

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

IN THE MATTER OF: :  
 :  
O.C., : C.M. # 19594-N  
A person with a disability :

**ORDER DENYING PETITION TO EXPEND**

WHEREAS, on April 23, 2021, C.C. (the “guardian”) was appointed guardian of the person and property of O.C. (the “person with a disability”);<sup>1</sup>

WHEREAS, the guardian’s inventory, filed on May 24, 2021, disclosed that the person with a disability owns real property in Maryland and cash assets that were transferred to a guardianship account;<sup>2</sup>

WHEREAS, the guardian’s first accounting reflected income of around \$30,000.00 for the sixth month period of April 22, 2021 through October 22, 2021;<sup>3</sup> after expenses of \$12,688.08, the first accounting reflected a remaining balance of \$622,102.12, largely consisting of real property but including \$24,807.92 in the guardianship bank account;<sup>4</sup>

WHEREAS, on July 7, 2022, the guardian filed a petition to expend asking to make payment up to \$25,000.00 toward debts owed by the person with disability’s

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<sup>1</sup> Docket Item (“D.I.”) 8.

<sup>2</sup> D.I. 9. *See also* D.I. 10.

<sup>3</sup> D.I. 21. The accounting was approved on February 15, 2022. D.I. 22.

<sup>4</sup> *See* D.I. 21.

late husband to his sister (the “Petition”);<sup>5</sup> the guardian explains that she has a document reflecting a \$17,000.00 loan from the person with a disability’s late husband to his sister<sup>6</sup> and his sister contends she ultimately loaned more than \$25,000.00 and none of it has been paid back; the person with a disability’s husband passed in February of 2021 and all of his property transferred by way of right of survivorship to the person with a disability;<sup>7</sup>

WHEREAS, guardians of the property of a person with a disability “shall, in the name of the person with a disability, do whatever is necessary for the care, preservation and increase of the property of the person with a disability[;]”<sup>8</sup> the guardian takes control of the person with a disability’s property for the benefit of the person with a disability and may only expend funds for the person with a disability’s needs and in the person with a disability’s best interest;<sup>9</sup>

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<sup>5</sup> D.I. 34.

<sup>6</sup> The guardian submitted a copy of a handwritten document, which appears to be written in a mix of Italian and English and signed by the person with a disability’s husband. *Id.* Ex. B.

<sup>7</sup> *See id.* Ex. A (letter of explanation from the guardian).

<sup>8</sup> 12 *Del. C.* § 3921(c).

<sup>9</sup> *See In re A.N.*, 2020 WL 7040079, at \*9 (Del. Ch. Nov. 30, 2020) (“The Court and guardian must take care of the ward’s property ‘for his sake, that, if he recovers, he shall find his estate as nearly as possible in the same condition as he left it.’”) (quoting *In re duPont*, 194 A.2d 309, 314 (Del. Ch. 1963) (quoting English law)). *See also* 12 *Del. C.* § 3923(e) (“The guardian of the property may, without court authorization or confirmation, pay or apply income or principal from the estate as needed for the clothing, support, care, protection, welfare and rehabilitation of the person with a disability, as requested by the person with a disability or the guardian of the person, if any. In exercising this power, the guardian of the property shall consider the cost of support and care of the person with a disability for the expected life of the person with a disability and the needs of any persons dependent upon the person with a disability as may be reasonably anticipated.”).

WHEREAS, “[n]either a guardian nor the representatives of the guardian shall dispute the right to property of a person with a disability which comes to the guardian’s possession, unless such property has been recovered from the guardian or there is a personal action pending on account of it[;]”<sup>10</sup>

IT IS HEREBY ORDERED this 23rd day of August 2022, as follows:

1. The Petition is DENIED.
2. The guardian is charged with ensuring the person with a disability’s assets and income are used for her benefit and her benefit alone. This typically requires making sure the person with a disability’s bills are paid timely and in full. But it also includes making sure the person with a disability is not overpaying for her expenses, nor contributing toward debts or expenses that are not her own. The Petition seeks the latter—to have the person with a disability pay off (or make payments toward) a debt she did not incur. Such would not be an appropriate expenditure from the guardianship account.
3. It appears the claimant may question, or seek to challenge, the person with a disability’s inheritance from her husband’s estate. Unless and until such challenge is filed, however, the guardian is required to accept and protect all assets in the person with a disability’s estate.

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<sup>10</sup> 12 *Del. C.* § 3924.

4. Although I appreciate the strain this situation has caused on the person with a disability's family, I find the guardianship assets should be preserved and protected for the use and benefit of the person with a disability. The estate should not be burdened with payment of, or toward, the referenced debt.

5. This is a Magistrate in Chancery's final report under Court of Chancery Rule 144.

/s/ Selena E. Molina  
Selena E. Molina  
Magistrate in Chancery