

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE PROBATE COURT
CASE NO.: 2018-GC-40-00052

IN THE MATTER OF)
THE GUARDIANSHIP OF)
JOHN S. STRITZINGER III,)
An Alleged Incapacitated Individual.)

James R. Stritzinger, Jr.,)
Petitioner,)

vs.)

John S. Stritzinger III, Hannah M.)
Burdick-Stritzinger, Katherine Wright-)
Burdick on behalf of minor children J.)
Burdick-Stritzinger and L. Burdick-)
Stritzinger,)
Respondents.)

RECEIVED

JAN 31 2020

ORDER APPOINTING GUARDIAN

COURT OF APPEALS

2019 JUL -5 PM 5:44

FILED

THIS MATTER COMES BEFORE THE COURT upon the filing of a Summons and verified Petition for Finding of Incapacity and Appointment of Guardian by James R. Stritzinger, Jr. (hereinafter also "Petitioner" or "Jim Stritzinger") on April 9, 2018. The Petitioner requested that this Court appoint him as the Guardian for John S. Stritzinger III (hereinafter also "John Stritzinger"), an alleged incapacitated individual (the A.I.I.). The Petitioner is John Stritzinger's brother. A companion conservatorship action was also filed with the Richland County Probate Court as case number 2019-GC-40-00037 and a separate order has been entered appointing James R. Stritzinger, Jr. as conservator for John S. Stritzinger III. An Order Appointing Temporary Guardian was entered by this Court on April 12, 2018, which appointed James R. Stritzinger, Jr. to serve as Temporary Guardian for his brother, John.

This case was filed prior to the effective date of the 2017 Amendments to Article 5 of the S.C. Probate Code. With his consent, Gregory E. Parker, Jr. was appointed as attorney for John Stritzinger, with the duties and responsibilities of a guardian *ad litem*. Mr. Parker was familiar with many aspects of Mr. Stritzinger's case from his representation in other matters in the Richland County Probate Court. However, after undertaking representation and discussing the guardianship and conservatorship Petitions with John Stritzinger, Mr. Parker informed the Court that it would be a conflict for him to continue in the dual role of attorney and guardian *ad litem* for Mr. Stritzinger. Thereafter, John

Stritzinger was informed that separate counsel would be appointed for him, as required by statute, unless he hired his own attorney. As the Court did not receive a Notice of Appearance from an attorney on behalf of Mr. Stritzinger, M.L. "Bart" Bartlett, Jr. was appointed to serve as counsel for John S. Stritzinger III. Mr. Parker continued to serve as Mr. Stritzinger's guardian *ad litem* for the duration of the guardianship and conservatorship proceedings.

As required by statute, John Stritzinger was examined to determine his capacity to make necessary daily living and health care decisions. James G. Bouknight, M.D., Ph.D., submitted an Examiner Report and Affidavit Regarding Capacity (hereinafter "Examiner Report and Affidavit"). Dr. Bouknight reported that John Stritzinger lacks the ability to meet the essential requirements for his physical health, safety, or self-care, necessitating the need for a guardian, due to Mr. Stritzinger's delusional disorder, "extremely limited insight," and poor judgment. Dr. Bouknight spent approximately two (2) hours examining Mr. Stritzinger and his attorney was present during the examination. Through counsel and by his own statements, John Stritzinger expressed that he does not agree with Dr. Bouknight's conclusion that he is need of a guardian, but no medical evidence was submitted to counter any of Dr. Bouknight's findings or conclusions. Mr. Parker submitted a Guardian *ad Litem* Report, which agreed with Dr. Bouknight's conclusions, found that it would be in Mr. Stritzinger's best interest for a guardian to be appointed, and recommended that Jim Stritzinger be appointed to serve as guardian for his brother. All reports were made a part of the record of this case.

A hearing regarding the petition for guardianship was held on July 3, 2019. All statutorily required parties were served with the Summons and Petition, as evidenced by the Affidavits of Service and/or Acceptances of Service in the court file. All interested parties were sent the Notice of Hearing. The following were present at the hearing: The Petitioner, James R. Stritzinger, Jr.; John S. Stritzinger III and his attorney, Bart Bartlett; and Gregory E. Parker, Jr., GAL for John Stritzinger.

At the hearing, the Petitioner testified that he understood the duties and responsibilities of a guardian, and the Court discussed those duties with him. On behalf of his client, Mr. Bartlett informed the Court of John Stritzinger's objection to the appointment of anyone to serve as his guardian, as he does not believe he needs a guardian. Mr. Parker stated that he had the opportunity to read Dr. Bouknight's report, that John Stritzinger is in need of a guardian, and that it would be in his best interest for Jim Stritzinger to be appointed to serve in that role. The Guardian *ad Litem* recommended a guardianship appointment in which some rights are retained, but most rights would not be retained by John Stritzinger.

