**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

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| IMO: A.N., a person with a disability. | ) | C.M. No. 18290-N-MTZ |

**MEMORANDUM OPINION**

Date Submitted: August 28, 2020
Date Decided: November 30, 2020

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**ZURN, Vice Chancellor.**

The dispute in this guardianship matter arises out of the twin certainties of death and taxes. A patriarch with several children suffered a tragic accident that placed him in a persistent vegetative state and ultimately led to his death. This Court, in one of its fundamental equitable functions, appointed one of the children to be the guardian of the patriarch's person and property. From the outset, the other children distrusted the guardian, and the guardianship was highly contentious. Over the course of the guardianship, the Court adjudicated the parties' many disputes, ranging from the administration of real and personal property to the patriarch's medical treatment.

The patriarch passed away in October 2017. After his death, the guardianship remained open to resolve lingering disputes and determine if the guardian had been deficient in his service. Approximately a year into that unusually drawn-out process, the guardian and interested parties executed a settlement agreement. Based in part on that settlement agreement, and having ruled on the rest of the pending disputes, the Court terminated the guardianship on October 22, 2018, and ordered the guardianship assets to be transferred to the administrator of the patriarch's estate. It appeared that the parties' war had finally ended.

But there would be no peace. In February 2019, one of the children alerted the Court that one of the patriarch's real properties had been sold while the guardianship was still open. An investigation revealed that the guardian failed to

pay taxes on that property while the ward was alive, despite the ability to do so and notice that the debt was overdue. Shortly after the patriarch died, and while the guardianship remained administratively open, the City of Dover noticed a monition action and the property was lost at auction. The guardian knew the property had been lost, but did not correct the Court's understanding that the guardian still retained the property until confronted, months after he was released from his bond. The Court issued a show cause order and held an evidentiary hearing. With the benefit of that hearing and subsequent briefing, this opinion addresses the scope of the guardian's duties, whether he breached those duties, and remedies for any breach.

The guardian's duties to the ward terminated upon the ward's death, while the monition action and property's loss occurred after the ward died. Therefore, the Court cannot remedy the loss of the property in this action. During the ward's life, the guardian owed the ward fiduciary duties, which the guardian breached by failing to pay taxes. That breach is cognizable in this guardianship action. But the lost property cannot serve as the measure of damages, because it was lost after the ward died. Only nominal damages are available in this action to remedy the breach during his life.

After the ward died, the guardian still owed the Court a duty of utmost candor until the guardianship was administratively closed. The guardian, as the Court's

agent, had an ongoing obligation to be candid and truthful in his dealings with the Court. In his final moment of reckoning with the Court, the guardian selectively omitted any facts about the monition action and the fact that the property had been sold, and permitted the Court to rely on outdated submissions representing that the guardian still held the property. The guardian breached his duty of candor to the Court. This breach is sanctioned by a fine.

## I. BACKGROUND[1]

### A. The Court Appoints A Guardian For Mr. N.'s Person and Property.

On February 21, 2016, shortly after his eighty-first birthday, Mr. N. suffered a debilitating accident in his Wilmington home.[2] Mr. N. was immediately hospitalized at Christiana Hospital, and spent the rest of his life—over a year—in a

[1] Citations in the form of "Hrg. Tr. —" refer to witness testimony from the June 11, 2020 hearing transcript, available at Docket Item ("D.I.") 355. Citations in the form of "JX — at —" refer to a hearing exhibit.

Because guardianships are confidential, I refer to the ward as "Mr. N." and omit his name from citations to related cases. And, in this family dispute, I use initials and defined terms in pursuit of clarity and privacy. I intend no familiarity or disrespect.

Finally, this opinion assumes that every person who has presented himself or herself as the ward's biological child is doing so accurately. There have been accusations that some such persons are not the ward's biological children. This opinion does not resolve those disputes.

[2] D.I. 24 ¶ 2. Based on the attorney *ad litem*'s report and the physician's affidavit that accompanied the petition to open the guardianship, it appears that Mr. N. suffered a brain aneurysm. *See id.*; *see also* D.I. 1 at 1.

vegetative state.[3] One of Mr. N.'s sons, A.W.-N. ("Guardian"), petitioned the Court to serve as the guardian of Mr. N.'s person and property.[4] Several of Mr. N.'s other children, including K.N., L.L., and A.N. (together, the "Interested Parties"), opposed Guardian's appointment.[5] In a sign of things to come, the guardian selection process was contentious. On June 1, the Court appointed Guardian as guardian of Mr. N.'s person and property, and Guardian's mother J.W.-R. as co-guardian of Mr. N.'s person.[6] As required by statute, Guardian posted a $300,000 bond.[7] Mr. N.'s guardianship inspired intense and incessant litigation between Guardian and the Interested Parties: Guardian's service was pockmarked with deficiencies, which the Interested Parties picked at and inflamed. Mr. N. passed away on October 4, 2017.[8]

The parties' current dispute relates to Guardian's service as guardian of Mr. N.'s property, in particular a 0.87-acre vacant lot located at 515 S. DuPont Highway, Dover, Delaware (the "Property"). Mr. N. owned the Property through a wholly

[3] *See* D.I. 24 ¶ 6.

[4] D.I. 1.

[5] *E.g.*, D.I. 4; D.I. 46.

[6] D.I. 31. Because this opinion only relates to Guardian's guardianship of Mr. N.'s property, I use the term to refer to him alone.

[7] *Id.* ¶ 3.

[8] D.I. 214 at 1.

owned corporation, Dexalia, Inc.[9] A brief background on Guardian's stewardship over the Property and Mr. N.'s other real estate holdings may help to contextualize the dispute.

Guardian filed three accountings during his time as Mr. N.'s guardian (the "First Accounting," "Second Accounting," and "Final Accounting," respectively; together, the "Accountings").[10] On the First Accounting, Guardian listed the Property and valued it at $60,000.[11] On June 8, 2016, Guardian moved to appoint an appraiser for the Property,[12] explaining it should be sold to pay for Mr. N.'s medical care, which the Court granted.[13] On July 11, the appraiser filed a report

[9] Dexalia appears to be a holding company. Mr. N. was Dexalia's registered agent. *See* JX 8 at 1. Guardian expressed confusion as to what stake Mr. N. owned in Dexalia. *See* Hrg. Tr. 142:11–143:10.

Guardian and the Interested Parties treated the Property as if it were individually owned by Mr. N. Based on the unique facts of this guardianship action, even though the Property was owned through a corporation, I, too, treat it as Mr. N.'s property and thus subject to Guardian's oversight. Guardian has not made any argument to the contrary. Rather, Guardian included the Property in all inventories of Mr. N.'s property, including all three accountings, and a July 2017 summary. JX 127, Sched. A; JX 17, Sched. A; JX 120, Sched. A; JX 131. Guardian had the Property appraised, using guardianship funds; in doing so, Guardian represented that he could and should sell the Property for Mr. N.'s benefit. *See* D.I. 32; D.I. 38; JX 8. Guardian also represented to the Register of Wills that the Property was part of Mr. N.'s estate. *See* JX 52 at 4–5.

[10] JX 127; JX 17; JX 120.

[11] JX 127, Sched. A.

[12] D.I. 32.

[13] D.I. 38.

appraising the Property at $249,000.[14] On July 7, 2017, after extensive proceedings regarding Mr. N.'s other real estate holdings, Guardian filed a summary of Mr. N.'s many real property and their associated obligations.[15] That summary listed the Property as unencumbered by any mortgage, but owing city taxes in the amount of $2,001.28, county taxes in the amount of $163, and school taxes in the amount of $1,307.56.[16] None of the Accountings indicated any payment of property taxes.[17] This is because, as would later be made plain, Guardian was not paying them.

Guardian and the Interested Parties spent much of 2016 and 2017 litigating exceptions to the Accountings,[18] a dispute over a debt owed to Mr. N.,[19] and Mr. N.'s end-of-life medical instructions.[20] The parties also spent significant time litigating Guardian's petitions to sell some of Mr. N.'s real properties.[21] Guardian ultimately sold a Wilmington property on April 10, 2017, depositing $87,663.88 in proceeds into the guardianship account on May 15.[22] Guardian also sold a Claymont

[14] JX 8 at 30.

[15] JX 131.

[16] *Id.*

[17] *See generally* JX 127; JX 17; JX 120.

[18] *E.g.*, D.I. 105; D.I. 108; D.I. 127.

[19] *E.g.*, D.I. 190.

[20] *E.g.*, D.I. 202.

[21] *E.g.*, D.I. 53; D.I. 83; D.I. 96; D.I. 120.

