

March 31, 2013

U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Office of the Assistant Attorney General, Main
Washington, D.C. 20530

Re: Civil Rights Violation Complaint - on behalf of Dorothy Luck (Fort Worth, Tx)

Filed by Latifa Ring and Sharyn Eklund (Elder Rights Advocates)

To Whom It May Concern:

We are advocates for the rights of the elderly and disabled adults. We are particularly troubled by the gross violation of the rights of elderly and disabled adults that occurs in guardianships. We have been outspoken about the problems with guardianship and have been working for reform for the past 5 years. We are both very familiar with adult guardianship and have studied and written on the topic and collectively have personal experience with adult guardianship in two states. In all the hundreds of cases that we have seen, the case of Dorothy Luck is one of the worst cases of wrongful deprivation of rights.

COMPLAINT

Dorothy Luck, a resident of Fort Worth, Texas has had her civil rights stripped of her (in her opinion and ours) under an unnecessary and improper imposition of a guardianship over her estate. Dorothy has been and continues to have her right to access to the courts and due process denied her by the order which denies her the right to counsel and the right to defend herself and to appeal the guardianship matter. She has been stripped of the right to defend herself and of the right to appeal in a trust litigation matter that preceded the guardianship matter and played a part in the initiation of the guardianship matter.

HISTORY

The guardianship of the estate was initiated by the court under the provisions of the Texas Probate statutes that allow a "court initiated guardianship" in this case without a letter of need on file and without any physician finding that she was in need of a guardianship. At the time, there was a trust litigation matter underway where Dorothy was a defendant. Subsequent to the appointment of a guardian ad litem and an attorney ad litem (who was also counsel of record in the trust litigation matter), three doctors evaluated Dorothy.

She was placed under the guardianship of the estate after one doctor (appointed by the court) found that she needed help with complex financial matters due to mild issues with executive functioning. This second doctor never personally evaluated Dorothy instead he relied on a series of questions and tests administered by two young assistants. The first doctors found that she was not incapacitated in any way and was capable of handling her own personal affairs and finances. Months later without re-evaluating Dorothy under pressure she changed her finding to match those of doctor number 2. The third doctor was a geriatric psychiatrist who referred Dorothy for a fully evaluation and then evaluated her personally. This doctor found her to have full capacity and fully able to manage her own personal affairs and finances and refused to change her findings.

The record and order shows that the judge (without a proper medical certificate) declared Dorothy to be an incapacitated individual and found that she "lacks capacity to act as a

fiduciary, including but not limited to acting as and Independent Executor of the Estate" of her late husband and as the Trustee of two trusts. What is especially troubling is that the Court would remove her rights under a guardianship of the estate when there was already a trust litigation matter underway where the Court could have been removed her as trustee and/or executor without the need for a guardianship where the need proven. Every day in America the wheels of justice turn and individuals who do not properly manage a trust or estate are removed by the court without the court putting them under a guardianship and stripping them of all of their rights to due process and unable to defend against the allegations and or appeal the decision.

This is exactly what happened to Dorothy. She was removed as the trustee, a receiver was appointed, a temporary restraining order was placed against her to prevent her from accessing her money and immediately thereafter the court initiated the guardianship with the appointment of a guardian ad litem. In fact that order even stated she was an incapacitated person in advance of any medical evaluations.

The court then went on to find in the guardianship order that Dorothy is an incapacitated person and that her rights to her property would be protected by a guardian of the estate. However the guardianship order went further and denied her the right to hire an attorney and to execute any legal documents or contracts. So essentially she was denied the right to due process (which includes the right to appeal) in both the guardianship matter and in the lawsuit underway against her in the trust matter. Her only avenue for seeking justice was through the attorney ad litem the court appointed.

The Court appointed an attorney ad litem who was also one of the attorneys involved in the trust litigation and appointed her bank as the guardian when the bank was also a part to the trust litigation matter. The record shows that the attorney for the plaintiff for the trust litigation matter even suggested a temporary guardian be appointed in advance of a finding of incapacity to allow them to proceed with trial.

