

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS

PROBATE AND FAMILY COURT
Docket No. 99- 1066 - GII

In Re: Guardianship of
Agatha Adams

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

This case came before me for hearing on a motion for the appointment of a temporary guardian on October 25, 1999 and for appointment of permanent guardian on November 30, 1999, in both occasions after notice, hearing the parties, and examining their exhibits, I make the following Findings of Fact and Conclusions of Law:

1. This matter was brought before this Court on the petition of Nancy Drew, the niece of Agatha Adams, seeking authority to consent to medical treatment, for authority to monitor the administration of anti-psychotic medication and to admit the proposed ward to a nursing home. The attorney for the petitioner is Atticus Finch.
2. No counsel was appointed for the proposed ward, as it was represented to the court that there were no contested issues.
3. Agatha Adams did not attend either hearing.
4. The following documentary evidence was admitted into evidence: Medical Affidavit and Proposed Treatment Plan of John Kildare, M.D., dated October 21, 1999.
5. Dr. Kildare did not attend either hearing.
6. The respondent is 88 years of age and resides at 7 Carmody Court, Lynn, Massachusetts. She was admitted to the Gotham City Hospital on October 5, 1999, where she was diagnosed as having suffered a fractured left shoulder, with congestive heart failure, chronic obstructive pulmonary disease, and exhibiting dementia of some two years duration. She has been compliant with and has responded to therapies for her shoulder, but now needs long term care placement. She cannot be returned home, because her primary caregiver, a younger sister, died on October 4, 1999, at the age of 79.

Findings of Fact on Competence

1. The respondent is a mentally ill person who is not capable by reason of such mental illness of caring for herself and who does not have the present ability to make informed decisions regarding her medical treatment, including but not limited to treatment with anti-psychotic medications.

2. Specifically, the Court finds that the respondent is exhibiting dementia with delusions and depression, diagnosed as likely a combination of Alzheimer's disease and vascular dementia.

3. The Court has appointed the respondent's niece, Nancy Drew, as temporary guardian of the person and the estate of Agatha Adams on October 25, 1999. The Court finds her to be a suitable guardian. The Court finds that there is a need for substituted judgment on the matter of the guardian's request to give informed consent to medical treatment, including treatment with anti-psychotic medications.

FINDINGS OF FACT ON SUBSTITUTED JUDGMENT

1. The findings above on competency are not repeated but are considered here as applicable. In prior years, the respondent had made informed decisions for and against medical treatment, and in recent years she gave health care proxy authority to her sister, Beatrice, who was exercising that authority until she died on October 4, 1999. Due to the respondent's condition, she is not able to make such decisions.

2. The respondent has not expressed a preference which would inhibit compliance with the proposed treatment plan. Such representation is substituted by representation of the respondent's niece and acquaintances and that her religion and her own religious beliefs would not prevent her from accepting the proposed treatment.

3. The respondent has not expressed a preference for treatment by anti-psychotic medication and her niece and neighbors represent that the respondent has accepted treatment from doctors and medication in the past, prior to becoming mentally ill.

4. There would be no appreciable impact on the respondent's family should treatment be instituted or withheld other than the distress of her family should she require placement in a psychiatric facility.

5. The respondent's prognosis if treatment is not provided is that, in all likelihood, she will continue to deteriorate, will become unmanageable and unsuitable for nursing home care and require commitment to a psychiatric facility. She will likely become markedly combative, paranoid, and will pose a danger to herself and others.

6. The respondent's prognosis if treatment is provided is that she will enjoy relative stable health and will be well cared for in a nursing home, the least intrusive setting.

7. The petition and treatment plan are offered in good faith and there is no conflict between the proposed treatment plan and the wishes of the family.

TREATMENT PLAN

A treatment plan, dated October 21, 1999, proposed by Dr. John Kildare, is attached hereto and incorporated by reference. The risks and benefits of the proposed treatment are set forth therein.

CONCLUSIONS OF LAW

I conclude, by a preponderance of the evidence that Agatha Adams is in need of anti-psychotic medications and of other medical treatment to which she is unable to give informed consent.

I conclude, beyond a reasonable doubt, after careful consideration of the evidence that, using a subjective test as to what Agatha Adams would do if competent, and taking into account the present and future incapacity of the respondent, based on a substituted judgment factors enumerated above, that she would consent to the administration of the proposed treatment plan which is offered in good faith by the physician and not for the administrative convenience of the treating facility.

ORDER

IT IS ORDERED THEREFORE that the treatment plan shall be implemented by the treating physician and that the guardian shall have the authority to consent to the treatment by anti-psychotic medication in accordance with the approved plan.

In the event that the purposes of this order are fully accomplished, and the respondent becomes able to give informed consent to medical treatment, a petition to discharge, may be brought at any time.

In the event that a change in the treatment plan is necessary, any party may move to amend said plan at any time.

This order authorizes the guardian to consent to medical treatment, to admit the respondent to a nursing home, and to otherwise authorize treatment in accordance with treatment plan approved herein.

ADDITIONAL FINDINGS ON GUARDIAN'S EXPENSES

1. The respondent is now a resident of a long term care facility and receives MassHealth benefits to pay for her care at said facility.
2. The findings above on Competency and for authority to treat with anti-psychotic medication are not repeated but are considered here as applicable.
3. The attorney has presented and certified her fees and costs to obtain the within order and I find said costs to be reasonable and within the amount allowable for payment from the future income of the ward.

FURTHER ORDER ON GUARDIAN'S EXPENSES

IT IS FURTHER ORDERED that \$1200.00 is awarded to the Guardian to defray her expenses incurred in establishing MassHealth eligibility for the ward and in obtaining authority to give informed consent to medical treatment for the ward.

Date

Judge of the Probate & Family Court