The New Connecticut Conservatorship Law

In 2005, Daniel Gross, an 86-year-old New York resident, convalesced with his daughter in Connecticut after surgery in New York. His health declined and he was admitted to the Waterbury Hospital. After 9 days, the Hospital filed an application for appointment of a conservator. The Waterbury Probate Judge granted the application appointing an attorney as Conservator of Gross' person and estate. The Conservator placed Gross in a nursing home and obtained an order from the probate court restricting visits by his daughter. Gross owned a home on Long Island, but did not have enough income or liquid assets to pay the nursing home charges. The Conservator then got an order to sell Gross' Long Island home.

Gross' daughter contacted Connecticut Legal Services, which brought a habeas corpus petition in Connecticut Superior Court. Almost a year after Gross entered the Waterbury Hospital, the Superior Court found that probate court lacked jurisdiction at the time the Conservator was appointed because Gross was neither a resident nor a domiciliary of Connecticut.

This case exposed myriad problems with involuntary conservatorship proceedings in Connecticut, some involving constitutional issues. The Waterbury Probate Court kept no record of its proceedings. No evidence other than an affidavit of the hospital employee and the testimony of the Conservator allowed the court to take away Gross' freedom and his Long Island home. After Gross returned to his home in New York and Connecticut Legal Services, the Connecticut Probate Court Administrators office, and the Connecticut Bar Association began lobbying for fundamental changes to the conservatorship law. The result was Public Act 07-116, effective October 1, 2007.

To appoint a conservator, the probate court must find by clear and convincing evidence that it has jurisdiction. If the respondent's home is not in Connecticut, the court must give the respondent an opportunity to return to his or her home. The respondent must have an attorney representing his or her interest. The Court will pay for the respondent's attorney if the respondent cannot afford one. The respondent now has a right to attend the hearing even if the respondent is in the hospital or a nursing home. The probate court must record all proceedings and may only consider evidence which would be admissible in trial courts. A physician must have examined the respondent within 45 days of the hearing and, if his or her affidavit is contested, the physician can be subpoenaed to testify under oath.

The judge must find that a conservatorship is the least restrictive means of intervention. The judge must determine whether the respondent has a valid durable power of attorney or appointment of health care representative and whether the individual can meet his or her personal needs with appropriate assistance of others. If such assistance is available, the judge cannot appoint a conservator.

The court must consider any relevant evidence from the respondent's family regarding the respondent's preferences, supportive services, or other means of meeting his or her needs without a conservator. The judge must limit the powers of the conservator to the least number of powers possible. For instance, if the respondent can manage a small checking account for daily needs, the judge may allow the respondent to keep control of those funds without a conservator. If so, the judge cannot appoint a conservator.

Public Act 07-116 totally revised the law of appeals in conservatorship proceedings. Appeals are based on the transcript from the probate court proceedings. Thus, the parties do not have to try the conservatorship proceeding all over again in Superior Court. The appeal does not automatically stay the probate court decision. If requested, the probate court may stay its decree pending appeal. Even if the conservatorship is upheld, the conserved person may petition for termination of the conservatorship at any time.

This new law purposely makes it difficult to obtain an involuntary conservatorship. It places a much greater reliance on durable powers of attorney, appointments of health care representatives, and voluntary conservatorships for the care and treatment of disabled individuals. We strongly recommend planning for what will happen if you become incapacitated. If you or a loved one needs help with such planning, please give us a call.

Joseph A. Cipparone, Esq. CFP®, wrote this article. Mr. Cipparone serves on the Executive Committee of both the Estates & Probate Section and the Elder Law Section of the Connecticut Bar Association. This information is for general purposes only and

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