No less than three doctors have found Dorothy is not an incapacitated person in four separate evaluations and that and she can manage her own affairs and finances. But since she has been declared incapacitated by the Court, it does not matter. How can one human being have so much power over another.

Per the guardianship order

- ✓ Dorothy cannot pay employees, contractors, attorneys, accountants, bookkeepers, , professionals (except medical) or other individuals.
- ✓ She cannot execute any legal documents¹ or contracts
- ✓ She cannot request that her rights to be restored for a period of one year ²
- ✓ She cannot drive a car (which she had already ceased doing due to some physical problems)
- ✓ Only her court appointed guardian can represent her in any legal matters³
- ✓ She has been told she cannot contact the court because she is an incapacitated person and she cannot execute any legal document⁴.

¹ She should be able to file a bill of review with the court according to Texas Probate Code - Section 657 but is not allowed to by the guardianship order. She should be able to contact the court under the due process rights under the 14th amendment but she is not allowed to according to the Court and the guardianship order.

² Per Texas Guardianship Statute

³ According to the guardianship Order (attached as exhibit A)

⁴ The court has refused to allow her to submit a letter to the Court as recently as last month

- ✓ She is allowed a monthly allowance per month sufficient to cover her living expenses and still manages all her affairs (except for her estate which amount to at least a couple million) and lives independently in the community.

THE CURRENT SITUATION

Dorothy has always vehemently opposed the imposition of the guardianship over her estate. She has been to every place that she can imagine looking for help but is bootstrapped from seeking a remedy due to the denial of her right to counsel, her right to self-defense, her right to appeal the court's decision and her right to contract. She has testified to the Texas Jurisprudence Committee and has written to the Sunset Commission that oversees the Judicial Review Board. She has contacted legislators, the FBI and the Texas Rangers but has not gotten much help.

The attorney ad litem appointed by the court⁵ objected to the guardianship at the onset stating that Dorothy was not incapacitated. Upon a written request from Dorothy, she filed a notice of appeal with the appeals court, however, according to the record the case was dismissed by the appeals court due to non-payment of fees that had to be submitted for the application to proceed. The attorney later wrote that Dorothy authorized her not to proceed with the appeal which Dorothy vehemently disagrees with.

Last year, after seeing yet a forth doctor who found her to have full capacity, Dorothy contacted the Social Security Administration about her social security money. the Social Security Administration conducted their own investigation and found her to be competent and is now sending her the monthly social security checks⁶.

Dorothy waited the full year, as required by Texas Statutes to try to get this case overturned and get her rights restored. On November 19, 2012, Dorothy went to the Court and paid a fee as she was instructed to by the Court. Shortly thereafter, the guardian ad litem was re-appointed to the case. Dorothy contacted an attorney who agreed to help her with filing an appeal and who filed her appearance on the record. At or about the same time, the docket shows that the parties to the trust litigation entered into a settlement in the guardianship case without Dorothy's knowledge, without her being present and without her having legal representation as the former attorney ad litem now represented the guardian of the estate.

Recently Dorothy approached the court with two letters. One was regarding her objection to the guardianship matter and her request that this matter be overturned and her rights be restored and the other regarding her objection to the settlement offer agreed to by the parties regarding her estate. The court refused to accept her letters and told her she is not allowed to approach the court because she is an incapacitated person.

The attorney that Dorothy has engaged has filed a "Statutory Bill of Review" with the court asking for this case to be reviewed by the appeals court. The court held a conference regarding this motion and challenged the attorney's right to represent Dorothy due to the provisions of the guardianship order. The Judge held a conference and the Guardian ad Litem to filed a Motion to Show Authority to force the attorney to come to court to prove that she has the authority to represent Dorothy. This is scheduled to be heard on April 30th. Coincidentally the Texas Probate code allows a "ward" to file a Bill of Review so

⁵ Coincidentally, this is the same attorney that Dorothy had refused to hire in advance of the guardianship matter when asked to.

