
C.A. No. 17950-N

APPENDIX A

assigned in, the Court of Chancery's July 18, 2016 Order Adopting Master's Report and July 28, 2016 Order Regarding Adoption of Master's Report. The record does not support the appellant's claims that the Court of Chancery erred when deciding that the appointment of the appellee, Kevin Reagan, as permanent guardian, was in the best interests of Mrs. Palmer. When adopting the Master's well-reasoned Final Report dated February 12, 2016, the Court of Chancery correctly applied the standard of review articulated in *DiGiacobbe v. Sestak*.² The Court of Chancery's orders of July 18, 2016 and July 28, 2016 reflect a thorough review of the matter, careful legal analysis, proper application of the law, and no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Court of Chancery is AFFIRMED.

BY THE COURT:

/s/ Gary F. Traynor
Justice

² *DiGiacobbe v. Sestak*, 743 A.2d 180, 183–84 (Del.1999) (“[T]he standard of review for a master's findings—both factual and legal—is *de novo*.”).

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN THE MATTER OF
DEBORAH R. PIRESTANI.

) C. A. No. 17950-N-VCL
)

ORDER ADOPTING MASTER'S FINAL REPORT

WHEREAS:

A. On September 22, 2014, representatives of the Adult Protective Services Program of the Delaware Department of Health and Human Services removed Deborah Ann Reagan Pirestani ("Deborah") from the care of her husband, Joseph Daniel Pirestani ("Dan"). Deborah has been diagnosed with "Schizophrenia OBS" and suffers from paranoia, delusions of grandeur, dementia, and poor memory.

B. On November 14, 2014, Kevin J. Reagan ("Kevin") sought to be appointed guardian for Deborah, who is his sister.

C. Joseph Layton was appointed as attorney ad litem for Deborah. In a report dated December 9, 2014, the attorney ad litem supported Kevin's petition to be appointed as Deborah's guardian. The attorney ad litem has maintained that position throughout these proceedings.

D. By letter dated December 10, 2014, Dan objected to the appointment of Kevin as Deborah's guardian. From that point on, this matter was treated as a contested guardianship.

E. On January 23, 2015, Dan and his mother cross-petitioned to be appointed as Deborah's co-guardians.

APPENDIX B



F. A hearing on the contested guardianship was scheduled for March 20, 2015.

G. Shortly before the hearing, Dan submitted a list of exhibits. By letter dated March 19, 2015, Master LeGrow postponed the hearing to allow the parties to review and digest Dan's new exhibits, as well as to let the parties develop the record regarding certain key events. The hearing was rescheduled for June 12, 2015.

H. In a supplemental report dated June 4, 2015, the attorney ad litem reiterated at length the reasons why he continued to support Kevin's petition to be appointed as Deborah's guardian.

I. On June 12, 2015, Master LeGrow presided over an evidentiary hearing (the "Evidentiary Hearing").

J. On June 23, 2015, Master LeGrow issued a draft report (the "Draft Report") recommending that Kevin be appointed Deborah's guardian.

K. Dan took exception to the Draft Report, and briefing on his exceptions ensued.

L. On July 25, 2015, Deborah resumed living with Dan. Since then, a nurse from Connections CSP, Inc., has made home visits three times per week to monitor Deborah and deliver her medications.

M. On February 12, 2016, Master Legrow issued her final report (the "Final Report"). The report recommended that the court appoint Kevin as Deborah's guardian.

N. On February 24, 2016, Dan filed exceptions to the Final Report.



O. By order dated April 1, 2016, this court appointed Kevin as Deborah's interim guardian pending a ruling on Dan's exceptions to the Final Report.

P. On May 17, 2016, Dan filed his 113-page opening brief. Kevin and the attorney ad litem have indicated that their positions on the matter are established and that neither of them intends to submit further briefing.

NOW THEREFORE, the court finds and orders as follows:

1. This court has conducted a *de novo* review of the record and considered *de novo* the rulings in the Final Report.

2. The court agrees with the analysis conducted and the conclusions reached in the Final Report. Deborah is disabled and needs a guardian for her person and property. Kevin is the most appropriate person to fill that role.

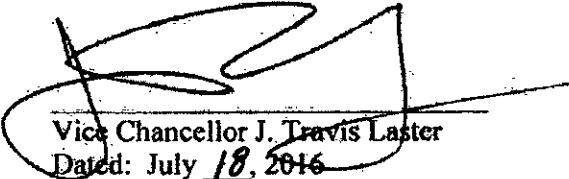
3. The Final Report was the product of extensive proceedings that took place over approximately fourteen months, which included motion practice and the Evidentiary Hearing. During the hearing, Dan introduced over 110 exhibits, including hundreds of pages of medical records, articles, photographs, and his own analysis. The Evidentiary Hearing included testimony from eight witnesses, including an expert, Toby Watson, Psy.D., called by Dan to testify on the use of psychiatric medication and forced treatment. Dan also submitted a twenty-nine page affidavit written by Dr. Watson. The evidentiary hearing was recorded on video to facilitate this court's *de novo* review. Master LeGrow also permitted Dan to introduce additional documentation into evidence during the Evidentiary Hearing. After the hearing and before issuing the Draft Report, Master LeGrow permitted Dan to add supplemental documents to the record, including a sixty



page "additional response" to a report by the attorney ad litem. Since the Evidentiary Hearing and as recently as June 22, 2016, Dan has continued to file letters, motions, and other documents with the court. The court's *de novo* review of the record encompassed all of Dan's voluminous submissions to this court, including submissions made before, during, and after the Evidentiary Hearing.

4. Dan's exceptions to the Final Report are overruled, and the Final Report is adopted as a decision of this court.

5. There are also several outstanding motions filed by Dan over the past several months. *See, e.g.*, Dkt. 126; Dkt. 124; Dkt. 110; Dkt. 95. Some of those motions were procedurally improper, but all have been reviewed and considered by the court. To the extent that this order has not mooted the subject matter of those motions, they are now denied.



Vice Chancellor J. Travis Laster
Dated: July 18, 2016



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN THE MATTER OF)
DEBORAH PIRESTANI,) C.M. No. 17950-N-ML
a disabled person)

MASTER'S REPORT
(Post-Trial)

Oral Draft Report: June 23, 2015
Submitted on Exceptions: November 20, 2015
Final Report: February 12, 2016

Kevin J. Reagan, pro se, Petitioner.

Joseph Daniel Pirestani, pro se, Cross-Petitioner.

Carla R. Pirestani, prose, Cross-Petitioner.

Jonathan Layton, Esquire, Attorney *Ad Litem*.

LEGROW, Master

APPENDIX C

Competing petitions for guardianship of Deborah Pirestani (“Deborah”) have been filed by her husband and brother. Deborah’s husband has overseen her care for many years, functioning to various degrees as her substitute decision-maker and caregiver, while controlling any income Deborah received. During much of that time, Deborah’s husband has refused on her behalf medication to give to treat her schizophrenia and related conditions. Unfortunately, Deborah’s husband has proven himself as a caretaker to be unreliable, illogical, and singularly-focused on ensuring Deborah never is prescribed antipsychotic medication, all of which presented and continues to present a danger to Deborah’s health and safety. In contrast, although he does not live locally and has not seen Deborah regularly in recent years, Deborah’s brother has demonstrated the open-minded and rational thinking necessary to assume guardianship of his sister. For the reasons that follow, as well as the reasons articulated in my draft bench report, I recommend that the Court enter an order granting Deborah’s brother guardianship of her person and property.

I. BACKGROUND

These are the facts as I find them after trial, and after consideration of various exhibits and documents submitted by Deborah’s husband, Joseph Daniel

Pirestani (“Dan”),¹ after trial in this action. By her brother’s account, Deborah was highly intelligent and extremely talented in her adolescence and early adulthood. She was a successful actress and artist until her twenties, when symptoms of schizophrenia began to emerge.² Even then, she initially was able to resume her acting career for a time, but repeatedly was institutionalized throughout the 1990s as symptoms of her disease took hold.³ At the time this guardianship case was initiated, Deborah’s treating physician at Governor Bacon Health Center diagnosed her with “Schizophrenia OBS” and indicated she was incapable of performing most activities of daily living without supervision.⁴ Other evidence admitted during this action indicates that Deborah suffers from paranoia, delusions of grandeur, dementia, and poor memory, and that she regularly refuses medication prescribed to treat those issues.⁵

Deborah married Dan in 1994. At some point before 2005, Deborah filed a petition for divorce, which was granted by the Family Court. That divorce decree later was vacated upon Deborah and Dan’s joint petition.⁶ Apart from her various

¹ Because several of the parties and participants in these proceedings share the same last name, I use first names for clarity and consistency. No disrespect is intended.

² *In re Deborah Pirestani*, C.M. No. 17950 at 110 (TRIAL TRANSCRIPT) (June 12, 2015) (hereinafter cited as “Tr.”).

³ *Id.* at 110-11.

⁴ Pet. for Guardianship, Aff. of David Sherwood, M.D. at 2.

