

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

STEPHEN P. LAMB  
VICE CHANCELLOR

New Castle County Court House  
500 N. King Street, Suite 11400  
Wilmington, Delaware 19801

Submitted: March 26, 2007  
Decided: May 8, 2007

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***RE: In the Matter of Helen Elizabeth Fugee,  
a disabled person  
C.M. No. 12612***

Dear Counsel:

After reviewing the parties' submissions regarding an award of attorneys' fees and costs in this guardianship action, I conclude that the petitioner should receive 25% of her request. These monies should be paid from the disabled person's estate. The respondent shall bear his own fees and costs associated with this litigation. For the reasons set forth herein, I grant in part the petitioner's motion and deny the respondent's cross-motion.

In June 2006, the petitioner, Helen F. Hocter, filed a petition requesting appointment of a guardian over the person and property of her mother, Helen Elizabeth Fugee. Ms. Fugee's health has continually declined since undergoing a craniotomy in August 2005. She presently is bedridden and is unable to perform

even the most basic self-maintenance functions on her own. However, Theodore Fugee III, her son and the respondent here, has devoted a substantial amount of his time and attention to Ms. Fugee's care as she has aged, especially since the onset of her most recent health problems. Indeed, the respondent's position in this litigation was that he should be appointed Ms. Fugee's guardian because he had acted as a *de facto* guardian to both of his parents for the better part of a decade.<sup>1</sup>

At the hearing on January 22 and 23, 2007, the evidence presented overwhelmingly portrayed the respondent as a loving and devoted child. I found that the respondent thus far had acted, and doubtlessly would continue to act, in Ms. Fugee's best interests when it came to her health and medical care. As I intimated at the hearing, I have rarely witnessed such uncompromising loyalty and compassion by a child towards a needy parent. This assured me that appointing the respondent as guardian of Ms. Fugee's person was the only justifiable course of action in this case.

Fiscal responsibility, however, does not always accompany devotion. The record in this matter was replete with examples of the respondent's mismanagement of his mother's finances.<sup>2</sup> On that basis, I appointed a neutral,

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<sup>1</sup> Ms. Fugee's husband died in May 2006.

<sup>2</sup> For instance, Ms. Fugee's estate was encumbered by numerous outstanding medical bills, while much of the day-to-day financing of the household was conducted through cash advances on credit cards, many of which carried rates of interest in the 30% range. Further, tens of thousands

third-party asset management firm as guardian of Ms. Fugee's property.

Following the hearing, the petitioner submitted a motion requesting payment of her attorneys' fees out of Ms. Fugee's estate in the amount of \$22,385.40. In support of her motion, the petitioner argues that her efforts in bringing this litigation resulted in a substantial benefit for her mother: the appointment of a neutral guardian of Ms. Fugee's property.

The respondent opposes this motion, contending that a fee award is unjustified here because the petitioner's success at the hearing was, at least in his opinion, inconsequential. Additionally, the respondent, by way of a cross-motion, says that the bad faith exception to the American Rule applies in this case and merits fee shifting in his favor. In the respondent's view, his sister never had any genuine concern for Ms. Fugee's best interests, and instead simply sought to pursue "her own agenda based on her unhealthy relationship with [the respondent]" by needlessly initiating an expensive and arduous adjudication.

As part of its obligation to achieve a fair and just resolution to each case, the Court of Chancery, as a court of equity, enjoys broad discretion in awarding costs and attorneys' fees.<sup>3</sup> This power is highlighted by the statutory charge of 10 *Del.*

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of dollars in benefits due to Ms. Fugee upon her husband's death had not been filed for in the eight months since that event.

<sup>3</sup> *Donovan v. Delaware Water & Air Res. Comm'n*, 358 A.2d 717, 723 (Del. 1976).

