

FILED

FEB 4 - 2016

JUDGE DIXIE PARK
STARK COUNTY PROBATE COURT

IN THE PROBATE COURT OF STARK COUNTY, OHIO

**IN RE: IVAN W. FLOHR
GUARDIANSHIP**

) CASE NO. 219330

) JUDGE R. R. DENNY CLUNK

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) **GUARDIAN FAITH LANSHE'S**
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) **SUPPLEMENTAL MEMORANDUM IN**
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) **RESPONSE TO COMBINED MOTION**
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) **TO APPOINT A GUARDIAN**
()

) **UNRELATED TO THE WARD;**
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) **MOTION TO ALLOW THE WARD TO**
()

) **RELOCATE; AND MOTION TO**
()

) **ALLOW THE WARD TO EXPEND**
()

) **MONIES**
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Faith Lanshe, duly appointed Guardian of the Person of Ivan W. Flohr, an incompetent (the “Guardian”), by and through undersigned counsel, respectfully requests that this Court deny in total the combined motion filed by the Ward Ivan Flohr (the “Ward”), to permit the Ward to relocate from his present residence as requested in this Motion and to appoint a guardian unrelated to the Ward. The Guardian submits this supplemental memorandum in support of her position.

In addition to the Guardian's position as set forth in her Amended Memorandum filed on December 29, 2015, the Guardian states that, based on the most recent medical evidence, the Ward's is simply unable to live independently in his own home and take care of livestock whether or not he (or his children) agrees with his diagnosis. The pertinent portions of the Ward's combined motion state:

He [the Ward] wants to live in a house with room for his dog (Abbe), perhaps a cow or two, where he can get out and enjoy the open air on his own property.

...

The Ward wishes to spend approximately \$300,000.00 on a suitable property, may be somewhat more or less.

However, unfortunately, the Ward is not medically fit to live independently on his own property and care for livestock.

In addition to previous medical opinions provided on this issue, Dr. Cleveland has submitted an updated report. Dr. Maryjo Cleveland states in her February 1, 2016 Letter, a copy of which is attached hereto as **Exhibit A**:

His [the Ward's] current living situation is the most appropriate situation to meet his needs. Over the next few years, it is expected that Mr. Flohr's condition will continue to deteriorate and he will need more supervision. At this time, however, the structure provided by his current environment, supplemented with support by the family, is adequate to meet his needs. Any more independent situation is clearly not going to be adequate for this.

(emphasis added). Thus, Dr. Cleveland, the Ward's treating physician, and Dr. Berke, the independent physician appointed by this Court, both agree that the Ward's current living situation is medically appropriate, and altering the Ward's current living situation would be *medically inappropriate*. While the Ward's request to return to a home is not an unexpected request for any resident of an assisted living facility, Faith Lanshe has been appointed to do what is in the best interest of the Ward, not grant every request from the Ward himself. Here, unequivocally, it is in the Ward's best interest to remain in his current living situation despite his request to live elsewhere.

Additionally, in conjunction with the Guardian's position as outlined in her Amended Memorandum, the Guardian states that the Ward's motion is premature and fails on its face as it seeks to appoint a guardian prior to seeking removal of the current Guardian.

The language of the motion at issue states in pertinent part:

The Ward, for Reasons set forth above, wishes the Court would appoint a non-relative attorney to be his guardian. This would eliminate the majority of attorney fees and internecine warfare.

Because the Ohio Revised Code does not allow for co-Guardians of the Person to be appointed¹, the Ward must first seek to remove Faith Lanshe as guardian of the person for the Ward. Because the Ward has failed to request this be done, this court cannot appoint a "non-relative attorney" even if it found grounds to do so. Thus, the Ward's combined motion fails on its face as contrary to Ohio law and must be denied.

Should this court interpret the Ward's combined motion as a motion to remove Faith Lanshe as guardian of the person and appoint a non-relative attorney as guardian of the person, the Ward's motion still fails as there is no basis in fact or in law to appoint a non-relative attorney as guardian of the person.

"[T]here is no separate statutory provision governing a motion to remove a guardian under R.C. Chapter 2111, [rather] such motions are recognized and reviewed under R.C. 2109.24 because a guardian is a fiduciary." *In re Weingart*, 2002-Ohio-38, 2002 WL 68204 (8th Dist. No. 79489) at *5. R.C. 2109.24 states, in pertinent part:

The court may remove any fiduciary, after giving the fiduciary not less than ten days' notice, for habitual drunkenness, neglect of duty, incompetency, or fraudulent conduct, because the interest of the property, testamentary trust, or estate that the fiduciary is responsible for administering demands it, or for any other cause authorized by law.

¹ See R.C. 2111.01(A).

Here, there is no evidence whatsoever to suggest that Faith Lanshe has neglected her duties, is incompetent, engaged in fraudulent conduct, or any other reason justifying the removal of Faith Lanshe as guardian of the person. Because no evidence has been offered to suggest that Faith Lanshe has engaged in any of the statutory reasons to allow for removal of the guardian, the motion should fail. Most importantly, however, there has been no evidence offered that appointing a non-relative attorney to act as guardian of the person would be in the best interest of the Ward.

