

2011 WL 7962652 (Me.) (Appellate Brief)  
 Supreme Judicial Court of Maine.

GUARDIANSHIP OF JO-ANN MARIE CANTARA.

No. YOR-11-45.  
 December 5, 2011.

On Appeal  
 From the Probate Court, York County, Maine

**Brief of Appellant**

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**\*3** Statement of Facts and Procedural History.

The Appellant is Jo-Ann Cantara.<sup>1</sup> Ms. Cantara is a veteran. She receives health care through the Veteran's Administration ("VA"). She receives monthly VA benefits which are paid to and disbursed by a VA fiduciary, Laurie Roberts. Appx. 21. Ms. Roberts manages a bank account for Ms. Cantara. The responsibilities of a VA fiduciary include: Managing the beneficiary's VA income and ensuring the beneficiary's just debts are paid; Utilizing the funds for the beneficiary's daily needs (e.g., food, clothing, housing, medical expenses, and personal items); Obtaining prior approval for any nonrecurring expense exceeding \$1,000.00; and Protecting the beneficiary's funds from the claims of creditors.<sup>2</sup> Ms. Cantara's assets consist of a car, personal belongings, her bank account and spending cash.

On July 29, 2003, York County Probate Court Judge Nadeau appointed Monique Parenteau<sup>3</sup> to be Ms. Cantara's limited guardian and limited conservator.<sup>4</sup> Appx. 9-11. The Joined Letters of Guardianship and Conservatorship contained the following proviso:

"Guardians and conservators shall not relocate themselves or their ward to a state other than Maine for a period greater than 30 days without giving the Court and all interested persons at least 30 days written notice prior to such relocation...." Appx. 9.

**\*4** The Joined Letters limited Mrs. Parenteau's guardianship powers in the following manner:

"(1) To have custody of Jo Ann Lorentz<sup>5</sup> for the following purposes only:

- (a) To have full access at all times to Jo Ann Lorentz and to her residence, for the purposes of monitoring her compliance with her prescribed. psychiatric-related medication regimen and the condition, health and safety of her person and residence;
- (b) To make provisions for Jo Ann Lorentz's mental health care needs, and to select and have full and complete access to her mental health care providers, counselors, team participants, records and information;
- (c) To place Jo Ann Lorentz in an appropriate mental health facility in the event of a mental health relapse occasioned by substantial non-compliance with her medication regimen or upon the recommendation of a licensed psychiatrist, psychologist or physician and, in that event only, to establish her subsequent place of residence." Appx. 10.

The Joined Letters limited Mrs. Parenteau's conservatorship powers as follows:

"(1) To have direct and regular access to Jo Ann Lorentz's representative payee<sup>6</sup> and financial accounts and records wherever located, for the purposes of monitoring the propriety of her expenditures and vetoing or approving any **\*5** expenditures for items valued at \$500.00 or more, except that Jo Ann Lorentz is hereby authorized to purchase, register and insure an automobile for a total price of not more than \$10,000.00 if her representative payee consents;

(2) To collect, hold, retain and maintain the income and assets of Jo Ann Lorentz and to nominate her representative payee and any agent(s) to fulfill that purpose and any other purpose identified in this Adjudication.

All other types of personal discretion and authority not listed herein shall be retained by Jo Ann Lorentz, who shall fully cooperate with the Limited Guardian and Limited Conservator to facilitate full compliance with the exercise of the powers granted herein.” Appx. 11.

Mrs. Parenteau served as Ms. Cantara's limited guardian and limited conservator for approximately eight years. On December 10, 2010, with the intent to resign, Mrs. Parenteau filed Joined Petitions for the Appointment of Guardian and Conservator. Appx. 18-22. Her nominees were Bonnie Hoseit and Carol Chabot.<sup>7</sup> A visitor was duly appointed. The court ordered mediation; all parties attended but were unable to agree.

On July 7, 2011, a hearing was held before Judge Bailey on the Joined Petitions. Present at the hearing were Ms. Cantara, her attorney, Jeffrey P. Buhrman, Mrs. Parenteau and her attorney, Eric Cote. Mrs. Parenteau testified that she sought (1) to have Mrs. Hoseit and Mrs. \*6 Chabot replace her as guardians and conservators, and (2) to expand their powers to full guardianship and full conservatorship.<sup>8</sup> See also Appx. 32.

Testifying at the hearing were Mrs. Parenteau, Carol Chabot, Bonnie Hoseit and Ms. Cantara. The exhibits admitted at the hearing included photos of Ms. Cantara's previous residence taken in January 2011 (Appx. 101-107), photos of her current residence taken in July 2011 (Appx. 121-124), a letter of reference from the Director of Ms. Cantara's current residence (Appx. 108), and portions of Ms. Cantara's health-care records from the Veteran's Administration (Appx. 109-120).

Mrs. Parenteau testified that “most” winters she left Maine to spend five or six months in Florida. Appx. 35. Her most recent absence was during the winter of 2010-2011. She gave notice of her absence in “the first years,” but not after that. Appx. 35-36. During Mrs. Parenteau's absence, Mrs. Hoseit and Mrs. Chabot were active in Ms. Cantara's health-care and personal matters. Appx. 36-37 [MP], 36-37 [CC] and 61-63 [BH].<sup>9</sup> This was particularly true of the winter of 2010-2011.

