

96PR640 (6/6/97, npt 6/3/97)

PROBATE COURT, CITY AND COUNTY OF DENVER, COLORADO

Case No. 96PR640

IN THE MATTER OF

Letty Milstein, Incapacitated/Protected Person

COMPREHENSIVE PROTECTIVE ORDER

THIS MATTER comes before the Court on a Petition for Appointment of Guardian and Conservator for Letty Milstein. The Court enters this Order in elaboration of and in addition to the bench ruling of June 3, 1997 which is incorporated herein.

On April 9, 1996 this Court held a hearing, took testimony from the petitioner and from Mrs. Milstein and entered findings that Mrs. Milstein was a person who, within the meaning of CRS § 15-14-101 et seq. was incapacitated and in need of protection. A protective order was issued by this Court on April 10, 1996 nunc pro tunc April 8 (sic). Subsequently, on April 23, 1996 this Court reaffirmed its findings and Order. Numerous additional hearings have been held in this case over the intervening 14 months. The Court is thoroughly familiar with the parties, the issues and the conflicting contentions.

A hearing was held on June 3, 1997 for final orders on appointment of a Guardian and adoption of a final care plan, and for appointment of a Conservator and adoption of a final financial plan. The Court finds that venue is proper, and that the required notices have been given or waived.

Mrs. Milstein did not appear at the hearing for the reasons set out in Section II below. Judi Wolf, Mrs. Milstein's adult daughter and the Petitioner here, appeared by counsel who participated in the hearing. John Milstein, Mrs. Milstein's adult son, appeared pro se, declined to question witnesses and from time to time declined to respond to questions, but otherwise participated in the hearing. The Temporary Guardian, Florence Jones, appeared and was represented by counsel. The nominated Guardian, Patricia Ayers, appeared pro se. The temporary and nominated conservator, Norwest Bank, was represented by counsel.

Dr. Bruce Leonard, a board certified psychiatrist, appeared and testified as an expert witness for the Court. Dr. Leonard submitted a written report which was distributed to all interested parties prior to the hearing. In addition, reports from Drs. Westfall and Ginsburg

were received by the Court, were distributed by the Court to all parties and to counsel and were considered by the Court in these findings.

The Court also has on file and has considered the contents and conclusions of previously filed reports from Kathryn Kaye, Psy.D., Dr. Barbara Halterman, Dr. Vivyenne Roche, Dr. Jon Bell, and the on-going reports of the temporary guardians on file in this case.

The Court appointed a guardian ad litem, Elizabeth Paul, Esq., to represent Mrs. Milstein's best interests. Ms. Paul was selected by the Court because she was independent from and had no previous contact with or knowledge of any of the parties in this case. The Court received and read the GAL's report which was distributed by the Court to all interested parties and to their counsel prior to the hearing.

Through the guardian ad litem, William G. Smith, M.S.W., L.C.S.W., was engaged as an expert on family interactions and dynamics to evaluate the relationships among Mrs. Milstein and her two adult children and to make recommendations to the Court regarding the care plan. Mr. Smith made a written report to the Court which was reviewed by the Court and was distributed by the Court to all interested parties prior to the hearing.

All parties and counsel were notified of the availability of the five reports prepared for the Court prior to the June 3 hearing. They were all advised and encouraged to pick up copies of the report at or after 4:00 p.m. on Friday, May 30 at the office of the Clerk of the Probate Court. As of the time of the hearing on June 3, 1997, John Milstein had failed to come to the Court, had not picked up his copies of the report, and had not read the reports. During the hearing the Court again tendered the written reports to Mr. Milstein who refused to accept or receipt for the reports. As of the date of this written Order the Court continues to hold for his receipt all of the above-referenced reports. All other interested parties have received copies of all of the reports.

I. Representation by Counsel

Mrs. Milstein was represented by attorney Horen at the initial hearing held on April 3, 1996 and at at least one subsequent hearing. Attorney Horen resigned from her representation in February 1997 with the Court's permission after he concluded and advised the Court that because of her dementia Mrs. Milstein lacked the capacity to work with counsel. The Court accepted the representations of counsel, accepted his resignation and, because of the Court's prior orders and the medical and psychiatric reports then on file, appointed the GAL referred to above.

