

Matter of Capurso

Surrogate's Court of New York, Westchester County

March 26, 2019, Decided

2009-2351/A

Reporter

63 Misc. 3d 725 *; 98 N.Y.S.3d 381 **; 2019 N.Y. Misc. LEXIS 1182 ***; 2019 NY Slip Op 29079 ****; 2019 WL 1348351

[***1] In the Matter of the Guardianship of Stephen Sean Capurso, Petitioner.

LexisNexis® Headnotes

Core Terms

guardianship, decree, best interest, decisions, disability

Family Law > Guardians

[HNI](#) [↓] **Family Law, Guardians**

SCPA Article 17-A guardianship is plenary, resulting in a total deprivation of an individual's liberty. SCPA 1750, [1750-a](#), [1750-b](#).

Case Summary

Overview

HOLDINGS: [1]-A SPCA Article 17-A guardian was no longer needed for an intellectually and developmentally disabled man because he had gained greater independence since moving to a group home since he was able to obtain and sustain employment, manage a bank account, maintain a social life, travel independently, take care of his hygiene, and engage with a supported decision-making network.

Family Law > Guardians

[HN2](#) [↓] **Family Law, Guardians**

Guardianships decreed in accordance with SCPA 17-A are unlike those granted under Article 81 of the Mental Hygiene Law because the latter can be tailored to suit the individual needs of the person.

Family Law > Guardians > Appointment

[HN3](#) [↓] **Guardians, Appointment**

The standard for whether a decree of guardianship should issue in the first instance for an intellectually and a developmentally disabled

Outcome

Petition granted.

person is set forth respectively in SCPA 1750 and [1750-a](#). In accordance with the statutory provisions, a determination must be made by the court that the individual has an impaired ability to understand and appreciate the nature and consequences of decisions which result in such person being incapable of managing himself and/or his affairs by reason of intellectual disability and/or developmental disability and that such condition is permanent in nature or likely to continue indefinitely.

Family Law > Guardians > Removal & Termination

[HN4](#) [↓] **Guardians, Removal & Termination**

SCPA 1759 states that a person for whom a 17-A guardianship has been established may petition the court to have the guardianship dissolved. To have guardianship letters revoked, a 17-A ward bears the burden of establishing that the guardianship is not in his best interest, with the determination of what is in his best interest committed to the court's discretion. SCPA 1751; [SCPA 1750-a](#). In determining whether the termination of a guardianship is in the best interest of the individual, courts have considered whether it is the least restrictive means to preserve and protect the rights of the person.

was restored to full legal capacity. An article 17-A guardianship is plenary, resulting in a total deprivation of an individual's liberty. To have 17-A letters revoked, the individual under guardianship bears the burden of establishing that the guardianship is not in his or her best interest, with the determination of what is in the individual's best interest committed to the court's discretion. In determining whether the termination of a guardianship is in the best interest of the individual, courts have considered whether the guardianship is the least restrictive means to preserve and protect the individual's rights. Here, petitioner had gained greater independence since moving to a group home, as he had been able to obtain and sustain employment, manage a bank account, maintain a social life, travel independently, take care of his hygiene and engage with a supported decision-making network. Therefore, since petitioner had a system of supported decision-making in place that constituted a less restrictive alternative to a 17-A guardianship, the guardianship was no longer warranted.

Counsel: [***1] *Disability Rights New York*, Albany, for petitioner.

Patricia Capurso, guardian pro se.

Headnotes/Summary

Headnotes

Guardian and Ward — Revocation of Guardianship — Restoration of Full Legal Capacity

In a proceeding pursuant to SCPA article 17-A, petitioner, a 34-year-old person with disabilities, was granted dissolution of his guardianship and

Thomas Capurso, guardian pro se.

Mental Hygiene Legal Service, Tarrytown, court-appointed counsel.

Judges: Brandon R. Sall, S.

Opinion by: Brandon R. Sall

Opinion

[*726] [**381] Brandon R. Sall, S.

In this guardianship proceeding brought pursuant to article 17-A of the SCPA, Stephen Capurso, along with his counsel, Disability Rights New York, petitions this court for the dissolution of his guardianship, the revocation of the letters of guardianship [**382] decreed to his parents Patricia Capurso and Thomas Capurso, and the restoration of his full legal capacity. For the reasons set forth below, the relief requested in the petition is granted.

The facts relevant to this petition are as follows:

On October 13, 2009, Patricia and Thomas filed a petition seeking a decree awarding them 17-A guardianship of the person and property of Stephen. At that time, the court had before it, in support of the application, the affidavit of Benna Dinhofer, Psy.D., and the affirmation of Claudia Sickinger, M.D., both of which basically stated, among other things, that Stephen suffered from mild intellectual and developmental disabilities. On May 17, 2010, Patricia and Thomas were made Stephen's 17-A guardians [***2] of the person and property.

