

The Family Court of the State of Delaware



FELICE GLENNON KERR
JUDGE

NEW CASTLE COUNTY COURTHOUSE
500 N. KING STREET, SUITE 9400
WILMINGTON, DELAWARE 19801-3732

July 14, 2023

Brandon Spivey, Esquire
Giordano, DelCollo, Werb and Gagne
5315 Limestone Road
Wilmington, DE 19808

LETTER DECISION AND INTERIM ORDER - COSTS

Caroline Kaminski, Esquire
1208 Kirkwood Highway
Suite 3
Wilmington, DE 19805

Rebecca Kilmon, Esquire
500 Delaware Avenue, Suite 1500
P. O. Box 2306
Wilmington, DE 19899-2306

Re: H--- T----- v. J----- T----- and U----- F-----
File No.: CN23-02326; Petition No.: 23-07633
Petition Type: Guardianship

Dear Mr. Spivey, Ms. Kaminski & Ms. Kilmon:

The Court held a status conference regarding the status of this case filed by H--- T----- ("Guardian") against J----- T----- ("Mother") and Unknown Father regarding K--- T----- ("Child") and specifically to address the request for payment of the fees for a neuropsychological evaluation by Dr. James S. Langan and a forensic psychological evaluation by Dr. Joseph Zingaro. Each evaluation would cost \$2,000.00. Ms. Kaminski explained that the psychologists agreed to limit their fees to \$2,000.00 as Ms. Kaminski was Court-appointed to represent Mother. The Court requested the conference in part to better understand the extent of the trust funds held by the Guardian for Mother. This is an unusual case as counsel is generally appointed when a party is indigent. In the present case, counsel was appointed early on due to the emergency nature of the proceedings and as Mother's legal Guardian is adverse to her in this case and therefore Mother needed a representative immediately.

However, the Court learned during the recent status conference that Mother has very significant assets in the guardianship trust which far exceed what indigent parents who appear in family court possess. Most litigants who are given Court-appointed counsel at taxpayer expense have no assets whatsoever. Guardian was concerned that Mother would not have enough funds to sustain her for her lifetime since her only income other than the trust is social security; however, many recipients of appointed counsel are also on social security and don't have enough funds to get through a week. Thus, the question is whether the Delaware taxpayers should be funding these evaluations or the trust. If the funds were not in trust, it would be extremely clear that the Court would not pay the evaluation costs for Mother. The Court does believe that the neuropsychological evaluation is necessary to determine Mother's ability to parent K---, unless there is an existing evaluation which can be provided to Mother's counsel which would answer the question of Mother's current ability to parent K---. The Court has no information as to the extent of Mother's disabilities and her condition is something that could have improved or deteriorated since the guardianship was put in place. The Court is aware that Mother suffered a traumatic brain injury.

Mr. Spivey on behalf of Guardian questioned whether the evaluations would be in Mother's best interest and therefore whether the trust should pay the cost. He indicated that it would be in the interest of the child, K--- T----- ("Child"), but not Mother. The Court notes that Mother has a fundamental constitutional right to parent her child which cannot be taken without due process.¹ The Supreme Court of Delaware has emphasized such rights in numerous decisions over the years.² Mother's desire to exercise this right and to raise her child is in her interest. This Court has no information as to Mother's current ability to raise her child or if the Child would be dependent, abused or neglected in Mother's care. The Court has no evidence of the last time Mother was evaluated and if that evaluation included an assessment of her parenting abilities. Ms. Kaminiski believed that the last evaluation was in 2015. While Mother is in a guardianship, this Court has awarded custody to parents who are minors and in the custody or guardianship of others but are able to parent their own children.

This case is also different than many guardianships in that Mother and Guardian reside together. Generally, persons residing together do not litigate guardianship issues as they live as a family.³ When both parents live together, they are not permitted to litigate custody pursuant to Delaware statute. The Court believes it would be in the best interest of K--- and the parties if they were to mediate the case.

Given the amount of funds in the trust but given that delay would not be in the interest of the parties or K---, the Court will advance the funds but for the cost of the neuropsychological evaluation only at this time and will require Guardian to seek the funds from Chancery Court. Given the fundamental rights of Mother that are at stake, this Court finds that it is in Mother's best interest to have an updated neuropsychological evaluation completed. The Court will also order the parties to engage in mediation upon receipt of the neuropsychological evaluation.

¹ See *Lassiter v. Department of Social Services*, 452 U.S. 18 (1981).

² *Watson v. Division of Family Services*, 813 A. 2d 1101 (Del. 2002); *Walker v. Walker*, 892 A.2d 1053 (Del. 2006).

³ 13 Del. C. §701(a).

IT IS SO ORDERED this _____ day of **JULY, 2023** that:

- 1. The Court will advance \$2,000.00 for the neuropsychological evaluation.**
- 2. Guardian shall immediately request permission from Chancery Court to have the trust reimburse Family Court for the cost of evaluation. She shall present this Order to the Chancery Court.**
- 3. Upon receipt of the evaluation the parties shall engage in mediation. The Court will seek to have another Judge mediate, given the complexities of the case.**

Very truly yours,

/ Felice G. Kerr/
Felice Glennon Kerr, Judge

FGK:vm

Date emailed:

Date mailed: