1980

In Re the Matter of Nelda Boyer : Amicus Curiae Brief of State of Utah

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

IN RE THE MATTER OF NELDA BOYER : Case No. 16853

AMICUS CURIAE BRIEF OF STATE OF UTAH

Appeal from an order of the Second Judicial District Court of Weber County, State of Utah, Honorable Judge Calvin Gould, presiding.

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NELDA BOYER

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STATEMENT OF THE NATURE OF THE CASE

This is an appeal from an order of the Second District Court in Weber County, finding the appellant to be incapacitated and appointing a guardian over her person. Appellant challenges the constitutionality of the guardianship provisions of the Utah Uniform Probate Code. The state as Amicus Curiae, herein defends the constitutionality of the Utah Statutes.

DISPOSITION IN THE LOWER COURT

The Second Judicial District Court of Weber County, the Honorable Judge Calvin Gould, presiding, after a jury trial, found that appellant was an incapacitated person pursuant to Section 75-1-201, Utah Code Annotated, and in need of a guardian.

Appellants' sister, Susie Rice, was appointed as guardian and is presently serving in that capacity.

RELIEF SOUGHT ON APPEAL

The State of Utah, as Amicus Curiae, seeks this court's declaration that the guardianship provisions of the Utah Uniform Probate Code are constitutional.

In the alternative, the state would suggest that this case might appropriately be remanded if this court finds that the judge below did not correctly apply the guardianship statutes in this particular case.

STATEMENT OF FACTS

The state as Amicus Curiae is not an advocate for either of the parties in this case. It is not the state's purpose to argue or discuss the particular facts of this case. The court should note, however, that due to lack of resources of the guardian's family, no responsive brief has been or will be filed. Therefore, the court's analysis of the specific facts of this case and the lower court's application of the statute to those facts will of necessity be assisted only by Appellant's Brief and the record itself.

PRELIMINARY STATEMENT

The interest of the State of Utah as Amicus Curiae in this case is to defend the validity and constitutionality of the guardianship provisions of the Utah Uniform Probate Code. This brief is directed only to that issue and does not address points raised in Appelant's Brief which do not challenge the statute itself. Specifically, Point VII of Appellant's Brief, which discusses the expert witness testimony which was accepted by the judge below, is not addressed or responded to in the state's brief. Neither does the state argue the appropriateness or correctness of the lower court's application of the guardianship statutes in this particular case. However, it should be pointed out that should this court find a misapplication of the statute by the lower court, it can avoid any finding as to the constitutionality of the statute simply by remanding with directions to make a different application of the statute.

This brief addresses appellant's arguments concerning the constitutionality of the involuntary guardianship provisions of the Utah Uniform Probate Code, Title 75, Utah Code Annotated, 1953 as amended, which was substantially adopted by the Utah

State Legislature in 1975. Appellant contends that the guardianship provisions allow the state to deprive an individual of important fundamental constitutional rights without sufficient due process and equal protection safeguards.

In any necessary guardianship there may be deprivation of personal liberties. However, the basic issue in this case should not be whether any deprivation of personal rights because of incapacity is ever warranted, but rather whether an individual who has been deprived of some such rights due to incapacity has been afforded sufficient due process and equal protection safeguards. The adoption of the Utah Uniform Probate Code was due in part to the recognition by the state legislature of the potential infringement of civil rights by involuntary guardianships and the need for procedural and substantive protections. In order to comply with due process and equal protection requirements necessitated because of the possible deprivation of fundamental rights, the involuntary appointment of a guardian must be based upon a compelling state interest, be the alternative least restrictive of basic rights, afford sufficient procedural due process, and be imposed under a sufficiently definitive statute. By adoption of the Uniform Probate Code, Utah has ensured these safeguards.

POINT I

THE UTAH GUARDIANSHIP STATUTES DO NOT UNCONSTITUTIONALLY DEPRIVE THE WARD OF FUNDAMENTAL CIVIL RIGHTS.

