

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN THE MATTER OF:)
)
J.D.G.,) C.M. # 19122-N-SEM
)
a person with a disability)

ORDER

WHEREAS, on September 26, 2019, I issued a final order appointing J.G., C.A.G., C.S.G., and M.S. as co-guardians of the person and property of J.D.G.;¹ the co-guardians may act jointly or individually on J.D.G.’s behalf;

WHEREAS, on June 4, 2021, J.G. and C.A.G. filed an emergency petition to remove C.S.G. and M.S. alleging abuse by C.S.G. and failure to protect by M.S. (the “Petition to Remove”);²

WHEREAS, on August 17, 2021, M.S. moved to dismiss the Petition to Remove and for other relief, including longer and unmonitored visitation;³

WHEREAS, on September 17, 2021, I issued an order denying the motion to dismiss and staying further consideration of M.S.’s request for additional visitation until a hearing could be held to address the request;⁴ that hearing has been scheduled for Wednesday, October 27, 2021 (the “Hearing”);⁵

¹ Docket Item (“D.I.”) 27.

² D.I. 30.

³ D.I. 59.

⁴ D.I. 64.

⁵ D.I. 67.

WHEREAS, on October 19-20, 2021, J.G. and C.A.G. submitted recordings, logs, and transcripts of telephone conversations between M.S. and J.D.G. that occurred between June 22, 2021 and September 21, 2021; J.G. and C.A.G. seek permission to use the recordings and transcripts as evidence at the Hearing;⁶

WHEREAS, on October 21, 2021, M.S. objected to the introduction of the telephone recordings and transcripts on the grounds that neither M.S. nor J.D.G. consented to the recording; further, M.S. objects that it is unclear who transcribed the recordings and whether the transcripts are reliable;⁷

WHEREAS, under 11 *Del. C.* § 2402, “[e]xcept as specifically provided in this chapter or elsewhere in this Code, no person shall: (1) Intentionally intercept, endeavor to intercept, or procure any other person to intercept or endeavor to intercept any wire, oral, or electronic communication;”

WHEREAS, it is lawful under 11 *Del. C.* § 2402(c), “[f]or a person to intercept a wire, oral or electronic communication where the person is a party to the communication or where one of the parties to a communication has given prior consent to the interception, unless the communication is intercepted for the purpose of committing any criminal or tortious act in violation of the constitutions or laws of the United States, this State or any other political subdivision of the United

⁶D.I. 73.

⁷D.I. 78.

States or this or any other state[;]” the Family Court recognizes an exception to the one-party consent rule allowing a parent of a participating party to consent on the minor’s behalf if the parent has “a good faith basis, which is objectively reasonable, to believe it was necessary to consent on [their child’s] behalf, to a conversation . . . in order to prevent abuse, threats, or intimidation[;]”⁸

WHEREAS, “[o]utside of the criminal arena, imposition of a guardianship represents the most significant deprivation of the right to self-determination a court can impose[;]”⁹ a guardian of the person “may exercise the same powers, rights and duties respecting the care, maintenance and treatment of the person with a disability that a parent has respecting the parent’s own unemancipated minor child[;]”¹⁰

IT IS HEREBY ORDERED this 26th day of October 2021, as follows:

1. M.S.’s objection to the introduction of the recordings at the Hearing is **OVERRULED**.

a. J.G. and C.A.G. had a good faith, objectively reasonable basis for consenting on behalf of J.D.G. to the recording of the telephone calls.

b. The telephone recordings may be used by J.G. and C.A.G. at the Hearing, with the following limitations:

⁸ *G.J.G. v. L.K.A.*, 2006 WL 2389340, at *10 (Del. Fam. Ct. Apr. 11, 2006).

⁹ *Matter of J.T.M.*, 2014 WL 7455749, at *1 (Del. Ch. Dec. 31, 2014).

¹⁰ 12 *Del. C.* § 3922(b).

- i. Any recording that J.G. and C.A.G. wish the Court to hear must be played in full from start to finish, with no alterations.
- ii. The time it takes to play any recordings will count against the time allotted to J.G. and C.A.G. for presentation of their case.

2. M.S.'s objection to consideration of the transcripts of the recordings is SUSTAINED. The transcripts are incomplete, and their reliability has not been established. Further, the transcripts are unnecessary because J.G. and C.A.G. will have the opportunity to play the recordings they wish to play, subject to the limitations herein, at the Hearing.

3. The Parties are again reminded that the Hearing is limited solely to (1) visits between J.D.G. and M.S. since June 15, 2021 and (2) the recommendation of J.D.G.'s counselor regarding future visitation. Any proposed testimony or exhibits outside this scope will be excluded.

IT IS SO ORDERED.

/s/ Selena E. Molina
Magistrate in Chancery