The Superior Court Declines to Interpret Section 5456 of the Probate, Estates and Fiduciaries Code as Extending the Authority to Decline Life Sustaining Medical Treatment to Plenary Guardians of the Person

By JENNIFER DiVETERANO GAYLE, ESQ.
MANNION PRIOR, LLP

In *In re D.L.H. Incapacitated Person,* 2009 Pa. Super. 25, the parents and plenary guardians of their adult child, D.L.H., appealed from the Orphan's Court's order denying their petition to decline life preserving medical treatment on behalf of D.L.H.

D.L.H. is a 50-year-old man who suffered from profound mental retardation since birth and who never executed a legal instrument expressing his desires in regard to life sustaining medical treatment. Appellants were appointed D.L.H.'s plenary guardians in 2002.

In 2007, D.L.H. became ill with aspiration pneumonia and was placed on a mechanical ventilator to assist him in breathing. Appellants attempted to decline medical treatment, claiming that their status as plenary guardians of D.L.H. vested them with the legal authority to make surrogate medical decisions and that mechanical ventilation was not in his best interests. Over their objection, D.L.H.'s doctors placed him on a mechanical ventilator. In response, Appellants filed a "Petition to Grant the Guardians Authority to Exercise the Powers of a Health Care Agent on Behalf of the Incapacitated."

The trial court held that Appellants failed to meet the statutory requirements necessary to become D.L.H.'s "health care agent" under the Health Care Agents and Representatives Act, 20 Pa. C.S.A. §§ 5451-5471, and thus, that they did not have the authority to refuse life sustaining medical treatment on his behalf. The Superior Court affirmed the trial court's order through different reasoning.

The Superior Court began its analysis by discussing the fundamental distinction that exists at common law between an agent and a guardian. An agent is subjected to the power of the principal and has a duty to carry out the principal's expressed wishes. By contrast, a guardian, acting as an officer of the court, theoretically must take action that is in the best interest of the incapacitated person and, through judicial review, is subjected to the court's control regarding the ward. The authority granted to a health care agent in Section 5456 is more consistent with the creation of a common law agency relationship and the duty of the agent to comply with the instructions received from the principal. Further, under 20 Pa. C.S.A. §§ 5456(a) and 5461(c) the health care agent has the express statutory authority to object to life sustaining medical procedures on behalf of a principal, where the principal has neither an end-stage medical condition nor is permanently unconscious.

Thus, the authority to make these health care decisions on behalf of a principal is specifically designated to a health care agent. In contrast, the authority to refuse life sustaining medical treatment to an individual who has neither an end-stage medical condition nor is permanently unconscious is not specifically granted to plenary guardians under 20 Pa. C.S.A. § 5521(a). Therefore, the Superior Court concluded that Appellants' status of plenary guardians, standing alone, does not confer them with the blanket authority to exercise the power of a health care agent.

Even assuming that the Orphans' Court could specially grant a guardian the power to decline medical treatment for an incompetent who does not have an end-stage medical illness nor is in a permanent vegetative state, the Superior Court concluded that the guardian would first have to petition the court for such power, and then prove by clear and convincing evidence that refusing medical treatment would be in the best interest of the incapacitated person before exercising that power. In determining whether death would be in the incapacitated person's best interest, a court should only consider the best interests of the incapacitated person, not the interest or convenience of the parents, guardians or society in general. Additionally, in order to establish that death is in the incapacitated person's best interest, a guardian, at minimum, must prove reliable medical expert testimony documenting the incapacitated person's severe, permanent medical condition and current state of physical/psychological

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Beil Estate

By BENJAMIN K. RODGERS
GADSDEN SCHNEIDER & WOODWARD LLP

In *Beil Estate*, the decedent designated his wife as the sole beneficiary of a life insurance policy he held on his own life. *Beil Estate*, 29-3 Fiduciary Reporter 2d, Cumberland County 2008. The policy did not contain a contingent beneficiary designation. Approximately two years after he purchased the policy and made the beneficiary designation, the decedent and his wife were divorced. The decedent died approximately five years after the divorce and never changed the beneficiary designation on his policy. The insurance company declined to pay the proceeds, pursuant to 20 Pa. C.S. §6111.2, to decedent's former wife, who contended that decedent wished her to receive 100% of the proceeds notwithstanding the divorce.

A presumption is established under 20 Pa. C.S. §6111.2 that upon divorce, ex-spouses intend to revoke all life insurance beneficiary designations in favor of the former spouse. The court explained that, as provided in the statute, this presumption may be overridden if it appears from the wording of the designation, a court order or a written contract between the decedent and former spouse that the designation was intended to survive the divorce.

The court then briefly discussed a constitutionality argument raised by the petitioner but was unable to address constitutional issues because certain procedural requirements had not been met and because the court was guided by the "canon of constitutional avoidance" in construing the statute, which constrained the court to avoid constitutional questions and to "interpret the statute in a way which allows at least the reasonable prospect of honoring the contractual intent of the insured."

In construing the language of §6111.2, the court concluded that the term "court order" as used in the statute refers only to an order in existence prior to the death of the insured. The court deemed such interpretation to be in furtherance of "the clear legislative intent of Section 6111.2" to require "some documentary or written evidence that the beneficiary designation was intended to survive divorce." Without such evidence, the statute renders the designation ineffective.

The court also noted that there is no further explanation in §6111.2 of what is meant by a "written contract between the person and such former spouse," but concluded that, because the legislature refrained from narrowing the definition in any way, the term should be given the broadest interpretation. Accordingly, the court found that an exchange of emails between the decedent and his former spouse that occurred after the divorce satisfied the requirements of a written contract within the meaning of §6111.2. In the email to his former wife, decedent "made a clear statement with regard to his intention" that she receive the proceeds of the life insurance policy. Decedent's former wife responded by acknowledging that she would receive the proceeds

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deterioration and pain. The court should not place any emphasis or the fact that the incapacitated person, prior to receiving medical treatment, suffers from a mental disability or other cognitive deficiency, because this in that individual's natural state of being.

In the absence of any evidence of an incapacitated person's expressions during or prior to treatment, the quality of the medical evidence should be of such a character that a court is convinced that the benefits of prolonging life, as a result of medical treatment, is markedly outweighed by the incurable nature of the incompetent's medical condition and the consistent, recurring degree of pain. A court should be able to conclude, without hesitation, that extending life would amount to an inhumane act that runs so contrary to basic notations of fundamental decency that death furthers the best interests of the incompetent.

The Superior Court expressly limited its holding to the following: "where a life-long incompetent adult has neither an end-stage medical illness nor is in a [permanent vegetative state], and a plenary guardian seeks to decline life preserving medical treatment on behalf of the incompetent, if the plenary guardian fails to establish that death is in the incompetent's best interests, by clear and convincing proof, then the guardian does not have the legal authority to decline life preserving medical treatment on behalf of the incompetent."