⁵ See, e.g. Report of Attorney *Ad Litem* dated Dec. 9, 2014; Trial Exhibit (hereinafter cited as “Ex.”) K.

⁶ *Pirestani v. Reagan*, No. 165, 2004 (Del. July 18, 2005) (ORDER).

hospitalizations and institutionalizations, Deborah has lived with Dan since their marriage.

In April 2009, Deborah, at Dan's suggestion and with his oversight, weaned herself off the various medications prescribed to treat her schizophrenia, including antipsychotic medication.⁷ Since that time, Dan effectively has functioned as Deborah's *de facto* guardian. That is, according to several witnesses, including Deborah's brother, Kevin Reagan ("Kevin"), Dan's mother, Carla Pirestani ("Carla"), and employees of Adult Protective Services, Deborah was unable to care for herself without assistance by the time she ceased using medication in 2009. Dan took charge of Deborah's day-to-day care, and in that capacity oversaw her healthcare, treatment, activities of daily living, and general well-being. This relatively unusual situation provides an illuminating picture of the decisions Dan would make for Deborah were he appointed as her guardian by this Court.

Before describing Dan's decisions regarding Deborah's care, it is helpful to understand Deborah's abilities and limitations during the relevant time period. Unfortunately, because Dan almost never took Deborah to a doctor between 2009 and 2014, the evidence is limited to (1) Dan and Carla's testimony, (2) Kevin's recollections of his visits and discussions with Deborah, and (3) Deborah's condition at the time of trial. By the time of trial, Deborah had been civilly

⁷ Ex. O at 56; Tr. at 225.

committed and resumed taking antipsychotic medication.⁸ Although she was relatively calm, Deborah nonetheless exhibited paranoid delusions during her testimony, describing how, when she lived with Dan, she saw clones of him coming in and out of the house, was subjected to cyber attack by Microsoft, and was exposed to nuclear fallout around the home that changed the molecular structure of her body.⁹ Deborah exhibited other delusions during her meeting with her court-appointed attorney *ad litem*, Jonathan Layton, Esquire, to whom she indicated she: (1) was a board member and founder of several Fortune 500 companies, (2) graduated from Harvard University, where she received her degree in “M.I.T.,” (3) had been cloned multiple times because “corporate America” wanted to share her brain with others, (4) was a prisoner of war in Iran, Iraq, and Afghanistan.¹⁰

Kevin Reagan testified that his interactions with Deborah were sporadic in the period Dan oversaw her care, largely because of disagreements between Kevin and Dan about treatments available to Deborah and what Dan refers to as “mainstream” medicine or psychiatry.¹¹ Kevin visited Deborah at least once during this period, and recalled her as “confused.”¹²

⁸ Ex. AA.

⁹ Tr. at 205, 209-13.

¹⁰ See, e.g. Report of Attorney *Ad Litem* dated Dec. 9, 2014 at ¶ 23.

¹¹ Tr. at 110-12.

¹² *Id.* at 111-12.

Carla testified that Deborah was calmer in the period before she altogether ceased taking antipsychotic medications, although Carla saw her behave calmly “some of the time” that she was not medicated.¹³ Dan disagrees with characterizations of Deborah that suggested she was a danger either to herself or others, or that she required constant supervision, but he acknowledges that he controlled, or attempted to control, the food she ate, the persons with whom she interacted, and the medical care and treatment she obtained. As further evidence of her unstable mental condition during this period, Deborah was institutionalized at least five times between December 2009 and July 2014.

In effect, therefore, during the five or six years (if not more) before this guardianship case was initiated, Dan functioned as Deborah’s caregiver with very little assistance or oversight from anyone other than Dan’s parents. Dan made decisions for Deborah regarding her healthcare, medication, food, day-to-day activities, and finances. His actions and inactions during that time conclusively convince me that he would not be a proper court-appointed guardian for Deborah.

After 2009, Dan concedes he did not obtain regular health care for Deborah, foregoing preventative care visits with a primary care physician, gynecologist, or

¹³*Id.* at 226-27.

dentist.¹⁴ He did not believe there was any need to monitor Deborah's high cholesterol, and claims that he did not realize women require regular check-ups and screenings.¹⁵ Although Dan acknowledges Deborah's significant dental issues, including the loss of a substantial number of teeth and issues with her gums, Dan attributed those issues to side effects of Deborah's antipsychotic medication and thus determined that Deborah did not need to see a dentist for regular check-ups or to have her loose teeth extracted.¹⁶ To the contrary, because one dentist advised that all of Deborah's teeth eventually would have to come out, Dan illogically concluded Deborah did not require regular dental care to monitor her oral health.¹⁷ Alarming, when Deborah began to complain that her teeth were very loose, Dan suggested that she pull them out herself, or alternatively offered to pull them out for her.¹⁸

Dan believes it was the "medical system's" responsibility to alert him when Deborah needed preventative care.¹⁹ Dan's inaction, however, regarding Deborah's medical care extends beyond mere ignorance. Rather, he actively sought to avoid Deborah being seen by any "mainstream" medical provider

¹⁴ According to Dan, Deborah visited a dentist in November 2009, September 2012, February 2013, and May 2013. It appears only two of those visits involved preventative care. "Report" drafted by Dan Pirestani dated Jun. 2, 2015, at 21-22 (hereinafter cited as "Jun. 2 Report").

¹⁵ Ex. O at 36-37.

¹⁶ Am. Opening Br. of J. Daniel Pirestani in Supp. of Exceptions ("Am. Opening Br.") at 42-44.

¹⁷ Jun. 2 Report at 21-22; Am. Opening Br. at 43-44.

¹⁸ Jun. 2 Report at 22.

¹⁹ Ex. O at 36.

because he feared Deborah would be institutionalized and forced to take antipsychotic medications, which Dan thought – genuinely, I believe – would be harmful to Deborah and would cause her to deteriorate further.²⁰ For that reason, Deborah did not receive regular medical or dental treatment for at least half a decade.²¹

Dan similarly eschewed any psychiatric treatment for Deborah's schizophrenia. Many years ago, Dan concluded that antipsychotic medication was harmful to Deborah, which precipitated her decision to stop taking the drug. This conclusion is not baseless; as described below, Dan provided expert testimony at trial that explained some of the research and findings regarding the significant side-effects associated with antipsychotic medication and the increased likelihood of relapse experienced by patients taking those drugs. Having so concluded, however, Dan did not pursue any alternative therapy or treatment for Deborah's schizophrenia. Rather, he concluded that he could control Deborah's schizophrenia – which Dan describes as agitation and irritability – with diet and exercise.²² Dan has provided no research or medical opinion indicating diet and exercise are effective or accepted treatments for Deborah's disease.²³ Dan's expert testified that psychotherapy and cognitive behavioral therapy are alternative

²⁰ See, e.g. *Id.* at 45.

²¹ *Id.* at 37.

²² *Id.* at 72.

²³ *Id.* ("I believe certain psychosocial approaches and educational techniques might improve Deborah's psychosis, but I haven't done much in that regard.") *Id.* at 75-76, 81.

treatments to medication for patients suffering from schizophrenia.²⁴ Dan did not pursue either option. Rather, he concluded he was positioned to “treat” Deborah with diet and exercise because he has read several psychiatry books and articles and completed one and a half years of medical school.²⁵

Dan did occasionally take Deborah to visit a psychiatrist in Washington, D.C., Joseph Tarantolo, M.D., whom Dan chose and allowed Deborah to see specifically because Dr. Tarantolo would not prescribe antipsychotic medication.²⁶ Deborah’s visits with Dr. Tarantolo were not regular,²⁷ but one is particularly noteworthy: in July 2014, after Deborah involuntarily was committed to Rockford Center for a period of time, she was discharged with a prescription for Ativan²⁸ and instructed to follow up with her regular psychiatrist. Without filling the prescription, Dan then took Deborah to Dr. Tarantolo. There is no indication in the record that Dan told Dr. Tarantolo about the prescription. Dan did not know – and did not ask – whether Dr. Tarantolo was treating Deborah for her mental illness, or whether Deborah should see another psychiatrist.²⁹ Rather, the visit proceeded as a

²⁴ Tr. at 164-66.

²⁵ Ex. O at 56, 73-77; Am. Opening Br. at 75.

²⁶ Tr. at 263.

²⁷ For example, Deborah did not see Dr. Tarantolo at all between July 2012 and July 2014. *See* Ex. O at 58.

²⁸ Ativan is the brand name for Lorazepam, a medication used to treat anxiety.

²⁹ Ex. O at 60-61. Although Dan did not discuss with Dr. Tarantolo whether he was treating Deborah for her mental illness, he contends that Dr. Tarantolo’s treatment plan had superseded any treatment plan given to Deborah upon discharge, thereby excusing Dan from filling Deborah’s prescription. *Id.* at 73.

