

FIRST THINGS FIRST: THE GUARDIAN'S DUTY TO PRIORITIZE THE WARD'S FUTURE NEEDS FOR SUPPORT AND CARE

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In this age of frequent medical breakthroughs that have greatly increased life expectancy and in recognition of the ever-rising cost of healthcare, now more than ever, all of us must do what we can to plan and prepare for our future needs. However, try as we might, we cannot anticipate all of the circumstances that might bring about significant changes in our lives. Sooner or later, before each of us passes away, the state of our health will most likely decline for some period of time. In some cases, a person's decline in health renders him or her incapable of managing his or her own affairs or property such that the courts recognize him or her as being "incapacitated." When that happens, the law provides a mechanism for courts to appoint a guardian who is statutorily invested with certain powers and duties for taking care of the person and/or property of the incapacitated individual. The incapacitated individual for whom the guardian is appointed is known as the "ward."

In a relatively recent decision, the New Hampshire Supreme Court was called upon to address the scope of the general powers and duties that guardians owe pursuant to RSA Chapter 464-A, the New Hampshire guardianship law. In re Guardianship of Domey involved two co-guardians who the court appointed to have care and custody over Donald Domey and to manage Donald's estate. Prior to the court's appointment of the co-guardians, Donald suffered a stroke that rendered him totally incapacitated. In Domey, the New Hampshire Supreme Court was presented with questions relating to whether a guardian's fiduciary duties to protect the well-being of his or her ward, including the guardian's duty to protect his or her ward's estate in order to ensure that there would be sufficient assets for the ward's future support and care, take precedence over the guardian's alleged duty to protect his or her ward's assets for the benefit of the ward's spouse. These questions were presented as two issues. The first issue was whether a guardian has a fiduciary duty to impoverish his or her ward's estate in order to qualify the ward for Medicaid benefits so that the ward's assets can be preserved for the benefit of the ward's spouse, children, and/or parents. The second issue that the court decided was whether a guardian has a duty to engage in estate planning for the testamentary distribution of the ward's estate.

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The New Hampshire Supreme Court answered both questions in the negative, finding that a guardian does not automatically have either of these duties under RSA Chapter 464-A.

The New Hampshire Supreme Court held that under RSA 464-A:26, a guardian's primary duty is to protect the assets in his or her ward's estate for the ward's needs, including the ward's future support and care. Although a guardian may have a duty to consider the needs of the ward's spouse, children, and/or parents, that duty is secondary. Therefore, when the ward has continuing needs and it is unclear whether the ward's estate will be "more than sufficient" to provide for the ward's reasonable subsistence going forward, the guardian does not have a fiduciary duty to "impoverish" the ward's estate so that the ward qualifies for Medicaid and the ward's assets can be protected for the benefit of the ward's spouse. Furthermore, a guardian does not have a fiduciary duty under the guardianship statute to provide financial support for the ward's spouse, children, and/or parents absent the requisite findings under RSA 546-A:2. Consistent with the primary focus of a guardian being the ward's needs and acting to protect the ward's estate for use toward the ward's future support and care, a guardian does not have a duty to conduct estate planning on behalf of the ward, even if estate planning would minimize the taxation of the ward's estate or facilitate the distribution of the ward's estate. In fact, a guardian does not even have authority to engage in such estate planning unless the probate court has first authorized the guardian to take on that endeavor. Under RSA 464-A:26-a, the guardian of an estate has the option of petitioning the probate court for permission to engage in estate planning on behalf of his or her ward, but that is not one of the guardian's duties under the guardianship statute, RSA Chapter 464-A.

As is evident from the plain language of RSA 464-A:26, the primary purpose for a guardianship of the estate is to manage the ward's property and financial affairs in a fashion that serves the ward's best interests. The New Hampshire Supreme Court's decision in Domey demonstrates that unless the value of a ward's estate is more than sufficient to guarantee adequate funding to meet the ward's continuing needs for support and care, the ward's guardian does not have a duty to consider the possible needs of his or her ward's spouse, children, and/or parents.

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