

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

In the Matter of )  
 )  
M.G., ) C.M. No. 19235-K-PWG  
a person with a disability )

**MAGISTRATE IN CHANCERY’S REPORT**

Date Submitted: January 6, 2022  
Final Report: January 31, 2022

D.F., Dover, Delaware, *Guardian for M.G. George, Pro Se.*

Brian J. Ferry, Esquire, FERRY JOSEPH, P.A., Wilmington, Delaware, *Attorney for Petitioner C.C.*

James E. Sharp, Esquire, MOORE & RUTT, P.A., Georgetown, Delaware, *Attorney for Cross-Petitioner S.G.*

A.G.G., Wilmington, Delaware, *Interested Party, Pro Se.*

Richard Kiger, Esquire, Wilmington, Delaware, *Attorney ad Litem.*

**GRIFFIN, M.**

This is a post-trial report resolving a dispute between the person with a disability's son and granddaughter, who both seek to be appointed her successor guardian. The person with a disability's daughters (one of whom is her current guardian) consent to the appointment of their brother as successor guardian.

This Court is tasked, in its role as the ultimate fiduciary and guardian of persons with a disability, with appointing a guardian to act in the best interests of the person with a disability. Although the dispute over who should serve as successor guardian has caused strife within the family, it is apparent from the evidence that the person with a disability deeply loves her family members and that all of her family members deeply love her. Considering all of the evidence, I recommend that it is in the best interest of the person with a disability for the son and granddaughter to be appointed as co-guardians of her person and that she remain in her current living arrangement with her granddaughter at this time, subject to certain conditions. I also recommend that the son be appointed guardian of the property of the person with a disability. This is a final report.

## I. Background<sup>1</sup>

M.G. is a 91-year-old person with a disability who lives in Dover, Delaware and suffers from Alzheimer's disease.<sup>2</sup> M.G.'s children are D.F., A.G.G., and S.G.<sup>3</sup> D.F. is the current guardian of the person and property for M.G.<sup>4</sup> M.G. currently lives with C.C., her granddaughter and primary caregiver.<sup>5</sup>

On December 6, 2019, D.F. was appointed guardian of the person and property for M.G. in an uncontested proceeding, with A.G.G.'s and S.G.'s consent.<sup>6</sup> The attorney *ad litem*, Richard Kiger, Esquire ("AAL"), recommended D.F.'s appointment as guardian.<sup>7</sup> D.F. filed a proof of compliance showing that a guardianship account was opened on March 31, 2020, an inventory on April 23, 2020, and a partial First Accounting on July 8, 2020.<sup>8</sup> On July 16, 2020, the Register in Chancery ("RIC") sent D.F. a letter requesting additional documentation for the

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<sup>1</sup> I refer to the transcript from the evidentiary hearing held on December 2, 2021 and December 22, 2021 as "Trial Tr." I refer to C.C.'s exhibits as "C.C. Tr. Ex.," and to S.G.'s exhibits as "S.G. Tr. Ex."

<sup>2</sup> See Docket Item ("D.I.") 7; D.I. 1, Physician's Aff.; D.I. 8.

<sup>3</sup> D.I. 1.

<sup>4</sup> D.I. 7; D.I. 8.

<sup>5</sup> D.I. 24; Trial Tr. 43:13-20.

<sup>6</sup> D.I. 7; D.I. 8; D.I. 1. At the time of the initial guardianship proceedings, C.C. lived in California and there is no evidence that she was notified about those proceedings. Trial Tr. 43:13-16; *id.* 33:22-34:8.

<sup>7</sup> D.I. 4.

<sup>8</sup> D.I. 12; D.I. 13; D.I. 17.

First Accounting.<sup>9</sup> On October 21, 2020 and December 10, 2020, RIC sent D.F. additional letters requesting the additional documentation for the First Accounting and that she file the Annual Update and Medical Statement.<sup>10</sup>

In January 2020, C.C. moved from California to Delaware to be closer to her family.<sup>11</sup> At that time, M.G. was living in her own apartment but, between March and April 2020, M.G. started staying with C.C. episodically and by early May, was living with C.C. full-time.<sup>12</sup> At that time, D.F., A.G.G., and S.G. agreed that having M.G. live with C.C. was in M.G.’s best interest or at least did not object.<sup>13</sup> Since that time, C.C. has been the primary contact for M.G.’s home health care providers and doctors.<sup>14</sup> At one point, D.F. suggested that C.C. seek appointment as co-

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<sup>9</sup> D.I. 18.

<sup>10</sup> D.I. 21; D.I. 22. D.F. did not respond to those letters.

<sup>11</sup> Trial Tr. 31:12-14; *id.* 43:13-15.

<sup>12</sup> *Id.* 31:12-19; *id.* 37:16-38:10; S.G. testified that he recalled the “official move took place in April/May” of 2020. *Id.* 245:5-7.