No evidence has been offered to support the notion that a non-relative attorney would be more beneficial than the Ward's daughter in the position of guardian of the person.

In a similar situation to the case before this Court, the Eighth District Court of Appeals affirmed the probate court's decision not to remove a guardian of the person in *In re Weingart*. In *Weingart*, non-relative attorney Charles Neuger had been appointed as guardian of the estate and of the person for the ward, who had been diagnosed with Alzheimer's and had no offspring. *Id.* The ward was transferred to an assisted living facility due to his progressive diagnosis in spite of his request to be returned to his unsold condominium. *Weingart*, 2002-Ohio-38 at *1. Upon learning of his guardianship, the ward's stepbrother, niece, and nephew² filed a motion to remove the guardian along with a long-time friend of the ward who also sought the removal of the guardian. *Weingart*, 2002-Ohio-38 at *2.

The basis for the request to remove Neuger as guardian of the person was that he had been appointed without the ward's stepbrother's knowledge, the ward was unhappy in his current living conditions, and the ward could be cared for in his own home. *Id.* Further, at the hearing on the motions, all witnesses testified that the ward wanted to go home; however, the employees of the assisted living facility testified that "this was an expected response from any resident."

² The ward's niece and nephew lived outside of Ohio. *Weingart*, 2002-Ohio-38 at *1

Weingart, 2002-Ohio-38 at *3.³ Moreover, testimony at the hearing on the motions revealed the contentious nature of the relationship between the guardian and the ward's stepbrother:

The testimony [at the hearing] also revealed Neuger's adversarial relations with Cook and Price over Weingart's living arrangements, his attempt to restrain price from visiting him because of a belief that Price encouraged Weingart to reject Neuger as his guardian, and his letter to Weingart that told him his only friends were Lawrence Gaia and Carlita Karlin.

Weingart, 2002-Ohio-38 at *3.

The probate court judge denied the motions to remove Neuger as guardian of the person and guardian of the estate. *Weingart*, 2002-Ohio-38 at *3.

The Eighth District, in affirming the trial court's decision, held:

The judge found that Weingart's placement at Alterra was reasonable, based on evidence that he needed twenty-four hour supervision, that he had threatened suicide, and that his condition would get progressively worse. We cannot find an abuse of discretion in that finding or reverse the finding that Neuger's conduct as guardian of the person was appropriate.

Weingert, 2002-Ohio-38 at *6 (emphasis added). Similarly, despite the contentious nature of the case before this court, the Ward cannot identify any actions and/or inactions of Faith Lanshe that would warrant her removal as guardian of the person. Every decision made and action taken by Faith Lanshe has always been, and always will be, in the best interest of her father. As in *Weingart*, although the Ward disagrees with the Guardian's decision to house him in an assisted living facility, the decision to do so was, and continues to be, in the best interest of the Ward given his diagnosis with a progressive disease impairing his cognitive abilities.

In fact, where the ward in *Weingart* had no offspring making it reasonable to appoint a non-relative attorney, it is illogical to suggest that the best interests of the Ward would be served in any way by appointing a non-relative attorney as guardian of the person when he has a

³ At the hearing, two physicians testified that that it would be possible to provide the ward with home care rather than requiring he stay at the assisted living facility. *Weingart*, 2002-Ohio-38 at *2. However, the ward's condominium was not yet sold thereby providing him a home in which he could have home care.

daughter who has been appointed to be the guardian of the person and has dutifully carried out the responsibilities of that position. Faith Lanshe, as guardian of the person and a registered nurse, knows her father and his needs better than a non-relative attorney ever could. Furthermore, a non-relative attorney simply cannot provide the love and compassion to the Guardian's father that she can to ensure his best interests are protected.

For the above reasons and for the reasons set forth in the Guardian's December 29, 2015 Amended Memorandum, the motions of the Ward to relocate from his present residence and the motion to appoint a non-related attorney as guardian must be denied.

Respectfully submitted,

BLACK, MCCUSKEY, SOUERS & ARBAUGH



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*Counsel for Faith Lanshe,
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been sent on this 4th day of February, 2016, by Regular U. S. Mail to:

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Judith Flohr
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Spouse (Estranged) of Ward

Randolph J. Lamm
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February 1, 2016

RE: Ivan Flohr

To Whom It May Concern,

Mr. Flohr was re-evaluated by me on October 7, 2015. At that time he was retested and his Alzheimer's disease had, indeed, progressed. His current living situation is the most appropriate situation to meet his needs. Over the next few years, it is expected that Mr. Flohr's condition will continue to deteriorate and he will need more supervision. At this time, however, the structure provided by his current environment, supplemented with support by the family, is adequate to meet his needs. Any more independent situation is clearly not going to be adequate for this.

If you need further assistance do not hesitate to call.

Sincerely,

A handwritten signature in black ink, appearing to read "Maryjo L. Cleveland, M.D." followed by a stylized surname.

Maryjo L. Cleveland, M.D.
Medical Director
Post Acute & Senior Services
Chief, Division of Geriatric Medicine