[22] *See* JX 21 ¶¶ 2–4.

property on August 25, depositing $136,575.16 in proceeds into the guardianship account on August 28.[23]

The proceeds from these sales, coupled with Mr. N.'s other assets, meant that the guardianship account held thousands, if not hundreds of thousands, of dollars at all times.[24] Guardian prudently used some of this money to pay for utilities, insurance, and upkeep for Mr. N.'s other real estate properties.[25] Guardian also used these funds, as he was entitled, to cover court costs related to the guardianship.[26] While Guardian received some invoices for Mr. N.'s medical expenses, he never paid any medical bills, including from Christiana Hospital.[27] There is no indication that Mr. N.'s medical care suffered as a result.

Guardian also used the considerable cash at his disposal to pay expenses that are discretionary at best, and wasteful or self-interested at worst. In the last ten months of Mr. N.'s life, Guardian spent over $4,500 of guardianship funds on Mr.

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[23] *See* JX 29 ¶¶ 2–4.

[24] *See* Hrg. Tr. 97:9–99:7; *see generally* JX 117 (confirming Guardian's testimony).

[25] *See* JX 127, Sched. E; JX 17, Sched. E; JX 120, Sched. E.

[26] *See* JX 127, Sched. E; JX 17, Sched. E; JX 120, Sched. E.

[27] *See* Hrg. Tr. 99:20–100:9; *id.* 113:20–114:3; *see also id.* 139:9–13. The Accountings appear to confirm Guardian's testimony that Mr. N.'s account never paid out of pocket for any of Mr. N.'s medical expenses. *See generally* JX 127, Sched. E; JX 17, Sched. E; JX 120, Sched. E. Guardian made vague references to "verbal threats" from Mr. N.'s medical providers regarding his medical bills. *E.g.*, Hrg. Tr. 29:14–24. But there is no evidence in the record that Mr. N.'s medical bills resulted in any formal collection effort, casting doubt on the import of these "threats."

N.'s pets.[28] This includes nearly $400 on non-essential accessories, such as toys and sweaters, and grooming.[29] Guardian spent $900 on landscaping for the Property, a vacant lot, in just over five weeks in the spring of 2017, prioritizing those payments because landscaping would attract potential buyers and because the landscaper was a "cool guy" who "was destitute and didn't have much."[30] Guardian filed several petitions to reimburse himself for payments on Mr. N.'s behalf and to pay counsel, which the Court granted.[31] He also petitioned the Court for a $14,000 commission for his service as Mr. N.'s guardian, contending that his service was exemplary.[32]

After Mr. N. passed away in October 2017, several disputes about Guardian's service while Mr. N. was still living lingered. Guardianship proceedings remain open after the death of the ward until the guardian files a final accounting and the Court determines whether to release the guardian from her bond (the "Administrative Period").[33] The bond facilitates entering a judgment in the event the guardian misappropriated the ward's assets, and remains in effect until the

[28] *See* JX 120, Sched. E.

[29] *See id.* This is the most conservative estimate I could make, and excludes ambiguous expenses, such as purchases made at Petco and PetSmart.

[30] *See id.*; *see also* Hrg. Tr. 112:3–8; *id.* 102:8–103:14.

[31] *E.g.*, D.I. 94; D.I. 125; D.I. 131; D.I. 161; D.I. 210; D.I. 212.

[32] *See* D.I. 229.

[33] *See* 12 *Del. C.* § 3905(a).

guardian has completed her final accounting and returns the ward's property to the ward's estate.[34] Reconciling the guardian's final accounting and deciding whether to cancel the guardian's bond is the Court's final opportunity to evaluate a guardian's performance and resolve any remaining disputes.

In this case, the Administrative Period ran from Mr. N.'s October 2017 death until October 2018, when the Court closed the matter and released Guardian from his bond.[35] On February 12, 2018, Guardian filed his Final Accounting;[36] the next day, he filed a petition to close the guardianship (the "Petition").[37] Both filings included lists of Mr. N.'s assets, representing that Guardian still held the Property.[38] Guardian also petitioned the Register of Wills to serve as the personal representative of Mr. N.'s estate.[39] Guardian and the Interested Parties spent several months litigating Guardian's service to Mr. N.

In June 2018, the parties' efforts shifted from litigation to settlement.[40] Guardian, the Interested Parties, and another of Mr. N.'s children, T.I.L., proceeded

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[34] *See id.*

[35] D.I. 277.

[36] JX 120.

[37] D.I. 230.

[38] *See* JX 120 at 15; D.I. 230 ¶ 4.

[39] *See* JX 2; *see also* JX 52.

[40] D.I. 251 ¶¶ 7–12.

to negotiate and execute a settlement agreement that L.L.'s counsel presented to the Court on October 9 (the "Settlement Agreement").[41] That agreement released Guardian from claims, including fraud in the inducement of the Settlement Agreement, which could have been asserted by the Interested Parties and T.I.L. in connection with the guardianship action.[42] I relied on the Settlement Agreement in fashioning the terms by which the guardianship was terminated.[43] Although the Interested Parties agreed not to oppose Guardian's petition for a $14,000 commission, I denied that petition due to the deficiencies in Guardian's service.[44] The Court closed the guardianship and cancelled Guardian's bond via an order dated October 22, 2018 (the "Bond Order").[45]

At this point, an unfamiliar reader would be forgiven for believing that the parties' lengthy family dispute had come to an end. The Court was under a similar impression. To the Court's surprise, disturbing new facts came to light, giving rise to a year and a half of litigation and this opinion.

[41] JX 101; *see also* JX 100.

[42] JX 101 ¶ 8.

[43] *See* D.I. 308 ¶ C.

[44] D.I. 277 at 2.

[45] *Id.* at 1–3.

### B. The Court Learns The Property Was Lost And Sets Aside The Bond Order.

On February 18, 2019, A.N. wrote the Court and stated Guardian had sold the Property on April 24, 2018.[46] On February 21, 2019, I invited Guardian to explain the sale.[47] Guardian responded, clarifying that he had not sold the Property, but rather, it had been lost at a sheriff's sale.[48] In response, A.N. alleged that Guardian caused the sheriff's sale by his knowing failure to pay taxes on the Property.[49] Based on Guardian's failure, A.N. sought to "void" the Settlement Agreement and "cash" Guardian's bond.[50] I interpreted A.N.'s request as a request under Court of Chancery Rule 60 for relief from the Bond Order due to newly discovered evidence, fraud, or other reason.[51] The other Interested Parties weighed in on A.N.'s request, seeking to hold Guardian accountable for the loss of the Property.[52] K.N. joined in A.N.'s

[46] *See* D.I. 286 ¶ 9.

[47] D.I. 287.

[48] D.I. 288 at 1.

[49] D.I. 289 ¶¶ 2–7.

[50] D.I. 290.

[51] *See* D.I. 291 at 2.

[52] *See* D.I. 293; D.I. 294.

motion.[53] Guardian submitted two freeform letters in response, dated March 6 and April 12.[54] He did not request a hearing.

The parties' letters revealed that the Property was sold due to an outstanding $4,190.19 tax bill that Guardian failed to pay. On April 26, I granted K.N. and A.N.'s motion under Rule 60(b) in part.[55] I expressed my dismay at Guardian's neglect of the Property's taxes and lack of candor with the Court regarding the Property's loss. In an effort to further investigate these failures, I set aside the Bond Order based on fraud on the Court and ordered a hearing to further evaluate the issues:

> [The Bond Order] is hereby set aside based on fraud on the Court, for the limited purposes of: 1) taking evidence on the loss of the Property and the extent to which [Interested Parties] knew about that loss before entering into the Settlement Agreement, and 2) considering whether a judgment should be entered against [Guardian] for the value of the loss of the Property. Counsel and litigants shall contact [the Register in Chancery] to schedule a hearing. As has been the case in the context of this issue to date, [Guardian] shall bear his own legal expenses and costs.[56]

Guardian sought clarification and an interlocutory appeal, and L.L. responded.[57] On May 24, I declined to certify the interlocutory appeal, which

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[53] *See id.*

[54] D.I. 288; D.I. 296.

[55] *See* D.I. 298.

[56] *Id.* at 10.

[57] D.I. 299; D.I. 300; D.I. 301; D.I. 303.

Guardian did not pursue before the Delaware Supreme Court.[58] I scheduled an evidentiary hearing on the matter (the "Hearing"), originally to take place on October 22.[59] I clarified that the Hearing would address the following points, to be construed liberally:

> (a) Whether [Guardian] had a duty to pay the taxes on the Property while [Mr. N.] was still living;
> (b) Whether he had a duty to defend against the sheriff's sale after [Mr. N.] passed away;
> (c) Whether he had a duty flowing from his appointment as [Mr. N.]'s guardian to inform the Court about the Property's sale;
> (d) Whether he informed the Court that the Property might potentially be sold;
> (e) What interested parties knew or reasonably should have known about the status of the Property; and
> (f) Whether a judgment should be entered against [Guardian]. This point includes [Guardian]'s explanation for and intent behind his actions.[60]

Guardian and the Interested Parties proceeded to spar over discovery, scheduling, and rote procedural matters for months. As the day for the Hearing drew near, the litigants found themselves too entangled in procedural matters to proceed with the Hearing, so it was rescheduled for December 13.[61] These problems

[58] D.I. 308.