<sup>13</sup> *See id.* 297:12-17; *id.* 425:12-426:11. S.G.’s initial statement was that he “initially thought that having [M.G.] live with [C.C.] would be in ... the best interests of [M.G.]” D.I. 56, at 2. His testimony at trial about his position whether M.G. moved in with C.C. was inconsistent. Trial Tr. 245:15-247:15 (S.G.’s testimony that he attempted to resolve the tension between C.C. and D.F., who did not want M.G. living with C.C.); *id.* 312:9-12 (he “did have a problem with” C.C. taking over M.G.’s full-time care); *id.* 313:6-12 (he “d[id]n’t recall” whether he supported M.G. living with C.C. in March of 2020); *id.* 377:6-14 (he supported M.G. and C.C. living together in early 2020). Considered overall, the evidence does not show any objections based upon C.C.’s caregiving when M.G. moved in with C.C. *See id.* 47:22-48:1 (S.G.’s objection to early termination of M.G.’s lease).

<sup>14</sup> *See id.* 431:15-18; *see, e.g.*, C.C. Tr. Ex. 6, 7, 17, 18. C.C.’s Trial Exhibit 18 is a letter dated November 24, 2021 from Dr. M.S. There was a standing hearsay objection to this exhibit. Trial Tr. 80:24-81:3. C.C.’s counsel argued that it is admissible as a record of a

guardian of M.G. with her.<sup>15</sup> However, it appears the relationship between S.G., C.C., and D.F. broke down, which led to this contested proceeding.<sup>16</sup>

On March 8, 2021, D.F. filed a Petition to Transfer Guardianship from Delaware (“Transfer Petition”) seeking to transfer the guardianship of M.G. to Maryland, to which S.G. consented.<sup>17</sup> Also on March 8, 2021, C.C. filed a Petition to Remove Guardian and Appoint Successor Guardian (“C.C.’s Petition”) seeking D.F.’s removal as guardian, and her appointment as successor guardian for M.G.<sup>18</sup> On March 12, 2021, C.C. filed an opposition to the Transfer Petition.<sup>19</sup> On April 26, 2021, S.G. filed a Petition to Remove Guardian and Appoint Successor Guardian (“S.G.’s Petition”), seeking D.F.’s removal as guardian and his appointment as successor guardian, with D.F. and A.G.G.’s consent.<sup>20</sup> On April 6, 2021, the Court entered an order that the guardianship shall maintain its status quo until an

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regularly conducted activity. *Id.* 81:9-15 (citing D.R.E. 803(6)). I need not resolve this objection because I do not rely on the letter for its truth value but only as evidence that the doctor was familiar with C.C. *See also id.* 431:15-18 (D.F. discussing that Dr. M.S. had “been working with [C.C.]”); *but see id.* 234:15-18 (S.G.’s testimony that D.F. controlled the schedule for M.G.’s doctors’ appointments).

<sup>15</sup> Trial Tr. 394:16-19; *id.* 147:17-149:5; D.I. 27, at 5.

<sup>16</sup> Trial Tr. 297:2-3 (A.G.G.’s testimony that S.G. “had an incident with [C.C.]”); *see also id.* 248:15-17.

<sup>17</sup> D.I. 23. S.G. testified that the intent in filing the Transfer Petition was to have S.G. take over as guardian for M.G. Trial Tr. 316:2-24.

<sup>18</sup> D.I. 24.

<sup>19</sup> D.I. 27.

<sup>20</sup> D.I. 33.

evidentiary hearing to resolve the petitions.<sup>21</sup> On April 28, 2021, the AAL was re-appointed as attorney *ad litem* to provide recommendations to the Court regarding this matter.<sup>22</sup> On May 3, 2021, a judicial mediator was appointed and the July 20, 2021 mediation was unsuccessful.<sup>23</sup> On August 4, 2021, the Court renewed its earlier status quo order and entered an order requiring D.F. to complete the First Accounting and to file the Annual Update and Medical Statement and the Second Accounting by October 1, 2021.<sup>24</sup>

On August 17, 2021, C.C. filed a letter raising concerns about a possible violation of the Court's status quo order.<sup>25</sup> That same day, S.G. responded,<sup>26</sup> and on August 18, 2021, S.G. raised additional concerns about M.G.'s and C.C.'s COVID-19 vaccination status.<sup>27</sup> The parties exchanged several letters, which led to S.G. filing a Motion to Amend the Status Quo Order on September 17, 2021.<sup>28</sup> I did not

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<sup>21</sup> D.I. 31.

<sup>22</sup> D.I. 34.

<sup>23</sup> D.I. 36; D.I. 38.

<sup>24</sup> D.I. 40.

<sup>25</sup> D.I. 41.

<sup>26</sup> D.I. 43.

<sup>27</sup> D.I. 44.

<sup>28</sup> D.I. 51.

rule on this motion, but offered to consider the motion as a part of an expedited evidentiary hearing on C.C.'s and S.G.'s Petitions.<sup>29</sup>

A trial in this matter was held on December 2, 2021 and December 22, 2021.<sup>30</sup> At the end of trial, after obtaining the AAL's final recommendations, I reserved decision so that D.F. could file the outstanding accountings and required documentation.<sup>31</sup> D.F. submitted accountings and documentation on January 6, 2022.<sup>32</sup>

## II. Analysis

The main issue before the Court is who should be appointed successor guardian of M.G.'s person and property.<sup>33</sup> The current guardian, D.F., has consented to S.G.'s appointment as successor guardian so her removal is not at issue.<sup>34</sup> I also consider other aspects of the guardianship, such as living and visitation arrangements, based on M.G.'s best interest.

### A. *The Parties' Contentions.*

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<sup>29</sup> Because of scheduling conflicts, the hearing was not able to be moved to an earlier date.