“couples therapy” session intended to improve Deborah’s attitude toward Dan.³⁰ Dr. Tarantolo instructed Dan and Deborah to have “quiet tea-time together using skull cap tea.”³¹ Dan takes pains to point out that he in fact purchased the skull cap tea. Dan did not, however, make any follow-up appointments for Deborah or otherwise seek continued care for the issues that prompted her stay at Rockford.

In addition to ignoring treatment for physical and mental health, Dan also allowed Deborah to leave their home for long stretches of time unsupervised. During these excursions, Deborah frequently would walk along the shoulder of a busy, multi-lane road. At times, Dan would follow Deborah in his car, but not always. The police received reports that Deborah was crossing the street unsafely, endangering herself and motorists.³² Deborah also repeatedly would leave the home and go into area businesses, where she at times attempted to shoplift and was verbally aggressive. Deborah also frequently called 911 to report one of her paranoid delusions, or to ask for help getting away from Dan. Dan allowed Deborah to walk around unsupervised, and to enter various stores, while her schizophrenia remained untreated and despite past incidents of shoplifting and violent outbursts when she was in stores.³³ In short, this situation was a “ticking time bomb” that presented real potential harm to Deborah’s personal safety, not to

³⁰ *Id.* at 60.

³¹ *Id.*

³² *Id.* at 11-15.

³³ *Id.* at 12-14.

mention the possibility that she would face legal action for her conduct. It also presented potential harm to motorists or other patrons or employees at the stores Deborah visited. Finally, it unnecessarily taxed police resources.

While caring for Deborah, Dan also allowed her to live in an unsanitary environment with minimal access to food. When Adult Protective Services (“APS”) first intervened in Deborah’s care, they observed that the apartment where Deborah and Dan lived was dirty and there was black mold growing in the bathroom.³⁴ APS found almost no food in the home.³⁵ Before APS’s involvement, Carla had seen the black mold and the unkempt apartment and advised Dan to address the problem. Although Dan contends there was food in the home, he acknowledges that he kept Deborah on a restricted diet in order to calm her “agitation.”³⁶ During her calls to 911 and her interactions with police and APS, Deborah frequently complained about hunger.³⁷

As previously noted, Deborah was institutionalized in mental health facilities several times between 2009 and 2014, including December 2009, August 2011, December 2011, July 2012, and July 2014. Upon her release, she was returned to Dan’s care. After her July 2014 stay in the Rockford Center, however,

³⁴ Ex. L, APS case record, APS visit summary dated 8/26/14.

³⁵ *Id.*

³⁶ Ex. O at 75-76; Am Op. Ex Br. at 72-73.

³⁷ Tr. at 18, 43.

APS began to monitor Deborah's health and safety with periodic checks.³⁸ During APS's initial visit to the home, the social worker found Deborah unbathed and unkempt, wearing ill-fitting clothing, and complaining about not wanting to live with Dan.³⁹ During a follow-up visit on August 29, 2014, Dan was instructed to make an appointment for Deborah with a primary care physician.⁴⁰ Dan spent days searching for a doctor who matched Dan's philosophy regarding medication.⁴¹ When he finally selected a physician and made an appointment, Dan failed to bring the necessary identification and insurance information to the appointment.⁴² When APS made a follow-up check nearly a month later, and learned that Deborah had not yet seen a physician and Dan had not made another appointment, APS took Deborah into protective custody.⁴³ Deborah eventually was civilly committed to Governor Bacon Health Center, along with a brief stay in Rockford Center.⁴⁴ At the time of trial, she was staying at the Delaware Psychiatric Center.

Kevin did not learn of Deborah's problems or APS's involvement with her care until after she was taken into custody. Kevin then began regularly discussing Deborah's case with APS and became, in effect, her surrogate decision-maker. In November 2014, Kevin filed with this Court a petition to be appointed guardian of

³⁸ Ex. K, p. 1.

³⁹ Ex. L, APS case record, APS visit summary dated 8/26/14.

⁴⁰ *Id.*, APS visit summary dated 8/29/14.

⁴¹ Ex. O at 45-47.

⁴² *Id.* at 44-45; Ex. L, APS summary dated 9/19/14.

⁴³ Ex. L, APS case record, APS summary dated 9/22/14.

⁴⁴ Ex. K.

Deborah's person and property. Jonathan Layton, Esquire was appointed as Deborah's attorney *ad litem*. Dan objected to Kevin's petition and Dan and Carla later filed a cross-petition seeking to be appointed Deborah's co-guardians. This matter then was scheduled for an evidentiary hearing.

In addition to the background information summarized above, other key testimony emerged during the hearing. First, Dan offered testimony from Dr. Watson, who described various studies regarding prolonged use of antipsychotic medication and the rate of relapse for those using those medications. According to Dr. Watson, numerous studies have documented serious side effects associated with these drugs, and patients who use them for long periods of time often experience worsening symptoms of schizophrenia when they are taken off the drug.⁴⁵ Dr. Watson works with patients who take these medications, as well as those who do not, and does not appear to share Dan's absolute views regarding the harmful effects of these drugs. Notably, Dr. Watson was not aware of any research regarding whether a person who has been on antipsychotic medication for many years, like Deborah, can cease taking the medication and effectively function or receive alternative treatment for schizophrenia.⁴⁶

Carla's trial testimony was perhaps the most important, in my view, because she acknowledged Dan's limitations and expressed doubt regarding his ability to

⁴⁵ Ex. V, Aff. of Dr. Watson, at ¶¶ 11-13, 15, 18.

⁴⁶ Tr. at 192.

act independently as Deborah's guardian. At the time, Carla was seeking co-guardianship of Deborah, but Carla did not take exception to my draft report recommending that Kevin be appointed Deborah's guardian, and she has since indicated that she no longer is pursuing her petition for co-guardianship.⁴⁷ During trial, Carla acknowledged that she was concerned about Deborah walking unsupervised along the highway and expressed those concerns to Dan.⁴⁸ Carla also testified that she advised Dan to address the cleanliness and mold issues in the home he shared with Deborah and interposed questions regarding Deborah's dental health.⁴⁹ When Carla was asked if she thought Dan was capable of taking care of Deborah as Deborah's sole guardian, Carla responded "I'm not sure if he would be."⁵⁰ Carla also testified that Dan was not gainfully employed between 2008 and 2014.⁵¹

Dan's testimony, and his arguments throughout this case, focused primarily on whether APS acted properly in removing Deborah from his home, and whether he truly could be characterized as "neglectful" of Deborah under Delaware law, given his professed ignorance of the law and of the need for routine medical care. It is clear from Dan's testimony that he genuinely believes the use of antipsychotic medication will be harmful to Deborah and will hasten her death and worsen her

⁴⁷ Pet'r's Response to Am. Opening Br. at Ex. 3.

⁴⁸ Tr. at 241-42.

⁴⁹ *Id.* at 239-41.

⁵⁰ *Id.* at 237.

⁵¹ *Id.* at 231, 234.

mental condition. It also is clear that, given that view, Dan took calculated and repeated steps to limit Deborah's interaction with "mainstream" medicine. Having weighed the evidence, I believe Dan's inaction regarding Deborah's healthcare between 2009 and 2014 was driven not by his ignorance of the importance of regular medical or dental care, but rather by his mission to ensure that Deborah was not prescribed antipsychotic medication or institutionalized. Dan's testimony, as well as his post-trial submissions, also clarifies that, if appointed Deborah's guardian, he likely would choose Dr. Tarantolo as Deborah's treating psychiatrist, knowing that Dr. Tarantolo would not prescribe antipsychotic medication, regardless of what any other doctor indicated was in Deborah's best interests.⁵²

One of the members of Deborah's treatment team, Donald Taggart, testified at trial regarding Deborah's present mental state and the course of treatment recommended for her by her treating physician, Dr. Grimes, at the Delaware Psychiatric Center. According to Mr. Taggart, and to a letter from Dr. Grimes that was admitted into evidence, Deborah improved significantly after she was committed involuntarily for treatment.⁵³ In the view of Dr. Grimes, the use of antipsychotic and mood stabilizing medications had calmed Deborah's agitation

⁵² *Id.* at 269; Am. Opening Br. at 82-84. Dan conceded that, if ordered to do so by a court, he would allow Deborah to be treated with antipsychotic medication.

⁵³ Tr. at 286; Ex. AA.

and outbursts, such that she could be discharged to a supervised apartment and allowed freedoms she could not enjoy while confined at DPC.⁵⁴

Finally, Kevin's testimony provided insight into his background and how he would approach overseeing Deborah's care if appointed as her guardian. Kevin has a Ph.D. in microbiology and immunology and is employed in a biotechnology company in Minnesota.⁵⁵ Kevin hopes to retire in two to three years time, after which he hopes to relocate to this area or to California.⁵⁶ At the time of trial, Kevin indicated that he believes Deborah needs to live in a supervised facility that will ensure she takes any necessary medication on a regular basis, and that he would defer to Deborah's doctors regarding the appropriate treatment for her conditions.⁵⁷ Kevin did, however, express his belief that Deborah was being over-medicated at DPC and testified that he would like to see her moved to a less restrictive nursing facility as soon as possible.⁵⁸

A few weeks after trial, I issued a draft bench report recommending that the Court award guardianship to Kevin. Dan took exception to my draft report and the parties briefed Dan's arguments. Shortly after I issued my draft report, and unrelated to my recommendation, another civil commitment hearing was held for Deborah, after which the Civil Commitment Court ordered DPC to release her.