[59] *See* D.I. 310.

[60] D.I. 308 at 6–7.

[61] *See* D.I. 330.

continued, and the Hearing was rescheduled yet again for June 11, 2020.[62] The parties tried but failed to mediate the matter in advance of the Hearing.[63]

The Hearing was held on June 11 by videoconference.[64] The parties submitted post-hearing briefs, with the final brief filed on August 28.[65] Based on the testimony and evidence presented at the Hearing, I have made the following findings of fact.

### C. Guardian Knowingly Failed To Pay Taxes On The Property.

Taxes accrued on Mr. N.'s properties throughout Guardian's term. According to the July 2016 appraisal Guardian requested, the Property owed $1,227.89 annually to Kent County and $1,786.86 to the City of Dover.[66] The Property's taxes had been overdue since at least 2016.[67] The appraisal's title search revealed a debt of $1,255.14 in outstanding taxes and fees on the Property.[68] On July 7, 2017, approximately three months before Mr. N. passed away, Guardian reported $3,471.84 in outstanding taxes on the Property.[69]

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[62] *See* D.I. 353.

[63] *See* D.I. 349 ¶¶ (a)–(b).

[64] *See* D.I. 354.

[65] D.I. 359; D.I. 361; D.I. 362; D.I. 364.

[66] JX 8 at 3.

[67] *See* JX 146.

[68] JX 126 at 31; *see also* Hrg. Tr. 136:9–137:14.

[69] *See* JX 131 (indicating $2,001.28 in overdue city taxes, $163 in overdue county taxes, and $1,307.56 in overdue school taxes).

Guardian knew those taxes were overdue.[70] Guardian testified that he deliberately ignored property tax bills in an effort to preserve guardianship funds for Mr. N.'s care, delaying paying taxes until the properties were sold or until the relevant authorities threatened action.[71] He testified that because Mr. N.'s financial affairs were so distressed, and his health care needs so great, Guardian was stretched extremely thin and felt the need to preserve Mr. N.'s assets for his care.[72] Guardian contends he chose to withhold tax payments until the consequences of nonpayment were imminent, and that he did not realize their imminence because he did not receive notice. This explanation is neither credible nor supported by the record.

As the tax bills mounted, authorities sent Guardian at least two notices that payment was overdue. A March 31, 2017 notice indicated that $1,307.56 of county taxes were due.[73] An April 1, 2017 notice showed $2,001.28 of overdue city taxes.[74] The April notice included the following warning: "FAILURE TO PAY WILL RESULT IN FURTHER ADMINISTRATIVE ACTION & ADMIN FEES."[75]

[70] Hrg. Tr. 112:20–22.

[71] *E.g.*, *id.* 28:18–30:16; *id.* 106:18–20; *see also id.* 33:21–36:3.

[72] *E.g.*, *id.* 28:18–30:16; *id.* 33:21–36:3.

[73] JX 16.

[74] JX 19.

[75] *Id.*

While Guardian does not remember whether he received these notices,[76] he was aware of these arrearages as of July 2017, when he documented them in his summary for the Court.[77]

If Guardian did not receive the preliminary notices, it was because he neglected Mr. N.'s mail. The notices, like all other notices regarding the Property, were mailed to 8 Glen Berne Drive (the "Glen Berne House"), which was Dexalia's registered address, Mr. N.'s primary residence before his hospitalization, and Guardian's primary residence during the first part of the guardianship.[78] When he filed the Second Accounting on March 1, 2017, Guardian represented to the Court that he still lived at the Glen Berne House.[79] But Guardian stopped attending to mail sent to the Glen Berne House. He stopped living there at some unspecified point during the pendency of the guardianship, and in his absence, the mailbox was destroyed and Guardian did not replace it.[80]

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[76] *See* Hrg. Tr. 110:8–112:21.

[77] *See* JX 131.

[78] D.I. 1 at 1; JX 16; JX 127; JX 17.

[79] *Id.* Guardian similarly represented that he lived at the Glen Berne House in the First Accounting. JX 127. On the Final Accounting, Guardian listed his attorney's address instead. JX 120.

[80] Hrg. Tr. 110:10–111:18; *id.* 166:6–167:21.

On November 28, 2018, Guardian received a letter from the Kent County tax office.[81] That letter indicated that overdue taxes were past due and threatened a monition action:

> This letter will serve as notice to you that your property taxes, sewer and/or lien fees have not been paid. If these taxes, sewer and/or lien fees are not paid by December 31, 2017, we will proceed with [the] monition method of sale to collect the delinquent taxes, sewer and/or lien fees. Under Delaware Law, we may use the monition method of sale which will result in your property being sold by the Sheriff, subject only to a sixty (60) day period of redemption.
>
> To prevent your property from being placed in the monition sale process, the delinquent account of $2,769.00 (includes taxes and $50.00 collection fee) must be PAID IN FULL by December 31, 2017. . . .
>
> For further information, please contact Lisa Cooper in the Tax Office at (302) 744-2336. This is an attempt to collect a debt and any information obtained will be used for that purpose.[82]

Guardian received this notice and passed it along to his attorney.[83]

More fundamentally, Guardian's purported strategy of preserving assets to pay for medical care finds no support in the record. Mr. N.'s guardianship bank account always had more than enough money to pay the delinquent tax bill, while still preserving resources for future medical bills Mr. N. may have incurred.[84]

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[81] JX 41.

[82] *Id.*

[83] *See* Hrg. Tr. 117:20–118:21; *id.* 145:14–20; *see also id.* 64:23–65:2; *id.* 60:11–61:2.

[84] *Compare* JX 105 at 11, *with* JX 117, *and* Hrg. Tr. 97:9–99:7.

Further, Guardian's own actions betray his position. He spent freely on toys and accessories for Mr. N.'s pets: pet expenses exceeded the taxes due on the Property.[85] He prioritized these and other discretionary expenses, such as landscaping, over the Property's taxes.[86] Finally, while Mr. N.'s medical bills were mounting, Guardian never paid any money toward those bills.[87] By contrast, the tax bills, were an imminent concern: Guardian received multiple delinquency notices, with one threatening "further administrative action" if the property taxes remained unpaid.[88]

Guardian understood his decision to withhold taxes was a "calculated risk" that could cause the Property to be lost.[89] Indeed, this is exactly what happened. On January 12, 2018, the City of Dover filed a monition action against Dexalia, Inc., for $4,190.19 in unpaid taxes from 2016 through 2018 (the "Monition Action").[90]

Guardian again seeks refuge in not having received notice.[91] According to the Superior Court docket, notice of the Monition Action was posted on the Property.[92]

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[85] *See* JX 120, Sched. E; Hrg. Tr. 100:14–101:8.

[86] *See* Hrg. Tr. 103:23–104:1.

[87] *Id.* 99:20–100:9.

[88] JX 19 (emphasis removed); *see also* JX 16.

[89] *See id.* 116:16–24.

[90] *City of Dover v. Dexalia Inc.*, No. K18J-00118 NEP [hereinafter "Monition Action"], D.I. 1; *see also* JX 105 at 11. Citations to the Monition Action docket are styled "Monition Action D.I. — at —."

[91] *See* Hrg. Tr. 62:23–64:7.

[92] Monition Action D.I. 3; *see also* JX 105 at 11.

Guardian offered the testimony of a real estate broker Mr. N. had engaged to sell the Property, Mitri Habash.[93] Habash testified that he did not see any signs about the Monition Action at the Property.[94] On April 19, 2018, notice of the impending sale was sent to the Glen Berne House.[95] The notice to the Glen Berne House was returned as "Vacant Unable To Forward,"[96] likely due to Guardian's aforementioned neglect of the mail.

The same day that the Monition Action was filed, Guardian's counsel wrote to the Register of Wills in support of Guardian's petition to be appointed administrator of Mr. N.'s estate.[97] Under the heading "Assets of the Estate," Guardian, through his counsel, represented:

> Generally, the assets of the estate to be administered are as follows. There currently exists three real properties, the guardianship account which will eventually become the estate account, personal property, and a potential note secured by a mortgage owned by the decedent. The properties were all in disrepair upon [Guardian's] appointment. Two of the properties have no equity due to outstanding secured interests and **the other property is a vacant lot which is now subject to monition due to certain municipal obligations not being paid as a result of**

[93] Hrg. Tr. 5:19–6:13.

[94] *Id.* 9:12–15.