C. § 5106, which provides that this court “shall make such order concerning costs in every case as is agreeable to equity.”<sup>4</sup>

Generally speaking, this court follows the American Rule on attorneys’ fees.<sup>5</sup> The American Rule teaches that, absent unusual circumstances, each side should bear its own fees in litigation.<sup>6</sup> In guardianship actions, however, this court often deviates from strict adherence to the American Rule. Unlike typical litigation, the petitioner in a guardianship case “is frequently acting, not to vindicate some right of his own, but to protect the rights of another (the ward).”<sup>7</sup> Thus, it is not uncommon for a court to order the ward’s estate to pay at least a portion of the petitioner’s attorneys’ fees.<sup>8</sup>

It is important that the Court of Chancery remain vigilant in thoroughly examining the facts and circumstances of each guardianship case when assessing a motion for fees. Although an award of attorneys’ fees offers an important incentive to spur a petitioner into taking legal action for the ward’s benefit, the court should be wary when, say, a prodigal family member returns after years of

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<sup>4</sup> “Costs” as mentioned in the statute are deemed to include attorneys’ fees. *Kerns v. Dukes*, 707 A.2d 363, 369 (Del. 1998).

<sup>5</sup> *McNeil v. McNeil*, 798 A.2d 503, 514 (Del. 2002).

<sup>6</sup> *HMG/Courtland Properties, Inc. v. Gray*, 749 A.2d 94, 124 (Del. Ch. 1999).

<sup>7</sup> *In re Griffiths*, 2004 WL 1774571, at \*5 (Del. Ch. July 23, 2004).

<sup>8</sup> *Id.*; *In re Rowles*, 1998 WL 326670 (Del. Ch. June 18, 1998).

absence and suddenly seems to know exactly what course of action is in the ward's best interests. As past cases in this area have shown, the prospect of a fee award provides a convenient excuse for a petitioner to drag a familial dispute into court in order to exert leverage over a respondent on some ancillary issue while the very person whose interests the petitioner is purporting to safeguard faces the possibility of shouldering the bill for legal intervention that provides only a small benefit.<sup>9</sup> This court will not—indeed, it must not—condone or encourage such behavior through a fee award, lest the ward's best interests recede to secondary importance in a guardianship proceeding.

Of course, irrefutable evidence of a petitioner's ulterior motives is rarely encountered. Pertinent circumstantial evidence, then, will often prove to be the most probative indicia of whether the petitioner has unwaveringly advanced the best interests of the ward throughout the case. In the final analysis, a court facing a motion for attorneys' fees in a guardianship action must balance what it perceives to be the apparent motivations underlying a petitioner's plea for relief against the success achieved and benefits conferred on the person for whom relief is sought.<sup>10</sup>

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<sup>9</sup> *In re Griffiths*, 2004 WL 1774571, at \*5.

<sup>10</sup> Compare *In re Unfunded Ins. Trust Agreement of Capaldi*, 870 A.2d 493, 498 (Del. 2005) (noting that the court must evaluate both the success of the litigation as well as a petitioner's motivations in determining a fee award) and *McNeil*, 798 A.2d at 514 (noting that a trustee's breach of duty must be balanced with any resulting benefit conferred in litigation brought by a

The relevant inquiry here yields a mixed bag of evidence to help me determine an appropriate fee award for the petitioner. First, despite the respondent's bald assertions to the contrary, this litigation did confer a substantial benefit on Ms. Fugee. Her financial situation will be more structured and budget-oriented in the months and years to come because of the petitioner's efforts here.

However, given the facts that the petitioner undoubtedly knew throughout this case, I cannot help but equate some of her litigation posturing to anything else but selfish motivation. The petitioner was well aware of the dedicated and loving relationship which existed between her brother and her mother, as well as the care and attention her mother received because of the respondent's efforts.

Nonetheless, I do not find that the petitioner's conduct rises to the level of bad faith. The respondent has roundly failed to meet his stringent evidentiary burden of producing "clear evidence" of bad faith conduct, especially given the fact that the petitioner did achieve success on a portion of her petition.<sup>11</sup>

Accordingly, I award the petitioner 25% of the attorneys' fees and costs she incurred in prosecuting this action, or \$5,596.35, to be paid from the disabled

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beneficiary when the court considers a fee request).

<sup>11</sup> *In re Grupo Dos Chiles, LLC*, 2006 WL 2507044, at \*1 (Del. Ch. Aug. 17, 2006).

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person's assets. The respondent's cross-motion is denied.<sup>12</sup> IT IS SO ORDERED.

/s/ Stephen P. Lamb

Vice Chancellor

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<sup>12</sup> I do note that the respondent asks me to award him fees from the petitioner only and not from his mother's estate. The respondent incurred upwards of \$24,000 in costs and expenses in this litigation, and the fact that he does not seek at least partial reimbursement out of Ms. Fugee's assets is yet another testament to his steadfast benevolence towards her.