⁵⁴ Tr. at 290-93; Ex. AA.

⁵⁵ Tr. at 135.

⁵⁶ *Id.* at 115.

⁵⁷ *Id.* at 121-22.

⁵⁸ *Id.* at 113-15.

Deborah was released to transitional housing in Claymont. Within hours, she had left that home and returned to Dan's home. The Civil Commitment Court mandated that Deborah receive regular care from a community health care group, Connections Community Support Program. Connections visits Deborah on a daily basis to ensure that her medications are administered to her and to check her general well-being. Any permanent decisions regarding Deborah's care have stalled, however, while these proceedings reach a resolution.

II. ANALYSIS

A. Deborah is a "person with a disability" within the meaning of 12 *Del. C.* § 3901.

This Court has the power to appoint a guardian of the person and property of a "person with a disability." Under 12 *Del. C.* § 3901(a)(2), a "person with a disability" is someone who by reason of mental or physical incapacity is unable to manage or care for her own person or property, or both, and who therefore is in danger of jeopardizing her health, dissipating or losing her property, or becoming the victim of designing or abusive persons.

Section 3901 requires the Court to make a two-part determination. First, the Court must decide whether a person suffers from a physical or mental incapacity that renders them unable properly to manage or care for her own person or property. This Court has defined "mental incapacity" to include:

(1) a pattern demonstrating an inability to recognize as relevant to decisions of significance, facts or considerations that one would expect reasonable and competent persons to recognize as relevant to such a decision; (2) a pattern demonstrating an inability to reason with respect to decisions that are relatively simple but personally important, in a way that is internally inconsistent; or (3) the presence of a mental disease or condition that interferes with the operation of the prospective ward's perceptions or reasoning to such an extent as to raise a substantial likelihood that decisions relating to matters of importance to her have been affected by that mental disease or condition.⁵⁹

Although the third element of the test is partially redundant of the first two, it more easily accommodates professional medical evidence and evidence of past susceptibility to overreaching.⁶⁰ If such incapacity is present, the Court then must determine whether the person is, as a result of that incapacity: (i) in danger of dissipating or losing her property, (ii) in danger of substantially endangering her own health, (iii) in danger of becoming subject to abuse, or (iv) in danger of becoming the victim of designing persons. The elements necessary to impose a guardianship must be supported by clear and convincing evidence.⁶¹

Neither Kevin nor Dan contests Deborah's need for a guardian. Deborah's position on this issue has shifted over time. During trial, Deborah indicated she was not opposed to a guardian, but some of her post-trial findings suggest she now

⁵⁹ *In the Matter of Gordy*, 658 A.2d 613, 617 (Del. Ch. 1994).

⁶⁰ *Id.*

⁶¹ *In re J.T.M.*, 2014 WL 7455749, at *3 (Del. Ch. Dec. 31, 2014). Clear and convincing evidence is evidence that "produces in the mind of the trier of fact an abiding conviction that the truth of the factual contentions is highly probable." *Hudak v. Procek*, 806 A.2d 140, 147 (Del. 2001).

resists the notion.⁶² Regardless of Deborah's position, however, the evidence conclusively demonstrates that Deborah suffers from a mental incapacity, including schizophrenia and dementia, which interferes with her perception of people and events and affects her ability to reason regarding her own health, welfare, and property. Deborah's delusions render her unable logically to weigh the benefits and side-effects of various potential treatments for her disorder, she exhibits very poor memory for many facts necessary to function independently, she has demonstrated poor hygiene and self-care, and she does not appear to have the ability to plan for her future needs. For all those reasons, I believe this Court may, and should, appoint a guardian for Deborah under Section 3901.

B. Kevin is the person best suited to serve as Deborah's guardian.

The purpose of guardianship is to protect the rights of the helpless, and when selecting a guardian this Court must determine who can best serve and protect the disabled person's interests.⁶³ When this Court concludes that a person requires a guardian, "the Court ... becomes the 'ultimate fiduciary of the [w]ard'" and the guardian derives her powers from the Court.⁶⁴ The Court therefore attempts

⁶² Deborah Pirestani's letter to the Court dated Nov. 20, 2015.

⁶³ *In re Bennett*, 1993 WL 1502230, at *2 (Del. Ch. Mar. 4, 1993); *see also In re J.L.M.*, 1987 WL 28435, at *1-2 (Del. Ch. Dec. 11, 1987).

⁶⁴ *In re L.M.R.*, 2008 WL 398999, at *2 (Del. Ch. Jan. 24, 2008) (quoting *In re Jones*, 2006 WL 2035714, at *5 (Del. Ch. July 13, 2006)).

carefully to select a guardian who faithfully and reliably can employ powers delegated by the Court and who appears able to fulfill the duties of a guardian.⁶⁵

Those duties and powers are substantial. The guardian of a person has “the same powers, rights and duties respecting the care, maintenance and treatment of the person with a disability that a parent has respecting” an unemancipated minor child.⁶⁶ The duties of a guardian include an obligation to (1) make provision for the care, comfort, and maintenance of the disabled person, (2) preserve and care for the property of the disabled person, and (3) to consent to medical or other professional care or treatment.⁶⁷ Importantly, a guardian may not unreasonably withhold consent to medical or professional treatment, and may not “withhold such consent or approval [to medical treatment] on account of personal beliefs held by the guardian or the person with the disability.”⁶⁸ Rather, the guardian must act in a way he objectively believes is in the best interests of the disabled person.⁶⁹

I am convinced, as I was when I issued my draft bench report in this action, that Dan is not capable of acting as Deborah’s guardian. This is not to say he does not care about Deborah, or does not genuinely believe that continued use of antipsychotic medications will be harmful to Deborah. Dan, however, has allowed his myopic view toward antipsychotic medication to cloud his decision-making to

⁶⁵ *Id.*

⁶⁶ 12 *Del. C.* § 3922(b).

⁶⁷ *Id.* §§ 3921(c), 3922(b)(1)-(3).

⁶⁸ *Id.* § 3922(b)(3).

⁶⁹ *Id.*

the point that he endangered Deborah's health and safety, failed to obtain medical treatment for her, and allowed her to live in a home that was unsafe and unsanitary. Dan did not make available adequate food and did not properly supervise Deborah's excursions from the home. Moreover, Dan continues to indicate that, if appointed as Deborah's guardian, he would only allow her to be seen by medical professionals who would not prescribe antipsychotic medications for her, and would "doctor shop" as necessary to ensure that result, unless otherwise ordered by a court.

I do not view this case as a referendum on whether antipsychotic medications are an appropriate treatment for Deborah. This Court is ill-suited to make that determination, particularly on the current record. The expert testimony Dan elicited from Dr. Watson persuasively indicated that antipsychotic medications may not be a panacea for schizophrenia, and that, for some patients, alternative treatments may effectively manage that illness and reduce the likelihood of relapse. Dr. Watson, however, could not say whether an individual who took antipsychotic medication for an extended period, as Deborah did for at least a decade, could transition off the medication and benefit from alternative treatments, nor did he offer any opinion about Deborah's treatment in particular, having never met or examined her. At most, Dr. Watson's testimony convinces me

that Deborah's guardian should carefully consider all available treatment options, including weighing the potential benefits and side-effects thereof.

Dan, however, has shown that he is incapable of objectively considering all available treatments and what is in Deborah's best interests. One of two things is possible as it relates to Deborah's care: either (1) continued use of antipsychotic medication is in Deborah's best interests, despite the side-effects, or (2) continued use of antipsychotic medication is not in Deborah's best interests. If the former, Dan candidly admits that, regardless of Deborah's best interests, he would seek out a physician who would not prescribe such medications. His past conduct convincingly demonstrates his capability of doing so and his willingness to jeopardize Deborah's health to achieve that end. Thus, if antipsychotic medication is in Deborah's best interests, Dan is incapable of fulfilling his duty as a guardian to consent to necessary medical treatment regardless of his personal views on the matter.