By imposing involuntary guardianship upon an adult person, the courts may deprive the incapacitated individual of some rights enjoyed by others generally. Basically, the guardian has the same control and custody of the incapacitated person that a parent has of his unemancipated minor child. Utah Code Annotated, Section 75-5-312. Concededly, an appointment of a guardian due to the incapacity of the ward, can restrict an individual from exercising some fundamental civil rights -- control over property, Section 75-5-312(b), choice of place of abode, Section 75-5-312(a), personal choice of medical care and treatment, Section 75-5-312(c). Other freedoms which may be limited are the right to marry, sue, contract, and hold a license, Mental Health and Human Rights, Report of the Presidents' Commission on Mental Health, Ariz. L.R. 20:49-174, 77, 1978. As these are basic rights protected by the Constitution, the state must have a strong interest in limiting their exercise by some persons.

A. INVOLUNTARY GUARDIANSHIPS, WHEN ORDERED PURSUANT TO UTAH LAW, ARE JUSTIFIED BY IMPORTANT AND COMPELLING STATE INTERESTS.

To prevent the detrimental physical and financial consequences of incapacity has been unanimously determined by

every state legislature to be an important state interest sufficient to warrant involuntary guardianship. (For a list of current guardianship statutes, see Mitchell, Involuntary Guardianship, Southern California Law Review, July 1979, Vol. 52, No. 5, footnote 35.) Though the several states do not have identical procedures for appointing guardians, and though some may violate requirements of due process of law, the unanimity does demonstrate the recognized need and importance of involuntary guardians and conservators when warranted by manifest disability. So compelling in fact is the interest of the state in providing necessary guardianships that the Presidents' Commission on Mental Health did not even question the legitimacy of the imposition of guardianship if due process was ensured. Mental Health and Human Rights, Arizona Law Review, 20:49-174, 1978.

The Utah statutes themselves express the reasons why the state has such a great interest in the warranted appointment of guardians. The "incapacitated person," according to Section 75-1-201, is one who "lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person. Thus, Section 75-5-304 states that "appointment is necessary and desirable as a means of providing continuing care and supervision of the person of the incapacitated person." Section 75-5-312 state that another reason for appointment of a guardian is to provide for the comfort, maintenance, training, and education of the

ward. Section 75-5-401 states that an appointment of a conservator (the "guardian" of the ward's estate rather than the ward's person) is to protect the estate of the ward from waste or improvident dissipation, not only for the care of the ward but also, when necessary or desirable, to provide for the care of those entitled to be supported by the ward. Section 75-5-402(c) recognizes also a need to protect creditors of the ward by protective proceedings.

Another unexpressed, though logical, reason for involuntary guardianship is to protect the state and society from undue welfare and tax burdens which would result from permitting the person to continue making decisions regarding himself and his estate which he is unquestionably incapable of making. In short, the justification of involuntary guardianship is needed to ensure protection of the incapacitated person, his dependants, and the state from the detrimental and legitimately avoidable consequences of decisions which futilely risk physical and financial ruin.

Guardianship is a consequence of living in a civilized society. Autonomy, even if it can be considered a fundamental right, must bend, just as do guarded rights such as speech and religion, when conduct or actions drop below a tolerable floor

into behavior that is destructive of social good, familial integrity and security, and one's own physical and financial state. There would seem to be no question that one who attempts suicide is mentally aberrant and in need of help. Why then would not the state have an interest in preventing eventual physical or financial suicide when one's mental perspective becomes so distorted that he can no longer make responsible decisions concerning himself and his affairs? The conclusion is that the state does have a compelling interest in appointing guardians when warranted, which interest can only be questioned when the appointment is a result of a violation of due process or equal protection. (See Points II, III, and IV, supra, for a discussion of due process protections afforded by the Utah statutes.)

B. THERE IS NO NEED TO FIND A SUSPECT CLASS AS STRICT SCRUTINY IS ALREADY APPLIED TO THE GUARDIANSHIP PROCEEDINGS.

Petitioners argue that imposition of involuntary guardianship creates a "suspect class" that invites strict scrutiny of the Utah Uniform Probate Code provisions on guardianship. Since it is conceded that involuntary guardianship may result in some restriction of basic rights, which would invite the same standard of scrutiny, it is not necessary to argue whether involuntary wards are a suspect class. However,

it is important to note that the United States Supreme Court has in recent years been slow to expand the classes considered suspect. It has retreated in extending "suspectness" to several classes, including illegitimates. Trimble v. Gordon, 430 U.S. 762 (1977). The court has instead relied on newer equal protection analysis, which is a reasonably related test with bite. This test requires "at a minimum, that a statutory classification bear some rational relationship to a legitimate state purpose." Id. at 766.