Mrs. Parenteau testified that she never signed a power of attorney to delegate her guardianship authority to Mrs. Hoseit and Mrs. Chabot. Appx. 38. Mrs. Hoseit corroborated that there is no document granting her guardianship authority. Appx. 57.

The witnesses testified about an incident in January 2011, when Mrs. Chabot found Ms. Cantara at home, seriously ill and living in squalor. Appx. 50 [CC]. Mrs. Chabot discussed the \*7 situation on the telephone with Mrs. Parenteau (who was in Florida) and Mrs. Hoseit, and they decided to involve the local Police. Appx. 41 [CC]. The Police, Mrs. Chabot and Mrs. Hoseit then confronted Ms. Cantara at home and persuaded her to go to the hospital. Appx. 41-42 [CC]. A period of hospitalization and rehabilitation followed. Appx. 41-44 [CC]. During the hospitalization and rehabilitation, Mrs. Chabot and Mrs. Hoseit actively involved themselves in Ms. Cantara's health care. Appx. 28 [MP]; 45 [CC]; 57, 51 [BH]. They also actively involved themselves in her discharge planning and residential placement following rehab. Appx. 35 [MP]; 52, 63-64 [BH].

The witnesses testified that the incident in January 2011 concerned Ms. Cantara's physical health. Collectively, Mrs. Parenteau, Mrs. Chabot and Mrs. Hoseit stated that Ms. Cantara had [congestive heart failure](#), an edema, COPD, [sleep apnea](#), [diabetes](#), [conjunctivitis](#), a [yeast infection](#) and was “filled with fluids.” Appx. 31 [MP]; 51-52 [BH]. She was so ill, “she could hardly stand up straight.” Appx. 42 [CC]. Their testimony is corroborated by the VA medical records which indicate: “Patient was admitted on 1/20/11 for [Cor pulmonale](#),<sup>10</sup> decompensated.” Appx. 109.

The testimony shows that during and after the hospitalization Mrs. Hoseit and Mrs. Chabot inserted themselves into Ms. Cantara's physical health and lifestyle contrary to her wishes and without her permission. Mrs. Chabot testified:

"At the point that we brought her to the hospital she didn't want us to talk to anybody. She doesn't allow us to talk to anybody. We basically had to call my \*8 mom to speak to the doctor, to get an okay to do anything because they--no--Jo--Ann won't let anybody talk to us." Appx. 42.

Mrs. Hoseit gave similar testimony. Appx. 51. Ms. Cantara testified that her sisters were "way out of line" involving themselves in her health care, VA matters, lifestyle and living arrangements. She said:

"I think they're being very nosy in my situation, and I think it's way out of line. I think they're very demanding, and they have no right to demand what they're demanding from my doctors or telling me to do this or do that." Appx. 84.

When asked "did you authorize your sisters, Bonnie and Carol, to talk to your healthcare providers?," Ms. Cantara answered, "No, I did not." Appx. 83. Ms. Cantara made her position clear to the VA. For example, her chart contains the following note:

"Veteran had specifically requested that this provider not speak with her 2 sisters unless it was an emergency." Appx. 116.

The record shows that during and after the hospitalization Mrs. Hoseit and Mrs. Chabot misrepresented their legal authority to the VA or, at the very least, allowed others to believe they had legal authority over Ms. Cantara, when in fact they did not. Mrs. Hoseit admitted to making false claims of authority. When asked, "Have you ever told Jo-Ann's healthcare providers that you have co-guardianship?," Mrs. Hoseit testified, "It is a term that we use in my mother's absence, while she's in Florida." Appx. 57-8.

\*9 The VA medical records reveal that Mrs. Hoseit, in various ways at various times, told Ms. Cantara's health care providers that she (Mrs. Hoseit) had guardianship powers.

"Patient's mother, Monique Parenteau ... is her legal guardian. She lives in Florida and her sisters, Bonnie Hoseit... and Carol Chabot (both of Saco) are pursuing shared guardianship. According to Bonnie, they have "temporary guardianship." Appx. 109.

"Veteran has mother Monique as guardian. She is elderly and lives in [Florida]. [Daughters] Bonnie and Carol have temporary guardianship until court date is set." Appx. 114.<sup>11</sup>

"Psych/Social: Single, no children, mother and 2 sisters have shared guardianship for Jo-Ann." Appx. 117.

"[Telephone call] veteran's sister, Bonnie Hoseit, after receiving request to call from RN [home based primary care].

Ms. Hoseit asked questions re: sister's health, ability to make decisions about her health, frequent request to resume smoking and driving. Ms. Hoseit \*10 says she is speaking (has documentation verifying)<sup>12</sup> for her mother who is veteran's guardian, and that her mother is on her way back to Maine from several months living in Florida." Appx. 120.

During Ms. Cantara's hospitalization and rehab, her sisters talked to her health care providers and involved themselves in her health care decisions. Mrs. Chabot testified that she spoke to Ms. Cantara's doctors and nurses about her sister's health care information. Appx. 45-6. Mrs. Hoseit admitted that her own involvement was very broad:

"I correspond through my mother's verbal approval/permission to speak with all of Jo-Ann's professional support team. And that includes her primary care doctor, her psychiatrist, her social worker, her caseworker, the personal care attendant. I've dealt with landlords, you know, anything that requires support for Jo-Ann." Appx. 53.