Conversely, if antipsychotic medication is contraindicated for Deborah, Dan has had more than five years to demonstrate that he is able properly to care for Deborah. He failed miserably in this regard and has offered no convincing evidence that he would be able to reverse course. In the five years in which Dan managed Deborah's care while she was not using medication to treat her schizophrenia, he failed to obtain proper health care for her, proposed to address

her significant dental problems by allowing her to extract her own teeth (or offering to extract them for her), did not ensure that she performed activities of daily living such as self-care, did not ensure that Deborah's living conditions were clean and free from known health dangers such as mold, and restricted Deborah's diet in an ill-conceived effort to control her "agitation." Dan allowed Deborah to walk along the shoulder of a busy road unsupervised, despite her persistent delusions and occasional violent outbursts, and saw no reason to prevent Deborah from repeatedly calling 911 in non-emergent situations. Other than his "diet and exercise" experiment, which Dan contends was based on his extensive medical knowledge after completing one and a half years of medical school, Dan did not pursue any alternative treatment for Deborah's care. Significantly, rather than acknowledge his ill-advised decisions and explain how he would correct them if appointed as Deborah's guardian, Dan continues to defend his actions as proper. Admittedly, Deborah has lived with Dan for the past few months without incident and with the support of Connections. That, however, is not a permanent solution for Deborah's care, because Deborah was being treated with antipsychotic medication during that time, a practice Dan has indicated he would end just as soon as this Court appoints him guardian and the Civil Commitment Court lifts its ordered requiring Deborah to be medicated against her will.

Kevin, on the other hand, has professed a willingness to remain open-minded about Deborah's care and an intent to consult her physicians to determine what treatments and what care plan would be in her best interests. Although his contact with Deborah has been limited in the past several years due to conflicts with Dan, Kevin was involved in Deborah's life and care for many years. In recent months, while serving as Deborah's surrogate decision maker, Kevin demonstrated an ability and willingness to work with various care providers and objectively consider options for Deborah's health, housing, and care that are consistent with her diagnosis while being as least restrictive as possible.

CONCLUSION

For the foregoing reasons, I recommend that this Court appoint Kevin as guardian of Deborah's person and property. This is my final report and exceptions may be taken in accordance with Rule 144.

Respectfully submitted,

/s/ Abigail M. LeGrow
Master in Chancery

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN THE MATTER OF:

Deborah Pirestani,

An alleged disabled person

:
: C.M. #17950-N-ML
:
:
:

- - -
Chancery Court Chambers
New Castle County Courthouse
500 North King Street
Wilmington, Delaware
Tuesday, June 23, 2015
3:00 p.m.
- - -

BEFORE: HON. ABIGAIL M. LeGROW, Master.
- - -

MASTER'S DRAFT BENCH REPORT

CHANCERY COURT REPORTERS
New Castle County Courthouse
500 North King Street - Suite 11400
Wilmington, Delaware 19801
(302) 255-0522

APPENDIX D

1 APPEARANCES: (Via teleconference)

2 JONATHAN LAYTON, ESQ.

Layton & Associates, P.A.

3 Attorney ad litem for Deborah Pirestani

4
5 ALSO PRESENT:

6 Deborah Reagan Pirestani

Kevin Reagan

7 Joseph Daniel Pirestani

Carla Pirestani

8
9 - - -

1 THE MASTER: Good afternoon. This is
2 Master LeGrow.

3 May I have appearances for the record.

4 DEBORAH PIRESTANI: Appearances?

5 MR. LAYTON: Good afternoon, Your
6 Honor. This is Jonathan Layton, attorney ad litem for
7 Deborah Pirestani.

8 THE MASTER: Good afternoon,
9 Mr. Layton.

10 MR. REAGAN: This is Kevin Reagan
11 calling from Minneapolis.

12 THE MASTER: Good afternoon,
13 Mr. Reagan.

14 MR. TAGGART: And this is Don Taggart.
15 I am the social worker here with Deborah.

16 THE MASTER: Good afternoon,
17 Mr. Taggart. Good afternoon, Deborah.

18 DEBORAH PIRESTANI: Good afternoon.

19 MR. PIRESTANI: This is Joseph Daniel
20 Pirestani.

21 THE MASTER: Good afternoon,
22 Mr. Pirestani.

23 CARLA PIRESTANI: This is Carla
24 Pirestani, Your Honor.

1 THE MASTER: Good afternoon,
2 Mrs. Pirestani.

3 All right. This is the time that we
4 have scheduled with the parties so that I can issue a
5 draft bench report with my recommendation to the Court
6 regarding the cross petitions for guardianship that
7 were filed by Kevin Reagan and by Dan Pirestani and
8 Carla Pirestani.

9 I think I alluded to this during our
10 hearing, but I want to explain more clearly for the
11 parties what my role is and what a draft report means.
12 So my role, as I said, is a Master to this Court,
13 which means that none of the decisions I make are
14 final unless or until they are confirmed by either the
15 Chancellor or one of the Vice Chancellors. That means
16 that any report and recommendation that I make the
17 parties may take exception to.

18 When I make a draft report, the
19 parties may choose to take exception to that within
20 the time period allotted by Rule 144. If they do so,
21 those exceptions are considered first by me. I will
22 issue a final report with my final recommendation. If
23 the parties then take exception to that report and
24 recommendation, those exceptions are considered by

1 either the Chancellor or one of the Vice Chancellors,
2 to whom the case would be reassigned.

3 If the parties choose not to take
4 exception to either a draft report or a final report,
5 that report is then reviewed by, typically, the
6 Chancellor; and, if the Court chooses, it can adopt my
7 recommendation, or certainly it can choose to do
8 something other than what I have recommended.

9 Just a couple other preliminaries.
10 First of all, there is a court reporter on the line.
11 My remarks today are being transcribed, and the
12 parties certainly can order a transcript if they wish
13 to do so. If they intend to take exception to my
14 report and recommendation, Court of Chancery Rule 144
15 requires that the parties taking exception order a
16 transcript. There should not be anybody recording
17 this teleconference; first of all, because it would be
18 unnecessary; second of all, because I believe at least
19 Mr. Layton and perhaps other parties as well object to
20 this call being recorded; and, third, but perhaps most
21 importantly, because that type of recording equipment
22 may interfere with the connection and, therefore,
23 should not be used.

24 All right. I'm going to refer to some

1 of the parties by their first names in my draft
2 report. I'm not doing that out of any disrespect, but
3 only because there are multiple Pirestanis, and I'm
4 doing so solely for the sake of clarity in the draft
5 report.

6 I just want to be clear, since
7 Mr. Pirestani has filed a number of things since our
8 hearing, that I have considered all of what
9 Mr. Pirestani filed last week, as well as an
10 additional filing that he made either this morning or
11 yesterday; I'm not sure when. But for clarity, that
12 filing is the supplemental response to the attorney ad
13 litem's report. I think that was filed today. So
14 although those filings were made both after the
15 evidentiary hearing in this matter and certainly
16 outside of the time frame allotted by my letter order,
17 I have considered that material because I understand
18 that the parties were limited in the amount of time
19 they had at the hearing and I want the parties to be
20 able to present as much evidence as they wish to
21 present.

22 Having said that, however, I now
23 consider the record to be closed from an evidentiary
24 perspective, and unless there is new evidence that

1 develops after today's date, there should not be any
2 additional submission of evidence in this case.

3 All right. So with that sort of
4 preface -- and I apologize for going on a little
5 bit -- I'm going to turn to my report and my
6 recommendations.

7 When this Court considers a petition
8 for guardianship of an alleged disabled person, the
9 inquiry is really a twofold inquiry. The first and
10 most fundamental is whether the person over whom
11 guardianship is sought is actually disabled within the
12 meaning of the statute. And then second, assuming
13 that the Court concludes that the person is disabled,
14 who should be appointed guardian.

15 There doesn't seem to be much dispute
16 in this case that, at least currently, Deborah
17 Pirestani, who I will refer to as "Deborah," is
18 disabled within the meaning of Title 12, Section 3901
19 of the Delaware Code. That statute states that a
20 person with a disability is one who "By reason of
21 mental or physical incapacity is unable properly to
22 manage or care for their own person or property, or
23 both, and, in consequence thereof, is in danger of
24 dissipating or losing such property or of becoming the

1 victim of designing persons or, in the case where a
2 guardian of the person is sought, such person is in
3 danger of substantially endangering person's own
4 health, or of becoming subject to abuse by other
5 persons or of becoming the victim of designing persons
6"

7 Precedent from this Court has
8 established that before imposing a guardianship, the
9 need for a guardianship and the evidence of a person's
10 disability must be established by clear and convincing
11 evidence. It seemed clearly established to me that
12 Deborah presently is in need of a guardian. There are
13 physicians' affidavits in the record that support the
14 fact that Deborah is suffering from either
15 schizophrenia or a schizo-affective disorder, that she
16 is subject to and experiences delusions, that those
17 delusions affect both her ability to manage her
18 property and her ability to care for herself.

19 Those physicians' affidavits are
20 supported by testimony from APS workers who observed
21 Deborah in the fall of 2014; by one of her caregivers
22 at Delaware Psychiatric Center; by her brother, Kevin
23 Reagan, who has spoken with her on a number of
24 occasions; and, in fact, by Dan Pirestani, who is her

1 husband and who lived with her for many years before
2 she was removed from his care by Adult Protective
3 Services.

4 The record establishes that, as I
5 said, Deborah suffers from paranoid schizophrenia,
6 from delusions, that she is unable to perform
7 self-care tasks without supervision, that she is
8 unwilling or in the past was unwilling to follow a
9 prescribed course of treatment without supervision,
10 and that she has endangered herself and acted
11 violently toward and in the presence of others.