Because the Utah involuntary guardianship statute can pass even the strict scrutiny test, which requires a compelling state interest and least restrictive alternatives, there is no question that the Utah statute is not rationally related to a legitimate state purpose.

POINT II

THE UTAH UNIFORM PROBATE CODE PROVIDES FOR AND REQUIRES THE MOST APPROPRIATE GUARDIANSHIP OR ORDER WHICH LEAST RESTRICTS THE EXERCISE OF FUNDAMENTAL RIGHTS.

Because of the possible deprivation of rights which might result from an involuntary guardianship, due process not only requires a compelling state interest, but also that any infringements upon such rights be necessary and minimally restrictive. Shelton v. Tucker, 364 U.S. 479 (1960). The Utah Uniform Probate Code recognizes that incapacity can arise from a number of causes and in variable degrees. (Section 75-1-201.) Consequently, any statute providing for involuntary guardianship must be sufficiently flexible to allow the courts to tailor the appointment or appropriate order to meet the circumstances of each case and yet handle the spectrum of cases ranging from minor to severe disability.

The Utah involuntary guardianship statutes are constructed so as to meet both of these requirements. In regard to flexibility, the Utah statutes permit innumberable alternatives, limited only be ingenuity itself. The Utah court can appoint either a guardian or conservator or both (See sections 75-5-303, 75-5-401, 75-5-410, and Editorial Board Comment to 75-5-312.) Alternatively, the court can issue appropriate orders in lieu of guardianship, section

75-5-304, or enlarge or limit the statutorily defined powers of the conservator, Section 75-5-426, or guardian, Section 75-5-312. Section 75-5-408 lists permissible alternative court orders as a result of protective proceedings, and Section 75-5-409 even authorizes protective contracts, trusts, or arrangments of single transactions. In view of these statutes it is apparent that any manner of guardianship or limited guardianship can be fashioned and, perhaps more importantly, avoided, since Section 75-5-304 permits appropriate orders that could entail powers of attorney, trusts, provision of home care or day care services, or whatever services are available and appropriate.

The Utah statutes also bind the court to assess and use the alternatives which least infringe upon the rights of the individual. Sections 75-5-304 and 75-5-401 state that the court must be satisfied that appointment (or any other alternative which the court can order) is "necessary or desirable...." The Utah statute therefore does not compel the violation of basic rights as do statutes such as were addressed in Shelton v. Tucker, supra, which arbitrarily violated the rights of association by requiring full disclosure of associations. Rather, the Utah guardianship statutes flexibly permit the tailoring of appropriate orders or appointments and encourage the courts to restrict the incapacitated person's rights only if necessary or

desirable. As the courts are bound to afford due process and equal protection, which include the minimal restriction of basic rights, the interpretation of the word "desirable" must be limited by the bounds of constitutional law. Furthermore, those appointments or orders which are "necessary" are only those which are minimally required to provide the incapacitated with proper and effective care, and consequently result in guardianships which are least restrictive of the individual's rights.

It is also necessary to determine what is required by the "least restrictive alternative" doctrine. Most of the case law regarding this issue concerns civil commitments, but the underlying concern of safeguarding due process makes the courts' analyses in commitment cases appropriate in this case. In the case of Lake v. Cameron, 364 F.2d 657 (D.C. Cir. 1966), the court stated: "Deprivation of liberty solely because of dangers to the ill persons themselves should not go beyond what is necessary for their protection." Id. at 660. To satisfy this obligation, the court held that commiting courts have a duty to explore alternatives, which the state has the burden of proposing, and to use earnest effort to provide care reasonably suited to the individual's needs. Lake was cited in Covington v. Harris, 419 F.2d 617 (D.C. Cir. 1969), which concerned due process requirements after commitment. That