On May 28, 1997, two attorneys sought continuance of the June 3 hearing, claiming to represent Mrs. Milstein. In its denial of the continuance, the Court stated that "(T)his Court has previously found and ruled that Mrs. Milstein lacks legal capacity at the present time to employ legal counsel." On May 29, 1997 the same attorneys attempted to enter an appearance as Mrs. Milstein's counsel, in contravention of the Court's prior orders and without the knowledge or consent of the GAL or Mrs. Milstein's guardian as required in protective proceedings and by the Rules of Professional Conduct. The GAL objected to the Entry of Appearance on June 2, 1997 and the Court denied the Entry on the same date. On the morning of the June 3 hearing the Court again advised the attorneys that the entry of appearance was not recognized.

All courts safeguard and promote the retention of counsel by parties who appear before the Court, particularly parties whose personal liberties are at stake. This Court also recognizes

that any party who is the subject of a protective proceeding under C.R.S. § 15-14-303(4) is "entitled" to counsel. The Court interprets this provision to mean that the protected person is entitled to counsel if he or she voluntarily requests counsel. The Court is aware of no such request by Mrs. Milstein in this case but is aware that Mrs. Milstein is susceptible to manipulation, confusion, and suggestion by others as is explained in the expert reports and testimony, by the guardian ad litem's reports, and by the Court's own experience with and observation of Mrs. Milstein. One of the Court's primary considerations in fashioning orders to secure Mrs. Milstein's safety and well-being has been protecting her from manipulation and intimidation to adopt others' agendas.

On Friday, May 23, 1997 this Court personally visited with Mrs. Milstein to receive from her any input, statement, request, or complaint she had prior to the hearing and in regard to the protective orders. The Court purposely met with Mrs. Milstein without advance knowledge to, or in the presence of either of her children, because it was the Court's intention and desire to know what Mrs. Milstein wanted personally, not what her two children wanted her to want. Mrs. Milstein expressed no desire to be represented by an attorney. Instead, she repeated her oft-expressed three priorities set out in Section IV below. Mrs. Milstein has made no request to the Court through the GAL for appointment of counsel. The GAL was in contact with Mrs. Milstein up to the morning of the hearing and Mrs. Milstein expressed no interest or desire to be represented by counsel; expressed no knowledge of the attempt to enter an appearance on her behalf in this Court, and continued to advance her three priorities set out in Section IV below.

II. Confidentiality of Proceedings

Mrs. Milstein's overriding concern, communicated to and through the GALs report and directly to this Court, is protection of her own and her family's privacy. Nevertheless, this matter has attracted the attention of media representatives and has been the subject of published and broadcast stories. Mrs. Milstein was not responsible for any of the media attention. She has protested it, resisted it and has been injured by it. While ordinary citizens are entitled to put themselves in the public eye through whatever publicity they attract deliberately or through their actions, Mrs. Milstein is an unwilling, fearful and anxious victim who has been found by this Court to be an elderly person in need of protection. The law protects such persons through legislation against abuse of the vulnerable elderly and by arming this Court with the power to extend the state's protective shield over these citizens. The Court, acting to implement that mandate, took the following protective steps:

First, the psychiatric and medical reports on file with this Court have been sealed except as to interested persons and their counsel pursuant to C.R.S. §24-72-104 and Chief Justice Directive 85-16. Both the GAL and John Milstein also requested that the medical and psychiatric records remain sealed;

Second, the Court, acting pursuant to C.R.S. §15-14-303(4) and upon the request of the GAL closed the hearing on June 3, 1997 except for the interested persons and their counsel and witnesses. The Court accorded Mrs. Milstein every possible consideration in avoiding exposure of her private medical and psychiatric information and the dynamics of her family to unwanted public attention; and

Third, based upon the recommendations and request of the GAL and on the recommendations of both of the experts who testified on June 3, the Court entered a finding that appearing in Court on June 3 was likely to be deleterious to Mrs. Milstein's mental condition and expose her to unnecessary anxiety and trauma with attendant health risks. To

that end, at the GAL's request, the Court: (a) interviewed Mrs. Milstein at her home on May 23, 1997 in lieu of appearance and testimony at Court on June 3; and (b) entered an Order that she did not need to appear and could not be brought to Court on June 3 without the approval of the GAL.