[95] Monition Action D.I. 6; *see also* JX 139.

[96] *See* Monition Action D.I. 6 at 5.

[97] JX 52.

> **the guardianship powers being halted as a result of [Mr. N.'s] death.**[98]

Guardian's counsel's letter was part of the Register of Wills file and was available to L.L.'s counsel, as L.L. was also petitioning to be appointed personal representative.[99] This letter evidences that Guardian and his counsel knew that the Property was subject to monition as of January 12, likely from the November 28, 2017 notice Guardian received and gave his attorney.[100] That notice clearly states that a monition action on the Property would commence on December 31, 2017 unless the taxes were paid in full.[101]

While Guardian weaponized the arrearage in his attempt to be appointed executor of Mr. N.'s estate, Guardian never raised the possibility of losing the property to this Court. Instead, on February 13, 2018, Guardian petitioned this Court for a large commission based on his "extraordinary service" in "marshalling [Mr. N.']s assets" and for attorneys' fees.[102]

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[98] *Id.* at 4–5 (emphasis added). Of course, Guardian did not pay taxes on the Property before Mr. N.'s death, either.

[99] *See* D.I. 293 at 3.

[100] *See* JX 41.

[101] *See id.*

[102] D.I. 228; D.I. 229 ¶¶ 5–11.

On April 24, the Property was sold at a sheriff's sale for $52,000, netting proceeds of $40,341.12.[103] Also on April 24, Guardian and the Interested Parties agreed to the appointment of a neutral third-party administrator for Mr. N.'s estate.[104] On July 31, Habash learned the Property had sold at sheriff's sale, and told Guardian.[105] On August 2, Guardian's counsel informed L.L.'s counsel and the third party administrator that "[m]y client was told by another person that the Dover property was sold at auction. I don't know if this is true or not but he wanted me to pass this along."[106]

Two more months passed before the Court closed the guardianship and cancelled Guardian's bond. In that period, Guardian failed to mention the fact that the Property had been lost. There was no indication in the record that A.N., K.N., or T.I.L. knew the Property had been sold, and A.N. stated he did not know.[107] Before A.N.'s February 2019 letter, neither Guardian nor his counsel informed the Court about the Monition Action or that the Property had ultimately been lost. After the parties entered into the Settlement Agreement, the Court, ignorant of these

[103] *See* JX 106 at 1–2; *see also* JX 141.

[104] JX 69.

[105] JX 90; Hrg. Tr. 9:16–18; *see also id.* 12:3–5.

[106] JX 91 at 1.

[107] D.I. 286 ¶ 10.

problems, released Guardian's bond and ordered him to turn over Mr. N.'s assets to his estate.

In sum, Guardian knew about the unpaid taxes long before Mr. N. passed away, consistently and deliberately refusing to pay them. During the Administrative Period, Guardian and his attorney knew the Property was subject to monition. Meanwhile, in petitioning to close the guardianship and be released from his bond, Guardian affirmatively represented that the Property was among Mr. N.'s assets. Guardian also petitioned the Court for a commission, inaccurately representing he had protected the guardianship property. Shortly thereafter, the Property was lost. Guardian's counsel told L.L.'s counsel, but not the Court, which closed the guardianship and released Guardian from his bond based on Guardian's representations that he still held the Property. This unusual fact pattern presents questions about the contours of Guardian's duties to Mr. N. and to the Court.

## II. ANALYSIS

"Outside of the criminal arena, imposition of a guardianship represents the most significant deprivation of the right to self-determination a court can impose."[108]

> Because it involves fiduciary relationships, guardianship has traditionally fallen within the jurisdiction of this court of equity, both with respect to its English common-law antecedents and in its current statutory incarnation. Today, all guardianships imposed in Delaware over disabled adults are pursuant to statute. The Court of Chancery is

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

> empowered by 12 *Del. C.* § 3901(a) "to appoint guardians for the person or property, or both, of any person with a disability."[109]

The Court is the ultimate fiduciary of the person with a disability; in appointing a guardian, the Court empowers a substitute decisionmaker that owes duties to both the ward and the Court.[110] "In reality the court is the guardian; an individual who is given that title is merely an agent or arm of that tribunal in carrying out its sacred responsibility."[111] When the Court appointed Guardian, he gained two principals to which he owed fiduciary duties: Mr. N. and this Court.[112] "In addition to the duties set out by statute and court rules, guardians owe common law fiduciary duties to the wards they undertake to represent and the Court for whom they act as agents."[113] Guardians owe different duties to the ward and to the Court, and over different

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[109] *Id.* at *2.

[110] *See* 12 *Del. C.* § 3901(e); *accord Boisvert v. Harrington*, 796 A.2d 1102, 1106 (Vt. 2002) ("In this, as in most states, the probate court essentially exercises a continuing jurisdiction over both the guardian and the ward . . . Indeed, in appointing a guardian *the court* assumes the primary responsibility to protect the minor or others who are unable to care for themselves.") (emphasis in original); *Seaboard Sur. Co. v. Boney*, 761 A.2d 985, 992 (Md. App. 2000) ("Lest sight be lost of the fact, we remind all concerned that a court of equity assumes jurisdiction in guardianship matters to protect those who, because of illness or other disability, are unable to care for themselves. *In reality the court is the guardian; an individual who is given that title is merely an agent or arm of that tribunal in carrying out its sacred responsibility*.") (emphasis in original) (quoting *Kicherer v. Kicherer*, 400 A.2d 1097, 1100 (Md. 1979)); *see also In re Jones*, 2006 WL 2035714, at *5 n.51 (Del. Ch. July 13, 2006) (quoting *Boisvert*, 796 A.2d at 1106, and also quoting *Seaboard*, 761 A.2d at 992).

[111] *Kicherer*, 400 A.2d at 1100; *see also Jones*, 2006 WL 2035714, at *5 n.51 (citing *Kicherer*, 400 A.2d at 1100).

[112] *See Jones*, 2006 WL 2035714, at *5.

[113] *Id.*

periods during the guardianship. I first consider Guardian's performance through the lens of his duties to Mr. N., and then through the lens of his duties to the Court.

### A. Guardian's Failure To Pay Taxes While Mr. N. Was Living Was A Breach Of Fiduciary Duty.

The first question this matter poses is whether Guardian had a duty to pay the taxes on the Property while Mr. N. was still living. In handling her ward's property, a guardian must satisfy statutory standards and common law fiduciary duties.

Title 12, Section 3302(a) of the Delaware Code generally compels guardians to meet a reasonable prudence standard of judgment and care in managing the ward's property:

> When investing, reinvesting, purchasing, acquiring, exchanging, retaining, selling and managing property for the benefit of another, a fiduciary shall act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use to attain the purposes of the account.[114]

This duty requires guardians to "exercise the skill and care that a [person] of ordinary prudence would exercise in dealing with his own property in light of the situation existing at the time."[115] Under common law, a guardian must "administer the [guardianship], diligently and in good faith, in accordance with the terms of the

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[114] 12 *Del. C.* § 3302(a); *see also In re Buonamici*, 2008 WL 3522429, at *6 (Del. Ch. Aug. 11, 2008).

[115] *Law v. Law*, 753 A.2d 443, 447 (Del. 2000); *see also Wilm. Tr. Co. v. Coulter*, 200 A.2d 441, 448 (Del. 1964).

[guardianship] and the applicable law."[116] The Court and guardian must take care of the ward's property "for his sake, that, if he recovers, he shall find his estate as nearly as possible in the same condition as he left it."[117] That the ward's money "might have been more successfully invested" is not enough to violate the guardian's fiduciary duty.[118]

The guardianship statutes specify these duties. Section 3921(c) enumerates the "powers and duties" of a guardian with "the possession and management of all the property of the person with a disability":

> The guardian of the property shall, in the name of the person with a disability, do whatever is necessary for the care, preservation and increase of the property of the person with a disability in accordance with Chapter 33 of this title, unless investments are restricted by the Court.[119]

Title 12 gives special protection to real property, reflected in its requirement that a guardian seek the Court's approval before selling any real estate.[120] Title 12 also recognizes that paying taxes is "necessary . . . to preserv[e] and increase" the ward's property, and gives the guardian power to do so.[121]

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[116] Restatement (Third) of Trusts § 76(1) (Am. L. Inst. 2007).

[117] *In re duPont*, 194 A.2d 309, 314 (Del. Ch. 1963) (quoting English law).

[118] *See Staley v. Peirson*, 1998 WL 1033076, at *3 (Del. Ch. Dec. 3, 1998).

[119] 12 *Del. C.* § 3921(c).

[120] *Id.* § 3951(a).