After reviewing all of the filed pleadings, reports, documents, and other evidence and hearing the testimony taken at the hearing, the Court makes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Probate Court has subject matter jurisdiction over this guardianship proceeding pursuant to S.C. Code Ann. § 62-1-302(a)(2)(i), 1976, as amended, and venue is proper in Richland County, pursuant to S.C. Code Ann. § 62-5-302, 1976, as amended.
2. Based on the Examiner Report and Affidavit submitted by James G. Bouknight, M.D., Ph.D., the Court concludes the evidence is clear and convincing that John S. Stritzinger III meets the definition of incapacity as defined in S.C. Code Ann. § 62-5-101(13), 1976, as amended.
3. The Court further concludes that John Stritzinger lacks the ability to effectively receive, evaluate, and respond to information or make or communicate decisions such that he, even with appropriate, reasonably available support and assistance, cannot meet the essential requirements for her physical health, safety, or self-care, necessitating the need for a guardian. The Court also concludes that Jim Stritzinger is a fit and proper person to serve as Guardian for John Stritzinger.
4. Pursuant to S.C. Code Ann. § 62-5-304(A) the Court should exercise its authority to encourage maximum self-reliance and independence of the A.I.I. and issue orders only to the extent necessitated by the incapacity of the individual.
5. Based on John Stritzinger's incapacity, there are certain rights he does not retain. S.C. Code Ann. § 62-5-304A, 1976, as amended, states the rights not retained by an A.I.I. upon a finding of incapacity in a guardianship matter, unless the Court rules otherwise. The specific rights to be retained, removed, suspended (if applicable), or otherwise exercised as a result of John Stritzinger's incapacity will be addressed in the section of this Order stating the directives of the Court.
6. Pursuant to S.C. Code Ann. § 62-5-105, 1976, as amended, if not otherwise compensated for services rendered, the court-appointed Guardian *ad Litem*, counsel for the alleged incapacitated individual, and the appointed examiner are entitled to reasonable compensation, as determined by the court. Unless the court issues an order stating otherwise, the Petitioner is responsible for his own attorney's fees and costs, as well as the other costs and expenses of the action. However, if the filing of the action results in the appointment of a guardian, the attorney's fees and costs of the Petitioner may be paid from the assets of the alleged incapacitated individual. See Dowaliby v. Chambless, 344 S.C. 558, 544 S.E.2d 646 (Ct. App. 2001). In this case, the fees and cost of the court-appointed Guardian *ad Litem* and counsel for the alleged incapacitated individual should be paid form the funds of John S. Stritzinger III. The fee



charged by dr. Bouknight for his examination was already been paid on the date of examination.

7. Mr. Parker and Mr. Bartlett should each submit an Affidavit and itemized invoice outlining their fees and costs associated with serving as guardian *ad litem* and attorney for John Stritzinger, respectively. The Petitioner appeared *pro se*, therefore, he has not incurred any fees or costs for legal representation. The Court will review and approve the invoices and billing statements of the GAL and attorney for the A.I.I., and payment will be directed by way of a separate order.
8. Pursuant to S.C. Code Ann. §§ 23-31-1040(A) and 23-31-1020, 1976, as amended, respectively, John S. Stritzinger III is not allowed to purchase, possess, or have access to firearms and ammunition, and the Court is required to report his name to SLED for that purpose.

THEREFORE, IT IS HEREBY ORDERED THAT:

- A. James R. Stritzinger, Jr. shall be appointed as Guardian for John S. Stritzinger III, with all powers and duties as set forth by S.C. Code Ann. § 62-5-309, 1976, as amended, or as granted by an Order of this Court, including, but not limited to, the authority to make decisions about medical care, psychiatric care, living arrangements, and health care for John S. Stritzinger III.
- B. A Full Guardianship, with retention of certain rights, is appropriate given the evidence presented. The rights to be retained and lost will be addressed in Paragraph D of this Order.
- C. The authority of the Guardian includes all powers as Personal Representative under HIPAA. All medical providers, physicians, nurses, psychiatrists, counselors, therapists, psychologists, insurance companies, and any and all other individuals or entities providing treatment, care or maintaining medical records for John Stritzinger shall provide the Guardian with information, copies, and access to all such information, and the Guardian shall be granted access to all health care and treatment information pertaining to John Stritzinger, S.C. Code Ann. § 44-22-100(A), 1976, as amended; HIPAA regulations; and 42 U.S.C. 290dd-2, notwithstanding, as applicable. As the Guardian deems it appropriate, she also has the authority to sign a HIPAA authorization for release of health care information to others.
- D. Pursuant to the Court's finding by clear and convincing evidence that John S. Stritzinger III meets the definition of an incapacitated individual, the rights stated in S.C. Code Ann. § 62-5-304A(A) shall be retained, removed, suspended (if applicable), or otherwise exercised, as noted below:

<u>REMOVE</u>	<u>RETAIN</u>	<u>OTHER</u>	
<u>X</u>	___	___	1. Marry or divorce
<u>X</u>	___	___	2. Reside in a place of his/her choosing, and consent or withhold consent to any residential or custodial placement
<u>X</u>	___	___	3. Travel without the consent of the proposed guardian
<u>X</u>	___	___	4. Give, withhold, or withdraw consent and make other informed decisions relative to medical, mental, and physical examinations, care, treatment and therapies
<u>X</u>	___	___	5. Make end-of-life decisions including, but not limited to, a "do not resuscitate" order or the application of any medical procedures intended solely to sustain life, and consent or withhold consent to artificial nutrition and hydration.
<u>X</u>	___	___	6. Consent or refuse to consent to hospitalization and discharge or transfer to a residential setting, group home, or other facility for additional care and treatment.
<u>X</u>	___	___	7. Authorize disclosures of confidential information
<u>X</u>	___	___	8. Operate a vehicle
___	<u>X</u>	___	9. Vote
<u>X</u>	___	___	10. Be employed without the consent of the proposed guardian.
<u>X</u>	___	___	11. Consent to or refuse educational services.
___	<u>X</u>	___	12. Participate in social, religious or political activities.
<u>X</u>	___	___	13. Buy, sell, or transfer real or personal property or transact business of any type.
<u>X</u>	___	___	14. Make, modify, or terminate contracts.
<u>X</u>	___	___	15. Bring or defend any action at law or equity.

OTHER: Please explain any restrictions, limitations, or exceptions to the aforementioned rights:

E. Pursuant to S.C. Code Ann. § 62-5-309(A), subject to the rights and powers retained by the ward and except as modified by order of the court, a guardian has the following duties, rights, and powers:

- (1) to the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, maintaining custody of the ward and the ability to establish the ward's place of abode within or without this State;
- (2) if entitled to custody of the ward, providing for the care, comfort, and maintenance of the ward; the guardian is entitled to receive reasonable compensation for his/her services and for room and board furnished to the ward as approved by the court;
- (3) arranging for appropriate habilitation and rehabilitation services and educational, social, and vocational services to assist the ward in the development of maximum self-reliance and independence;
- (4) taking reasonable care of the ward's clothing, furniture, vehicles, and other personal

effects, and commencing protective proceedings if other property of the ward is in need of protection;

- (5) providing any consents, denials, or approvals necessary to enable the ward to receive or refuse to receive medical or other professional care, counsel, treatment, or service, including institutional care. If there is no conservator and placement or care of the ward requires the execution of an admission agreement or other documents for the ward's placement in a facility, the guardian may execute such documents on behalf of the ward, without incurring personal liability;
- (6) if no conservator for the estate of the ward is appointed or if the guardian is also conservator:
 - (a) instituting proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform his/her duty;
 - (b) receiving money and tangible property deliverable to the ward and applying the money and property for support, care, and education of the ward; however, he/she may not use funds from the ward's estate for room and board or services that he/she, his/her spouse, parent, or child have furnished the ward unless a charge for the services or room and board is approved by order of the court made upon notice to at least one of the next of kin of the ward, if notice is possible. He/she must exercise care to conserve any excess for the ward's needs; and
 - (c) exercising the ward's rights as trust beneficiary to the extent provided in Article 7, Title 62;
- (7) reporting the condition of the ward and of the estate that has been subject to his/her possession or control to the court, as required by the court or court rule, but at least on an annual basis;
- (8) if a conservator has been appointed:
 - (a) paying over to the conservator all of the ward's estate received by the guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward and accounting to the conservator for funds expended; and
 - (b) requesting the conservator to expend the ward's estate by payment to the guardian or to third persons or institutions for the ward's care and maintenance;
- (9) if co-guardians have been appointed, keeping the other co-guardian informed of all relevant information regarding the care and custody of the ward, including, but not limited to, the identity of the ward's care providers, medical providers, or similar professionals and informing the other co-guardian when scheduling medical appointments for the ward; and
- (10) exercising any other power, right, or duty ordered by the court.

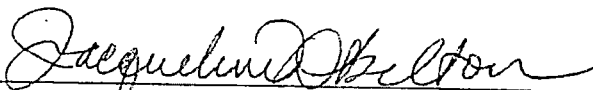
F. Pursuant to S.C. Code Ann. § 62-5-309(B) the Guardian shall provide a Plan of Care to this Court within 30 days of the date of this Order. The Plan of Care will take into consideration the best interest of the ward, and state to what extent the Guardian believes the ward may develop or recover the ability to exercise independent decision making.