<sup>30</sup> D.I. 70; D.I. 74.

<sup>31</sup> D.I. 74.

<sup>32</sup> D.I. 75. The accounting filings remain under review and will be addressed separately. *See* D.I. 78

<sup>33</sup> It was determined in an earlier proceeding that M.G. is a person with a disability under the guardianship statute. D.I. 7; D.I. 8; *see* 12 *Del. C.* § 3901. None of the parties dispute M.G.'s status as a person with a disability in these proceedings.

<sup>34</sup> D.I. 33, Ex. A.

C.C. argues that she should be successor guardian of person and property for M.G.<sup>35</sup> She believes that she is in the best position to act in the best interests of M.G. and, since moving to Delaware, she has made M.G. the first priority in her life.<sup>36</sup> Two of M.G.'s home health care providers, V.P and D.S., testified that M.G. should remain with C.C. and that she has provided a good environment for M.G. as her caregiver.<sup>37</sup>

S.G. contends that he should serve as successor guardian of M.G.'s person and property.<sup>38</sup> He does not dispute C.C.'s efforts as M.G.'s day-to-day caregiver,<sup>39</sup> but asserts he is in a better position to act in M.G.'s best interest and provide for her.<sup>40</sup> S.G. proposes that M.G. live with him in Potomac, Maryland and intends to hire a full-time caregiver who is currently employed at his physical therapy office.<sup>41</sup> His objections to C.C. becoming M.G.'s guardian include C.C.'s failure to get

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<sup>35</sup> D.I. 24; D.I. 27.

<sup>36</sup> Trial Tr. 88:12-89:12.

<sup>37</sup> *Id.* 161:24-162:6; *id.* 188:4-16; *see also* C.C. Tr. Ex. 10. In C.C.'s Trial Exhibit 10, I rely only upon the letters from V.P. and D.S. *See* Trial Tr. 13:14-14:1.

<sup>38</sup> D.I. 33.

<sup>39</sup> Trial Tr. 313:24-314:1.

<sup>40</sup> *Id.* 261:5-21.

<sup>41</sup> *Id.* 211:3-20.

vaccinated against the COVID-19 pandemic, her history of moving frequently, and her alleged mental health issues.<sup>42</sup>

D.F. testified that she has struggled as M.G.'s guardian and believes it is in M.G.'s best interest for S.G. to be appointed successor guardian and that he can support M.G.<sup>43</sup> She questioned C.C.'s ability to make difficult decisions in M.G.'s best interest as M.G.'s disease progresses.<sup>44</sup> A.G.G. concurs that S.G. should be appointed as the successor guardian and questions C.C.'s ability to care for M.G. over the longer term, pointing to C.C.'s transience in the past.<sup>45</sup> R.G., S.G.'s wife, and S.G.G., A.G.G.'s husband, also testified in support of S.G.'s appointment as successor guardian.<sup>46</sup>

M.G. spoke during the hearing and indicated that she would like to stay with C.C.<sup>47</sup> She spoke fervently of her love for all of her children, reiterating S.G., and that she likes seeing her children.<sup>48</sup>

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<sup>42</sup> See D.I. 51; Trial Tr. 243:9-20.

<sup>43</sup> Trial Tr. 394:3-395:24; *id.* 417:20-21; *see also* D.I. 33, Ex. A.

<sup>44</sup> Trial Tr. 397:22-398:4.

<sup>45</sup> *Id.* 291:3-19.

<sup>46</sup> *See, e.g., id.* 202:11-23; *id.* 273:12-24.

<sup>47</sup> *Id.* 154:14-155:18 (although M.G. confused who C.C. was in her comments).

<sup>48</sup> *Id.* 154:23-155:20; *id.* 156:14-19.

The AAL recommends that S.G. be appointed guardian of the person and the property for M.G.<sup>49</sup> He recognizes that for an Alzheimer’s patient, change and moving is difficult, but reasons that the sense of dislocation would abate given her love for S.G.<sup>50</sup> He does not believe that M.G. has the capacity to determine what is in her best interests.<sup>51</sup> He noted that S.G. and R.G. are “retired, or pretty much retired” and that C.C. “is a young woman who is going to need to make a career for herself.”<sup>52</sup>

*B. Legal Standard.*

In a guardianship, “the Court shall have the same powers, rights and duties respecting the person with a disability that parents have respecting their child ... In exercising these powers, the Court shall act in the best interest of the person with a disability.”<sup>53</sup> “[T]he Court shall act toward the property of the person with a disability as it believes to be in the best interest of the person with a disability and

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<sup>49</sup> *Id.* 470:1-4.

<sup>50</sup> *Id.* 466:1-3; *id.* 466:11-15.

<sup>51</sup> *Id.* 469:15-17. He discussed M.G.’s verbal abuse of S.G. and D.F. in front of him in the past. *Id.* 464:13-21; D.I. 48, at 5-7 (discussing meetings where M.G. had accused her children of neglect); D.I. 4, at 3-6 (discussing a 2019 meeting in which M.G. indicated to the AAL that her children were not treating her well). He indicated that, because of M.G.’s clarity of focus when he spoke with her pertaining to this matter, he thought she may have been coached. *Id.* 468:2-469:11.

<sup>52</sup> *Id.* 469:22-470:4.