court's standard of review to determine whether a decision conformed with the least restrictive alternative was whether the court "made a permissible and reasonable decision in view of the relevant information and within the broad range of discretion." (419 F.2d at 621). Perhaps the most lenient standard that has been held to comport with the least restrictive alternative requirement was expressed in Welsch v. Likins, 373 F.Supp. 487 (Minn. 1974), which stated that due process requires state officials to make "good faith attempts to place such persons in settings that will be suitable and appropriate to their mental and physical conditions while least restrictive of their liberties." In light of these cases it is apparent that the least restrictive alternative requirement is not as strict as at first may be presumed. (One explanation of this might be that expressed in Lake that proceedings of care and treatment are not strictly adversary proceedings. Guardianship, a vestige of parens patriae, is still considered as conferring a benefit, which historically did not require due process, rather than a taking of a right.) The requirement seems to require only that the court earnestly consider alternatives and choose that which reasonably suits the individual's needs of proper and effective care and least restricts fundamental rights. The Utah standard requiring that a guardianship appointment or order be that which

is most "necessary or desirable" among the statutory alternatives, ranging from dismissal of the petition to full guardianship, fully complies with and exceeds the requirements of the least restrictive alternative doctrine.

POINT III

THE UTAH UNIFORM PROBATE CODE PROVIDES SUFFICIENT PROCEDURAL SAFEGUARDS AND STANDARD OF PROOF TO ENSURE DUE PROCESS AND EQUAL PROTECTION OF THE LAW IN PROCEEDINGS FOR INVOLUNTARY GUARDIANSHIP.

Another requirement of due process is sufficient procedural safeguards when the deprivation of basic rights is possible. The factors in determining what is sufficient were set forth in Mathews v. Eldridge, 424 U.S. 319 (1976), which states:

> [D]ue process generally requires consideration of three factors: first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail. 424 U.S. at 335.

The Presidents Commission on Mental Health, Mental Health and Human Rights, Arizona Law Review 20:49-174, 176, 1978, listed by recommendation what due process required of guardianship proceedings:

> 4. Guardianship
>
> Recommendation 1.
>
> (a) State guardianship laws should be revised to provide: (1) increased

procedural protections including, but not limited to, written and oral notice, the right to be present at proceedings, appointment of counsel and a clear and convincing evidence standard as the burden of proof; a comprehensive evaluation of functional abilities conducted by trained personnel; and a judicial hearing which employs those procedural standards used in civil actions in the courts of general jurisdiction of any given State; (2) a definition of incompetency which is understandable, specific and relates to functional abilities of people; (3) the exercise of guardians' powers within the constraints of the right to least restrictive setting, with no change made in a person's physical environment without a very specific showing of need to remove a person to a more restrictive setting; and (4) a system of limited guardianships in which rights are removed and supervision provided only for those activities in which the person has demonstrated an incapacity to act independently.

(b) Public guardianship statutes should be reviewed for their effect in providing services to persons in need of but without guardianship.

Utah, as well as other states who have adopted the Uniform Probate Code, has replaced the former informal and constitutionally questionable guardianship proceedings with substantive and procedural formalities that ensure procedural due process as outlined by the President's Commission. Utah Code Annotated, Sections 75-1-401, 75-5-309, and 75-5-405 require that personal notice be served 10 days prior to the hearing;

Section 75-5-303 ensures the individual's right to be present, to confront all witnesses, to present evidence, to counsel, to cross-examine witnesses, and to a jury; Section 75-5-307 ensures the right to petition for termination of incapacity; and Section 75-1-308 ensures the right to appeal. The only procedural safeguard alleged by the appellant to be insufficient is the standard of proof.

The Utah standard of proof goes to two issues - whether the individual is incapacitated and whether the final appointment or order is necessary or desirable.

The standard of proof required by the Utah Uniform Probate Code is that the court must be "satisfied that the person for whom a guardian is sought is incapacitated and that the appointment is necessary or desirable...." Section 75-5-304. The apparent problem with this standard is determining where it falls within the traditionally known standards of preponderance, clear and convincing, or beyond a reasonable doubt. However, the problem disappears for two reasons.

