 diagnosed with, among other things, seizure disorder, mental
2 retardation, behavioral disorder, and ADD. (Petitioner's
3 Exhibit E) She takes numerous medications, some of which
4 present risks to her fetus, and perhaps to her. The combined
5 effect of the medications on her or the fetus is not known.
6 (Petitioner's Exhibit I, page 1-3). She has provided mixed
7 responses to questions surrounding the pregnancy and her
8 wishes regarding it. (Petitioner's Exhibit E, page 4, Real
9 Party In Interest's Exhibit D).

11 II. ARGUMENT

12 A. Judge Walker did not act in an arbitrary and
13 capricious manner when he set the underlying action for a
Status hearing.

14 As noted above, Judge Walker did received an informal ex
15 parte communication on September 27, 2012 regarding the
16 pregnancy of Elisa. (Petitioner's Exhibit C) That
17 communication, along with the fact that the Guardians had not
18 filed their required annual report for 2011, prompted him to
19 set the matter for a status conference. (Ibid). The second
20 reasoning for Judge Walker's setting this matter for that
21 Status Conference is repeatedly omitted from Guardian's
22 Petition.

24 Moreover, while the initial report may have been informal
25 and ex parte, Judge Walker immediately provided notice to all
26 parties concerning the contact and completely disclosed the
27

1 information made in that contact. Nevada Code of Judicial
2 Conduct Rule 2.¹

3 Central to Guardians' position in this matter is the
4 assertion that the Court lacked jurisdiction to order a status
5 conference, or to oversee or inquire into the decision-making
6 processes of the Guardians once they were appointed. To that
7 end Guardians cite NRS 159.079, NRS 159.185 and NRS 159.1853.
8

9 In so doing they misinterpret the statutes they cite and
10 ignore not only other provisions of Chapter 159 but the
11 general principles attendant to the role of guardian.

12 "The appointment of a guardian creates the
13 relationship of trustee and beneficiary between
14 the guardian and the ward. The estate becomes
15 a trust fund for the ward's support. The guardian only
16 acts as the hand of the court and is at all
17 times subject to the court's direction in the manner
18 in which the guardian provides for the care and
19 support of the disabled person... The court functions
20 in a central role, which permits it to oversee and
21 control all aspects of the management and protection
22 of the disabled person's estate. The court controls
23 the ward's person and estate and directs the guardian's
24 care, management and investment of the estate." (Emphasis
25 added.)
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23 ¹ Undersigned counsel was not appointed until October 29, 2012
24 in this matter and, thus, was not present during any on record
25 discussions regarding the genesis of the September 27 Order.
26 Moreover, due to the short period of time that undersigned
27 counsel has been part of this case, we have not yet obtained
28 the CD recordings of the proceedings, although they have been
requested. It seems a fair reading on the record cited herein
that the communication was of an emergency nature.

1 In re Estate of Wellman, 673 N.E.2d 272, 278 (Ill. 1996); 39
2 C.J.S. Guardian & Ward §5.

3 This core principal of the role and authority of the
4 guardian is exemplified by NRS 159.081, requiring the annual
5 reports by guardians of the person.

6 In addition, the provisions of NRS 159.079, relied upon
7 by the guardians to support their claim of virtual autonomy in
8 handling issues concerning the ward, actually support the
9 contrary position. The very first words of Section One read
10 "[e]xcept as otherwise ordered by the court...". In addition the
11 statue requires the "proper" care of the ward. Clearly the
12 court has continuing authority over the guardianship, the
13 guardians and the ward, after appointment of the guardians.

14 In addition, the provisions of NRS 159.046 covering the
15 appointment of investigators by its plain language provides

16 "1. Upon filing of the petition, or any
17 time thereafter, the court may appoint one
18 or more investigators to:

19 ""
20 (c) investigate allegations or claims which
21 affect a ward or proposed ward..." (Emphasis
22 added).

23 There are a number of other provisions concerning the
24 authority of the court regarding guardianships. See, NRS
25 159067; NRS 159.078, NRS 159.0801, NRS 159.0805, for examples.
26 Nothing in the language of these statutory sections provides

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1 that they are the only instances when the court has oversight
2 over the guardian and guardianship.

3 NRS 159.176 requires an annual review of a
4 guardianship. While this section is found under the heading
5 Accountings, by its language it is general in scope.

6 The Guardians also rely on the provisions of NRS 159.185
7 et seq. regarding removal and terminations of guardianships.
8 However, this argument is also unavailing. No one is seeking
9 either action at this time. The stated purpose of the status
10 hearings is not to remove or terminate the guardianship. The
11 purpose is to obtain information so that appropriate, proper
12 reasoned decisions can be made concerning the well-being of
13 the ward. The hearings serve as a logical extension of the
14 requirement of the court to receive annual reports regarding
15 the ward, NRS 159.081, reports which had not timely been made
16 by the guardians in this case for 2011. The last report the
17 court had was from 2010, predating the pregnancy. (Real Party
18 In Interest's Exhibit A).
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21 Moreover, nothing in this statutory section provides that
22 it is the sole mechanism whereby the court may inquire into
23 the actions of the guardians.