12 The finding that Deborah is disabled
13 is also supported by the Superior Court's findings at
14 two civil commitment hearings that were held regarding
15 Deborah and, in fact, by Deborah's testimony at the
16 trial that was held in this case, where she testified,
17 among other things, about delusions that she had been
18 subject to cyber attacks, that her husband had been
19 cloned, and that there was nuclear fallout around her
20 home.

21 Her testimony also exhibited an
22 inability to plan for her long-term care and treatment
23 and a lack of understanding about the need to plan for
24 her long-term care.

1 So having concluded that the evidence
2 was actually overwhelming that Deborah is, in fact,
3 disabled within the meaning of Section 3901, the
4 remaining issue before the Court, and the one that is
5 really the dispute between the parties, is who should
6 serve as Deborah's guardian. And in making that
7 determination, the Court has to make that decision by
8 keeping in mind the purpose of a guardianship, which
9 is to protect the rights of the helpless, and the
10 Court must, therefore, determine who can best serve
11 and protect a disabled person's interests. When a
12 Court determines that a person requires a guardian,
13 the Court is the ultimate fiduciary of the disabled
14 person and a court-appointed guardian derives his or
15 her powers from the Court. For that reason, it is
16 important that the Court carefully select a guardian
17 who can faithfully and reliably employ the powers
18 delegated by the Court.

19 I have considered all of the evidence,
20 both the evidence that was presented at the hearing,
21 as well as the information and position of Deborah's
22 court-appointed attorney ad litem and the voluminous
23 filings that Mr. Pirestani submitted to the Court,
24 both before and after the hearing.

1 To me, it is important that the Court
2 consider both the proposed guardian's past conduct, as
3 well as their current and past relationship with
4 Deborah, Deborah's wishes, to the extent that they can
5 be conveyed in a reliable fashion, but, most
6 importantly, who the Court ultimately concludes can
7 best serve Deborah's interests.

8 This case, at least, does not either
9 require the Court to determine whether or not Deborah
10 should be placed on various medications, nor, in fact,
11 is the Court in the best position to make that
12 determination. I am not medically trained by any
13 stretch of the imagination; nor, even if I were, have
14 I examined Deborah; nor am I sufficiently aware of all
15 her medical needs in order to make that determination.
16 And so any recommendation that I make or ultimate
17 decision of this Court I do not believe addresses the
18 question of whether or not Deborah should be
19 prescribed or forced to take certain medications.
20 That issue may be one that is at least partially
21 decided by the Superior Court at various civil
22 commitment hearings. Ultimately, I believe it's one
23 that Deborah's doctors and her court-appointed
24 guardian need to make for her.

1 So, with that in mind, I have
2 considered both whether Dan and Carla would be
3 appropriate guardians and whether Kevin would be an
4 appropriate guardian and which of those would be the
5 best person to serve as Deborah's guardian.

6 First as to Kevin's petition for
7 guardianship. I believe that Kevin Reagan can serve
8 as Deborah's guardian, that he is capable of acting in
9 her best interests, and that in the past several
10 months he has shown a willingness and a desire to
11 serve in that capacity for Deborah. He is, of course,
12 her brother and has known Deborah since childhood. He
13 appears to and his testimony at trial indicated that
14 he is willing to consider any manner of treatments for
15 Deborah that may be recommended by her physicians and
16 that he is, in my view, appropriately concerned about
17 overmedicating Deborah, while not outright discounting
18 the possibility that medication may be an appropriate
19 treatment for Deborah now or at some point in the
20 future.

21 Although Kevin lives several hours
22 away and has not had a close relationship with Deborah
23 in the past several years, he has, as I have said,
24 expressed a willingness to take the time necessary to

1 manage Deborah's care and her finances and to keep her
2 in her present geographic location at this point,
3 while considering the possibility that moving her in
4 the future to be closer to where Kevin ultimately
5 resides after retirement may be in everyone's best
6 interest. So I do conclude that Kevin is an
7 appropriate guardian.

8 As to Dan and Carla's petition for
9 guardianship and whether they can act in Deborah's
10 best interest, my determination here is not one that's
11 based on whether, in the months between APS's
12 involvement in Deborah's care and the time that APS
13 removed Deborah from Mr. Pirestani's care, whether
14 APS's decision was appropriate, whether their actions
15 were appropriate. It's not this Court's function to
16 review APS's actions and determine whether or not APS
17 acted appropriately or not.

18 I, instead, have considered the entire
19 time period in which Deborah was in Dan's care, both
20 while she was on prescribed medications to treat her
21 disorder, as well as the time period after she and
22 Dan, it appears, collectively decided that she should
23 go off those medications. But I have especially
24 focused on the period of time after Deborah stopped

1 taking medications; and I focused on that period
2 because it was, in my view, during that period that
3 Deborah was in particular need of either alternate
4 treatment or supervision, given her diagnosis and her
5 actions during that time period.

6 Second, I genuinely believe, having
7 heard the testimony and reviewed the documents, that
8 Dan Pirestani, who I will refer to as "Dan," genuinely
9 believes that medication is not in Deborah's best
10 interest and that taking further medication may harm
11 her, perhaps greatly.

12 Despite that conclusion that I've
13 made, it also appears very evident to me from the
14 record that Dan is unwilling to consider the fact that
15 any medication may be appropriate for Deborah to treat
16 her schizophrenia or, in fact, any other condition she
17 might have; and that Dan, therefore, has taken extreme
18 efforts to avoid allowing Deborah to see any, what he
19 classifies as, mainstream physicians that might
20 prescribe medication, even if that physician is a
21 primary care physician or even a dentist.

22 Having reviewed the evidence, it's
23 somewhat plain to me that there are one of two
24 possibilities here: Either that Deborah does

1 not react well to medication, should not be on
2 medication, and should have alternate treatments
3 attempted in order to address her condition; or, two,
4 that she does need medication despite its side
5 effects. Again, I haven't decided, nor do I think it
6 is within this Court's ability to decide, which of
7 these two possibilities is, in fact, the case for
8 Deborah; but it's my conclusion that whether it is the
9 first or the second of those possibilities, Dan has
10 demonstrated that he is not the appropriate guardian
11 for Deborah under either circumstance.

12 If it is, in fact, the case that
13 Deborah does not react well to medication and that
14 medication is contraindicated for Deborah, then Dan
15 and, by extension, his mother have not appropriately
16 supervised Deborah, provided care for her, sought or
17 obtained recognized alternate treatments for
18 schizophrenia, or, indeed, provided care for her other
19 medical and dental needs.

20 During trial, Dan presented the
21 testimony of Dr. Watson, whose report indicated that
22 there are alternate treatments other than medication
23 that may be effective toward treating schizophrenia.
24 Those treatments included psychotherapy and cognitive

1 behavior therapy, among others. There was no evidence
2 presented at trial that Dan either pursued, sought, or
3 obtained those treatments for Deborah in the five or
4 so years that she was off medication.

5 I found Dr. Watson's testimony to be
6 very interesting and at times compelling. I, again,
7 am not in a position to disagree with his conclusion
8 about the potential long-term effects of medications
9 that are used to treat schizophrenia, but I listened
10 carefully to Dr. Watson's testimony and I read his
11 affidavit very carefully, and what I gleaned from that
12 was a very narrowly cabined opinion regarding whether
13 medication should be started or used for a long period
14 of time to treat schizophrenia.

15 He expressly offered no opinion and no
16 support regarding the effectiveness of removing a
17 patient from medication after the patient has been on
18 it for an extended period of time. And, in fact, he
19 repeated a couple of times during his testimony that
20 he was not expressing an opinion about whether that
21 could effectively be done either in a hypothetical
22 global sense or certainly in Deborah's case, and he
23 offered no studies indicating whether removing a
24 person from medication after they had been on it for

1 an extended period of time would allow that patient to
2 recover or possibly respond to alternate treatments.

3 For that reason, although, again, I
4 found his testimony interesting and enlightening sort
5 of on a global informational level about schizophrenia
6 and about the medications that are used to treat it,
7 Dr. Watson's opinion is of limited value in this case
8 because Deborah did spend many years on medication,
9 and so any damage that may have been caused by those
10 medications has, if I understand Dr. Watson's
11 testimony, already been done, and whatever efforts
12 have been made to keep her off medication have so far
13 been shown to be ineffective.

14 In addition, the evidence at trial
15 showed that during the time that she was off
16 medication and, therefore, susceptible and in need of
17 care and supervision and under the care and
18 supervision of Dan, Deborah received no regular
19 psychiatric treatment from a psychiatrist or
20 psychologist and no other regular medical care for
21 preventative care or dental needs outside of visits
22 with a primary care physician while she was
23 institutionalized at various times in mental
24 institutions or one visit for an ear problem. That

1 is, Dan testified that between approximately 2007 and
2 the time Deborah was removed from his care, he never
3 took her to a primary care physician other than one
4 time to treat her for an ear problem.