Mrs. Hoseit tried to control Ms. Cantara's driving and her choice to smoke. VA social worker, Cynthia Bartlett notes in the medical records:

"Ms. Hoseit asked questions re: sister's health, ability to make decisions about her health, frequent request to resume smoking and driving."

\*11 "Ms. Hoseit says, given her sister [sic] pulmonary and cardiac status she should not be smoking and given that she is not using her O2 during the day, she should not resume driving." Appx. 119.

Mrs. Hoseit and Mrs. Chabot also took it upon themselves to choose Ms. Cantara's residence. Three notes by VA social worker, David Strong reveal the sisters' control:

"phone call from Bonnie Hoseit, Sister who was concerned that Vet is beginning to go out on appts to look at apts in area." Appx. 115.

"Contact with Sister Bonnie Hoseit regarding housing at Huot House in Saco. She and her other sister [Carol Chabot] toured and approved of facility." Appx. 111.

"Follow-up with Sister, Carol Chabot while Bonnie Hoseit is out of town. Family would like to move ahead with placement..." Appx. 112.

The VA records show that Mrs. Hoseit wielded her self-awarded powers in a peremptory and authoritarian manner. On one occasion memorialized in the records, Ms. Hoseit dictated terms to Ms. Cantara and threatened to end her independence if those terms were not met. The social worker David Strong wrote on January 31, 2011:

"Telephone call with Bonnie Hoseit, Sister. She had 'points' that she wished to share with the writer that needed to be agreeable and met by the Vet in order for she and her mother, (Guardian) to allow Vet to remain at home. She wanted \*12 writer to know that this was Vet's 'last chance' to remain independent." Appx. 110. (emphasis added).

Mr. Strong's entry described the "points" shared by Mrs. Hoseit, which she corroborated at trial. Only one, the transfer to a local psychiatrist, concerned Ms. Cantara's mental health. The rest were personal, financial or physical health care matters. Appx. 110. Mrs. Hoseit testified that she discussed the "points" with Ms. Cantara's health care providers, social worker and personal care attendant. Appx. 64.

As regards money matters, the evidence shows that Mrs. Parenteau and Mrs. Hoseit have taken control of the VA fiduciary's discretion. When asked, "Didn't you tell Laurie [Rogers, the VA fiduciary] to reduce Jo-Ann's weekly spending money?," Mrs. Parenteau answered, "Yes." Appx. 37. Ms. Hoseit corroborated her mother's testimony:

"Initially, they [the VA] allotted Jo-Ann a very large weekly allowance ... We've reduced that...." Appx. 96 (emphasis added).

Ms. Hoseit said "our relationship with Laurie has existed for almost ten years" and:

“[I]t's taken many years to get to the point where we have a relationship, and that **they [sic] understand and look for our insight into any kind of allocation for Jo-Ann.**” Appx. 53-4 (emphasis added).

Ms. Cantara testified that, over her objections, her family controls her money matters and dictates terms to the VA fiduciary:

\*13 “Q: I'm going to ask you, Jo-Ann, a little bit more about your bills. How do they get paid?”

A: The[y] get paid by Laurie.

Q: And then she sends you a weekly check. How much is that?

A: It's a hundred and fifty right now. I'm trying to demand more.

Q: Did it used to be more?

A: It used to be three hundred dollars a week.

Q: And why is it a hundred and fifty now?

A: They say I don't need anything where I'm living.

Q: Who's “they”?

A: My family. Whether it's coming from my sisters or my mom, I'm not sure ... I hardly hear from them.

Q: Did you authorize your sisters to talk to Laurie Rogers?

A: Usually it's my mom. I prefer that my mom deal with her, given the situation. I prefer nobody do. I prefer my own freedom and my own right to my own privacy with my VA situation, my file, everything. But if my mother has to deal with her, Laurie will turn around and answer me sometimes ‘ask your mother.’ And she makes it very difficult on me. So, in turn, I ask my mother \*14 to try to get something done. She's got my money. There's not too much I can do. All I can do is file a complaint to Washington to make it legal, and I fight it from there. So unless my mother can give me money, some days I won't have money. If she does this to me, I won't have money.

Q: Jo-Ann, do you want your sisters to be talking to Laurie Rogers?

A: No.” Appx. 72-73.

An entry by David Strong in the medical records on April 6, 2011 echoes the family's interference:

“[Home visit] with Veteran and her Sister, Bonnie Hoseit

Veteran was visibly upset when Sister attempted to make decisions for her and or ‘manage’ her affairs.... One issue involved Veteran's desire to have more spending money. Sister had told Veteran to ask for money when she needed it which opened up debate for Sister to weigh in on what Veteran could do with her money. Veteran insisted she didn't need anyone determining what she spends her income on. Writer suggested Veteran request ‘pocket change’ which could be an nominal amount but could be spent at Veteran's discretion...” Appx. 118 (emphasis added).

At the probate court hearing, Ms. Cantara's testimony demonstrated she was oriented to person, place and time. Appx. 65-68. Ms. Cantara readily knew the source and amount of her income. Appx. 69. She spoke about her goals of getting married and adopting children. Appx. \*15 73. Ms. Cantara testified that she cooks, cleans, dresses herself, buys groceries, shops, drives a car, and takes medication on her own. Appx. 74-77. Ms. Cantara clearly understood that she was under a limited guardianship. Appx. 68.