<sup>53</sup> 12 *Del. C.* § 3901(f).

the estate of the person with a disability.”<sup>54</sup> “Thus, the Court, upon a determination of disability, becomes the ultimate fiduciary of the [person with a disability.]”<sup>55</sup> The Court may instruct guardians “in the exercise of their duties. Both the court in its supervisory role and the guardian in his or her primary role, are bound to advance the best interest of the [person with a disability.]”<sup>56</sup> And, “[i]n deciding who should be the guardian of [a person with a disability,] the focus of the exercise is ‘exclusively’ on the best interest of the [person with a disability.]”<sup>57</sup> In this inquiry, the objective best interests of a person with a disability control even if the decision goes against family members’ wishes.<sup>58</sup>

*C. C.C. and S.G. are Appointed as Successor Co-Guardians of the Person.*

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<sup>54</sup> 12 Del. C. § 3901(e); see also *In re Pawley*, 1978 WL 4650, at \*2 (Del. Ch. Jan. 30, 1978).

<sup>55</sup> *In re L.M.R.*, 2008 WL 398999, at \*2 (Del. Ch. Jan. 24, 2008) (internal quotation marks and citations omitted); see also *In re A.N.*, 2020 WL 7040079, at \*8 (Del. Ch. Nov. 30, 2020) (“In reality the court is the guardian; an individual who is given that title is merely an agent or arm of that tribunal in carrying out its sacred responsibility.” (quoting *Kicherer v. Kicherer*, 400 A.2d 1097, 1100 (Md. 1979))).

<sup>56</sup> *In re Gordy*, 658 A.2d 613, 618 (Del. Ch. Dec. 30, 1995) (citation omitted); see also *In re Price*, 1992 WL 396308 (Del. Ch. Dec. 29, 1992); *In re Harlow*, 1992 WL 301001 (Del. Ch. Sept. 26, 1992); *In re Roemer*, 1992 WL 127560 (Del. Ch. May 28, 1992).

<sup>57</sup> *In re Tarburton*, 1998 WL 326667, at \*4 (Del. Ch. June 18, 1998) (citation omitted). “The best interests of the [person with a disability] is a standard that attempts in the first instance to replicate the decisions that the [person with a disability] would make in the circumstances present, if she did not suffer from diminished mental capacity or physical incapacity.” *In re Gordy*, 658 A.2d 613, 618 (Del. Ch. 1994).

<sup>58</sup> See *In re Bennett*, 1993 WL 1502230, at \*2 (Del. Ch. Mar. 4, 1993); see also *In re Colon*, 1998 WL 1033059, at \*4 (Del. Ch. Dec. 22, 1998).

The first inquiry is who should be appointed as successor guardian of the person. “[A] guardian must act with competency, rationality, and integrity and in a manner that meets the best interests of the [person with a disability.]”<sup>59</sup> Guardians are charged with an objective standard of care, although “a guardian is obligated to give consideration to the views of the [person with a disability] herself.”<sup>60</sup> When the Court appoints a guardian for a person with a disability, it “repose[s] its trust in [the guardian] to act in [the person with a disability]’s best interest,” and to engage in a fully-informed decision-making process regarding the person with a disability and to follow the advice of medical and other professionals.<sup>61</sup>

I conclude that it is in M.G.’s best interest that C.C. and S.G. be appointed successor co-guardians of the person for M.G. in order that both be actively involved in M.G.’s life and in the decision-making process for her. As the AAL reported, “[S.G.] and [C.C.] were always the focus of [M.G.’s] life, at least in recent years.”<sup>62</sup>

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<sup>59</sup> *In re Williams*, 2011 WL 3925690, at \*2 (Del. Ch. Aug. 25, 2011) (internal quotation marks and citation omitted).

<sup>60</sup> *In re Gordy*, 658 A.2d 613, 618 (Del. Ch. 1994).

<sup>61</sup> *In re D.R.*, 2008 WL 4262369, at \*1 (Del. Ch. Sept. 5, 2008); *see also In re Williams*, 2011 WL 3925690, at \*3 (Del. Ch. Aug. 25, 2011); *In re B.W.*, 2011 WL 2448373, at \*4 (Del. Ch. June 3, 2011); *In re L.M.R.*, 2008 WL 398999, at \*4-6 (Del. Ch. Jan. 24, 2008); *In re Tarburton*, 1998 WL 326667, at \*4 (Del. Ch. June 18, 1998); *In re Gravatt*, 1996 WL 787165, at \*6 (Del. Ch. Nov. 12, 1996).

<sup>62</sup> Trial Tr. 467:2-3.

Both S.G. and C.C. presented strong arguments, although each for different reasons, why they would be the best person to make decisions in M.G.’s best interests.<sup>63</sup>

The evidence shows that C.C. has been making day-to-day decisions for M.G., and the parties appear to agree that C.C. has been doing a good job acting in M.G.’s best interest.<sup>64</sup> C.C.’s actions in the past two years—making M.G. a priority in C.C.’s life—show her commitment to M.G. However, D.F., A.G.G. and S.G. testified that, based upon their past conversations with C.C., they believe she would have difficulty in making the best choices about M.G.’s care as M.G.’s Alzheimer’s disease progresses.<sup>65</sup> It appears that C.C. has strong personal beliefs about certain matters that may affect her decisions about M.G.<sup>66</sup> A guardian must engage in

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<sup>63</sup> See Trial Tr. 88:12-89:21; *id.* 261:5-21; *id.* 458:3-19.