First, as stated in Point II, guardianship is a vestige of the doctrine of parens patriae. Before the acute awareness and protection of due process and fundamental rights, the normal guardianship proceeding was informal and afforded few procedural safeguards. The justification of this was that the proceeding was to benefit the individual rather than to injure

him or deprive him of any rights. As the need to prevent the unnecessary deprivation of rights appropriately received measured concern, there was also recognized the need to preserve the benefits of the informal proceeding. These benefits included efficiency, confidentiality, minimal advocacy that prevented additional trauma and alienation of the allegedly already troubled patient, and informality itself. As the court in Lake, supra, noted, the guardianship proceeding is still not a strictly adversary proceeding. Rather it is a proceeding to determine what action is in the best interest of the individual. The courts are permitted to choose the most reasonable alternative in light of what is necessary for the proper and effective care of the individual and is minimally restrictive of his rights. A standard which traditionally pertains to and reflects the adversarial nature seems in part inappropriate to a proceeding which is not strictly adversarial. For this reason a standard that recognizes the balance between the adversarial and beneficial natures of the guardianship proceeding is most appropriate. The standard of "satisfaction" seems to reflect such balance.

Second, to calm the fears of whimsy foreseen in the term "satisfied", Utah case law has given some substance to the word. The case of Abbott v. Peter, 105 Ut. 499, 143 P.2d 606 (1943), which concerned the standard to prove mistake in contract, stated that the standard was equal to that necessary

to prove fraud, which was clear, convincing and satisfying. (See also Hobart v. Hobart, 26 Cal.2d 412, 159 P.2d 958 (1945)). It is clear from this court's discussion in Abbott, supra, that the word "satisfaction" is equated with the standard of clear and convincing evidence. "Satisfaction" requires more than a mere preponderance of the evidence or probability, and less than that required to prove a fact "beyond a reasonable doubt." The clear and convincing standard is what is demanded by Appellant in the present case (See Point VI, Appellant's Brief).

It appears that the judge in the lower court may not have directed the jury in this case to apply the clear and convincing test. If this court determines that to be the required standard, the case might appropriately be reversed or remanded on that point. Such an action, however, would not necessitate a finding that the statute itself is invalid. Rather, the finding would be that the Utah statute requires clear and convincing proof and was simply erroneously interpreted or applied by the judge below. The State would suggest however, that the court carefully review the record in this matter, as it appears that the evidence produced was sufficient to meet even the more demanding test of clear and convincing proof.

For a time there appeared to be some disagreement among authorities as to whether the standard of proof in

guardianship cases should be the more strict "beyond a reasonable doubt" standard. The case of In re Winship, 397 U.S. 358 (1970) is cited by proponents of the stricter standard because the Supreme Court in that case applied the beyond a reasonable doubt standard in a juvenile case, which is considered a civil proceeding. However, the Winship court said that this was a "single narrow issue whether proof beyond a reasonable doubt is among the 'essentials of due process...' during the adjudicatory stage when a juvenile is charged with an action which would constitute a crime if committed by an adult." 397 U.S. at 359. The case therefore is applicable only in the narrow context of criminal or quasi-criminal proceedings.

Other courts which applied the beyond a reasonable doubt standard to civil commitment proceedings were In re Ballay, 482 F.2d 648 (D.C. Cir. 1973); and Lessard v. Schmidt, 349 F.Supp. 1978 (E.D. Wisc. 1972), vacated and remanded on other grounds, 414 U.S. 472 (1974). It should also be noted that Utah Code Annotated, Section 64-7-10, requires the beyond a reasonable doubt standard for involuntary commitments.

However, in a unanimous decision, the United States Supreme Court held in Addington v. Texas, 441 U.S. 418 (1979), that the standard of proof constitutionally required for civil commitment is clear and convincing evidence. The Addington case is controlling on this point and effectively overrules

Lessard, supra, and other earlier cases which purported to require a beyond a reasonable doubt standard.

The discussion in French v. Blackburn, 428 F.Supp. 1351 (M.D.N.C. 1977), affirmed 443 U.S. 901 (1979), is helpful in distinguishing the cases that urged the reasonable doubt standard. That court recognized that the sole purpose of the commitment proceeding was not deprivation of liberty, but rather to aid and treat incapacitated individuals. The court also said that the issues in a commitment proceeding, by their very nature, are not susceptible of proof beyond a reasonable doubt and that such a standard would be an impossible burden and prevent the aid to those in actual need. Id. at 1360.

The 1978 President's Commission on Mental Health also recommended use of the clear and convincing standard as a sufficient due process safeguard. Mental Health and Human Rights, Arizona Law Review, 20:49-174, 76 1978.