According to the director of the facility where Ms. Cantara lives, Ms. Cantara is "a model resident" presenting "no behavior or health issues." The director also stated Ms. Cantara is "helpful to other residents and always presents in a positive manner;" her "interaction with other residents has been excellent and appropriate;" and "she keeps her apartment clean and uses her time advantageously." Appx. 108.

The photos admitted into evidence of Ms. Cantara's current apartment demonstrate that, when she is well, she is able to maintain a healthy living situation. Appx. 121-124.

At the conclusion of the hearing, Appellant's attorney requested that the probate court issue findings of fact and conclusions of law. The court did so on August 25, 2011. The same day the court granted the Joined Petitions and appointed Mrs. Hoseit and Mrs. Chabot to be successor co-guardians and successor co-conservators without limitation. This appeal was noted on September 16, 2011.

#### **\*16 Issues Presented for Review**

1. Whether the probate court abused its discretion by appointing as full guardians persons who previously disregarded the restrictions of the limited guardianship and violated the ward's civil rights.
2. Whether the probate court abused its discretion by appointing as full conservators persons who previously disregarded the restrictions of the limited conservatorship and violated the protected person's civil rights.
3. Whether the probate court abused its discretion by expanding the limited guardianship to a full guardianship without consideration of the ward's specific needs and without attention to the development of the ward's self reliance and independence.
4. Whether the probate court abused its discretion by expanding the limited conservatorship to a full conservatorship without consideration of the protected person's specific needs and without attention to the development of the protected person's self reliance and independence.

#### **\*17 Summary of Argument**

**1. The probate court abused its discretion by appointing as full guardians persons who previously disregarded the restrictions of the limited guardianship and violated the ward's civil rights.**

##### *Standard of appellate review*

*"The critical test in determining the propriety of the exercise of judicial discretion is whether, under the facts and circumstances of the particular case, it is in furtherance of justice...."* *Matter of Howes*, 471 A.2d 689, 691 (Me.1984).

The probate court abused its discretion when it appointed Carol Chabot and Bonnie Hoseit to be Appellant's guardians. The evidence shows that Mrs. Chabot and Mrs. Hoseit violated Ms. Cantara's civil rights during the time that their mother was Appellant's limited guardian. The sisters assumed without legal authority the powers of a full guardian. They misrepresented their authority to others. They obtained Ms. Cantara's private health care information. They meddled in Ms. Cantara's personal affairs and made decisions that were not theirs to make. They bullied Ms. Cantara to comply with their decisions. When

appointing a guardian, the probate court must consider the ward's best interests. It is not in Ms. Cantara's best interests to have guardians who are callous of her civil rights.

**\*18** 2. The probate court abused its discretion by appointing as full conservators persons who previously disregarded the restrictions of the limited conservatorship and violated the protected person's civil rights.

The probate court abused its discretion when it appointed Chabot and Bonnie Hoseit to be Appellant's conservators. The evidence showed that, during their mother's limited conservatorship over Appellant, Mrs. Hoseit and Mrs. Chabot, ignored the restraints placed on the limited conservator. They tried to control all of Ms. Cantara's spending but for her "pocket change." They interfered with the VA fiduciary's determination of her weekly check. They usurped decisions that rightly belonged to Ms. Cantara.

3. The probate court abused its discretion by expanding the limited guardianship to a full guardianship without consideration of the ward's specific needs and without attention to the development of the ward's self reliance and independence.

#### *Standard of appellate review*

*"We review the Probate Court's determination of a guardian's or conservator's powers and duties for an abuse of discretion."*  
*Estate of Bragdon, 875 A.2d 697, 700 (Me. 2005).*

**\*19** The probate court failed to consider Ms. Cantara's specific needs when it enlarged the powers of the guardians from limited to full. The court did not adequately consider whether a less restrictive guardianship would meet Ms. Cantara's demonstrated specific needs. The single incident in January 2011, during the course of the 8 year limited guardianship, did not warrant removing the guardianship limitations. Appellee did not prove, by clear and convincing evidence, a need to expand the guardianship. A limited guardianship encourages the development of Appellant's maximum self reliance and independence.

4. The probate court abused its discretion by expanding the limited conservatorship to a full conservatorship without consideration of the protected person's specific needs and without attention to the development of the protected person's self reliance and independence.

The probate court abused its discretion by expanding the limited conservatorship without adequate consideration of Ms. Cantara's specific needs and whether a less restrictive conservatorship would meet her demonstrated specific needs. Appellee did not prove a need to expand the conservatorship powers. A limited conservatorship encourages the development of Appellant's maximum self reliance and independence.

#### **\*20 Argument**

##### **1. The probate court abused its discretion by appointing as full guardians persons who previously disregarded the restrictions of the limited guardianship and violated the ward's civil rights**

The probate court abused its discretion when it appointed Carol Chabot and Bonnie Hoseit to be Appellant's guardians. The evidence shows that Mrs. Chabot and Mrs. Hoseit had violated Ms. Cantara's civil rights during the previous limited guardianship. When appointing a guardian, the probate court must consider the ward's best interests. It is not in Ms. Cantara's best interests to have guardians who are callous of her civil rights.