24 NRS 159.081 states that the court may order reports at
25 other such times as the court deems appropriate and may
26 prescribe the form and contents filing a report. The court is
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1 not required to hold hearings. The Court is also not
2 prohibited from holding a hearing.

3 These hearings also serve to fulfill the requirements of
4 the roles and duties of the court and the guardian as
5 discussed above. In re Estate of Wellman, 673 N.E.2d 272, 278
6 (Ill. 1996); Lawrence A. Frolik, "Is a Guardian The Alter Ego
7 of The Ward," 37 Stetson L. Rev. 53, Fall, 2007; 39 C.J.S.
8 Guardian & Ward §5.
9

10 What is rather astounding is that the guardians do not
11 appear to want any information that may inform their decision
12 concerning Elisa and her pregnancy; that is, unless those
13 opinions support their own personal wishes. They describe as
14 "ipse dixit" any opinions from physicians who have actually
15 examined and treated Elisa, without any argument or authority
16 for the dismissal of those opinions except to label them as
17 ipse dixit (Petition, page 15). Instead they obtain opinions
18 from two physicians who agree with them. (Petition, pages 15-
19 17). While it may suffice for them to do so in their own
20 private lives, it is not permissible for them to do so with
21 respect to their roles as Guardians. The Guardians do not act
22 in this case as the parents of a minor child, but rather as
23 guardians with the attendant responsibilities to the ward and
24 to the court. In re Estate of Wellman, 673 N.E.2d 272, 278
25 (Ill. 1996).
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1 B. The District Court is not violating the due process
2 rights of either the Guardians or Elisa.

3 "The fundamental requisite of due process of law is the
4 opportunity to be heard. Grannis v. Ordean, 234 U.S. 385,394,
5 34 S.Ct. 779, 783, 58 L.Ed. 1363." Mullane v. Central Hanover
6 Bank & Trust Co, 339 U.S. 306,314,70 S.Ct. 652 (1950). The
7 Supreme Court went on to state

8 "An elementary and fundamental requirement of due
9 process in any proceeding which is to be accorded
10 finality is notice reasonably calculated, under
11 all the circumstances, to apprise interested
parties of the pendency of the action and afford
them an opportunity to present their objections"

12 Mullane v. Central Hanover Bank & Trust Co, 339 U.S.
13 306,314,70 S.Ct. 652 (1950).

14 We have deliberately undergone a detailed statement of
15 the steps which occurred in this case since Judge Walker was
16 apprised of the pregnancy and the failure of the guardians to
17 file an annual report on September 27, 2012. Clearly and
18 unequivocally, the guardians were afforded complete notice and
19 an opportunity to be heard. Indeed, in considering their
20 various pleadings filed herein, not to mention their
21 participation in the hearings, they were clearly afforded
22 opportunities to be heard.

23 Although it is unclear, it appears that a portion of the
24 argument rests on the assertion that the only means to address
25 the court concerning the decisions of the guardians regarding
26 the ward is to proceed by way of petition for removal.
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1 However, except for a general citation to Chapter 159 no
2 authority is provided for that assertion. No such proscription
3 exists in Chapter 159. There are provisions regarding a
4 petition to remove guardian which guardians have cited, but
5 those provisions do not apply in this matter. No one has
6 sought to remove the guardians. The hearing has been described
7 by the court, which ordered it, as a status hearing with
8 additional evidentiary hearings to obtain information.
9 (Petitioner's Exhibit N; Petition, Page 5).
10

11 In short, the hearings are designed to obtain the
12 information that the guardians should require and the court
13 does require to make the best decision for Elisa's well-being.
14 This represents a fulfilling of the core responsibilities of
15 both the Court and the guardians. In re Estate of Wellman, 673
16 N.E.2d 272, 278 (Ill. 1996).

17 The due process argument as it is presented on behalf of
18 Elisa in the petition, presents a different consideration.
19 Certainly the legal argument regarding notice applies equally
20 to Elisa. The issue is the appropriateness of counsel for the
21 guardians making those claims when, as here, Elisa has her
22 own, separate counsel (Petitioner's Exhibit N).
23

24 An attorney is prohibited from representing clients
25 with conflicting interests absent certain conditions being
26 met, which exception does not apply here. Nevada Rules of
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1 Professional Conduct 1.7. There is at least a significant risk
2 that a fundamental conflict exists or will soon arise
3 concerning the decision as to whether Elisa carries the fetus
4 to term. The guardians have made it clear that they will not
5 consider an abortion.(Petitioner's Exhibit D, page 3;
6 Petition, page 15)

7
8 The position Elisa has with respect to this issue is
9 conflicted and varying at this time. (Petitioner's Exhibit E,
10 page 4, Real Party In Interest's Exhibit D).

11 It is the obligation of undersigned counsel, as the
12 attorney for Elisa, to represent her and advise her. Nevada
13 Rules of Professional Conduct 1.14; Rule 2.1. Clark v.
14 Alexander, 953 P.2d 145 (Wyo. 1998); In Re M.R., 135 N.J. 155,
15 638 A.2d (1994). In that capacity undersigned counsel does not
16 assert claims of due process violations on behalf of Elisa.

