IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

In the Matter Of:	)	
Y.L.G.,	)	C. M. No. 19018-N-SEM
a person with a disability	)	

REVISED ORDER REMOVING CO-GUARDIAN OF PERSON

WHEREAS:

A. On April 30, 2019, I signed an order appointing Y.W. and A.G. as co-guardians of the person of Y.L.G. (the "person with a disability") and A.G. as the guardian of the property of the person with a disability. This co-guardianship structure was proposed by the parties as part of a settlement agreement they reached at mediation.

B. Despite the parties' amicable resolution of this matter, the co-guardians have had numerous disputes. Rather than summarize the docket, I confine myself to the instant dispute—the co-guardians each petitioned to remove the other as guardian of the person (the "Cross-Petitions").[1]

C. A.G. argues Y.W. should be removed because she has (1) removed the person with a disability from her facility for extended periods of time, potentially jeopardizing her placement, (2) been uncooperative regarding finances, (3) harassed A.G. and the person with a disability's medical providers, and (4) acted against

[1] *See* Docket Item ("D.I.") 85, 88.

medical advice regarding vaccinations, knee injections, and bed height. Altogether, A.G. argues Y.W.'s actions were in breach of "her fiduciary duty to [the person with a disability], cause undue harm to [the person with a disability] and frustrate the actions of the co-guardian, [A.G.], to provide care for [the person with a disability]."[2]

D. Y.W. argues A.G. should be removed because he (1) cancelled the person with a disability's appointment with a Spanish-speaking neurologist, (2) attempts to unilaterally dictate visitation, against the person with a disability's best interest, (3) disregards the final order's dispute resolution mechanism and requirement to keep Y.W. reasonably informed of medical appointments, treatments, and care, and (4) belittles and disparages Y.W. in communications with the person with a disability's caretakers.[3]

E. I heard the Cross-Petitions during an evidentiary hearing on March 23, 2022.[4] This is my post-hearing decision, which has been revised after considering the limited exceptions, and consent thereto, filed on April 19, 2022.[5]

F. A guardian may be removed for "for any sufficient cause." 12 *Del. C.* § 3908. The decision to remove a guardian is committed to the discretion of the

[2] D.I. 85.
[3] D.I. 88.
[4] *See* D.I. 104.
[5] *See* D.I. 107 (arguing for a 48-hour visitation limitation, rather than the 24-hour limitation in my original order), 108 (agreeing).

Court.[6] In determining whether to remove a co-guardian, the Court reviews whether the co-guardian acted with competency, rationality, and integrity and in the best interest of the person with a disability. *See In re Harris*, 2003 WL 22843905, at *1 (Del. Ch. Nov. 14, 2003). The Court will also consider whether removal is in the best interest under the circumstances. *See In re Williams*, 2011 WL 3925690, at *2 (Del. Ch. Aug. 25, 2011).[7]

NOW, THEREFORE, IT IS ORDERED this 12th day of May 2022, as follows:

1. A.G. is hereby removed as co-guardian of the person. Y.W. shall remain as sole guardian of the person.

2. Determining which co-guardian to remove was not an easy call. Neither party is blameless nor fully responsible for the co-guardians' failures in communication and coordination. But, holding the parties to their stated reasons for

[6] *In re Harris*, 2003 WL 22843905, at *1 (Del. Ch. Nov. 14, 2003).

[7] For example, in *In re Williams*, Vice Chancellor Laster affirmed the removal of a guardian for acting irrationally and not in the best interest of the person with a disability. 2011 WL 3925690, at *2. There the guardian was at odds with the person with a disability's facility. The guardian accused the facility of mistreatment, but after independent evaluations by court-appointed monitors, the Court found nothing to substantiate those claims. On the other hand, the court-appointed monitors confirmed that the guardian was refusing necessary medication and otherwise interfering with the facility's ability to care and treat the person with a disability. The Vice Chancellor agreed with the Magistrate in Chancery that the guardian "sincerely believe[d] she [wa]s acting in [the person with a disability's] best interest." *Id.* at *3. But those "beliefs [we]re not rational in light of the overwhelming evidence in the record demonstrating that [the person with a disability was] receiving appropriate care at [the facility]." *Id.* Thus, the guardian was removed.

removal, I find A.G. failed to substantiate his claims. Y.W. succeeded.