The Probate Code subjects the appointment of a qualified guardian to the best interests of the ward.

"WHO MAY BE GUARDIAN; PRIORITIES. Any competent person or a suitable institution may be appointed guardian of an incapacitated person,... [s]ubject to a determination by the court of the best interests of the incapacitated person,..." §5-311 (a)(b) (emphasis added).



The Law Court has said that in appointing guardians, the probate court must consider the best interests of the incapacitated person. 18-A M.R.S.A. §5-417-417. *Estate of Bragdon*, 875 A.2d 697, 700(Me. 2005), citing, 18-A M.R.S.A. § 5-311(b) (Supp. 2004).

**\*21** There is no indication in the Findings of Fact and Conclusions of Law that the probate court weighed Ms. Cantara's best interests when it appointed her sisters as her guardians. Moreover, the court gave no mention to the fact that Mrs. Hoseit and Mrs. Chabot had violated Ms. Cantara's civil rights. If the family will not protect Ms. Cantara's civil rights and the probate court will not, who will?

Had the court had fully considered the evidence, it would have found that Mrs. Hoseit and Mrs. Chabot were unsuited to carry out the responsibilities of guardians. Guardians are called upon to restrain their powers in much the same way as the probate court is restrained in its powers. No less than the probate court, guardians have a duty to encourage the ward to develop maximum self reliance and independence. See 18-A §5-408. Persons who are callous to the ward's civil rights cannot reasonably be expected to promote the ward's self reliance and independence.

What was the wrongdoing? During the previous limited guardianship, Mrs. Hoseit and Mrs. Chabot assumed without legal authority the powers of full guardians. They misrepresented their authority to others. They obtained Ms. Cantara's private health care information. They meddled in Ms. Cantara's personal affairs and made decisions that were not theirs to make. Finally, they bullied Ms. Cantara to comply with their unauthorized decisions.

A guardian must be court appointed. Court appointment is required, because the “appointment of a guardian for an incapacitated person affects the fundamental personal liberty of the prospective ward,” *Matter of Howes*, 471 A.2d 689, 691 (Me.1984).

**\*22** Until the recent court proceeding, Ms. Cantara's limited guardian was Monique Parenteau. Mrs. Parenteau's powers did not extend to her daughters. Mrs. Parenteau never legally delegated her authority to Mrs. Hoseit and Mrs. Chabot. By law, the only way a guardian can delegate authority to an agent is through a written power of attorney filed with the probate court. 18-A M.R.S.A. §5-104 (a). This was not done. No matter how well-intentioned, a family simply cannot assume control of another person's life, violating her “fundamental personal liberty” and by-passing the court process. The probate court abused its discretion when it validated this behavior and chose to ignore the violation of Ms. Cantara's due process rights.

Mrs. Hoseit and Mrs. Chabot claimed to have had verbal authority from their mother. They claimed to have been acting on her behalf. Even so, Mrs. Hoseit and Mrs. Chabot grossly overstepped the restraints placed on the legal guardian. Mrs. Parenteau's limited guardianship did not encompass physical health issues. The limited guardianship was crafted to address Ms. Cantara's mental health care needs. Apart from **mental health** matters, Mrs. Parenteau only could **monitor** the condition, health and safety of Ms. Cantara's person and residence.<sup>13</sup> Mrs. Parenteau was not empowered to make provisions for Ms. Cantara's physical health care needs. Nor was she authorized to select or access to for Ms. Cantara's physical health care **\*23** providers. **Nor** was Mrs. Parenteau empowered to place Ms. Cantara in a health care facility. Nor did Mrs. Parenteau have general authority to establish Ms. Cantara's place of residence. Mrs. Parenteau could not verbally authorize Ms. Chabot and Hoseit to do acts that she herself could not do.

The record shows that the hospitalization and rehab that followed the January 2011 event involved physical, not mental, health care problems. Ms. Cantara had a heart condition. She had edema. She had COPD, **sleep apnea** and **diabetes**. She had gained water weight. All these are health care issues. All are matters outside the limited guardianship.

Any rights not specifically allocated to Mrs. Parenteau remained with Ms. Cantara. Therefore, all decisions concerning Ms. Cantara's physical health, where she lived and how she lived were hers alone to make. The Probate Code provides:

“LIMITED GUARDIANSHIPS. In any case in which a guardian can be appointed by the court, the judge may appoint a limited guardian with fewer than all of the legal powers and duties of a guardian. The specific duties and powers of a limited guardian shall be enumerated in the decree or court order. A person for whom a limited guardian has been appointed retains all legal and civil rights except those which have been suspended by the decree or order.” 18-A §5-105 (emphasis added).

The records contains repeated instances when the sisters spoke to Ms. Cantara's health care providers. In so doing, Mrs. Hoseit and Mrs. Chabot violated Ms. Cantara's right to health care privacy, which is protected by State law. See [22 M.R.S.A. § 1711-C](#), “Confidentiality of \*24 Health Care Information.” Mrs. Hoseit and Mrs. Chabot actively involved themselves in Ms. Cantara's health care. They also inserted themselves in her discharge planning and residential placement following rehab.

