The Conservatorship of Britney Spears and a Ward's Right to Petition for Restoration of Competency

Britney Spears and the details of her conservatorship—the California equivalent of incompetency and guardianship in North Carolina—have recently been front page news, leading people to reach out to me with questions. While the case is remarkable, in part because of Ms. Spears' fame and the massive amounts of wealth involved, the themes and central issues are familiar to those who handle these types of cases. Allegations of abuses of power, bitter family disputes, and pleas for autonomy and a return to normalcy, are not uncommon in incompetency and guardianship proceedings. Still, there are important lessons in Ms. Spears' case for attorneys who handle guardianship work in North Carolina, including guardian ad litem attorneys in Chapter 35A proceedings.

Britney Spears' Conservatorship

In 2008, Ms. Spears was involuntarily committed to a psychiatric hospital in California. Along with an attorney, Ms. Spears' father, Jamie Spears, was granted temporary conservatorship over her before her release. *See* Andrew Blankstein & Richard Winton, *Spears is Released from UCLA Hospital Psychiatric Ward*, L.A. Times (Feb. 7, 2008). Various iterations of that conservatorship have remained in place since. The controversies surrounding the conservatorship—including whether the singer truly lacks capacity, the fees being charged by Ms. Spears' conservators and appointed attorney, and Ms. Spears' claim that she is being forced to carry an intrauterine device (IUD) against her will—were amplified by the February 2021 N.Y. Times documentary, *Framing Britney Spears*, and what has been dubbed the "Free Britney" movement by her fans and others concerned for her welfare. *See* Partricia Grisafi, *'Framing Britney Spears' on FX Shows How the Singer Gets Used for Everyone Else's Purposes*, NBC News (Feb. 6, 2021).

These are all important issues worthy of exploration. The issue this post focuses on is Ms. Spears' claim that no one told her of her right to request that the conservatorship be terminated and the law in North Carolina on that issue.

Britney's Recent Allegation. On June 23, 2021, Ms. Spears addressed a Los Angeles probate judge about her conservatorship. Among other striking statements, Ms. Spears discussed her longtime desire to end the conservatorship and that no one told her that she could make that request to the court. She told the judge:

> The last time I spoke to you, by just keeping the conservatorship going and also keeping my dad in the loop, made me feel like I was dead—like I didn't matter, like nothing had been

> done to me, like you thought I was lying or something. I'm telling you again, because I'm not lying. I want to feel heard. And I'm telling you this again, so maybe you can understand the depth and the degree and the damage that they did to me back then. I want changes, and I want changes going forward. I deserve changes. I was told I have to sit down and be evaluated again if I want to end the conservatorship. Ma'am, I didn't know I could petition the conservatorship to end it. I'm sorry for my ignorance, but I honestly didn't know that.

Jem Aswad, *Read Britney Spears' Full Statement Against Conservatorship: 'I am Traumatized'*, Variety (June 23, 2021).

That Ms. Spears has not previously formally sought an end of the conservatorship has been used against her. "Any time Britney wants to end her conservatorship, she can ask her lawyer to file a petition to terminate it; she has always had this right but in 13 years has never exercised it," Jamie Spears' attorney argued earlier this year. Liz Day, Samantha Stark & Joe Coscarelli, *Britney Spears Quietly Pushed for Years to End Her Conservatorship*, N.Y. Times (June 22, 2021). Ms. Spears said that she was never told that she has the option of requesting that the conservatorship be terminated.

An Attorney's Responsibility to Advise on the Rights of Wards

I have no access to information other than the media reports about Ms. Spears' case. The allegations that have been made are serious. It is difficult as an outsider to make judgments about the allegations in a case in which much of the evidence and proceedings have been confidential.

Let us focus here on what we do know: wards in North Carolina have the right to seek modifications to guardianship and restoration of competency, and lawyers need to inform clients of those rights.