<sup>64</sup> See *id.* 88:13-89:12 (C.C.’s testimony); *id.* 313:24-314:1 (S.G.’s testimony); *id.* 286:8-11 (S.G.G.’s testimony); *id.* 424:10-12 (D.F.’s testimony that the only concern that she has with C.C.’s care of M.G. is the presence of C.C.’s dog); *id.* 217:9-11 (R.G.’s testimony that there have been no incidents while M.G. has lived with C.C.).

<sup>65</sup> *Id.* 397:23-398:4 (D.F.’s testimony that C.C. doesn’t want to talk about M.G.’s final moments); *id.* 293:11-23 (A.G.G.’s testimony that C.C. would not discuss preparations for M.G.’s funeral); *id.* 256:15-258:17 (S.G.’s testimony that family discussions about the need to relocate M.G. to a facility with 24/7 care in the future are “quick discussions” because C.C. is “totally against it”).

<sup>66</sup> See, e.g., *id.* 135:13-19 (C.C.’s testimony that “I think that it’s evil to prematurely try to put [someone with Alzheimer’s dementia into a memory-care facility], versus actually hav[ing] proper understanding of what their current situation and needs are and then planning appropriately.”). C.C. did not take steps to get M.G. vaccinated for COVID, testifying that “her doctors were okay with where she was at.” *id.* 120:9-14; see also *id.* 117:1-17; *id.* 125:2-7 (C.C.’s testimony that there are “known and unknown” side effects of the COVID vaccine and that it is not risky for M.G. to live in a home with someone who is unvaccinated as “vaccinated individuals can still contract and transmit COVID”); but see *id.* 459:16-460:7 (when asked if she would take M.G. to get a COVID booster, C.C.

“conscious decision-making based on information supplied by people in the business of caring for the disabled.”<sup>67</sup> In other words, it is not the guardian’s subjective personal beliefs that control in making decisions for a person with a disability, but what is in that person’s best interest on an objective basis. While it may not be easy for C.C. to separate her personal beliefs in order to make objective decisions, she has demonstrated her desire to act in M.G.’s best interests and that she is committed to M.G.

S.G.’s testimony shows that he has been involved with M.G. over the long-term and with her major medical issues in the past, and that he can draw upon his experience and network in the medical profession.<sup>68</sup> He has not, however, been closely involved with M.G.’s day-to-day care recently, and acknowledged that he has done “[v]ery little” research into Alzheimer’s disease.<sup>69</sup> Nevertheless, the evidence shows that S.G. is capable of and prepared to make decisions, including difficult decisions, in M.G.’s best interests.

I believe that the combination of S.G.’s and C.C.’s strengths will produce decisions that are truly in M.G.’s best interest and find that a co-guardianship of the

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stated “if that’s what her doctor is saying is in her best interest, I would discuss that with him and then proceed[] accordingly”).

<sup>67</sup> *In re Tarburton*, 1998 WL 326667, at \*4 (Del. Ch. June 18, 1998).

<sup>68</sup> *See* Trial Tr. 232:9-234:9; *see also id.* 273:12-19.

<sup>69</sup> *Id.* 261:13-21; *id.* 357:4-6; *id.* 357:17-358:6.

person is appropriate in this instance.<sup>70</sup> C.C. will bring her day-to-day knowledge of M.G.’s condition and its progress into the decision-making process, and S.G. will bring his long-term involvement and background in the medical profession into the decision-making process. Although this dispute has caused strife within the family, C.C. and S.G. have had a good relationship in the past and it is evident that M.G. loves her children and grandchildren and they love her and each other.<sup>71</sup> It is my hope that they will work together for M.G.’s benefit because of their love of her.<sup>72</sup>

I recognize that this conclusion varies from the AAL’s recommendation to the Court. The attorney *ad litem* has “‘great latitude’ to determine the legal position to

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<sup>70</sup> S.G. and others expressed a concern that C.C. is transient and will be unable to commit to the responsibility of being M.G.’s guardian in the medium- to long-term. *Id.* 239:14-17 (S.G.’s testimony that C.C. “moved around a lot”); *id.* 216:22-24 (R.G.’s testimony that C.C. is a “flight risk”); *id.* 291:3-4 (A.G.G.’s testimony that C.C. is “very transient”). S.G. suggested that “over the last 20 years, ... [C.C.] might have moved 20 times.” *Id.* 239:14-15. This assertion is not supported by the evidence. In the past 20 or so years, C.C. lived in California for six years, in the greater Miami, Florida area for five years, in school in Arizona, and with family and school before that. *Id.* 90:13-91:9. And, since returning to Delaware in January of 2020, C.C. has been devoted to M.G.’s care for two years.

Additionally, S.G. questions whether C.C. has mental health issues that would prevent her from being an effective guardian. *id.* 319:14-20. His exhibits included a discharge plan of action related to an outpatient mental health treatment program C.C. attended in 2019. S.G. Tr. Ex. A; Trial Tr. 84:18-85:12. C.C. stated that she has struggled with depression and anxiety in the past but is doing well today. Trial Tr. 85:16-24. There was no evidence presented, including expert testimony or medical documentation, that indicated C.C. currently suffers from a mental illness that would impact her ability to care for M.G. or to make decisions in M.G.’s best interest.