G. Pursuant to S.C. Code Ann. § 62-5-309(7), 1976, as amended, the Guardian shall submit an annual Report of Guardian to the Court regarding the status of John S. Stritzinger III. The first

Report is due twelve (12) months from the date of this Order. An updated photograph of John Stritzinger shall also be submitted with each annual Report of Guardian.

- H. Pursuant to S.C. Code Ann. §§ 23-31-1040(A) and 23-31-1020, 1976, as amended, respectively, John S. Stritzinger III shall be prohibited from purchasing, possessing, and/or having access to firearms and ammunition, unless the reason for this guardianship is for a reason other than solely a physical impairment or disability. If this guardianship is based on incapacity because of a mental impairment that requires that his name be reported to SLED, the name of John S. Stritzinger III shall be reported to SLED for that purpose.
- I. Payment of outstanding fees for the attorney for the alleged incapacitated individual and the court-appointed Guardian *ad Litem* shall be paid by the James R. Stritzinger, Jr., as Conservator for John S. Stritzinger III, with approval from this Court, after submission and review by the Court of the invoices supporting the requested fees and costs. A separate order will be issued by the Court authorizing such payments.
- J. M.L. "Bart" Bartlett, Jr. and Gregory E. Parker, Jr. are hereby relieved of their appointments as attorney and Guardian *ad Litem*, respectively, for John Stritzinger. Therefore, both attorneys are hereby relieved on any further responsibility for representation of Mr. Stritzinger in any other matters, unless they agree to be retained by way of a Letter of Engagement or Retainer Agreement if requested by Jim Stritzinger, in his role as Conservator for John Stritzinger.

IT IS SO ORDERED.



Jacqueline D. Belton, Associate Judge
Richland County Probate Court

July 5, 2019
Columbia, South Carolina

**A TRUE COPY
ATTEST:
AMY W. McCULLOCH
PROBATE JUDGE
RICHLAND COUNTY, SC**

PURSUANT TO S.C. CODE ANN. § 23-31-1040(D), you are hereby notified that it is unlawful and a felony under state and federal law for a person found to be incapacitated, when due to anything other than solely a physical impairment or disability, to ship, transport, possess, or receive a firearm or ammunition.

(A) It is unlawful for a person who has been adjudicated as a mental defective or who has been committed to a mental institution to ship, transport, possess, or receive a firearm or ammunition.

(B) A person who violates this section is guilty of a felony, and, upon conviction, must be fined not more than two thousand dollars or imprisoned not more than five years, or both.

(C) In addition to the penalty provided in this section, the firearm or ammunition involved in the violation of this section must be confiscated. The firearm or ammunition must be delivered to the chief of police of the municipality or to the sheriff of the county if the violation occurred outside the corporate limits of a municipality. The law enforcement agency that receives the confiscated firearm or ammunition may use the firearm or ammunition within the agency, transfer the firearm or ammunition to another law enforcement agency for the lawful use of that agency, trade the firearm or ammunition with a retail dealer licensed to sell firearms or ammunition in this State for a firearm, ammunition, or any other equipment approved by the agency, or destroy the firearm or ammunition. A firearm or ammunition must not be disposed of in any manner until the results of any legal proceeding in which the firearm or ammunition may be involved are finally determined. If SLED seized the firearm or ammunition, SLED may keep the firearm or ammunition for use by SLED's forensic laboratory. Records must be kept of all confiscated firearms or ammunition received by the law enforcement agencies pursuant to this section. A law enforcement agency that receives a firearm or ammunition pursuant to this subsection may administratively release the firearm or ammunition to an innocent owner. If possession of the firearm or ammunition is necessary for legal proceedings, the firearm or ammunition must not be released to the innocent owner until the results of any legal proceedings in which the firearm or ammunition may be involved are finally concluded. Before the firearm or ammunition may be released, the innocent owner shall provide the law enforcement agency with proof of ownership and shall certify that the innocent owner will not release the firearm or ammunition to the person who has been charged with a violation of this subsection which resulted in the firearm's or ammunition's confiscation. The law enforcement agency shall notify the innocent owner when the firearm or ammunition is available for release. If the innocent owner fails to recover the firearm or ammunition within thirty days after notification of the release, the law enforcement agency may maintain or dispose of the firearm or ammunition as otherwise provided in this subsection.

(D) At the time the person is adjudicated as a mental defective or is committed to a mental institution, the court shall provide to the person or the person's representative, as appropriate, a written form that conspicuously informs the person or the person's representative, as appropriate, of the provisions of this section.