⁶ Of course the guardian is deducting the amount that social security gives her from her monthly allowance.

exactly how is the ward supposed to be able to do this if the court has ordered that they cannot hire counsel and that they cannot represent themselves in any legal matter. Dorothy is in her eighties and does not have the legal knowledge or expertise to file the bill of review without counsel to assist her.

At this point it appears the only way that Dorothy can get an attorney to represent her is if she appears before this same judge in the same court to ask for her rights to be restored. Understandably Dorothy feels it is highly unlikely that she will get a fair trial or hearing before the same judge in the same court. In fact the outcome could be very detrimental to her and could set her back in the fight to overturn the wrong done to her. Dorothy has visited a doctor once again to prove she is not incapacitated and again the finding supports that conclusion. Dorothy wants justice to be served and she wants to exercise her right to appeal for a review of the original decision that was made by the court placing her under what she believes is a wrongful imposition of the guardianship.

THE PROBLEM

Dorothy should be able to appeal this case. In fact the Texas Probate Code allows her to file a bill of review but her due process rights should afford her the right to do so but she cannot because the court will not allow her to contract or to hire an attorney.

Dorothy should be able to contact the court herself but she cannot because she has been deemed to be incompetent by the court and the Court has informed her that she does not have the right to contact any court of law and furthermore the guardianship order prevents her from executing any legal documents.

How can Dorothy get Justice if she has been denied the right to appeal and how can she defend herself in an appeal if she cannot hire an attorney?

Because Dorothy has been legal found to be an incapacitated by the court she has essentially been ruled a disabled person. Dorothy has been and continues to be denied access to the courts.

REQUEST FOR ASSISTANCE

What can you do to help this 85 year old woman be able to exercise her civil rights? How can she exercise her rights to due process and her right to appeal if she is denied the right to contract and the right to hire an attorney to represent her in court.

In a Texas guardianship matter, where a judge holds a bench trial, such as the one in the case of Dorothy Luck, what happens if the judge gets it wrong? What if, (without any witnesses or evidence), he finds in his opinion a person to be incapacitated and then because he or she believes the person is incapacitated, goes on to strip the individual of just about any rights or all rights to the property and person. In Texas, the individual cannot approach the court to ask for their rights back for a period of one year !

So again, what happens if the judge makes a mistake and gets this all wrong. Dorothy is convinced he made a mistake in this case? Normally when a judge makes a mistake the interested party can appeal the case but not in this case.

- ✓ Can the Court deny that person access to the courts to seek a remedy?
- ✓ Can the Court prevent that person the right to seek their own counsel to assist them with seeking redress?
- ✓ Can the Court deny that person the right to even ask the court to make another finding of capacity for a period of one year?

- ✓ How can the Court deny the individual's rights to due process guaranteed by the US Constitution?
- ✓ How can one person (a judge) be given such omnipotent power over another human being without providing that person the right to appeal a bad judgment or wrong decision ???

What can be done to help the woman? If you can help her, it could be precedent setting and you will help hundreds or thousands of others who may face the same plight.

A Ward should be able to retain counsel to ensure due process is served.

Guardianships often result in the denial of due process and it is a problem many advocates and specialists in the field of elder law and disability law are concerned about.

But in this case it went one step further and stripped Dorothy of the right to defend herself and due process not only in the guardianship matter but also in the lawsuit that led up to the guardianship and has been settled against her wishes and without her having representation.

Dorothy is in urgent need of assistance from your office as she is in a catch 22 situation where she cannot go to the courts for help.

Please can you respond at your earliest convenience to this request.

Sincerely and Respectfully,

Latifa Ring

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Elder Rights Advocate.
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03/28/2013

To Whom It May Concern,

My patient Dorothy Luck was evaluated on 3/21/13. She had a normal Folstein mini mental status exam. She scored 30/30 on the test. She had a normal clock drawing test. She was oriented to person, place and time. She was aware of current events. Her attendant has not noted any self care safety issues.

Any consideration you can extend my patient would be greatly appreciated.

Sincerely,

A large, stylized handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Kevin E. Conner M.D.