17 In that capacity undersigned counsel on behalf of
18 Elisa, requires the information being sought so as to advise
19 her, assist her in determining what decision she wishes to
20 make and advocate that position. Nevada Rules of Professional
21 Conduct, Rule 1.14.

22
23 C. Neither the Court nor Washoe County Social Services
24 is improperly usurping the authority of Elisa's Guardians to
make decisions regarding her health and welfare.

25 The essence of much of the Guardians' argument in this
26 petition is that decisions have already been made either by
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1 Social Services or the Court, regarding a number of issues
2 including the impropriety of the guardians' actions, the need
3 for an abortion, the conclusion that Elisa does not want an
4 abortion, whose medical judgment is best. They then argue that
5 since these decisions have already been made, the rights of
6 the guardians have been improperly usurped. (Petition, pages
7 15-18).

8
9 This argument ignores the stated purposes for the
10 hearings, namely, to gather information so as to make informed
11 decisions on these issues. (Petition, page 5). Gathering this
12 information is entirely consistent with the role of the Court
13 in overseeing and controlling the guardians and guardianship.
14 In re Estate of Wellman, 673 N.E.2d 272, 278 (Ill. 1996);
15 Lawrence A. Frolik, "Is a Guardian The Alter Ego of The Ward,"
16 37 Stetson L. Rev. 53, Fall, 2007. Gathering this information,
17 in a manner consistent with the time constraints presented by
18 the pregnancy, is the means to make decisions, decisions which
19 have not yet been made, decisions which need to be made.
20 Gathering this evidence is absolutely required for undersigned
21 counsel to advised Elisa so she can make her decision. Nevada
22 Rules of Professional Conduct Rules 1.14, 2.1.

24 The Petition also contains the broad assertion that Elisa
25 is being harmed by the process itself, and the Court's
26 apparent refusal to allow the guardians to remove Elisa from
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1 the home she has resided in for some time pending the outcome
2 of the fact-finding process. While undersigned counsel was not
3 part of the case at the time the removal matter was discussed
4 and thus, was not privy to what was argued, it does seem to
5 have been a reasonable decision to maintain the status quo and
6 prevent any actual or claimed improper influence on Elisa
7 regarding the decision as to what to do about the pregnancy
8 prior to the fact-finding process, and the resultant
9 advisement of Elisa, to occur. The remainder of this portion
10 of the argument cites to no supporting evidence and assumes
11 the conclusion that the decisions of the guardians are
12 reasonable and sound, a conclusion not yet made by the court.

14 III. CONCLUSION:

15 Based upon the foregoing, we submit that the District
16 Court has the jurisdiction to order the hearings objected to
17 in the Petition. Under the particular facts of this case, the
18 Court has the obligation to do so.

19 In addition, the Petition's characterization of the
20 issues as requiring Elisa to undergo a forced, i.e., against
21 her will abortion, is incorrect. Elisa's opinion, based upon
22 complete information, is not yet established. She has
23 expressed varying opinions.
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The decision as to whether an abortion will be ordered is far from being made, and should only be made after thorough information is obtained.

Elisa, through her undersigned counsel does not claim a denial of due process. The guardians have no viable claim for a denial of due process. They have been given ample notices and opportunities to be heard.

The role of the guardians in this case has not been usurped by Washoe County or anyone else.

Elisa has not been deprived of her constitutional rights to make decisions.

Therefore, since the court has the jurisdiction to hold the hearings and since no decisions ordering an abortion, forced or otherwise, have been made, despite the contrary characterization made by the guardians, we ask that the Writ be denied.

Dated this 5th day of November, 2012.

SINAI, SCHROEDER, MOONEY,
BOETSCH, BRADLEY & PACE

By Mary E. Boetsch
Mary E. Boetsch

CERTIFICATE OF SERVICE

Pursuant to the Rules of the above-entitled Court, I certify that I am an employee of the Law Offices of SINAI, SCHROEDER, MOONEY, BOETSCH, BRADLEY & PACE, and that on this date I caused to be hand-delivered, by a representative of the Reno/Carson Messenger Service, a copy of the attached and foregoing document, addressed to:

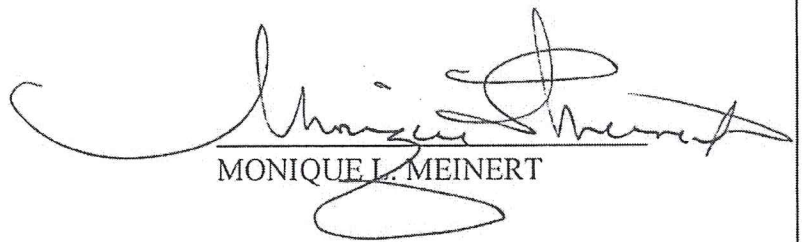
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HONORABLE EGAN WALKER
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RENO, NEVADA 89501

DATED this 5th November, 2012.



MONIQUE L. MEINERT