VA medical records show that Mrs. Hoseit repeatedly misrepresented her authority to Ms. Cantara's health-care providers, claiming “temporary guardianship,” “co-guardianship,” “shared guardianship” and the existence of documentation delegating authority to her. Ms. Cantara certainly was not the source of this misinformation. She is careful to specify that her mother was her limited guardian.

The VA records show that Mrs. Hoseit attempted to dictate terms to Ms. Cantara and threatened to end Ms. Cantara's independence if those terms were not met. VA social worker, David Strong wrote “**Bonnie Hoseit wanted the writer to know that this was the Vet's last chance to remain independent.**” This is a statement by a sister who has absolutely no legal authority to deal with Ms. Cantara's health care providers. The sisters, Mrs. Hoseit and Mrs. Chabot, although they might have had good intentions, diminished Ms. Cantara's independence, rather than maximized it. They are the wrong persons to be in charge. They are not respectful of Ms. Cantara. They cannot be trusted to act in Ms. Cantara's best interests. A guardian must be the advocate of the ward. A guardian must respect a ward's personhood. A guardian must act to encourage a ward's independence and self-reliance.

The probate court was not bound to appoint Mrs. Chabot and Mrs. Hoseit simply because they were the only persons nominated. The court was free to reject the nomination. The court had the power to fashion an alternate outcome. It “could appoint or reappoint a \*25 temporary guardian... or appoint as guardian someone other than petitioner[s].” In re [Krystal S.](#), 584 A.2d 672, 675 (Me. 1991). If it deemed it necessary, the court itself could have assumed temporary guardianship or appointed someone else temporary guardian ex parte, 18-A §5-310-A(a), pending the presentation of a suitable nominee or the involvement of a public guardian. See 18-A §5-601. The court abused its discretion when it appointed Mrs. Chabot and Mrs. Hoseit.

## **2. The probate court abused its discretion by appointing as full conservators persons who previously disregarded the restrictions of the limited conservatorship and violated the protected person's civil rights.**

The probate court abused its discretion when it appointed as conservators persons who previously had disregarded the legal limitations imposed on them by the court and who usurped power that rightly belonged to the protected person.

The record shows that Mrs. Hoseit and Mrs. Chabot assisted their mother, Monique Parenteau, in carrying out her duties as limited conservator. Mrs. Hoseit and Mrs. Chabot, however, overstepped the powers of the limited conservator. In so doing, they violated Ms. Cantara's right to privately manage her own finances to the extent of her abilities. The probate court was insensitive to this fact when it appointed Mrs. Hoseit and Mrs. Chabot as conservators. The court also **neglected** its obligation to encourage Ms. Cantara's independence and self reliance.

\*26 A conservator is a fiduciary who must observe the standards of care applicable to trustees. [Estate of Bragdon](#), 875 A.2d 697 (Me. 2005); 18-A M.R.S.A. §5-417. A conservator must not act arbitrarily with regard to the protected person's finances. Instead, she must act in good faith, with loyalty and in the protected person's best interest. See 18-B M.R.S.A., Uniform Trust Code, §§ 801-802.

It is reasonable to say that a conservator must encourage the protected person to develop the maximum level of self reliance and independence that she can safely achieve within her capabilities. This principle flows from the restraint imposed on the court by the Probate Code.

“PERMISSIBLE COURT ORDERS The court shall exercise the authority conferred in Parts 4 and 6 to encourage the development of maximum self reliance and independence of the protected person....” 18-A §5-408.

Since the court is charged with the duty “to encourage the development of maximum self reliance and independence of the protected person,” no less should be expected of a conservator who derives her power from the court.

Under the terms of the limited conservatorship, Mrs. Parenteau was allowed:

“direct and regular access to Jo Ann Lorentz’s representative payee and financial accounts and records wherever located, for the purposes of monitoring the propriety of her expenditures and vetoing or approving any expenditures for items valued at \$500.00 or more.”

\*27 Mrs. Parenteau had no authority to tell the VA fiduciary what to do; she only was given “access” to the VA fiduciary. Mrs. Parenteau had no authority to veto or approve the VA fiduciary’s actions or decisions. A VA fiduciary is subject to federal, not State, law. The probate court is unable to grant a conservator powers that supplant the discretion of the VA fiduciary. *See, In re Guardianship of Smith*, 17 A.3d 136 (Me. 2011) (“the court erred in interfering with the current representative payee’s discretionary authority to use the SSI benefits in the beneficiary’s best interest.”).

In addition, Mrs. Parenteau only was granted limited authority with regard to Ms. Cantara’s personal money decisions. Specifically, Mrs. Parenteau was empowered to monitor the propriety of Ms. Cantara’s expenditures and to veto or approve her expenditures for items valued at \$500.00 or more. Ms. Cantara was free, therefore, to spend as she wished whatever money she received from the VA fiduciary, so long as each item she purchased was valued at less than \$500.

The record shows that the limited conservator delegated much of her duties to Mrs. Hoseit and Mrs. Chabot. They, however, completely ignored the restraints placed on the limited conservator. Instead, Mrs. Hoseit and Mrs. Chabot tried to control all of Ms. Cantara’s spending but for her “pocket change.” They interfered with the VA fiduciary’s determination of Ms. Cantara’s weekly check. These actions were outside the bounds of the limited conservator’s authority. In overstepping these bounds, Mrs. Hoseit and Mrs. Chabot proved that they are not worthy to be conservators and the probate court abused its discretion by appointing them.