<sup>71</sup> Trial Tr. 153:22-157:22.

<sup>72</sup> If the co-guardians are unable to work together in M.G.’s best interest after a reasonable period of time, the Court can revisit this decision.

take in the best interests of the [person with a disability],”<sup>73</sup> and this Court has deep gratitude for the members of the Delaware Bar who take on this responsibility to protect the rights of those who cannot safeguard their own interests. I recognize that the AAL looked at the deep love that M.G. has for S.G. as her “one and only” son in reaching his final recommendation.<sup>74</sup> However, having reflected upon the evidence presented in this matter, I find that a co-guardianship is in M.G.’s best interest.<sup>75</sup> Details about decision-making within the co-guardianship are discussed below.

*D. M.G.’s Caregiving and Living Arrangement.*

An important, and separate, issue from who will serve as M.G.’s guardian of the person is M.G.’s living and caregiver arrangement. That issue is a key element of this dispute and of the guardianship.

Since M.G. has been living with C.C., all interested parties appear to agree that C.C. has done a good job of handling M.G.’s day-to-day care and needs.<sup>76</sup> She has been the primary contact for M.G.’s home health care providers and doctors, and she is closely involved with M.G.’s daily medical and other needs.<sup>77</sup> Further, the

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<sup>73</sup> *In re Palmer*, 179 A.3d 278, 2018 WL 566421, at \*1, n. 5 (Del. 2018) (TABLE) (citing *In re Tavel*, 661 A.2d 1061, 1071 (Del. 1995)).

<sup>74</sup> Trial Tr. 469:24-470:22.

<sup>75</sup> The AAL did not indicate any concern about C.C.’s fitness as a guardian, only that he thought it “makes better sense for her to be with her son.” *Id.* 470:11-12.

<sup>76</sup> See n. 64 *supra*.

<sup>77</sup> See n. 14 *supra* and accompanying text.

home health care providers testified that C.C. is attentive to M.G.'s needs and that moving M.G. would confuse her and would not be in her best interest because of her Alzheimer's disease.<sup>78</sup> The AAL agreed that moving would be difficult for M.G. because of her diagnosis, although he felt her sense of dislocation would abate.<sup>79</sup> In response, S.G. argues that M.G. would be better off with him in Maryland.<sup>80</sup>

In evaluating the living and caregiving arrangement that is in M.G.'s best interest, I look at S.G.'s proposed care plan for M.G., including R.G.'s testimony about her and S.G.'s home in Potomac, Maryland and how they would accommodate M.G.'s lifestyle.<sup>81</sup> It appears that their home, which is an approximate two-hour drive from M.G.'s current residence, would provide a comfortable and accommodating environment for M.G. to live in.<sup>82</sup> S.G. testified that he has arranged for one home health care provider to help with M.G. but his plan lacked specific details about M.G.'s day-to-day care.<sup>83</sup> He has not been involved in M.G.'s day-to-

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<sup>78</sup> Trial Tr. 164:18-165:6; *id.* 188:8-10; *id.* 189:14-22.

<sup>79</sup> Trial Tr. 466:1-15.

<sup>80</sup> D.I. 33; *see also* Trial Tr. 285:17-21 (S.G.G.'s testimony that S.G. has consistently cared for M.G. for 41 years).

<sup>81</sup> *Id.* 205:3-206:23 (R.G.'s description of their 4,500 square foot home, with an elevator and outdoor decks).

<sup>82</sup> Although A.G.G. and D.F. both live in Delaware, they indicate that it would not be a problem for them to see M.G. if she lived with S.G. in Maryland. *Id.* 298:23-299:6; *id.* 427:24-428:6.

<sup>83</sup> *Id.* 348:22-349:2. The caregiver that S.G. would hire has never met M.G. *Id.* 212:4-7.

day care for about 15 years, has limited knowledge about M.G.’s day-to-day activities, and has done “[v]ery little” research into Alzheimer’s disease.<sup>84</sup> S.G. acknowledged that, if appointed M.G.’s primary caregiver, it would be a process to set up M.G.’s care arrangements and that he would incorporate information from C.C. in making those arrangements.<sup>85</sup> M.G. has not lived with S.G. for any period of time in recent years.<sup>86</sup> Given M.G.’s current condition because of her Alzheimer’s disease, it does not appear that her lifestyle would be substantially different whether she lives with S.G. or C.C.

S.G. also argues that M.G. should not remain with C.C. because C.C. is unvaccinated for COVID-19 and puts M.G. at a higher risk for COVID-19.<sup>87</sup> C.C. responds that she maintains health and safety protocols for COVID-19 in the apartment and a cautious lifestyle with few visitors, who are all required to wear masks, including the home health care providers.<sup>88</sup> This argument is difficult to evaluate without expert testimony. C.C. is unvaccinated against the COVID-19

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<sup>84</sup> *Id.* 261:15-16; *id.* 357:4-6; *id.* 357:17-358:6; *see also id.* 351:1-6 (S.G.’s testimony that he has “not dissected” C.C.’s medical or financial updates on M.G. and “just skim[s] over the surface of whatever [D.F.] tells me what [C.C.] has provided”). One of the home health care providers testified that S.G. “had a good relationship with his mother . . . [h]e just never spent no time with her.” *Id.* 177:15-18.