On April 17, 2017, Stephen, who is now 34 years old, moved to the Park Circle [****2] Individualized Alternative, a group home in White Plains, NY. At some time thereafter, Stephen trained at the Culinary Tech Center, and he started work at the Birch Collective Restaurant in White Plains, NY, travelling to work independently.

On September 24, 2018, Stephen and his counsel filed this petition, stating that the guardianship

should be terminated because it was no longer in Stephen's best interest to maintain it; he has ample support from his family and community to assist him in decision-making; and it is not the least restrictive means to achieve the goal of protecting him. In support of his petition, Stephen attached his psychological assessment dated July 12, 2018, his individualized service plan dated October 16, 2017, and his psychosocial evaluation dated August 1, 2018.

The psychological assessment, conducted by Benna Strober, Psy.D., one of the doctors who had submitted an affidavit in support of the initial guardianship, stated that Stephen is "becoming more independent in all areas" including personal hygiene, cooking, shopping, maintaining employment, [***3] and [*727] going on outings with housemates without supervision. He can also make personal decisions regarding his well-being and lives in a supportive environment in a group home that has promoted his independence and increased his desire to participate in decisions that affect his life.

Dr. Strober concluded that: "Stephen's parents [should] be removed as his legal guardians and granted a healthcare proxy and a power of attorney to continue to assist Stephen with his medical and financial decisions."

The psychosocial evaluation concluded that Stephen would benefit from reversing his parents' legal guardianship.

Patricia and Thomas support the relief requested in the petition.

The court appointed Mental Hygiene Legal Service (MHLS) to represent Stephen's interest (*see* SCPA 1754 [1]). The MHLS attorney investigated the circumstances surrounding the application, and she recommends that the relief sought in the petition be granted. In fact, it is the position of MHLS that Stephen has made huge improvements in his ability to function independently and that it is a positive idea to put in place less restrictive alternatives for

Stephen than guardianship.

[HN1](#)^[↑] SCPA article 17-A guardianship is plenary, resulting in a total deprivation [***4] of an individual's liberty (*see* SCPA 1750, [1750-a](#), [1750-b](#); *see also* *Matter of Michael J.N.*, 58 Misc. 3d 1204[A], 94 NYS3d 539, 2017 NY Slip Op 51925[U], 2017 NY Misc. LEXIS 5104 [Sur Ct, Erie County 2017]; [Matter of \[***383\] Caitlin](#), 2017 NYLJ LEXIS 1043 [Sur Ct, Kings County 2017]).*

[HN3](#)^[↑] The standard for whether a decree of guardianship should issue in the first instance for an intellectually and a developmentally disabled person is set forth respectively in SCPA 1750 and [1750-a](#). In accordance with the statutory provisions, a determination must be made by the court that the individual has an "impaired ability to understand and appreciate the nature and consequences of decisions which result in such person being incapable of managing himself . . . and/or his . . . affairs by reason of [intellectual disability and/or] developmental disability and that such condition is permanent in nature or likely to continue indefinitely" ([SCPA 1750-a \[1\]](#)).

[HN4](#)^[↑] SCPA 1759 states that a person for whom a 17-A guardianship has been established may petition the court to have the [*728] guardianship dissolved. To have guardianship letters revoked, a [****3] 17-A ward, such as Stephen, bears the burden of establishing that the guardianship is not in his best interest, with the determination of what is in his best interest committed to the court's discretion (*see* SCPA 1751, [1750-a](#); *see also* *Matter of Michael J.N.*, 94 NYS3d 539, 58 Misc. 3d 1204[A], 94 NYS3d 539, 2017 NY Slip Op 51925[U], 2017 NY Misc. LEXIS 5104).

In determining whether the termination of a

* [HN2](#)^[↑] Guardianships decreed in accordance with SCPA article 17-A are unlike those granted under [article 81 of the Mental Hygiene Law](#) because the latter can be tailored to suit the individual needs of the person.

guardianship is in the best interest of the individual, courts have considered whether it is [***5] the least restrictive means to preserve and protect the rights of the person (*see* *Matter of Michael J.N.*, 94 NYS3d 539, 58 Misc 3d 1204[A], 2017 NY Slip Op 51925[U], 2017 NY Misc. LEXIS 5104).

There are only a few reported cases in which a decree of 17-A guardianship has been revoked and an individual restored to his full rights under the law. For example, in [Matter of Dameris L.](#) (38 Misc 3d 570, 956 NYS2d 848 [Sur Ct, NY County 2012]), the husband/co-guardian of a 17-A ward petitioned the court to revoke the guardianship letters issued to him and to the ward's mother. Because the record before it reflected that Dameris L. was able to make her own decisions (albeit sometimes with the assistance of family and community support), the court terminated the guardianship and restored her legal rights.

