



petition was denied without prejudice to renew with supporting documentation;<sup>4</sup> the guardian renewed his request and increased the requested amount to \$63,383.00 on August 3, 2022 (the “Petition”);<sup>5</sup>

WHEREAS, under the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (the “Uniform Act”), this Court “has jurisdiction to appoint a guardian . . . if: 1. This State is the [person with a disability]’s home state; [or] 2. On the date the petition is filed, this State is a significant-connection state and: . . . [t]he [person with a disability] does not have a home state or a court of the [person with a disability]’s home state has declined to exercise jurisdiction because this State is a more appropriate forum;”<sup>6</sup>

WHEREAS, a “home state” is “the state in which the [person with a disability] was physically present, including any period of temporary absence, for at least 6 consecutive months immediately before the filing of a petition for a protective order or the appointment of a guardian; or if none, the state in which the [person with a disability] was physically present, including any period of temporary absence, for at least 6 consecutive months ending within the 6 months prior to the filing of the petition[;]”<sup>7</sup>

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<sup>4</sup> D.I. 155.

<sup>5</sup> D.I. 157.

<sup>6</sup> 12 *Del. C.* § 39A-201.

<sup>7</sup> 12 *Del. C.* § 39A-101(8). As clarified in 12 *Del. C.* § 39A-102, “[t]he Court may treat a foreign

WHEREAS, this Court “may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum[;]”<sup>8</sup>

[i]n determining whether it is an appropriate forum, the Court shall consider all relevant factors, including: (1) Any expressed preference of the [person with a disability]; (2) Whether abuse, neglect, or exploitation of the [person with a disability] has occurred or is likely to occur and which state could best protect the [person with a disability] from the abuse, neglect, or exploitation; (3) The length of time the [person with a disability] was physically present in or was a legal resident of this or another state; (4) The distance of the [person with a disability] from the court in each state; (5) The financial circumstances of the [person with a disability]’s estate; (6) The nature and location of the evidence; (7) The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence; (8) The familiarity of the court of each state with the facts and issues in the proceeding; and (9) If an appointment were made, the court’s ability to monitor the conduct of the guardian or conservator[;]<sup>9</sup>

IT IS HEREBY ORDERED this 18<sup>th</sup> day of August, 2022, as follows:

1. The Petition is DENIED, and this action will be DISMISSED for lack of jurisdiction as further explained herein.

2. Through the Petition, the guardian asks to be reimbursed \$63,383.00 from the guardianship, representing that he used his personal funds to provide for the person with a disability. Specifically, he represents that he spent (1) \$24,256.00 in 2016 toward a 2015 federal income tax payment, (2) \$33,030.00 in 2018 for

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country as if it were a state for the purpose of applying this chapter.”

<sup>8</sup> 12 *Del. C.* § 39A-204(a).

<sup>9</sup> 12 *Del. C.* § 39A-204(c).

setting up the person with a disability's California home, (3) \$4,367.00 in 2020 representing the difference between the person with a disability's expenses and the permitted expenditures from the guardianship account, and (4) \$4,397.00 in 2021 under the same rationale as the 2020 request. From those amounts, he deducts \$2,667.00 as credits to the guardianship. The guardian contends that he has provided sufficient support for reimbursement by listing these amounts in Schedule G of his accountings. But the guardian is missing vital information—proof that he personally covered these expenses out of his own pocket. No receipts, invoices, or bank statements have been submitted to show that the guardian expended these funds and, as such, is entitled to reimbursement.

3. The Petition, therefore, is denied. Because the guardian was already directed to file support for the Petition and failed to do so, the denial should be with prejudice.

4. I also find this Court should decline continuing jurisdiction over this action under 12 *Del. C.* § 39A-204. Although Delaware was the “home state” when the guardian was initially appointed, the person with a disability has not resided in the United States, let alone in the State of Delaware, for approximately seventeen (17) years. Any connection between the person with a disability and the State of Delaware is tenuous, at best. The Court is being asked to supervise and monitor the

guardianship of and by long-time residents of South Korea. But all evidence related to how the guardianship is being managed is in South Korea; that is where purchases are being made and the guardian is utilizing the authority granted by this Court to make medical and financial decisions for the person with a disability. This presents unique challenges to this Court's ability to monitor, oversee, and supervise the guardianship. Those challenges would not be present if the guardianship was under the jurisdiction of a court or tribunal in South Korea, the current "home state".<sup>10</sup>

5. Although the guardian represented in 2019 that the South Korean guardianship system was in its infancy and does not permit transfers from another country, I find these representations no longer support continuation of the Delaware action. Public information confirms that the South Korean adult guardianship system has been effective since 2013.<sup>11</sup> Further, although South Korea may not accept a transfer of this guardianship, the guardian has failed to explain why he

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<sup>10</sup> See 12 Del. C. § 39A-102 ("The Court may treat a foreign country as if it were a state for the purpose of applying this chapter.").

<sup>11</sup> See Cary Colt Payne, Esq., *Elder Law: Not Just A Local Issue*, NEV. LAW., July 2017, at 18 (2017) (noting that South Korean representatives gave a presentation about their adult guardianship system at the World Congress on Adult Guardianships in Washington, D.C. in 2014); Robert Dinerstein, et. al., *Emerging International Trends and Practices in Guardianship Law for People with Disabilities*, 22 ILSA J. INT'L & COMP. L. 435, 450 (2016) (addressing the adult guardianship system in South Korea, which was reviewed and assessed by the Committee on the Rights of Persons with Disabilities).

cannot petition for guardianship anew in South Korea. He should do so, if he wishes to continue to serve as guardian for the person with a disability.

6. The guardian will be removed as guardian, with all authority revoked, effective August 30, 2022, unless the guardian timely files a notice of exception under Court of Chancery Rule 144.

7. The guardian will be required to file a final accounting before he is released from his bond.

8. This is a Magistrate in Chancery's final report under Court of Chancery Rule 144.

/s/ Selena E. Molina  
Selena E. Molina  
Magistrate in Chancery