<sup>85</sup> *Id.* 358:11-16.

<sup>86</sup> *See id.* 261:13-19.

<sup>87</sup> *Id.* 345:13-24; *id.* 346:23-347:1.

<sup>88</sup> *Id.* 64:4-11; *id.* 163:21-164:15; *id.* 189:3-9; *id.* 195:22-196:7.

virus.<sup>89</sup> M.G. is vaccinated.<sup>90</sup> S.G. and all members of his household are vaccinated and have received a booster shot.<sup>91</sup> S.G. recognizes that COVID-19 is “all around” him and that, in his physical therapy clinic, he is “constantly” hearing about patients that have contracted COVID-19.<sup>92</sup> And he testified that, when he has visited M.G., he has taken M.G. to eat at a restaurant, which would offer her enjoyment but would also expose her to a COVID-19 risk.<sup>93</sup> Considering the evidence, and lacking any expert testimony on the specific relative risks, I cannot conclude that C.C.’s unvaccinated status for COVID-19 prevents her from serving as M.G.’s caregiver, although the importance of following all COVID-19 safety precautions is heightened.

Weighing all of the evidence, I find that it is in M.G.’s best interest to continue her current living and caregiving arrangement with C.C.

*E. Conditions related to the Co-Guardianship.*

I recommend the following conditions be imposed related to the successor co-guardianship for M.G.’s person:

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<sup>89</sup> *Id.* 63:24.

<sup>90</sup> *Id.* 63:7-9; D.I. 56. D.F., A.G.G. and S.G. arranged for M.G. to obtain both COVID-19 shots. *See* D.I. 50, at 2.

<sup>91</sup> Trial. Tr. 346:15-16.

<sup>92</sup> *Id.* 381:23-382:6.

<sup>93</sup> *Id.* 255:23-256:7; *id.* 75:21-22.

1. Day-to-Day Decisions. M.G. will live with C.C., and C.C. will be responsible for M.G.'s day-to-day care and may make decisions independently in that context. And, the co-guardians will have independent authority to make minor medical decisions, consistent with medical advice.
2. Medical Concerns. Both co-guardians shall be able to obtain medical information directly from M.G.'s medical providers and may attend any of M.G.'s medical appointments. Each co-guardian will coordinate with the other co-guardian in advance if they are arranging for medical appointments for M.G.; but medical appointments do not need to be scheduled to accommodate attendance of both co-guardians and there shall be no unreasonable demands with scheduling medical appointments that would result in M.G. not getting the medical treatments that she needs. Each co-guardian shall keep the other co-guardian advised about what occurs at a medical appointment they arrange, and about M.G.'s health issues generally.
3. COVID-19 Precautions. M.G.'s living and caregiving arrangements shall strictly follow COVID-19 safety precautions. The risk factors for transmission of COVID-19 regarding interactions with care providers and others shall be taken very seriously by anyone interacting with M.G. The co-guardians shall follow recommendations from M.G.'s medical providers, including ensuring that M.G. receives a COVID-19 booster or other vaccinations if recommended.
4. Major Personal and Medical Decisions. The co-guardians must confer on any major personal or medical decision pertaining to M.G., and will make every reasonable effort to come to an agreement. If they cannot agree on a decision, the matter can be brought to the Court for final decision.
5. Changes to Living Arrangement. Unless on an emergency basis, any changes in M.G.'s living arrangement must be approved in advance by the Court.
6. Visitation Arrangements. All family members shall have a right to reasonable visitation with M.G., in person and/or through the use of remote technologies. Visitation by family is in M.G.'s best interest and her joy at seeing her children through Zoom at the hearing was palpable. Family members, including S.G., must provide C.C. with reasonable advance notice, at least 24-hour notice,

before visiting M.G.<sup>94</sup> C.C. shall put her dog in a separate room away from M.G. and the visiting family member, at the request of any family member coming to visit.<sup>95</sup>

7. Annual Update and Medical Statement. Since an AUMS with medical documentation has not been filed in this guardianship, C.C. shall file an AUMS within 90 days after this report becomes final, and a new AUMS shall be filed with the Court every year after that.

*F. S.G. is Appointed Successor Guardian of M.G.'s Property.*

The next inquiry is who should be appointed successor guardian of the property. A guardian of the property must “do whatever is necessary for the care, preservation, and increase of [the person with a disability’s] property.”<sup>96</sup> “Guardians, like other fiduciaries, are required to meet a reasonable prudence standard of judgment and care in managing the [person with a disability]’s property.”<sup>97</sup>

I conclude that it is in M.G.’s best interest for S.G. to be appointed as her successor guardian of the property. S.G. has been involved in M.G.’s financial

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<sup>94</sup> S.G. and D.F., in particular, indicated that they did not need to notify C.C. in advance in order to visit M.G. at her home. Trial Tr. 336:25-337:10; *id.* 409:12-23. I find it is not unreasonable to require advance notice to enable C.C. to make alternate arrangements with home health care providers and in consideration of that fact that M.G. and C.C. share the apartment.

<sup>95</sup> Arrangements shall be made to accommodate the dog’s needs and if the dog needs to be taken out during a visit, it will be kept away from visitors and on a leash, upon request.