[121] *Compare id.* § 3921(c) (requiring a guardian to take whatever steps necessary for the "care, preservation and increase of the property"), *with id.* § 3923(d)(8) (empowering a

Under this fact-specific rubric, I conclude Guardian had a duty to pay taxes during Mr. N.'s life. Paying taxes was consistent with Guardian's responsibility to invest the guardianship funds with "the skill and care [of] a [person] of ordinary prudence."[122] Guardian had a responsibility to do what he could to prevent avoidable loss of the Property.[123] As mentioned, Title 12 places special emphasis on the preservation of real property and empowers guardians to pay taxes toward that end.[124] And Guardian's duty to administer the guardianship "in accordance with . . . applicable law" required him to timely pay taxes in compliance with local law.[125]

Throughout the guardianship, Guardian had the authority and resources to discharge his duties. By statute, Guardian could pay taxes on the Property without seeking the Court's permission.[126] Every month, the guardianship account contained thousands, tens of thousands, or hundreds of thousands of dollars:[127] more than enough to pay the $4,190.19 tax bill.[128]

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guardian to "[p]ay taxes, assessments, compensation of the guardian and other expenses incurred in the collection, care, administration and protection of the estate").

[122] *See Law*, 753 A.2d at 447.

[123] *See* 12 *Del. C.* § 3921(c); *see also duPont*, 194 A.2d at 314.

[124] 12 *Del. C.* § 3951(a); *id.* § 3921(c); *id.* § 3923(d)(8).

[125] *See* Restatement (Third) of Trusts § 76(1).

[126] *See* 12 *Del. C.* § 3923(d)(8).

[127] *See* Hrg. Tr. 97:9–99:7; *see generally* JX 117 (confirming Guardian's testimony).

[128] *Compare* JX 105 at 11, *with* JX 117, *and* Hrg. Tr. 97:9–99:7. Guardian essentially conceded this point during his testimony. *See id.* 99:16–19. When Guardian received

Guardian's failure to discharge his duty is unjustified. He knew that taxes were due on the Property.[129] He received delinquency notices for these taxes.[130] If he did not understand the meaning of those notices, Guardian could have sought advice from his attorney, who was compensated from guardianship funds to support Guardian in safeguarding Mr. N.'s property.[131] Guardian acknowledged that failing to pay the taxes created a risk that the Property would be lost.[132]

Yet, Guardian deliberately chose not to pay taxes on the Property.[133] This is not a case where a guardian merely could have "more successfully invested" the money in the guardianship account.[134] Rather, Guardian's spending on non-essential expenses discredits his purported penny-pinching strategy, and shows that neglect, rather than a clever plan, prevented him from paying the Property's taxes.

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notice of this amount of arrearage, he was no longer a fiduciary bound to pay Mr. N.'s taxes, as I explain *infra*. I cite this fact only because it appears to be the maximum amount of taxes ever owed on the Property. At all times during the guardianship, the amount owed was substantially lower. *See* JX 16; JX 19. But even at its highest, the tax bill was well within Guardian's ability to pay.

[129] *E.g.*, Hrg. Tr. 112:21–22. The Property's July 2016 appraisal Guardian requested also indicated that outstanding taxes were due. *See* JX 126 at 31.

[130] Hrg. Tr. 111:19–22; *compare* JX 16 (giving notice of $1,307.56 in overdue county taxes), *and* JX 19 (giving notice of $2,001.28 in overdue city taxes), *with* JX 131 (reflecting both noticed amounts in a summary filed by Guardian).

[131] *See* D.I. 125; D.I. 161; D.I. 212; *see also* Hrg. Tr. 104:17–105:3.

[132] *See* Hrg. Tr. 116:16–24.

[133] *Id.* 106:18–20.

[134] *Cf. Staley*, 1998 WL 1033076, at *3.

Serving as Mr. N.'s guardian was certainly difficult, and Mr. N.'s financial and family affairs were complex and messy.[135] But when the Court appointed Guardian as a fiduciary of Mr. N.'s affairs, Guardian assumed a duty to do whatever was necessary for the "care, preservation and increase" of Mr. N.'s property.[136] I conclude that Guardian's failure to pay the tax bill while Mr. N. was alive amounts to a breach of his fiduciary duties.

### B. Guardian's Duty To Defend Against The Sheriff's Sale After Mr. N. Passed Away Cannot Be Assessed In The Context Of This Action.

I next consider whether Guardian, in that role, had a duty to defend against the April 2018 sheriff's sale in connection with the Monition Action. I conclude that to the extent Guardian owed such a duty, he did so outside the context of this guardianship action because the Monition Action was initiated after Mr. N.'s death terminated the guardianship. Thus, I cannot adjudicate Guardian's liability for any breach of that duty in this guardianship action.

Section 3909 provides that guardianships of the property continue "until [one] of the following occur: (1) The death of the person with a disability[, or] (2) Termination by the Court of Chancery upon application of the guardian, the person

[135] I do not detail these affairs in this public opinion; they are well documented in the confidential guardianship proceedings.

[136] *See* 12 *Del. C.* § 3921(c).

with a disability, or another interested party."[137] The guardianship statutes "seem to suggest that the [guardian]'s power is confined by the fact that what is done is done in the name of the [person with a disability]. This suggests in a general way that the [guardian's] power obtains its vitality from a living [person with a disability]."[138] And as a matter of logic, one cannot be the agent of a deceased principal. The ward's death terminates the guardian's fiduciary duties to the ward.

In considering a guardian's duties after the ward's death, this Court has looked to "the statute which purports to deal in a specific way with the [guardian's] duty as to the distribution of the property of a deceased [person with a disability]."[139] Since 1793, Delaware law has required that the guardian deliver the ward's estate to the ward's heirs or representatives upon the ward's death.[140] In 1956, the operative statute clearly provided:

> In case of the recovery or death of the [person with a disability], the trustee shall deliver and pay to him, or to his heirs, or proper representatives, all the balance of his estate, real and personal; and the Court shall cause to be transferred to him, or them, all stock, or investments or the proceeds thereof when sold, deducting just allowances to the trustee.[141]

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[137] *Id.* § 3909(c).

[138] *In re Bohnstedt*, 125 A.2d 580, 582 (Del. Ch. 1956).

[139] *Id.*

[140] *Id* at 582 & n.2.

[141] *Id.* at 582.

This Court interpreted that statute to mean that once the person with a disability dies, "the statutory scheme applicable to decedent's estates comes into play."[142]

Today, the guardian's duties regarding a deceased ward's property are set forth in Section 3905, which governs termination of the guardian's bond.

> [I]f the guardian . . . duly renders according to law just and true accounts of the guardianship and if the guardian, . . . upon the termination of the guardianship, shall deliver and pay to the person with a disability, or the executors or administrators of the person with a disability all the property belonging to the person with a disability in the possession of the guardian and all that shall be due to the person with a disability from the guardian and, if the guardian shall have in all things faithfully

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[142] *Id.* *Bohnstedt* considered whether a guardian of a deceased ward could pay the ward's unpaid debts and liabilities invoiced before the ward's death. *See id.* Chancellor Seitz interpreted Delaware's longstanding statutory rule to compel the conclusion that upon the death of the ward, the guardian must file the final accounting and turn the balance of the ward's assets over to the person administering the estate, without paying the ward's final bills. *See id.* Chancellor Seitz went on:

> I think the rule here adopted is unfortunate but any change must come from the Legislature. I believe there would be value in legislation which would permit the trustee to wind up his trust administration by paying bills, etc., due at the death of the [person with a disability]. Thus it would permit the trustee to make arrangements with the Hospital and other creditors which would permit deferred payments without the creditor running the risk of losing all because of death. This is often very important where family needs are involved. Also, where a trustee has made binding commitments on behalf of the [person with a disability] it does not seem fitting that the commitments of an agent of the Court should not be honored.

*Id.* I, too, wish the rule were different, and would welcome a change by the General Assembly. I take small personal comfort from the fact that I am not applying this rule today to bar Guardian from paying any of Mr. N.'s bills invoiced before his death. Rather, I rely upon the rule only to maintain the distinction between guardianship actions and actions pertaining to decedents' estates.

> performed and fulfilled the guardian's duties as guardian, then the obligation shall be void.[143]

This longstanding statutory regime, which operates in tandem with the statutory priority of distributions from a decedent's estate,[144] makes the guardian the ward's agent only so long as the ward is alive.[145] A guardian's duties to her ward terminate upon the ward's death.[146]

Accordingly, as of October 4, 2017, Guardian was no longer Mr. N.'s fiduciary. Once Mr. N. passed away, "the statutory scheme applicable to decedent's estates [came] into play."[147] Section 3905 compelled Guardian to turn over Mr. N.'s estate to his personal representative in order for his bond to be cancelled.[148]

During the Administrative Period, Guardian had a duty to preserve Mr. N.'s estate until he transferred it to the personal representative. But Guardian did not owe that duty to Mr. N. or to the Court in the guardianship proceedings.[149] This division

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[143] 12 *Del. C.* § 3905(a).