5 I suspect that Dan did that not
6 because he was not aware that Deborah might need
7 preventative care; but, rather, because he was trying
8 to avoid Deborah being seen by any type of physician
9 who might either prescribe medication or try to have
10 Deborah committed or --

11 MR. PIRESTANI: That is not true, Your
12 Honor. That is simply not true.

13 THE MASTER: Mr. Pirestani, this is
14 not a time for you to talk. If you interrupt again, I
15 will ask you to get off the call.

16 MR. PIRESTANI: I'm sorry.

17 THE MASTER: In addition, there is no
18 evidence that Deborah saw a gynecologist at any time
19 in the last several years or any other associated
20 routine medical care. Mr. Pirestani has argued that
21 that's not his fault, that he was not aware that she
22 might need preventative care, and that it is incumbent
23 on the medical system to issue reminders. But if one
24 is not regularly seeing a primary care physician, it

1 would be difficult for the primary care physician to
2 provide reminders about other preventative care that
3 might be warranted or appropriate.

4 There are also --

5 DEBORAH PIRASTANI: Your Honor --

6 THE MASTER: Deborah, nobody is
7 talking except me.

8 DEBORAH PIRESTANI: Okay.

9 THE MASTER: There's also evidence
10 that Dan did not take Deborah to any primary care
11 physician to ensure treatment or maintenance of her
12 high cholesterol. Understanding that Dan did not
13 believe that cholesterol medication would be in
14 Deborah's best interest and that he had instituted a
15 diet and exercise plan for her in an attempt to treat
16 her high cholesterol, it does not appear that he
17 sought medical care to ensure that that treatment plan
18 had been effective in addressing Deborah's cholesterol
19 problem.

20 In addition, despite very serious
21 dental issues with Deborah regarding the loss of her
22 teeth, inflamed gums, and the like, it appears that
23 Dan was not taking her regularly to see a dentist.
24 And although her teeth were falling out and she was

1 complaining about her teeth being loose, he did not
2 take her to a dentist for the safe and hygienic
3 removal of those teeth but, instead, suggested, rather
4 alarmingly, that either Deborah remove the teeth
5 herself or that Dan could do it for her. Frankly,
6 that fact alone would lead, I think, any reasonable
7 person to conclude that Dan very likely is not an
8 appropriate guardian for Deborah. Again, I believe
9 that it is likely that Dan did not take Deborah to the
10 dentist because he was worried that doing so might
11 prompt the dentist to either seek a commitment for
12 Deborah or suggest that she receive further medical
13 care.

14 There has been much focus by Dan in
15 his submissions to the Court about whether or not he
16 saw Dr. Nottingham, whether he had time on
17 September 22nd to make another appointment. That has
18 not factored into my analysis, frankly, at all.
19 Rather, it is significant to me that years went by in
20 which Deborah, although she plainly could not care for
21 herself and she was under her husband's care, Deborah
22 did not see a physician or a dentist for regular
23 preventative care.

24 Dan also failed to supervise Deborah.

1 There was testimony that she was walking around
2 confused and disoriented, making repeated calls to
3 911, had had violent outbursts and shoplifting
4 incidents at various stores, but that Dan continued to
5 allow her to go out without supervision.

6 Rather than focusing on the undisputed
7 fact, I believe, that Deborah had shoplifting
8 incidents and had verbally assaulted a number of
9 people in the past while she was out, Dan has,
10 instead, focused on whether or not Deborah was
11 wandering, as opposed to walking, which is really not
12 relevant to my analysis, or whether calling 911 was,
13 in fact, harmful to her, repeatedly calling 911 for
14 nonemergent reasons was harmful to her, which is again
15 not a factor in my analysis. Rather, a person who
16 suffers from delusions/schizophrenia, is not medicated
17 or under some type of alternate treatment, and has
18 demonstrated that they are unable to care for
19 themselves should not be walking around unsupervised,
20 either because they could harm themselves or harm
21 another person.

22 It's also apparent from the record
23 that Dan failed to supervise Deborah and ensure that
24 she engaged in proper hygiene and other self-care

1 tasks. Both Carla's testimony and the testimony of
2 the APS workers showed that Deborah and Dan were
3 living in a dirty apartment with black mold growing in
4 the bathroom, that both Carla and APS spoke to Dan
5 about cleaning the bathroom of black mold, which,
6 again, is something that you would not expect would
7 have to be told to somebody who is charged with the
8 care of a disabled person.

9 Deborah repeatedly complained about
10 hunger and the availability of food in the home.
11 There is a disputed record regarding the availability
12 of food, but it does appear from Mr. Pirestani's
13 testimony that he restricted Deborah's diet for
14 various reasons despite her complaints.

15 He also essentially concedes that he
16 failed to supervise Deborah to the point in order to
17 stop her from putting substances in her ear, which had
18 caused an unhygienic situation in which she gave off a
19 foul odor, whether or not that was actually an
20 infection, which I would find surprising that it
21 wasn't. But regardless, even if there was no
22 infection, Dan's failure to address that problem from
23 a hygiene perspective is also alarming.

24 Finally, Dan testified and stated

1 numerous times in his filings with the Court that he
2 had attempted to treat Deborah's conditions through a
3 combination of diet and exercise. He apparently
4 thought diet and exercise would address both her
5 cholesterol problem, which is possibly reasonable, and
6 her schizophrenia. He offered, however, no evidence
7 of any research he conducted or any discussions he had
8 with physicians that diet and exercise were an
9 effective treatment for schizophrenia. And it appears
10 from the record that diet and exercise were not an
11 effective treatment for Deborah's schizophrenia, given
12 her numerous problems in the years after she went off
13 medication, including, I believe, five
14 hospitalizations as well as a number of other
15 incidents, again, with shoplifting and violent
16 outbursts.

17 So, for that reason, if Deborah truly
18 should not be on medication and medication is
19 contraindicated for her, then Dan has shown that he is
20 not the appropriate person to care for her and to
21 obtain alternate treatments for her schizophrenia.
22 If, on the other hand, Deborah actually needs
23 medication, despite its possible side effects, Dan has
24 shown, both in direct statements in writing to the

1 Court as well as his past actions, that he is
2 unwilling to force Deborah to take medications and, in
3 fact, will take rather extreme efforts in order to
4 ensure that she is not prescribed medication.

5 DEBORAH PIRESTANI: Your Honor, I will
6 take note of the --

7 THE MASTER: Mr. Taggart, can you mute
8 your line so that Deborah cannot interrupt.

9 MR. TAGGART: Yes, I can.

10 THE MASTER: Thank you.

11 By way of example, in July of 2014,
12 after Deborah was released from the Rockford Center,
13 Mr. Pirestani concedes that he took Deborah to
14 Dr. Tarantolo knowing that Dr. Tarantolo would not
15 prescribe medication and that he could, therefore,
16 take the position that the Ativan prescription that
17 was given to Deborah upon her discharge was no longer
18 something she was required to take. In order to
19 support his position in that regard, Dan explicitly
20 did not ask Dr. Tarantolo about continuing the
21 medication; did not even ask Dr. Tarantolo whether he
22 was treating Deborah for the problems for which she
23 was hospitalized, but just assumed that the doctor's
24 prescription for skullcap tea and quiet tea time had

1 replaced the previous prescription on which her
2 discharge was ordered.

3 I also believe that if Deborah is
4 released to Dan's care, Dan and Carla's care if they
5 were appointed as the guardians, that they would
6 again -- well, at least Dan again would take Deborah
7 to a physician that does not believe in medication so
8 that Deborah would no longer be under the care of a
9 physician that was prescribing medication. Although
10 Carla equivocated about that issue in response to my
11 questions during the hearing and stated that she would
12 not remove Deborah from medication unless Deborah's
13 current physicians indicated that that was
14 appropriate, Dan explicitly testified that he would
15 take Deborah back to Dr. Tarantolo, knowing that
16 Dr. Tarantolo would not prescribe medication, and if
17 Dr. Tarantolo did not prescribe medication, as Dan
18 expected, Dan would not continue the medication while
19 she was under his care.

20 Overall, in my view, Dan's myopic
21 stance toward the issue of medication, his inability
22 to balance the potential side effects with the
23 potential therapeutic benefits and the risks to
24 Deborah, as well as his failure to seek any alternate

1 doctor-prescribed -- emphasis on doctor-prescribed --
2 treatment for her condition, and his failure to obtain
3 any other preventative mental or dental care for her
4 leads me to conclude that he cannot make decisions
5 that are in Deborah's best interest. In fact, I found
6 it significant during the hearing that even Carla,
7 Dan's proposed co-guardian, could not testify that Dan
8 would be an appropriate guardian for Deborah on his
9 own. But it is important for the Court, if the Court
10 is appointing co-guardians, to determine that either
11 of the co-guardians could serve on their own, given
12 the eventuality that one of the two co-guardians may
13 either resign or be unable to continue to serve.