3. I find no fault in Y.W. seeking monthly financial information—to which she was entitled under the final order. Similarly, Y.W. was not required, nor expected, to waive her right to review and file exceptions to A.G.'s accountings. Such is her right as an interested party. What A.G. saw as lack of cooperation was merely Y.W.'s (perhaps forceful) invocation of rights afforded to her. Further, what A.G. saw as harassment or lack of cooperation regarding medical care and treatment, was shown to be merely (and, again, perhaps forceful) questions and concerns raised to understand the situation more fully. Tone aside, this is what the Court expects from guardians—to ask questions and think deeply before making decisions on behalf of a person with a disability.[8] Likewise, A.G. did not present persuasive evidence that Y.W. acted against medical advice.

4. Less straightforward is whether Y.W.'s decision to remove the person with a disability from her facility for an extended period of time supports Y.W.'s removal as guardian of person. While the co-guardians were negotiating where to place the person with a disability, Y.W. advocated for her home, but she was

[8] During trial, A.G. appeared frustrated with Y.W.'s probing and prodding. And, on some level, I understand—no one likes to be challenged. And the record reflects that Y.W. may not be the easiest person to work or communicate with. But I find her dogged pursuit of information and clarity was driven by an interest in ensuring her mother's best interests were met. This is what we look for in a guardian and does not support her removal.

overruled.[9] Her conduct could be interpreted as intentional disregard for, or noncompliance with, the placement decision. Or, perhaps, it was retaliatory because Y.W. did not agree with the placement and felt better suited to care for her mother. Neither is outside the realm of possibilities. But because Y.W. did return her mother to the facility, the record reflects the person with a disability did not suffer any cognizable setbacks, and the placement was not jeopardized, I decline to find that this conduct supports removal. I am, however, concerned that future overnight visits may negatively affect or jeopardize the person with a disability. I address this concern in paragraph seven.

5. On the other hand, Y.W.'s bases for removing A.G. were substantiated at the hearing. When the person with a disability was placed in a facility in Sussex County, A.G. made the conscious and intentional decision to list Y.W., his co-guardian, as the third emergency contact. Not only did this placement elevate himself, and his non-fiduciary wife, over Y.W., but A.G. placed additional restrictions that Y.W. not be contacted for emergencies unless she was physically in the building. This was wholly inappropriate and unbecoming of a co-guardian. Further, A.G. attempted to restrict Y.W.'s visitation with the person with a disability. The final appointment order expressly permitted visitation and required that

[9] *See* D.I. 36.

visitation could not be refused if requested with 24-hour notice. Yet A.G. attempted to refuse visitation. He did not have the authority to do so. This supports his removal.

6. Although Y.W. will remain as sole guardian of the person, she is reminded that she must work cooperatively with A.G., who remains sole guardian of property. The co-guardians are expected to treat each other with respect and courtesy, recognizing their shared responsibility to serve and protect their mother.

7. Y.W.'s authority as sole guardian of the person is limited as follows:

a. Y.W. may not change the person with a disability's residence or remove her from Brandywine Senior Living for a period of over 48 hours without prior court approval. That approval may be requested through a petition, which must be served on all interested parties, who have the right to respond in support or opposition.

b. Y.W. may not interfere with, restrict, or suspend visitation between A.G. and the person with a disability. But A.G. is subject to the same limitation on visitation over 48 hours; prior approval is required before any such visitation may occur.

c. Y.W. shall execute HIPAA releases allowing A.G. to independently access the person with a disability's medical records and communicate with all her medical providers.

d. On the first Friday of every month, Y.W. shall send A.G. an email, updating A.G. on the person with a disability's health, including any new physicians, medications, or treatments the person with a disability is receiving.

e. In the event of a medical emergency, Y.W. shall notify A.G. as soon as reasonably practicable and make all reasonable efforts to keep him informed of the relevant condition, treatment, or tests, until the emergency subsides.

8. Neither guardian may disparage the other in the presence of the person with a disability.

9. The guardian of the property is reminded of his monthly requirement to send bank statements, including copies of cancelled checks or other itemization of expenses paid from the guardianship account, to Y.W.

10. The remaining provisions in the Final Order dated April 30, 2019, as supplemented on June 11, 2019, remain in full force and effect, unless otherwise provided herein.

11. This is a final report under Court of Chancery Rule 143 and exceptions may be filed under Court of Chancery Rule 144.

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