\*28 It was not mandatory that the probate court appoint any conservator. Ms. Cantara had a VA fiduciary in place, so her basic needs were covered. There was no compelling need for any conservator, given the existence of the VA fiduciary.

The probate court was not required appoint Mrs. Hoseit and Mrs. Chabot because they were the nominees. The court was free to reject the nomination. The court had authority to fashion an alternate result. It could have appointed a temporary conservator or appointed as conservator someone other than Mrs. Hoseit and Mrs. Chabot. *See, In re Krystal S.*, 584 A.2d 672, 675 (Me. 1991). In addition, the court could have exercised its own powers to protect Ms. Cantara until suitable conservators were nominated. “After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a person for reasons other than minority, the court has, for the benefit of the person and members of his household, all the powers over his estate and affairs which he could exercise if present and not under disability, except the power to make a will.” 18-A §5-408(3).

The court itself also could have taken on the role of temporary conservator.

“When a person is alleged to be in need of protection and an emergency exists and no other person appears to have authority to act in the circumstances, upon appropriate petition, the court may exercise the power

of a conservator or may enter an order, ex parte or otherwise, appointing a temporary conservator ... 18-A §5-408-A (a).

\*29 Under these circumstances, it was an abuse of discretion to appoint Mrs. Chabot and Mrs. Hoseit.

**3. The probate court abused its discretion by expanding the limited guardianship to a full guardianship without consideration of the ward's specific needs and without attention to the development of the ward's self reliance and independence.**

The probate court totally failed to consider Ms. Cantara's specific needs when it enlarged the powers of the guardians from limited to full. In addition, the court did not adequately consider whether a less restrictive guardianship would meet Ms. Cantara's demonstrated specific needs. In these respects, the probate court abused its discretion.

In *Guardianship of Collier*, the Law Court vacated a probate court's appointment of a full guardian because the record indicated that the court did not consider a less restrictive guardianship to meet the ward's specific needs and thus did not properly exercise its discretion. *Guardianship of Collier*, 653 A.2d 898 (Me. 1995). Appellant calls upon the Law Court to vacate the full guardianship of Mrs. Chabot and Mrs. Hoseit for the same reason.

The Probate Code requires the appointing court to circumscribe its orders.

“PERMISSIBLE COURT ORDERS. The court shall exercise the authority conferred in Parts 4 and 6 to encourage the development of maximum self reliance and \*30 independence of the protected person and make appointive and other orders **only to the extent necessitated** by the incapacitated person's actual mental and adaptive limitations or other conditions warranting the procedure.” 18-A §5-304 (emphasis added).

The wording of § 5-304(a) is “intended to make clear to the court that guardianship proceedings should be exercised to provide maximum protection for the allegedly incapacitated person and with a view toward giving the allegedly incapacitated person the maximum of independence and self-reliance consistent with actual physical or mental limitations of the incapacitated person.” *Guardianship of Collier*, 653 A.2d at 901. The mandate contained in section 5-304(a) dovetails with section 5-105 which provides that a ward retains all legal and civil rights except those which are suspended by a limited guardianship. The principle underlying both 5-304(a) and 5-105 is that a guardianship must not confer more authority over person of ward than necessary to alleviate the problems caused by incapacity. “[T]he appointment of a full guardian without limitation affects the fundamental personal liberty of the prospective ward[;] it should not be done without careful consideration of the prospective ward's specific needs.” *Guardianship of Collier*, 653 A.2d at 902. Therefore, once the probate court finds that a person is incapacitated and needs a guardian, the court “must determine the extent of the power to be exercised by the guardian with relationship to specific needs of the incompetent person.” *Guardianship of Collier*, 653 A.2d at 900.

This was not done in Ms. Cantara's case. The probate court did not give “careful consideration of [Appellant's] specific needs.” The Findings of Facts and Conclusions of Law do not even suggest that the court ever considered less than full guardianship. There is no mention \*31 of the significance of the expansion of powers, how that expansion would impact Ms. Cantara, or what specific needs of hers required full guardianship. There is in the Findings of Facts and Conclusions of Law no weighing of the evidence, no discussion of Ms. Cantara's capabilities, no mention of her specific needs, and no description of the court's thought process and what evidence was persuasive in its decision.

The photos in evidence of Ms. Cantara's current apartment, Appx. 121-124, demonstrate that she is capable when healthy of maintaining a suitable living situation. Her testimony about being able to cook, buy groceries, and shop was uncontested. Her testimony shows she is intelligent, thoughtful and has a grasp of many things. The letter from the housing supervisor shows that Ms. Cantara is a suitable neighbor, model resident and she has no behavioral issues.

The January 2011 incident that propelled the family back to court was the first and only incident in about 8 years. It occurred because Ms. Cantara was so sick with health issues that she could not clean her apartment or care for herself. This situation was a medical issue. Ms. Cantara had attempted to deal with it on her own. Her sisters rightly stepped in and took Ms. Cantara to the hospital, with the approval of Mrs. Parenteau. Once Ms. Cantara received medical attention, her family was legally required to step back. The limited guardianship permitted Mrs. Parenteau only to monitor Ms. Cantara's person and residence. That was done. The limited power to monitor proved effective to protect Ms. Cantara. She got the medical care she needed. When Ms. Cantara is healthy, she is able to live on her own, despite the overprotective view of her family. The single incident in January 2011 does not warrant expanding a limited guardianship to a full guardianship.