In doing so, Surrogate Glen wrote that "New York courts have embraced the principle of least restrictive alternatives" and that the

"legislature finds that it is desirable for and beneficial to persons with incapacities to make available to them the least restrictive form of intervention which assists them in meeting their needs but, at the same time, permits them to exercise the independence and self-determination of which they are capable" ([38 Misc 3d at 577](#) [citations omitted]).

The court also noted that the "legal remedy of guardianship should be the last resort for addressing an individual's [***6] needs because it deprives the person of so much power and control over his or her life" (*id.* [citations omitted]).

In *Matter of Michael J.N.* (94 NYS3d 539, 58 Misc 3d 1204[A], 2017 NY Slip Op 51925[U], 2017 NY Misc LEXIS 5104), the Surrogate's Court (Howe, S.) found that vacatur of the decree of guardianship and revocation of the letters issued to Michael's parents were in Michael's best interest. In vacating the decree, the court relied on the record before it,

which demonstrated that Michael's adaptive skills, as supported by his placement in a group home, enabled him to make health care decisions and to perform his daily living tasks without a guardian. [**384] The [*729] court noted that an individual's best interest must include an assessment of his functional capacity and what he can or cannot do in managing daily affairs (*see also Matter of Guglielmo*, 2006 NYLJ LEXIS 5332 [Sur Ct, Suffolk County 2006] [17-A guardianship dissolved where the record demonstrated that the individual currently was capable of conducting all activities of daily living]).

Cases where courts have refused to appoint a 17-A guardian in the first instance also are instructive on this issue. In *Matter of Caitlin* (NYLJ, Apr. 24, 2017 at 31, 2017 NYLJ LEXIS 1043 [Sur Ct, Kings County 2017]), the court, in denying the petition for SCPA article 17-A guardianship, stated that, where less restrictive alternatives were available, such as a durable power of attorney, a health care proxy, and community support services, [***7] it was not in Caitlin's best interest to have a guardian appointed for her and to have her "decision-making authority supplanted, regardless of good intentions and a desire by [her] family to protect [her]." In *Matter of Hytham M.G.* (52 Misc 3d 1211[A], 41 NYS3d 719, 2016 NY Slip Op 51113[U] [Sur Ct, Kings County 2016]), a petition for guardianship was dismissed where the individual, although intellectually in the borderline delayed range, was able to independently handle, among other things, money, purchases, grooming and cooking.

Similarly, in *Matter of Michelle M.* (52 Misc 3d 1211[A], 41 NYS3d 719, 2016 NY Slip Op 51114[U] [Sur. Ct., Kings County 2016]), [****4] the court denied the relief of a decree of guardianship where the individual lived in a supported apartment, had appropriate services and had the capacity to make her own decisions. In *Matter of D.D.* (50 Misc 3d 666, 19 NYS3d 867 [Sur Ct, Kings County 2015]), the court found that where less restrictive legal tools were available, appointing a 17-A guardian for a 29 year old with

an intellectual disability was not in his best interests because he was high functioning, well-integrated socially, able to care for his hygiene, work and travel, and capable of making his own decisions, although sometimes done with assistance (*see also Matter of Eli T.*, 62 Misc 3d 638, 89 NYS3d 844 [Sur Ct, Kings County 2018] [same]; *Matter of A.E.*, NYLJ, Aug. 17, 2015 at 22, col 4, 2015 NYLJ LEXIS 4377 [Sur Ct, Kings County 2015] [same]; *Matter of Luis*, NYLJ, Apr. 4, 2014 at 35, col 2, 2014 NYLJ LEXIS 6814 [Sur Ct, Kings County 2014] [same]).

The record before this court demonstrates that Stephen has gained greater independence since moving to Park Circle, as he has been able to obtain and sustain employment, [***8] manage a [*730] bank account, maintain a social life, travel independently, take care of his hygiene, and engage with a supported decision-making network. Therefore, since Stephen has a system of supported decision-making in place that constitutes a less restrictive alternative to 17-A guardianship, the guardianship is no longer warranted.

Based on the above, the petition is granted, and the decree dated May 17, 2010, is vacated; the SCPA article 17-A guardianship of Stephen is terminated; the letters of guardianship issued to Patricia and Thomas are revoked; and Stephen's full legal capacity is restored.

Patricia and Thomas now should proceed to put the health care proxy and the power of attorney in place, and they are directed to account for their proceedings as guardian of Stephen's property in an expeditious manner.

[***9]

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