

Wards and Support For Their Dependents

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Guardians and their attorneys face a difficult situation when trying to determine who can qualify as a ward's dependent and the amount of support that these dependents might be entitled to receive from the ward. Pursuant to F.S. §744.421, Any person who depends on a ward for support may petition for a support order. The definition of dependent is not clear under F.S. §744.421. However, F.S. §744.397 defines as a dependent, any person who is a legal dependent, as well as a person who the ward is morally or equitably obligated to aid, assist, maintain or provide care. (§ 744.421 Fla. Stat. (2008); Fla. Stat. § 744.397 (2008)). In addition, such dependents must have an existing need that can be satisfied by the ward's estate. Although F.S. §744.397 is intended to be applied only to the income generated from the property of a ward, this definition could be applied to a petition for support of the ward's dependents under §744.421.

Case law regarding the definition of a dependent, in the context of §744.421, is very limited. Courts have attempted to expand the meaning of dependent through the interpretation of other related statutes. Earlier decisions such as *In Re: Guardianship of Helen F. Bohac*, 380 So. 2d 550 (Fla. 2d DCA 1980) interpreted the meaning of a ward's dependents, pursuant to § 744.441 (regarding the powers of a guardian to make gifts), as being family members. However, the determination of who is a family member was found by the court, to be distinctive to the particular facts of each case, and construed to include those to whom the ward would be under a legal duty to support under normal conditions (i.e. spouse, children). The court also stated that other than familial connection, it could consider the close relationship of the recipients to the ward and whether the ward and the dependent co-habitated. *Id* at 553. In fact, the court found

that the lexicographer's meaning of the word "family" may include persons whom the ward, under normal conditions, would be under no legal duty to support.

Florida, as indicated by the decision of *Rainey v. The Guardianship of Mackey*, 773 So. 2d 118 (Fla. 4th DCA 2000) employs the "substituted judgment" standard for decision making by guardians on behalf of their wards, where the guardians must act as they believe the wards themselves would have acted. The court in *Mackey* stated that, in determining whether to substitute the guardian's judgment for that of the ward, the court should consider donative intent, the permanency of the ward's condition, the size and nature of the ward's estate, the needs of the ward and recipients, the affinity between the ward and the recipients, and whether they are dependent upon the ward. *Mackey* at 119 (citing to *Bohac* at 553). Therefore, using prior history as a basis, the substituted judgment standard may also assist the court in determining whom the ward intended to be a dependent.

It may be possible that even though an individual who is considered to be a dependent of a ward because of a familial relation, may not be entitled to receive support from the ward. In *Guardianship of Tanner v. Jannis*, 564 So. 2d 180 (Fla. 3rd DCA 1990) the court found that the ward's husband did not qualify as an indigent husband under F.S. §744.397 since he was financially secure, and was also not considered a dependent as contemplated in F.S. §744.421, because of his ability to continue to provide for himself. The court held that in circumstances such as these, family members may not be entitled to support from a guardianship estate. *Tanner* at 183.

In applying substituted judgment, the courts have found that there are limitations on the amount of support to dependents who are able to financially provide for themselves. However,

the ability of a ward to pay for dependents may also be limited. In a recent case advocated by the author, guardianship assets held for the primary benefit of the ward were found by the court to be available to pay for the school tuition of the ward's grandchildren. The court found, based on evidence presented regarding tuition payments made prior to incapacity, that the ward had expressed a desire to support her grandchildren in attending private school. The court held that this express intention, made prior to incapacity, was sufficient to support its findings under both the "substituted judgment" standard and the "best interest" standard.

Consequently, both guardians and their attorneys must be aware of the specific circumstances in which dependents may receive support from the ward. Evidence must be presented to qualify a person as a dependent of the ward, coupled with the size of the ward's estate, and the ability of the ward's dependents to provide for their own support without the benefit of the ward's financial help.