[144] *Id.* § 2105.

[145] *See Bohnstedt*, 125 A.2d at 581–82.

[146] *See* 12 *Del. C.* § 3309(c).

[147] *Bohnstedt*, 125 A.2d at 582.

[148] 12 *Del. C.* § 3905.

[149] I was unable to find authority delineating or classifying this duty. Had the Property been personal property owned directly by Mr. N., Delaware law suggests that a bailment would exist in favor of Mr. N.'s estate. *See Sports Complex, Inc. v. Golt*, 1994 WL 267697, at *1 (Del. 1994) (TABLE) ("Delaware courts have determined that a bailment exists where there is a delivery of personalty for some particular purpose, or on mere deposit, upon a contract, express or implied, that after the purpose has been fulfilled it shall be

respects the separate statutory schemes governing guardianships and estates acknowledged in *Bohnstedt*.[150] I conclude that this Court does not have oversight of a guardian's management of a deceased ward's property in a guardianship action; that oversight must occur in the context of a separate civil action.[151] In this guardianship proceeding, the Court may hold Guardian liable for breaching his

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redelivered to the person who delivered it, or otherwise dealt with according to his directions, or kept until he reclaims it." (internal quotation marks omitted)); 8A Am. Jur. 2d Bailments § 1 ("A bailment does not necessarily depend upon a contractual relation; it is the element of lawful possession, however created, and the duty to account for the thing as the property of another that creates the bailment, regardless of whether such possession is based on contract in the ordinary sense or not.").

Three factors confound applying this principle to this case. First, the Property is real estate, not personalty, so it cannot be subject to a bailment. *See Sports Complex*, 1994 WL 267697, at *1. Second, the title to real property passes to a decedent's heirs immediately upon the decedent's death. *See In re Estate of Bernstein*, 17 A.3d 1172, 1176 n. 10 (Del. Ch.), ("Under both Delaware and New Jersey law, title to real estate passes to the devisee immediately upon the testator's death . . .") *aff'd*, 31 A.3d 76 (Del. 2011). Third, while Guardian and the Interested Parties have treated the Property as if Mr. N. owned it directly, Mr. N. actually owned it through a holding company, Dexalia. Guardian has represented to the Register of Wills that the Property is part of Mr. N.'s estate. JX 52 at 4–5. The contours of Guardian's duties after Mr. N.'s death vis-à-vis the Property, as well as the beneficiary of those duties, are questions for another day in another action. For present purposes, it is enough to determine, as I have, that Guardian did not owe those duties to Mr. N. or the Court in the guardianship proceeding, and so, they cannot be adjudicated here.

[150] *See Bohnstedt*, 125 A.2d at 582.

[151] As part of the Settlement Agreement, L.L., K.N., A.N., and T.I.L. agreed to release Guardian "from any and all claims . . . which [L.L., K.N., A.N., and T.I.L.] have asserted or could have been asserted in [the guardianship action] against [[Guardian] . . . ." JX 101 ¶ 8. The Court set aside the Settlement Agreement for the limited purpose of investigating this matter. *See* JX 298. Whether this release prevents any signatory, or Mr. N.'s estate, from bringing a claim for loss of the Property against Guardian in a separate civil action is a question to be answered in that action.

fiduciary duty to Mr. N. while Mr. N. was alive, but it cannot reach, in this action, Guardian's management of Mr. N.'s estate after Mr. N. died. Because the Monition Action began and ended with the Property's loss wholly within the Administrative Period, after Mr. N.'s death, I am unable to adjudicate Guardian's liability for his role in the Monition Action and the Property's loss here.

This case is unusual. In most cases, the Administrative Period lasts only days or weeks; the guardian quickly demonstrates that the Court may cancel her bond and transfers the ward's property to the executor of the ward's estate. This case presented an extraordinarily contentious, and therefore extraordinarily long, Administrative Period. These conditions permitted entropy to do its work; Guardian abandoned the mail at the Glen Berne House, the Monition Action began, and the Monition Action ended with the sheriff's sale, all within the Administrative Period.

I suspect my conclusion that these wrongs cannot be righted in the guardianship action is dissatisfying to the Interested Parties. But at bottom, the length of the Administrative Period does not convert this case from a guardianship action, in which the guardian owes duties to the ward, to a proceeding in which the ward's heirs can recover losses to their inheritance from the guardian. Such recovery must be sought in a separate civil action. Maintaining this distinction will ensure

that within guardianship actions, the Court and interested parties are properly focused on the ward.[152]

### C. Guardian Breached His Duty To Inform The Court About The Property's Loss.

Having addressed Guardian's obligations as Mr. N.'s fiduciary, I now turn to Guardian's duties to his other principal: this Court. A guardian owes the Court a duty of candor.[153] "Candor and fair-dealing are, or should be, the hallmark of litigation and required attributes of those who resort to the judicial process."[154] "Just like attorneys have duties of candor to the tribunal, so too do parties themselves."[155] Complete candor is required in cases like this one, which "provide litigants with a

[152] The confidentiality of guardianship actions would also stymie the public's right to access disputes pertaining to a decedent's estate. *See generally In re Du Pont*, 1997 WL 383008 (Del. June 20, 1997) (discussing the limited public right of access to guardianship dockets in view of related public proceedings).

[153] *See Jones*, 2006 WL 2035714, at *5. In arguing no such duty exists, Guardian points to his statutory ability to perform certain tasks (such as paying taxes) without asking the Court for specific permission. *See* 12 *Del. C.* § 3923(d). This freedom does not absolve Guardian of the responsibility to be candid with the Court; rather, his freedom heightens his responsibility to be truthful.

[154] *E.I. DuPont de Nemours & Co. v. Fla. Evergreen Foliage*, 744 A.2d 457, 461 (Del. 1999).

[155] *Taylor v. Taylor*, 102 A.3d 151, 154 (Del. 2014) (citing Del. Lawyers' R. Prof'l Conduct 3.3); *see also id.* at 153 (noting a judgment obtained where a party was not candid with the Court could be reopened under Rule 60(b)(3) for "fraud or other misconduct," or under Rule 60(b)(6) "in the interests of justice").

forum in which emotionally charged issues could be resolved under the least disruptive and most efficacious conditions."[156]

While all litigants owe a duty to avoid affirmative misrepresentation, a guardian's extraordinary position as an agent of the Court demands a heightened duty of candor. As an officer of the Court, guardians owe a duty to "promptly inform the Court and opposing [parties] of any development which renders a material representation to the Court inaccurate."[157] "There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation."[158]

A guardian owes the Court candor so long as the guardianship action is open, even after the ward's death in the Administrative Period.[159] Reconciling the guardian's final accounting and deciding whether to cancel the guardian's bond or proceed with entering a judgment is the Court's final opportunity to evaluate a guardian's performance. The importance of a guardian's candor at this critical final

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[156] *See Bruce E.M. v. Dorothea A.M.*, 455 A.2d 866, 873 n.10 (Del. 1983). Cases before the Family Court require "complete candor and fairness by parties" due to that Court's "special and unique jurisdiction" of such emotional issues. *Taylor*, 102 A.3d at 154. In my view, guardianship cases in this Court present equivalent issues and require equivalent candor.

[157] *State v. Grossberg*, 705 A.2d 608, 612 (Del. Super. 1997).

[158] *Id.* (quoting Del. Lawyers' R. Prof'l Conduct 3.3 cmt. 3).

[159] The duty of candor to the Court persists as an independent duty even though the guardian's fiduciary duty to the ward, and this Court's oversight of those duties, terminates upon the guardian's death.

stage cannot be overstated. This Court's oversight of guardians and their vulnerable wards would be obviated if guardians could make dishonest representations during the Administrative Period.

In this case, Guardian's duty of candor persisted as an independent duty throughout the Administrative Period, until the October 22, 2018 Bond Order. Guardian had a duty to "promptly inform the Court . . . of any development which renders a material representation to the Court inaccurate."[160] Guardian breached his duty of candor by failing to correct his representations about the state of the Property. Both Guardian's February 12, 2018 Final Accounting and his February 13 Petition to close the guardianship listed the Property among Mr. N.'s assets, thereby representing the Guardian still held the Property.[161] By August 2, Guardian knew the Property had been lost, and knew that the Final Accounting and the Petition were inaccurate.[162] Yet Guardian did not correct the Final Accounting and the Petition. Between August 2 and October 22, the parties filed two joint status updates to the Court.[163] Neither report mentioned that the Property had been lost.[164] Guardian also

[160] *Grossberg*, 705 A.2d at 612.

[161] JX 120 at 15.

[162] JX 91 at 1.