\*32 Finally, Appellee failed to submit clear and convincing evidence supporting the expansion of powers. [18-A M.R.S.A. § 5-304\(b\)](#). It was an abuse of the probate court's discretion to grant full guardianship powers absent clear and convincing evidence that full powers were required to meet Ms. Cantara's specific needs.

**4. The probate court abused its discretion by expanding the limited conservatorship to a full conservatorship without consideration of the protected person's specific needs and without attention to the development of the protected person's self reliance and independence.**

The third argument, just made above, applies with equal force to the full conservatorship. The probate court abused its discretion by expanding the limited conservatorship without adequate consideration of Ms. Cantara's specific needs and whether a less restrictive conservatorship would meet her demonstrated specific needs.

The Probate Code requires the appointing court to circumscribe its conservatorship orders.

“PERMISSIBLE COURT ORDERS The court shall exercise the authority conferred in Parts 4 and 6 to encourage the development of maximum self reliance and independence of the protected person and make protective orders only to the extent necessitated by the protected person's actual mental and adaptive limitations and other conditions warranting the procedure.”  
18-A §5-408.

\*33 The Findings of Facts and Conclusions of Law do not even suggest that the court ever considered less than full conservatorship. There is no mention of the significance of the expansion of powers, how that expansion would impact Ms. Cantara, or what specific needs she had that required full conservatorship.

The evidence in the record is insufficient to support expanding to a full conservatorship. The previous limited conservatorship was adequate. Ms. Cantara's income is managed by a VA fiduciary. The fiduciary pays most of Ms. Cantara's expenses. Ms. Cantara receives a weekly check to spend as she needs and wishes, usually on food and personal items. The limited conservator could veto or approve purchases of items worth \$500 or more. Smaller purchases were exclusively at the discretion of Ms. Cantara. The limited conservatorship thoughtfully encourage Ms. Cantara to develop self reliance and independence. The expansion to a full conservatorship unnecessarily takes away Ms. Cantara's independence. The court expanded the powers without addressing Ms. Cantara's specific needs and how those needs required the expansion. This was an abuse of discretion.

**\*34 Conclusion**

Appellant requests that the Law Court overturn the appointment of Carol Chabot and Bonnie Hoseit, because they are insensitive to Appellant's rights. During the prior limited guardianship and limited conservatorship, they violated Appellant's civil rights, exceeded the prior court limitations and interfered with Appellant's fiscal independence.

Appellant requests that the Law Court direct the probate court to reinstate the terms of the 2003 Joined Letters, or create an alternate less restrictive limited guardianship and limited conservatorship tailored to Appellant's specific needs and abilities. The court erred by not encouraging the development of Appellant's self reliance and independence.

#### Footnotes

- 1 Previously, Ms. Cantara was known as Jo-Ann Lorentz.
- 2 U.S. Department of Veterans Affairs Fiduciary Program, "Responsibilities of a VA Fiduciary," December 21, 2010. [Http://www.vba.va.gov/bln/21/Fiduciary/responsibilities.htm](http://www.vba.va.gov/bln/21/Fiduciary/responsibilities.htm).
- 3 Mrs. Parenteau is Ms. Cantara's mother.
- 4 Appellant appealed the decision; the Law Court affirmed. [Guardianship of Jo Ann L., 847 A.2d 415 \(Me. 2004\)](#).
- 5 At the time Ms. Cantara was known as Jo-Ann Lorentz.
- 6 I.e., the VA Fiduciary, Laurie Roberts.
- 7 Mrs. Chabot and Mrs. Hoseit are Ms. Cantara's sisters; all three are daughters of Mrs. Parenteau.
- 8 The Joined Petitions sought a limited guardianship. The parties, however, agreed that Petitioner need not refile or amend the paperwork. The probate court accepted the agreement.
- 9 [MP] Parenteau, [CC] Chabot, [BH] Hoseit.
- 10 "Cor pulmonale" in lay terms is a right-sided heart failure.
- 11 Contrary to these assertions, the Joined Petitions did not seek temporary guardianship, Appx. 19, and none was granted to Chabot and Hoseit.
- 12 Ms. Hoseit admitted that there is no document from Mrs. Parenteau allowing Ms. Hoseit to speak for her. Appx. 58.
- 13 The July 29, 2003 Joined Letters of Guardianship and Conservatorship granted Mrs. Parenteau authority:
  - "(a) To have full access at all times to Jo Ann Lorentz and to her residence, for the purposes of monitoring her compliance with her prescribed psychiatric-related medication regimen and the condition, health and safety of her person and residence;
  - (b) To make provisions for Jo Ann Lorentz's mental health care needs, and to select and have full and complete access to her mental health care providers, counselors, team participants, records and information;
  - (c) To place Jo Ann Lorentz in an appropriate mental health facility in the event of a mental health relapse occasioned by substantial non-compliance with her medication regimen or upon the recommendation of a licensed psychiatrist, psychologist or physician and, in that event only, to establish her subsequent place of residence." (emphasis added). Appx. 10-11.