THE COURT HEREBY ORDERS THAT ALL OF THE PARTIES PRESENT AT THE HEARING ON JUNE 3, 1997 MAINTAIN THE CONFIDENTIALITY OF THE FIVE SEALED REPORTS DISTRIBUTED BY THE COURT ON MAY 30, AND THE MEDICAL AND PSYCHIATRIC TESTIMONY AND THE CLOSED PROCEEDINGS HELD ON JUNE 3, 1997. FAILURE TO ABIDE BY THIS ORDER BY ANY PARTY WILL RESULT IN THAT PARTY BEING SUMMONED BEFORE THIS COURT WHERE SUCH REMEDIES AS MAY BE APPROPRIATE FOR FAILURE TO IMPLEMENT OR ABIDE BY COURT ORDERS WILL BE IMPOSED.

III. Need for Guardianship and Appointment of Guardian

The Court finds that Mrs. Milstein suffers from moderate and progressive dementia. According to the expert testimony of Dr. Bruce Leonard she has significant and irreversible short and long term memory loss, confusion and anxiety. She lacks sufficient understanding or capacity to make or communicate responsible decisions concerning her person and needs a guardian as a means of providing continuing care and supervision. The testimony is uncontroverted that Mrs. Milstein needs 24-hour supervision to maintain her safety.

The person's welfare and best interests will be served by the appointment of a guardian. The Temporary Guardian, Ms. Florence Jones has completed her assignment, has petitioned the Court for approval of her resignation and has cooperated and agreed to continue cooperating in the best interests of Mrs. Milstein to insure a smooth and safe transition of responsibility to the Guardian.

The Court finds that the nature and extent of the care, assistance, protection and supervision which are necessary or desirable for Mrs. Milstein under all of the circumstances is as follows: 24-hour supervision, at home, to insure proper nutrition, medication, hygiene, exercise and health care. The Court has directed the Guardian to provide such care with attention to Mrs. Milstein's comfort and wishes to the extent possible in these matters.

The guardian shall have all authority to give consents or approvals that may be necessary to enable the person to receive medical or other professional care, counsel, treatment or services, taking into account the person's wishes, if any, and the prevention of unnecessary or excessive treatment.

The Court appoints Patricia Ayers, whose address is 819 Sherman Street, Denver, Colorado 80203, as Guardian of Letty Milstein and directs the issuance of Letters of Guardianship with the restriction that the guardian does not have the authority to obtain hospital or institutional care and treatment for mental illness, developmental disability or alcoholism against the will of the incapacitated person. The Guardian is prohibited from obtaining out-of-home care for the incapacitated person except for medical emergency and/or for the temporary protection and safety of the incapacitated person without further order of the Court. In addition, the Court will direct that the Guardian implement the care plan set out in Section IV below.

IV. Care Plan and Restrictions

The GAL presented to the Court the care plan desired by John Milstein and the care plan recommended by the GAL. Additionally, the Court has considered less restrictive alternative means of providing the necessary protective services. The Court has also considered the wishes of the incapacitated person as expressed to the Court, to the experts and to the GAL concerning her care, counsel, treatment, service and supervision, and her views concerning the selection of the guardian, the duties of the guardian, the scope and duration of the guardianship, and any limitations or restrictions which should be imposed on the powers of the guardian. Where consistent with her safety and protection, the Court has fashioned this Order to advance Mrs. Milstein's desires which can be summarized, as follows, in order of her priority:

Privacy,
"Peace," and

Restored contact with her son, John

(a) As Mr. Smith testified, Mrs. Milstein's emotional faculties remain very much intact and her emotional needs should remain a priority concern of her caretakers. In addition, all evidence points to the need for Mrs. Milstein to be more active in social activities among her friends, synagogue, neighbors and peers. While Mrs. Milstein resists these efforts or says she will not participate, experience demonstrates that she genuinely enjoys friendly, healthy interactions with other people and can gain much comfort and stimulation from such appropriate activities. The Guardian should therefore use her best efforts to involve Mrs. Milstein in appropriate social activities with peers and to stimulate her with appropriate interactions inside and outside the home.