[163] D.I. 261; D.I. 263. While the joint status updates were filed by L.L.'s counsel, the letters indicated that Guardian's counsel had reviewed them in advance and had no objection.

[164] *See* D.I. 261; D.I. 263.

petitioned the Court for attorneys' fees during this two-month period.[165] This request similarly failed to mention the loss of the Property.

On October 9, the parties submitted the Settlement Agreement and a proposed order cancelling Guardian's bond.[166] That order explicitly relied on the Petition,[167] in which Guardian affirmatively represented that he still held the Property for Mr. N.'s benefit and would turn it over to the estate upon cancellation of his bond.[168] The Court entered the Bond Order on that basis.

Guardian argues that by informing the Register of Wills that the Property was "subject to monition,"[169] and by informing L.L., L.L.'s attorney, and the executor of Mr. N.'s estate that he had heard the Property had been sold, he satisfied any duty of candor he may owe.[170] This argument misses the mark. Guardian's duty at this crucial juncture was a duty of candor *to this Court*.[171] Guardian's belated candor with some of the Interested Parties was not enough to satisfy this duty. The Court evaluates a guardian's service before releasing her from her bond in every Delaware

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[165] *See* D.I. 276.

[166] *See* D.I. 268; D.I. 269; D.I. 272. These updates were filed by L.L.'s counsel on behalf of all parties, including Guardian.

[167] *See id.*

[168] *See* D.I. 230.

[169] JX 52 at 4–5.

[170] *See* D.I. 364 at 18.

[171] *See Jones*, 2006 WL 2035714, at *5; *see also Kicherer*, 400 A.2d at 1100.

guardianship, not just those that are contested by other parties. Guardian owed this Court complete candor.

Guardian kept the loss of the Property from the Court for over two months, despite knowing that the Court was then considering whether to release him from his bond. Neither Guardian nor his counsel told the Court about the Monition Action or the loss of the Property until the Court directly asked, after receiving A.N.'s February 2019 letter.[172] The Court was completely unaware of the sale until nearly four months after the Court released Guardian from his bond and a full six months after Guardian became aware that the Property was lost. Guardian's lack of candor is inexcusable. Guardian had ample opportunity to inform the Court that the

[172] *See* D.I. 286 (reporting, for the first time, that the Property had been sold in a letter from A.N.); D.I. 288 (responding, for the first time, to those allegations in a letter from Guardian).

This opinion focuses on Guardian's breach of the paramount duty of candor he himself owes to the Court. I am mindful that in general, Delaware courts are hesitant to impute the misconduct of a party's attorney onto the otherwise-innocent party herself. *See e.g.*, *Langston v. Exterior Pro Sols., Inc.*, 2020 WL 1970536, at *4 (Del. Super. Apr. 22, 2020) ("The Court will not necessarily impute the negligence of a [party's] attorney to the [party] where the [party] has acted reasonably throughout the course of the proceedings and the default is solely attributable to the negligence of its attorney."). From my vantage point, it is difficult to determine whether Guardian's counsel committed any misconduct. Guardian's attorney knew the Property was subject to monition and had been lost, and could have informed the Court. In this unique guardianship context, I hold Guardian, as court-appointed agent to protect a person with a disability, personally responsible for his own candor to this Court.

Property was lost, yet failed to do so at every turn. I find that this failure constitutes a breach of his duty of candor.

### D. Guardian's Conduct Must Be Sanctioned.

The final issue is the difficult one of addressing Guardian's breach of his fiduciary duty to Mr. N. and breach of the duty of candor to the Court. "Once liability has been found, and the court's powers shift to the appropriate remedy, the Court of Chancery has broad discretion to craft a remedy to address the wrong."[173] Delaware trial court judges also have broad discretion in fashioning sanctions.[174] "The decision whether to impose sanctions, upon whom to impose them, and what sanctions to impose, will depend upon the facts and circumstances of each particular

[173] *Brinckerhoff v. Enbridge Energy Co., Inc.*, 159 A.3d 242, 262 (Del. 2017); *see also Harman v. Masoneilan Int'l, Inc.*, 442 A.2d 487, 499 (Del. 1982) ("On the other hand, equity adopts its decrees to fit the nature and gravity of the breach and the consequences to the beneficiaries and trustee. The choice of relief to be accorded a prevailing plaintiff in equity is largely a matter of discretion with the Chancellor." (internal quotation marks omitted)).

[174] *See Gallagher v. Long*, 2007 WL 3262150, at *2 (Del. 2007) (TABLE) ("A trial judge has broad discretion to impose sanctions for failure to abide by its orders."); *see also Shannon ex rel. Shannon v. Meconi*, 2006 WL 258313, at *4 (Del. Super. Jan. 5, 2006) ("The Court also maintains an 'inherent power' to sanction parties to litigation where bad faith conduct exists. Such power, 'exercised with great restraint,' permits the Court to deter abusive litigation and protect the integrity of the judicial process." (internal citations omitted)).

case, but it should always be viewed in light of the proper function which sanctions are intended to serve."[175]

The facts and procedural posture of this case do not lend themselves well to an obvious answer. What follows is "as fair a resolution as I can devise."[176]

### 1. Breach Of Fiduciary Duty To Mr. N.

As explained, Guardian breached his fiduciary duty to Mr. N. by failing to pay the taxes on the Property while Mr. N. was alive. A guardian's liability for pre-death wrongdoing may be assessed after the ward passes away in the context of the guardian's bond.[177] Guardian is liable within the confines of this action for breaching his duty to care for and preserve Mr. N.'s property while Mr. N. was living.

But, as explained, Guardian did not owe Mr. N. any duty to preserve the Property after Mr. N. died, and a breach of any duty owed to anyone else is not cognizable in the guardianship action. In this action, Guardian's liability for failure to pay taxes on the Property is limited only to the time during which he was Mr. N.'s guardian, and does not extend beyond Mr. N.'s death. While Guardian's neglect

[175] *Terramar Retail Ctrs., LLC v. Marion #2-Seaport Tr. U/A/D June 21, 2002*, 2018 WL 6331622, at *10 (Del. Ch. Dec. 4, 2018) (quoting *In re Rinehardt*, 575 A.2d 1079, 1082 (Del. 1990)).

[176] *In re Gittings*, 1999 WL 1581733, at *11 (Del. Ch. Dec. 30, 1999).

[177] *See* 12 *Del. C.* § 3905(a).

during the guardianship paved the way for the Property's loss, the monition action was not initiated, and the Property was not sold, until after Guardian's fiduciary duties ended.

And so, I face the difficult task of measuring Guardian's liability in this proceeding stemming from his failure to pay the Property's taxes, where the Monition Action was initiated and resolved after Mr. N. died. I discard several measures on the way to my final conclusion.

The Interested Parties urge the Court to "cash" Guardian's bond and order him to pay the difference between the appraised value of the Property and the price for which it sold at auction;[178] this would amount to an award of approximately $200,000.[179] The loss of the Property is the only objective metric the Interested Parties supply for a remedy. Because any cause of action deriving from the Property's loss is outside the scope of this action, it would be inappropriate to use the Property's appraised value as the measure of any loss.

Other remedies are similarly inappropriate. Fee shifting, a common sanction in the guardianship arena,[180] has not been requested by any party with standing to

[178] D.I. 286 ¶ 12.

[179] *Compare* JX 8 at 30, *with* JX 106 at 1–2.

[180] *E.g.*, *In re Mellinger*, 2007 WL 2306956, at *5 (Del. Ch. Aug. 13, 2007); *Gittings*, 1999 WL 1581733, at *11.

make such a request.[181] I have considered requiring Guardian to pay a fine to Mr. N.'s estate, but to do so would be to unfairly award punitive damages.[182] Such a fine would also blur the line this Court has already drawn between guardianship and estate proceedings; as explained, a guardianship action is not the proper proceeding for heirs to seek damages from a guardian suffered after the ward passed away. Payment to the estate would also unfairly reward Guardian himself as one of Mr. N.'s heirs.

I have already denied Guardian's request for a commission due to the other deficiencies in his service.[183] I have also already ordered that Guardian bear any fees and costs incurred in litigating this issue intensely for eighteen months;[184] if he had acted prudently, Guardian would be entitled to pay his reasonable attorneys' fees from the guardianship account.[185] That order shall remain in place, as it would be inequitable for Mr. N.'s estate, and, by extension, his heirs, to bear the financial burden of Guardian's defense.

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[181] *See* D.I. 362. A.N. did ask the Court to shift fees in his *pro se* post-hearing brief. D.I. 361. But A.N. did not incur any legal fees, and all interested parties have staunchly maintained that A.N. was not represented by Brian Ferry, attorney for L.L. *See, e.g.*, Hrg. Tr. 205:14–23.

[182] *See Beals v. Wash. Int'l, Inc.*, 386 A.2d 1156, 1159 (Del. Ch. 1978).

