The issue of standing in guardianship litigation

by Enrique Zamora

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As litigation becomes more prevalent in guardianship proceedings, it is necessary to understand who has standing to litigate. The Florida Supreme Court has repeatedly stated that "[s]tanding is a legal concept that requires a would-be litigant to demonstrate that he or she reasonably expects to be affected by the outcome of the proceedings."[1] In guardianship proceedings, it is not unusual to find relatives that believe they are entitled to participate, simply because they are somehow related to the ward. This cannot be further from the truth. The Florida Supreme Court has stated that "a party does not possess standing to sue unless he or she can demonstrate a direct and articulable stake in the outcome in the controversy."[2] For example, in a case where a child of a ward is the appointed guardian, it is clear that another child has standing to challenge the actions of the guardian. On the other hand, a brother of a ward may not have standing to challenge the actions of the son as guardian.

Let's step back for a second and look at who is entitled to notice in a proceeding to determine incapacity, which is the usual beginning of a guardianship case. In F.S. §744.331(1), it is clearly stated that the notice of filing and copies of the petition to determine incapacity and petition to appoint a guardian must be served upon all next of kin identified in the petition.[3] This introduces a new term: "next of kin." Who are the relatives of the ward that are to be considered next of kin? For an answer to that question, we go to F.S. §744.102(14), where we find that next of kin is defined as "those persons who would be *heirs at law* of the ward or alleged incapacitated person *if the person were deceased* and includes the lineal descendants of the ward or alleged incapacitated person."[4] Clearly, all descendants of the ward must be considered next of kin, but what about the siblings? In a case where there is at least one surviving child, the heirs at law will be limited to the children, and the siblings will not be considered next of kin. Therefore, in accordance with these two statutes, the siblings of the alleged incapacitated person would not be entitled to receive notice of the petition to determine incapacity. This seems to answer the question of who is entitled to notice on a petition to determine incapacity, but what about other pleadings? The Florida Probate Rules' definition of "service" states that "every petition or motion for an order determining the rights of an interested person and every other pleading or paper filed in that particular proceeding which is the subject matter of such petition or motion shall be served on interested persons."[5]

This begs the question: "Who is an interested person?" We find the definition of an interested person in F.S. §731.201(23), which states that an interested person is "one who reasonably can be expected to be affected by the outcome of the particular proceedings involved. The meaning, as it relates to particular persons, may vary from time to time and must be determined according to the particular purpose and matters involved in any proceedings."[6] It is reasonable to conclude that individuals who are neither "next of kin" nor "heirs at law" and who cannot reasonably expect to be affected by the outcome of a proceeding are not interested persons and thus have no standing.

One of the most important cases regarding standing to participate in guardianship proceedings is *Hayes v. Guardianship of Thompson*, 952 So.2d 498 (Fla. 2006), recently decided by the Florida Supreme Court. The surrounding facts dealt with the guardianship of Mae E. Thompson, who, under a petition filed by the Department of Children and Families, was removed from her nephew's home due to poor living conditions. The guardianship proceedings involved significant financial issues regarding the mismanagement of Ms. Thompson's money, and during the proceedings, Ms. Thompson's court-appointed counsel filed a petition for attorney's fees. Neither the guardian nor the monitor objected to the fee request; however, counsel for petitioners objected. The primary issue was to determine whether standing to participate in guardianship proceedings is limited to the guardian and the ward or whether it extends to other parties. The court held that "a person, including an *heir of the ward*, has standing to participate in guardianship if the applicable provisions of either the Florida guardianship law or Florida Probate Rules entitles a person to notice of the proceedings or authorizes a person to file an objection in the proceeding."[7] The court's inclusion of an "heir of the ward" reiterates the notion that "next of kin" and "heirs at law" certainly have standing. The court went on to require that those persons who have knowledge of the proceedings, and may be considered interested persons, must file a request for pleadings to be entitled to receive copies of any pleadings in the case.[8]

Although we have discussed several factual scenarios regarding the issue of standing, the most controversial are proceedings involving the removal of a guardian. Consider the following: A widowed elderly ward has one living son. The ward's sister

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and niece are attempting to remove the ward's court-appointed professional guardian and allege standing based upon a Declaration of Preneed Guardian that has been superseded by a subsequent declaration. Before executing the subsequent declaration, the ward was examined by a licensed psychologist who found the ward to have testamentary capacity. This latter document removes the ward's sister as guardian and instead names his son. Incidentally, a new will was executed concurrently with the declaration, which includes neither the niece nor the sister as beneficiaries. Proceedings for removal of a guardian under F.S. §744.477 states "removal of a guardian may be instituted by the court, by any surety or other interested person, or by the ward."[9]

Applying these facts, familial status as a sister or niece does not make them interested persons, and the only interested person is the son, who is next of kin. The sister and the niece cannot reasonably expect to be affected by the outcome of the proceedings and thus do not have standing; at least that was the finding by the court. In brief, for a person to be able to have standing to participate in guardianship proceedings, including adversarial proceedings such as the removal of a guardian, the person must be an interested person and must be next of kin of the alleged incapacitated person as defined under Chapter 744 of the Florida Statutes.

The issue of standing in guardianship proceedings requires special attention, especially with issues related to notice, service and removal of a guardian. One must tread carefully when distinguishing who is entitled to have standing when coming across terms such as "interested person," "next of kin," "heirs at law" and "lineal descendants." Every aspect of guardianship litigation calls for a distinct definition of standing. Thus, only a careful reading and understanding of the related statutes and case law can provide you with what you need to tackle the issues presented.

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Endnotes:

1 *See Hayes v. Guardianship of Thompson,* 952 So.2d 498,505 (Fla. 2006).

2 *Brown v. Firestone,* 382 So. 2d 654, 662 (Fla. 1980).

3 FLA. STAT. §744.331(1) (2010).

4 FLA. STAT. §744.102(14) (2010) (emphasis added).

5 FLA. PROB. R. 5.040.

6 FLA. STAT. §731.201(23) (2010).

7 *Hayes,* 952 So.2d at 500 (emphasis added).

8 *Hayes,* 952 So.2d at 508.

9 FLA. STAT. §744.477 (2010).

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