Chapter 35A gives the ward—as well as a guardian or any other interested person—the right to petition the clerk for restoration of the ward's competency. G.S. 35A-1130(a). A hearing on the motion for restoration is calendared between ten and thirty days after the motion has been served on the ward and the guardian, depending on who has filed the motion. G.S. 35A-1130(b). The ward has a right to be represented by counsel or an appointed guardian ad litem attorney. G.S. 35A-1130(c). If the court finds by a preponderance of the evidence that the ward is competent, the ward's competency is legally restored. The ward is once again authorized to manage his or her affairs, control his or her property, and exercise all rights as if there had never been an adjudication of incompetency. G.S. 35A-1130(d).

Attorneys have an ethical duty to advise clients on the status of a matter and how to accomplish the client's objectives. N.C. Rules of Prof'l Conduct Rules 1.3, 1.4. A lawyer's duties do not end the moment a hearing is over. Clients must be told what rights they have and what options are

available to them. Following the adjudication of incompetence and initial appointment of a guardian, attorneys should review with the client the possibility of appeal, as well as future motions to modify and restorations of competency. G.S. 35A-1115; G.S. 35A-1207; G.S. 35A-1130.

Attorneys need to communicate about the possibility of motions to modify and restorations of competency because guardianship may be in place for years, if not decades, and circumstances change. Guardianship cases are unique in that so long as a ward is alive and guardianship remains in effect, the cases do not end, even once the attorney is discharged after the initial adjudication of incompetency and appointment of a guardian. Clerks of court in North Carolina, who initially decide guardianship matters, have continuing jurisdiction, which allows the clerk to assure compliance with orders, to settle disputes among guardians, to remove or appoint alternative guardians, and to receive and review regular accountings. G.S. 35A-1203; G.S. 35A-1290; G.S. 35A-1291; G.S. 35A-1261; G.S. 35A-1264. The initial attorney for a ward does not necessarily remain in the case following a declaration of incompetency. It is therefore critical that a client knows his or her rights and how to exercise them if circumstances change after the attorney's active involvement in a matter ends.

Counsel for a ward—including an appointed guardian ad litem attorney—should (i) discuss the ward's future options to file motions for modifications to guardianship or for restoration of competency; (ii) explain the types of circumstances that could warrant such filings; and (iii) tell the ward how to seek modifications or restoration of competency. The conversation should include information on how to contact the attorney and how to go to the clerk's office to file a motion if the ward may be capable of doing so. The attorney should give this guidance to the client orally, in a face-to-face meeting. The information should also be shared in writing. For example, the attorney may give the client a letter detailing the options, possibly including a brochure or other information on the rights of wards. Equip the client with the information needed to protect his or her interests going forward.

Guardians should also be told about the possibility of future modifications or a restoration of competency. Any guardian can file a motion in the cause or petition the clerk to restore a ward's competency. G.S. 35A-1207(a); G.S. 35A-1130(a). If the ward's capacity improves or other circumstances change, the guardian can help the ward by bringing the matter before the clerk of court. Of course, guardians and wards will not always see eye-to-eye, and a ward may seek modification or restoration of competency without the guardian's assistance. Given a guardian's role, however, in ensuring that a ward's needs and best interests are met, the possibility of modifications and future restoration of competency should also be explained to the guardian. If the guardian is represented by counsel, that counsel should provide the guardian with this information. If the guardian is unrepresented, counsel for the ward should share this information with the guardian.

As Britney herself famously asked in *Baby One More Time*, "How was I supposed to know?" In North Carolina, the answer is clear: an attorney should always inform the client of his or her rights

and options.

For more information on the restoration process, see Meredith Smith, *Restoration to Competency under G.S. 35A-1130: Common Issues and Questions*, Social Services Law Bulletin No. 45 (UNC School of Government, 2015). AOC forms are available for restoration proceedings, including a Notice of Hearing and Order Appointing Guardian ad Litem, Motion in the Cause for Restoration to Competency, Order on Restoration, and a Motion and Order for a Multidisciplinary Evaluation in a Restoration Proceeding.