[183] *See* D.I. 277 at 2.

[184] *See* D.I. 287 at 4; D.I. 291 at 3; D.I. 298 at 10.

[185] *See* 12 *Del. C.* § 3921(e); *see also Gittings*, 1999 WL 1581733, at *11.

It is axiomatic that equity will not suffer a wrong without a remedy. While the Court has tremendous discretion in crafting remedies,[186] that discretion must remain tethered to the record.

> While this court endeavors always to remedy breaches of fiduciary duty, . . . and has broad discretion in fashioning such remedies, it cannot create what does not exist in the evidentiary record, and cannot reach beyond that record when it finds the evidence lacking. Equity is not a license to make stuff up.[187]

Here, while Guardian's breach of his duty to Mr. N. is disturbing and disappointing, compensatory remedies are unworkable and have no basis in the record. "Since I have found a breach of [Guardian's fiduciary duties,] but am unable to award any other form of relief, I find that [Mr. N.'s estate] is entitled to nominal damages."[188]

> Nominal damages are not given as an equivalent for the wrong, but rather merely in recognition of an injury and by way of declaring the rights of the plaintiff. Nominal damages are usually assessed in a trivial amount, selected simply for the purpose of declaring an infraction of the Plaintiff's rights and the commission of a wrong.[189]

In recognition of Guardian's failure to pay taxes on the Property, I order him to pay $1 in nominal damages to Mr. N.'s successor in interest, his estate.

### 2. Breach Of Duty Of Candor To The Court

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[186] *See Brinckerhoff*, 159 A.3d at 262.

[187] *Ravenswood Inv. Co., L.P. v. Estate of Winmill*, 2018 WL 1410860, at *2 (Del. Ch. Mar. 21, 2018), *aff'd*, 210 A.3d 705 (Del. 2019).

[188] *Id.*, at *25.

[189] *Id.* (alterations omitted) (citing *Oliver v. Boston Univ.*, 2006 WL 1064169, at *34 (Del. Ch. Apr. 14, 2006)).

I turn now to Guardian's failure to tell the Court about the Monition Action and loss of the Property. In the summer of 2018, while seeking to be released from his bond, Guardian learned that the Property had been lost at auction. Despite knowing this fact, Guardian continued in his efforts to close this matter, without mention of the monition sale, for two months. Guardian concealed the consequences of his misdeeds from the Court. His behavior caused a year and a half of burdensome and expensive litigation, commencing after the guardianship had already closed, and lasting longer than the guardianship itself.

More importantly, Guardian's misconduct strikes at the very heart of the principal-agent relationship between guardians and the Court. This Court, acting as Mr. N.'s ultimate fiduciary, placed Guardian in a position of unparalleled trust. The winding-up of that relationship, when the Court evaluates whether a guardian should be released from her bond, was the Court's opportunity to determine whether Guardian had been a faithful agent of the Court. In that crucial moment of reckoning, Guardian made a glaring and self-interested omission and failed to correct previous affirmative statements. His lack of candor undermined the swift administration of justice and was a betrayal of this Court's trust. Such a failure cannot go unpunished.

Yet the problem remains: the usual remedies have been exhausted or are otherwise inappropriate here. And so, I look to this Court's procedures for sanctioning its other agents—attorneys—for guidance and apply those principles by

analogy. Such sanctions are rare, and the Court does not impose them lightly.[190] While those principles do not perfectly map on to the sanctioning of non-attorney agents,[191] I use them to guide my otherwise broad discretion in sanctioning Guardian's misconduct.[192]

The purpose of attorney sanctions is to "deter repetition of such conduct or comparable conduct by others similarly situated."[193] This purpose is served by sanctioning Guardian's misconduct here. This Court relies on guardians' candor, especially in the final bond context, to ensure the continued viability of Delaware's guardianship system and the well-being of this State's most vulnerable citizens.

The Court must give attorneys a reasonable opportunity to respond, which "should include an opportunity for the attorney to present evidence and respond orally before a court imposes sanctions."[194] Here, Guardian has had an ample

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[190] *E.g.*, *Anguilla RE, LLC v. Lubert-Adler Real Estate Fund IV, L.P.*, 2012 WL 5351229, at *7 (Del. Super. Oct. 16, 2012) ("Delaware trial courts, however, rarely impose Rule 11 sanctions.").

[191] For example, the issue of whether it is appropriate for the Court to address the violation, rather than referring the offending attorney to the Office of Disciplinary Counsel, is unnecessary to consider here. *See Crumplar v. Sup. Ct. ex rel. New Castle Cty.*, 56 A.3d 1000, 1009–10 (Del. 2012).

[192] *See Gallagher*, 2007 WL 3262150, at *2.

[193] Ct. Ch. R. 11(c)(2); *see also Beck v. Atl. Coast PLC*, 868 A.2d 840, 855 (Del. Ch. 2005) ("Such conduct is clearly inappropriate, and must be remedied in a manner that will deter future misbehavior of this kind. Every reasonable effort must be made to ensure that conduct of this kind will not be repeated by this plaintiff or by any other.").

[194] *Crumplar*, 56 A.3d at 1011–12.

opportunity to do so. I invited Guardian first to respond in writing,[195] and then to use the Hearing to present evidence about (1) his role in the loss of the Property, including when he found out about that loss, and (2) whether and how he should be sanctioned for such a loss.[196]

Based on the foregoing, I have determined the appropriate sanction is a fine of $4,190.19.[197] Aware of the overdue tax bills and the risk that the Property might be lost, Guardian claims he clinched tightly to this relatively small sum of money to preserve it for medical bills that he ultimately never paid. Rule 11 contemplates sanctions in the form of "an order to pay a penalty into the Court."[198] But in this

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[195] *See* D.I. 287 at 4.

[196] *See* D.I. 298 at 10.

[197] When the Court imposes monetary sanctions under Rule 11, "the hearing should include an inquiry into the attorney's ability to pay." *Crumplar*, 56 A.3d at 1012. While this specific issue was not addressed at the Hearing here, I have limited Guardian's fine to an amount that he would likely be able to pay. As discussed above, Guardian has been paying his attorney's fees for the last year and a half. In the past, these fees have been substantially higher than the fine I impose. *See, e.g.*, D.I. 276. And in any case, I look to Rule 11 as a guide for exercising my discretion, not to ensure compliance with its procedural requirements.

Further, this fine is reasonable in light of the substantial costs incurred by the Court in adjudicating this matter. *See Beck*, 868 A.2d at 857 ("Finally, given the needless burden that the conduct of [attorneys] have imposed on the court, it is appropriate that they should pay an award to the court of $2500. This award represents the cost of one day of the court's mediation services. In reality, the conduct here resulted in several days of judicial and staff time that could have been devoted to handling other matters before the court." (citation omitted) (citing Ct. Ch. R. 174)). Today, Rule 174 charges parties $5,000 per day for judicial mediation of a trust matter and $1,500 per day for judicial mediation of a guardianship. *See* Ct. Ch. R. 174(l).

[198] Ct. Ch. R. 11(c)(2).

case, there is a more worthy recipient. Christiana Hospital, which treated Mr. N. in a vegetative state for over a year, appears to have written off Mr. N.'s extensive medical bills.[199] And so, Guardian shall pay this fine in the form of a donation to Christiana Hospital. Guardian shall submit confirmation of that donation by December 31, 2020.

## III. CONCLUSION

For the foregoing reasons, I find that Guardian breached his fiduciary duties to Mr. N. and his duty of candor to the Court. Judgment against Guardian shall be entered in the amount of $4,191.19. Guardian shall pay $1 of that judgment as nominal damages to Mr. N.'s estate. Guardian shall pay the remaining $4,190.19 as a donation to Christiana Hospital. An implementing order accompanies this decision.

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[199] I take judicial notice of the Register of Wills docket and the filings therein. *See Arot v. Lardani*, 2018 WL 5430297, at *1 n.6 (Del. Ch. Oct. 29, 2018). My review of that docket reveals that Christiana has not filed any claim against Mr. N.'s estate. *See* ROW Folio No. 167885. The lack of a claim against Mr. N.'s estate, coupled with Guardian's testimony that he did not make any payment on Christiana's medical bills, leads me to believe that Christiana has written off Mr. N.'s medical bills. *See* Hrg. Tr. 99:20–100:9.

I also considered redirecting this fine to Mr. N.'s estate. But as I have explained, this, too, would be inappropriate given the practical considerations of this case and the purpose of guardianship actions. But for Christiana Hospital's apparent decision to write off all of Mr. N.'s medical bills, the entirety of Mr. N.'s estate would likely have been payable to Christiana Hospital. These considerations bolster my determination that Christiana Hospital is a more worthy recipient of this modest fine.