In view of recent case law and authority, the clear and convincing standard fully complies with due process requirements. Furthermore, in view of this authority and Utah statutes, the clear and convincing standard is also the most desirable since it recognizes the beneficial and protective nature of the proceedings, yet also protect the individual's rights to due process and equal protection.

Therefore, the Utah Uniform Probate Code does provide sufficient procedural formalities to protect the incapacitated person's right to procedural due process. Furthermore, the Utah standard of proof requiring the court to be satisfied that the person is incapacitated and that the guardianship appointment is necessary or desirable requires more than a mere preponderance of evidence but less than required by the "beyond a reasonable doubt" standard. This "satisfaction" standard is equivalent to the clear and convincing standard which has been held by the United States Supreme Court to satisfy the requirements of due process.

POINT IV

THE UTAH UNIFORM PROBATE CODE SUFFICIENTLY DEFINES "INCAPACITATED" SO AS TO GIVE ADEQUATE NOTICE TO THE COURT AND INDIVIDUAL.

Finally, appellant argues that the Utah definition of "incapacitated" is vague and overbroad. Allegedly, the definition is so vague as to give no notice to the individual or the court as to what standard his conduct will be compared with to determine incapacity.

The definition in question is found in Section 75-1-201(18), Utah Code Annotated, which provides as follows:

> "Incapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person.

First, the Utah standard of incapacity is not vague or overbroad. The Utah definition essentially is that an incapacitated person is any person who is impaired to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person, for whatever cause besides minority. The statute lists a number of causes, including mental illness and deficiency or any other. This list of causes seems to add

some insight into what the legislature foresaw as causing incapacity. However, this list obviously was not considered a meticulous and exclusive list of grounds for finding incapacity, since the focus of the statute is upon the resulting effect or impairment rather than upon the cause itself. It is also difficult to understand how one could require the legislature to define in detail terms that even the mental health scientists concede are not yet comprehensively definable. Symposium - Mentally Retarded People and the Law, Stanford Law Review, Vol. 31, p. 555, April, 1979.

Second, the substantive and procedural statutes concerning involuntary guardianship add specificity to the definition of incapacity. The statutes as discussed above in Point III recognize the different causes and levels of incapacity and correspondingly create flexible procedures and altenatives so that the court might tailor the order or appointment to the needs of the individual while ensuring minimal infringement upon the exercise of his rights. The statutes are not overbroad because the courts are authorized to impose guardianship upon an individual only to the extent that the court is satisfied that the individual is incapacitated and that the appointment or order is necessary or desirable.

Third, the Utah Uniform Probate Code defines in detail what are considered "responsible decisions concerning his person." Section 75-5-312, which outlines the general

powers and duties of the guardian, and Section 75-5-4, which outlines the duties of a conservator, obviously contain the lists of those decisions which the legislature intended as "responsible". These decisions include the protection of the person of the incapacitated, his abode, maintenance, education, training and health - and protection of the estate of the ward for the benefit of himself, his dependents, creditors, and the state. The Utah Uniform Probate Code permits the court to limit or expand the duties and powers of the guardian or to issue other appropriate orders in order to allow the guardian to make only those decisions which the individual is incapable of making for himself.

Fourth, the United States Supreme Court has held that a statute need not be mathematically precise. In the case of Grayned v. Rockford, 408 U.S. 108, 110 (1972), which addressed the allegation that a city anti-noise ordinance was too vague and broad, the court said, "[W]e can never expect mathematical certainty from our language. The words of the Rockford ordinance are marked by 'flexibility and reasonable breadth, rather than meticulous specificity'". As noted in this Point and Point I, the purpose of the Utah statute is to provide this necessary flexibility and breadth in order to comply with due process.

Finally, the individual is protected from any possible vagueness in definition by the requirement that the judge must be presented with clear and convincing evidence of the alleged incapacity (See Point III, supra). This is a demanding standard which is necessitated by the inherent inprecision of mental health definitions and determinations. Because of the standard of proof required by the statute, the ward is protected from haphazard or overbroad applications of the guardianship statute.

CONCLUSION

The Utah Uniform Probate Code provides the necessary flexibility and procedural safeguards to ensure due process and equal protection of the laws during and following proceedings for the appointment of a guardian. Therefore, the State of Utah, as amicus curiae, respectfully requests this court to uphold the guardianship statutes as constitutional.

Dated this 4th day of June, 1980.

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