

97PR138 (9/22/98)

PROBATE COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO

Case No. 97PR138

IN THE MATTER OF THE ESTATE OF

ANNA JAWORSKI

Incapacitated Person

ORDER DENYING MOTION FOR APPOINTMENT OF GUARDIAN AD LITEM

This matter comes before the Court on the Department of Social Services'

Motion for Appointment of Guardian ad Litem.

Movant relies upon *In the Interest of M.M.*, 726 P.2d 1108 (Colo. 1986), for the proposition that, in the court's discretion, a guardian ad litem may be appointed for Anna Jaworski's husband Wallace Jaworski and requests that such an appointment be entered.

Movant states that Mr. Jaworski "appears to be able to handle the day to day affairs of his life but appears not to be able to assert or communicate his best interest in this case or the best interests of his spouse."

While it is tempting to rely upon *In the Interest of M.M.*, the case does not support the motion and I can find no other grounds upon which to grant the Motion.

The cases are different in three important ways:

1) In that case, the State sought to terminate the parent/child relationship between a mother (C.M.) and her son (M.M.). C.M. was a party, not simply an interested person as is Mr. Jaworski.

2) In that case, C.M.'s parental rights were in jeopardy. Although Mr. Jaworski has priority to serve as guardian for his wife, he is not requesting appointment as guardian. Even if he were to submit such a request, the Court would consider it only in terms of Mrs. Jaworski's best interests, not in terms of any right held by Mr. Jaworski. That is to say, this case is about Mrs. Jaworski, not Mr. Jaworski. As always, the Court will consider Mr. and Mrs. Jaworski's wishes. However, that does not change the focus of this case from Mrs. Jaworski's needs.

Finally, in that case there was a statutory provision providing for (discretionary) appointment of a guardian ad litem for a respondent parent. There is no corresponding statutory provision in the Colorado Probate Code providing for guardian ad litem appointment for an incapacitated person's spouse.

I am convinced that Mrs. Jaworski's best interests can be protected through her guardian ad litem, Carl Glatstein, and that she would not benefit by appointing a guardian ad litem for Mr. Jaworski. Certainly, he is entitled to hire an attorney if he wishes, and he is encouraged to do so.

DATE: September 22, 1998

BY THE COURT:

Magistrate Sandra Franklin