<sup>96</sup> *In re Buonamici*, 2008 WL 3522429, at \*6 (Del. Ch. Aug. 11, 2008) (citing 12 *Del. C.* § 3921(c)).

<sup>97</sup> *Id.* (citing 12 *Del. C.* § 3302); *see also In re A.N.*, 2020 WL 7040079 (Del. Ch. Nov. 30, 2020).

affairs in one form or another for a significant period of time.<sup>98</sup> S.G. testified that prior to the guardianship and even after the guardianship he “had access to [M.G.]’s bank accounts.”<sup>99</sup> He also testified that he used this access “to see if there was enough cash flow in there to get [M.G.] through, whether it was the week, the month, or the quarter.”<sup>100</sup> S.G. indicated that he has financially supported M.G. in a “very direct and very reactionary approach to whatever the need is.”<sup>101</sup>

In addition, S.G. has, over his lifetime, owned and operated at least two businesses, supervising up to 100 employees at one business.<sup>102</sup> He has provided financial advice and support to family members over the years.<sup>103</sup> The evidence shows that S.G. has an overall familiarity with M.G.’s financial affairs to support him in making reasoned judgments in the management of her property, and also the financial acumen to manage M.G.’s property objectively.

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<sup>98</sup> Trial Tr. 291:11-15 (A.G.G.’s testimony that S.G. was involved in discussions about M.G.’s finances over the years); *id.* 230:5-9; *id.* 258:18-20.

<sup>99</sup> *Id.* 263:2-8. On cross-examination, S.G. testified that he had “no access to [M.G.’s] bank accounts.” *Id.* 352:14-15; *see also id.* 351:22. However, the bank account at issue in that line of questioning was the guardianship account and he would not be able to access that account. *See* D.I. 12; C.C. Tr. Ex. 13.

<sup>100</sup> Trial Tr. 263:2-8.

<sup>101</sup> *Id.* 363:2-3; *see also id.* 273:12-19; *id.* 395:2-10; S.G.’s Tr. Exs. F, G.

<sup>102</sup> Trial Tr. 207:20-208:11; *id.* 228:6-7.

<sup>103</sup> *Id.* 230:1-9; *see also id.* 273:12-19 (S.G.G.’s testimony).

C.C. asserts that she handled M.G.'s finances prior to moving to Delaware in January of 2020, but her testimony at trial indicates that she was involved with monitoring M.G.'s bank account balances but started paying M.G.'s day-to-day expenses on or about March of 2020.<sup>104</sup> It does not appear that C.C. has had the same long-term involvement with M.G.'s finances as S.G. has.

Additionally, there is some evidence that until now, the management of M.G.'s property has been handled very informally by D.F. and C.C.<sup>105</sup> Weighing the evidence, I find that S.G. is best positioned to meet a reasonable prudence standard of judgment and care in managing M.G.'s property. Therefore, I recommend that the Court appoint S.G. as successor guardian of M.G.'s property.

#### *G. Conditions related to the Guardianship of the Property*

I recommend that the following conditions be imposed related to the successor guardianship of the property for M.G.:

1. All guardianship funds must be used only for M.G.'s benefit and no loans or gifts from those funds to others are allowed in the future.

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<sup>104</sup> *Id.* 40:4-41:5; *see also* C.C. Tr. Ex. 11; S.G. Tr. Ex. J.

<sup>105</sup> I recognize that D.F., not C.C., was M.G.'s guardian of the property up to now; but, C.C. was aware of the guardianship and both appear to have handled guardianship funds using Venmo and other mobile banking apps without providing the necessary documentation for guardianship finances. Trial Tr. 130:9-14. And, some assets may not have been brought into the guardianship. *Id.* 369:2-371:7. The guardian of the property has the duty to meet a reasonable prudence standard of judgment and care in caring for, preserving, and increasing the person with a disability's property. *In re duPont*, 194 A.2d 309, 313-314 (Del. Ch. 1963). Any issues with previous accountings will be addressed separately. But, any actions involving M.G.'s monies which do not inure to her benefit will not be permitted in the future.

2. Every effort shall be made to comply with Court of Chancery requirements for guardianship accountings, including providing bank statements and receipts with accountings. All of M.G.'s assets, including the assets in the Connecticut People's Union Bank account, shall be placed in M.G.'s guardianship account.
3. S.G. shall file an inventory and proof of compliance showing that he opened a guardianship account for M.G. within 30 days after this report becomes final.
4. S.G. will fully cooperate with C.C. in making funds available that are necessary for M.G.'s day-to-day care as expeditiously as practicable (including payment of M.G.'s share of the rent electronically).

### **III. Conclusion**

I recommend that the Court remove D.F. as guardian of the person and property for M.G.,<sup>106</sup> and appoint C.C. and S.G. as successor co-guardians of M.G.'s person, and S.G. as successor guardian of M.G.'s property. I further recommend that M.G. remain living with C.C. in Dover at this time, and that conditions detailed in this report pertaining to the guardianship be imposed by the Court.

This is a Magistrate in Chancery's final report, and exceptions may be taken under Court of Chancery Rule 144. Once this report becomes final, an order will be issued implementing this report.

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<sup>106</sup> D.F.'s bond remains in place until cancelled by the Court.