(b) The Guardian shall use her best efforts to maintain and support Mrs. Milstein's relationship with her beloved dog, Surprise, who provides essential stability and unconditional love to her. This attachment is critical to her emotional well-being, according to all who have observed it and to the expert psychiatric testimony.

(c) Mrs. Milstein has received unsolicited and troubling phone calls from strangers during the past few weeks. In order to protect her from this danger, the Guardian shall change her phone number to an unlisted, unpublished number which the Guardian should distribute as deemed appropriate. As in previous orders, the Court directs that the Guardian is solely responsible for scheduling activities around Mrs. Milstein.

V. RESTRICTION ON JOHN MILSTEIN

The Court finds, based on the report of the GAL, and the reports and testimony of Dr. Leonard and Mr. Smith that the dynamics between Mrs. Milstein and her son John represent a danger to Mrs. Milstein's emotional well-being and to her health. Mrs. Milstein very much wants to have a peaceful and calm relationship with her son. The Court therefore imposes the following absolute restriction on John Milstein and on the guardian: UNTIL JOHN MILSTEIN HAS READ AND UNDERSTANDS THE EXPERT REPORTS ABOUT HIS MOTHER AND UNTIL HE CAN DEMONSTRATE TO THE GUARDIAN AND TO THE COURT HIS SATISFACTORY COOPERATION AND PARTICIPATION IN APPROPRIATE, COURT-APPROVED COUNSELING AND/OR THERAPY AROUND HIS MOTHER'S ILLNESS, EMOTIONAL NEEDS, AND SAFETY, THERE SHALL BE NO UNSUPERVISED CONTACT BETWEEN HIM AND MRS. MILSTEIN. THE GUARDIAN SHALL CONTINUE THE TELEPHONE RESTRICTIONS IMPOSED BY THIS COURT IN ITS MAY 30 ORDER. THROUGH APPROPRIATE SUPERVISED VISITATION, MR. MILSTEIN MUST DEMONSTRATE TO THE SATISFACTION OF THE GUARDIAN AND THE COURT APPROPRIATE BEHAVIORAL INTERACTIONS WITH MRS. MILSTEIN PRIOR TO THE OCCURRENCE OF UNSUPERVISED CONTACT. THE COURT WILL ISSUE SUCH ADDITIONAL

OR FURTHER ORDERS AS MAY, IN THE FUTURE, BE NECESSARY TO IMPLEMENT THIS ORDER, ON AN EX PARTE AND EMERGENCY BASIS, IF NECESSARY.

VI. Conservatorship

The appointment of a conservator is necessary because Mrs. Milstein is unable to manage her property and financial affairs effectively because she suffers from dementia. According to the expert testimony of Dr. Bruce Leonard she has significant and irreversible short and long term memory loss. Funds are needed for her support, care and welfare, and protection is necessary or desirable to obtain or provide funds. The appointment of a conservator will serve Mrs. Milstein's best interests.

The Court appoints Norwest Bank, N.A., whose address is 1740 Broadway, Denver, Colorado 80274, as Conservator of the estate of the above person and directs the issuance of Letters of Conservatorship. The proposed initial financial plan filed by Norwest on May 20, 1997 is approved by the Court with the modification that Mrs. Wolf may purchase Mrs. Milstein's residence at fair market value to provide liquidity to the estate and to insure that Mrs. Milstein can continue to live in her own home as long as she desires and is able. All of the evidence supports the Court's finding that, at the present time, remaining in her home is an important component of the protection required. The Court recognizes that the Conservator has incurred heavy expenditures during the first year of the estate's administration, imposed largely by collateral issues addressed in this Order. The Court anticipates that the future expenditures will be more routine and focused on Mrs. Milstein exclusively.

The Court orders that all future pleadings and notices shall be given to those persons designated in CRS § 15-14-405(2). The Court further orders that the Conservator shall serve without bond. Continuing accountings shall be filed with the Court and served on interested persons no less frequently than annually.

June 6, 1997 nunc pro tunc June 3, 1997.

C. Jean Stewart
Judge, Probate Court