

New York Law Journal

Commentary

Britney Spears and the Sweeping Abuse of Guardianship Statutes: Legal Methods of Coercive Control

October 1, 2021

By Sheila Tendy

The horrifying conservatorship of Britney Spears has brought to high relief the number of women who have every aspect of their lives controlled by a coercive and paternalistic family member who used state guardianship laws to have them declared incapacitated. Called “conservatorship” in California, these laws are an issue in most states, with New York’s provisions among the most draconian.

Under the Article 81 Guardianship Statute, part of the Mental Hygiene Law in New York state, the courts have unfettered discretion, without any doctor’s evaluation, to have someone declared incapacitated, resulting in the appointment of a permanent personal and financial guardian who controls every life decision and every penny an incapacitated person can spend.

But “incapacitated” is not what you think. If you think the person has to be incoherent, think again. The standard for incapacity in New York grants broad discretion to courts, built into a machine that is virtually impossible to escape. See Sheila E. Shea and Carol Pressman, [Guardianship: A Civil Rights Perspective](#), NYSBA Journal (February 2018). And it is, by far, women who bear the brunt of the machine’s impacts. A study by the American Bar Association (ABA) found that, in New York state, 68% of guardianship proceedings are brought against women. [Guardianship Proceedings in New York State: Findings and Recommendations](#), ABA (April 1, 2016). Since guardianship statutes are exclusively the purview of state law, in every state these statutes range from scary to harrowing in empowering a pathway to deprive women of all decision making power. [Adult Guardianship Statutory Table of Authorities](#), ABA Commission on Law & Aging. The ABA is now urging Congress to work to modernize these statutes. [Annual Meeting 2020—House of Delegates Resolution, 105](#).

It is an abusive and arcane process in protective clothing, and it should be stopped.

Britney Spears’ situation is the most high-profile example but not an anomaly, as civil liberties are aggressively being taken away every day in this country under these blistering state guardianship statutes. Indeed, while the Britney Spears’ example is extreme, women are being declared incapacitated every day for far less. And New York state, for all its purported progressive credentials, is among the worst offenders.

What is particularly outrageous under New York Guardianship law is that relatives who stand to inherit under a will automatically have standing to declare a person incapacitated. As a result, the Guardianship statute in New York has become weaponized by families as a path to maximize their inheritance. It is also frequently used in divorce cases as leverage. Nursing homes in New York make use of guardianship statutes to ensure their fees get paid through Medicaid when their wards are poor, by having them declared incapacitated.



Just like with Britney Spears, once a case is filed, it is a runaway train, with an army of expensive court appointees that make it all happen. Unfortunately, court appointed guardians and attorneys are part of the machine, with their own financial incentive to see a person declared incapacitated when they stand to be appointed as a permanent guardian—which creates, for the guardian, a stream of recurring revenue. Even more disturbing, the allegedly incapacitated person is, in most cases, required to pay the fees of every appointee in this machine, including those of the petitioner and the Court appointees, along with their own legal fees. As a result, there is no downside financial risk to attempt to have a family member declared incapacitated as your fees will get paid by the allegedly incapacitated person.

Indeed, it's so hard to get out from under the Guardianship statute in New York that women often have to negotiate something less than an absolute declaration of incapacity to avoid total control of their lives ... and the resulting shame that comes with it.

We need to acknowledge that women are being coercively controlled in New York State through the abuse of the legal process that was designed to protect them. The unconstitutional New York Guardianship statute must be repealed and rewritten on an emergency basis. If the law doesn't allow us to hold someone for psychiatric reasons overnight without three doctors agreeing, we certainly shouldn't be able to control the rest of someone's life by taking away all of their civil liberties without so much as a doctor's evaluation.

We also need to understand that the problem is not only what happens *after* a person has been found incapacitated. The problem at a baseline is how easy it is for someone with no medical expertise to make allegations of incapacity, far too often resulting in a woman being declared incapacitated in violation of their constitutional rights of due process along with a complete deprivation of their civil liberties.

Proposed federal legislation, the [FREE Act](#) sponsored by U.S. Representatives Charlie Crist (D- FL) and Nancy Mace (R-SC), requiring guardians to be conflict free, will not improve the fate of someone accused of incapacity. Just like with Britney Spears, a guardian can control even the counsel an incapacitated person may employ.

We wouldn't deprive accused criminals or those who are psychiatrically ill of these rights without due process, so how can we do it to women so easily using the guardianship statutes? Likely this is because there is still the paternalistic view in our society that women need to be protected and don't have the skills to manage their own affairs. Unfortunately, that leaves them ripe for abuse by family members who have discovered a magic bullet in the guardianship statutes when they want control over the life of their allegedly incapacitated family member.

That is how Britney Spears' father has been able to control who she talks to, whether she procreates, who she dates, what books she reads, and how she spends her money. And he got rich using a poorly drafted piece of legislation to abuse his daughter for over 13 years. These paternalistic statutes harken back to the era in New York state when young girls were regularly imprisoned for years if they were not following their parents' rules. On April 10, 1933, according to [records](#) at the New York State Archives, Westchester County judge George W. Smyth sentenced a 15-year-old "colored" girl named Ella Fitzgerald to the New York State Training School for Girls in Hudson, N.Y., because she was "ungovernable and will not obey the just and lawful commands of her mother."

Britney Spears was too humiliated to tell the world that she was being abused by her father under the guise of protecting her but she has finally found her voice. This may have been especially complicated for Ms. Spears when her abuse had no bruises because it was legalized coercive control. That beautiful voice may now be able to help scores of women who have faced a similar fate.

It's time to expand the definition of #MeToo to include dismantling the legalized abuse of women using these paternalistic and arcane guardianship statutes that allow a declaration of incapacity without due process and in violation of our civil liberties.

Sheila Tendy, a former prosecutor with the Manhattan District Attorney's Office, provides boutique general and corporate counsel services in New York. Ms. Tendy devotes time in her practice to issues affecting women and the elderly.