14 I can't conclude, based on the record,
15 that Carla serving on her own would not be an
16 appropriate guardian, but she testified that she was
17 not willing to serve in that capacity on her own, and
18 I also do not believe that she could ensure or would
19 even act to keep Dan out of involvement in Deborah's
20 care and treatment. And because I have concluded that
21 Dan cannot act in Deborah's best interest when it
22 comes to her care and treatment, I do not believe that
23 appointing Dan's mother to serve as Deborah's sole
24 guardian would be appropriate.

1 So for that reason, because I have
2 concluded that Kevin Reagan is an appropriate guardian
3 for Deborah and that Dan and Carla are not appropriate
4 guardians for Deborah, it's my recommendation that the
5 Court enter an order appointing Dr. Reagan as
6 Deborah's guardian. In so doing, I'm not expressing
7 an opinion or recommending that the Court enter an
8 order about visitation for Deborah, and specifically
9 whether Dan or Carla or others should be permitted to
10 visit Deborah. I believe that's a decision for the
11 guardian, in the first instance, and should be based
12 on what is in Deborah's best interest, keeping in mind
13 that if a disabled person wants visitation with a
14 particular person, I believe that visitation should be
15 permitted as long as it is not harmful to the disabled
16 person.

17 As I said, if any of the parties wish
18 to take exception to my recommendation, they should do
19 so in accordance with the time period prescribed by
20 Court of Chancery Rule 144.

21 Mr. Layton, it's up to you whether you
22 want to submit a revised fee affidavit now or wait
23 until a final court order is entered in this case. I
24 will leave that to you to decide. It is my view that

1 Mr. Layton's attorney ad litem fee should be paid out
2 of Deborah's assets, to the extent there are some; and
3 I understood Kevin Reagan's testimony to be that
4 Deborah does have some assets that he has been holding
5 for her.

6 So that is my report and
7 recommendation to the Court. If the parties have
8 procedural questions or if Mr. Layton has a procedural
9 question, I'm happy to answer it, but I'm not hearing
10 arguments as to the merits of my decision.

11 So are there any questions?

12 CARLA PIRESTANI: Yes, Your Honor.

13 This is Carla. I have a couple of questions.

14 My first question is: If Dan wants to
15 take exception to your findings, may he do that on his
16 own, or is it imperative that he and I take exception
17 together?

18 THE MASTER: No, Dan could take
19 exception on his own.

20 CARLA PIRESTANI: All righty. And
21 what does it mean when you say after two times of
22 taking exception the case would be reassigned? What
23 does that mean?

24 THE MASTER: So once I issue a final

1 report, if a party takes exception to that, those
2 exceptions are considered by either Chancellor
3 Bouchard or one of the four Vice Chancellors. And so
4 at that point, the case is reassigned to them so they
5 can consider the exceptions.

6 CARLA PIRESTANI: Okay. Would they
7 make a final decision at that point?

8 THE MASTER: They would make a final
9 decision subject to any appeal rights to the Delaware
10 Supreme Court.

11 CARLA PIRESTANI: Okay. And last
12 question. When may Dan be allowed to visit Debbie?

13 THE MASTER: So I am not making any
14 decision as to visitation. Until there's a final
15 guardianship order, that decision about visitation
16 would be made by, I presume, either the Superior Court
17 in the civil commitment hearings or by the facility
18 where Deborah is placed. Once a guardianship is in
19 place, then the guardian would make decisions about
20 visitation.

21 CARLA PIRESTANI: So does that mean
22 that the restriction on Dan's visits which are in
23 place now would -- will continue?

24 THE MASTER: I don't know who put

1 those restrictions in place, but they are not my
2 restrictions and I'm not overruling them.

3 CARLA PIRESTANI: All right. Thank
4 you, Your Honor.

5 THE MASTER: Any other questions?

6 (No response)

7 THE MASTER: All right. Thank you all
8 for getting on, and I hope you have a nice afternoon.

9 (Teleconference concluded at
10 3:43 p.m.)

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CERTIFICATE

I, DEBRA A. DONNELLY, Official Court Reporter for the Court of Chancery for the State of Delaware, Registered Merit Reporter, Certified Realtime Reporter, and Delaware Notary Public, do hereby certify that the foregoing pages numbered 3 through 30 contain a true and correct transcription of the rulings as stenographically reported by me at the hearing in the above cause before the Master of the State of Delaware, on the date therein indicated.

IN WITNESS WHEREOF I hereunto set my hand at Wilmington, this 25th day of June, 2015.

/s/ Debra A. Donnelly

Debra A. Donnelly
Official Court Reporter
Registered Merit Reporter
Certified Realtime Reporter
Delaware Notary Public

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN THE MATTER OF
DEBORAH R. PIRESTANI,

) C. A. No. 17950-N-VCL
)

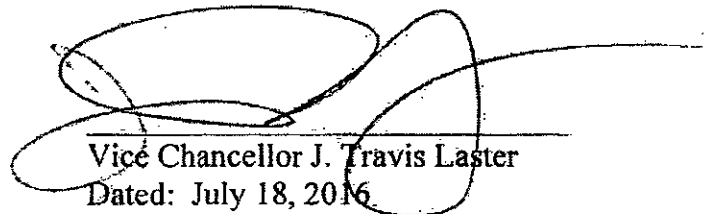
ORDER REGARDING ADDITIONAL MATERIAL FOR CONSIDERATION

1. Earlier today, the court filed an order adopting Master LeGrow's final report in this matter. The effect of the order was to appoint Kevin Reagan as Deborah Pirestani's permanent guardian.

2. Late Friday night, Dan Pirestani filed a motion asking this court to allow him to submit additional materials in support of his effort to be appointed Deborah's permanent guardian (the "Motion"). The material Dan wishes to submit includes three separate documents responding to the reports submitted by Kevin, who previously had been appointed by this court as Deborah's interim guardian.

3. The Motion was posted to the docket early this morning. The court was unaware of the Motion when it entered the order adopting Master LeGrow's final report.

4. This court will consider the Motion and additional documents and evaluate whether they would have changed this court's decision. No further submission from Dan will be accepted regarding the order this court entered today or in connection with the Motion.


Vice Chancellor J. Travis Laster
Dated: July 18, 2016

APPENDIX E



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN THE MATTER OF
DEBORAH R. PIRESTANI

) C. A. No. 17950-N-VCL
)

ORDER REGARDING ADOPTION OF MASTER'S FINAL REPORT

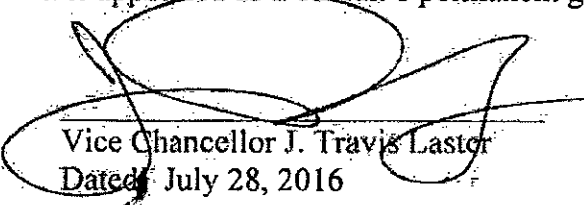
1. By order dated July 18, 2016, the court adopted Master LeGrow's final report in this matter. The effect of the order was to appoint Kevin Reagan as Deborah Pirestani's permanent guardian.

2. Before the court filed the order, Dan Pirestani filed a motion asking this court to allow him to submit additional materials in support of his effort to be appointed Deborah's permanent guardian (the "Motion"). Dan sought to introduce three separate documents responding to the reports submitted by Kevin, who previously had been appointed by this court as Deborah's interim guardian.

3. The court was unaware of the Motion when it entered the order adopting Master LeGrow's final report.

4. In a second order dated July 18, 2016, the court stated that it would consider the Motion and additional documents to evaluate whether they would have changed this court's decision to adopt Master LeGrow's final report.

5. This court has reviewed and considered the Motion and the additional materials. They did not change this court's decision. Master LeGrow's final report is adopted as a decision of this court. Kevin is appointed as Deborah's permanent guardian.


Vice Chancellor J. Travis Laster
Dated: July 28, 2016

APPENDIX F



APPENDIX G

NOW, THEREFORE, IT IS ORDERED that the Motion for Reargument and Motion for Rehearing *en Banc* are DENIED.

BY THE COURT:

/s/ Gary F. Traynor

Justice

Mill Creek Medical Assocs

4512 Kirkwood Highway Suite 202 Wilmington, DE 19808-5129
Phone: (302) 999-0137 Fax: (302) 999-1042

Page 1

February 3, 2014

*Patient Instructions

Patient: Deborah Pirestani

PATIENT COPY

Reason for your visit: npt-problems with ears

Based on this visit, your provider recommended the following:

Please do not put anything in your ears

Use the prescription drops as directed for 7 days

If there are continued problems --will need ENT evaluation

Follow up with Psychiatry as scheduled/needed

Problems associated with your visit include:

Added new problem of Other disorders of external ear (ICD-380.8)

Most recent Vitals observed:

Height: 64 inches

Weight: 164 pounds

BMI: 28.25

Temperature: 97.2 degrees F

Blood Pressure: 112 / 62 mmHg

Procedures and Services:

<None>

Labs, Tests and Referrals ordered:

(Please see Order sheet for further details)

<None>

Labs and Tests received in the past 3 days:

Your current medications include:

<None recorded>

Scheduled Appointments:

<None>

APPENDIX H