Legal Issues Related to the #FreeBritney Movement

*By Molly T. Zwerdlinger, Esq**

Conservatorships have been a hot topic in the media recently given the publicity and interest around the Britney Spears conservatorship case. Some of the related issues are as follows:

A. The priority of who may serve as conservator

1. A fiduciary for the individual who is appointed or already recognized;
2. A person nominated by the protected person, including the nomination of the person in a power of attorney;
3. Agent appointed by the protected persons power of attorney;
4. Protected persons spouse or partner in a civil union;
5. Adult child of protected person;
6. ***Parent of protected person (applicable in Britney's case as her father was appointed as conservator of her estate)***; and
7. Adult with whom the protected person has resided with for more than six months prior to filing.[1]

B. Determination of Incapacity

A conservatorship case is typically brought when an individual is incapacitated, although the appointment of a conservator is not a determination that the individual is incapacitated.[2] An incapacitated person is an individual who is unable to effectively receive or evaluate information or both, or make or communicate decisions to such an extent that the individual lacks the ability to satisfy essential requirements for physical health, safety, or self-care, even with appropriate and reasonably available technological assistance.[3] In addition, an incapacitated individual may include a missing person, detained person or individual who is unable to return to the US.[4] Many of the individuals in the Free Britney movement believe the conservatorship automatically deemed Britney incompetent, but the law says otherwise. A conservator may be appointed even for an individual who is competent, however the individual may need help with decision making. Because the medical reports have not been released in Britney's case, it is hard to know the reason behind the need for her conservatorship.

C. Legal Standard of Review

During the hearing to appoint a conservator, it must be proved beyond a preponderance of the evidence that the individual for whom a conservatorship is sought has property that will be wasted or dissipated unless management is provided, or money is needed for the support, care, education, health, and welfare of the individual or of individuals who are entitled to the individual's support and that protection is necessary or desirable to obtain or provide money.[5]

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[1] C.R.S. § 15-14-413(1)
[2] C.R.S. § 15-14-409
[3] C.R.S. § 15-14-102(5)
[4] C.R.S. § 15-14-401
[5] C.R.S. § 15-14-401(1)(b)(II)

Many members of the Free Britney movement neglect to realize that Britney was subject to the conservatorship for a reason that was the basis for appointment. There had to have been a standard met for the court to have felt the conservator was needed.

D. Procedure of Conservatorship Proceedings

1. **Petition for Appointment** – The petition may be submitted by the protected person, an individual interested in the estate, affairs, or welfare of the person, or a person who would be adversely affected by the lack of effective management of the property of the protected person. [6] In Britney's case, her father, as her parent, certainly has an interest in her welfare which would support his ability to petition for conservatorship.

2. **Professional Evaluation/Court Visitor** – The court *may* order a professional evaluation to determine individual's functional limitations, mental and physical condition, and prognosis for improvement. [7] In Britney's case the medical reports have not been released, so it is hard to determine the basis for the conservatorship without that information.

E. Powers of the Conservator in Administration Not Requiring Court Approval

There are some actions of a conservator that require court approval, but many actions are allowed without prior approval by the court. Some examples of applicable powers Britney's conservator may have been given upon appointment are as follows:

(a) Collect, hold, and retain assets of the estate, including assets in which the conservator has a personal interest and real property in another state, until the conservator considers that disposition of an asset should be made;

(b) Receive additional assets to the estate;

(c) Continue or participate in the operation of any business or other enterprise;

(d) Invest assets of the estate;

(e) Deposit money of the estate;

(f) Acquire or dispose of an asset of the estate;

(g) Consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(h) Insure the assets of the estate against damage or loss and the conservator against liability with respect to a third person;

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[6] C.R.S. § 15-14-403(1)
[7] C.R.S. § 15-14-406.5

(l) Borrow money, with or without security, to be repaid from the estate or otherwise and advance money for the protection of the estate or the protected person and for all expenses, losses, and liability sustained in the administration of the estate or because of the holding or ownership of any assets, for which the conservator has a lien on the estate as against the protected person for advances so made;

(j) Pay or contest any claim, settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise, and release, in whole or in part, any claim belonging to the estate to the extent the claim is uncollectible;

(k) Pay taxes, assessments, compensation of the conservator and any guardian, and other expenses incurred in the collection, care, administration, and protection of the estate;

(l) Pay any sum distributable to a protected person or individual who is in fact dependent on the protected person by paying the sum to the distributee or by paying the sum for the use of the distributee;

(m) Prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of assets of the estate and of the conservator in the performance of fiduciary duties.[8]

One of the more contentious issues in Britney's case is her conservator's ability to force Britney to work by engaging in business contracts and deals on her behalf. Under Colorado law, that is a power automatically given to a conservator unless the court Order or Letters restrict otherwise.

Timeline of the Britney Spears Conservatorship Case

The author cautions that the timeline below is based on information presented by the media and may not be entirely accurate. A brief history of the Britney Spears Conservatorship case is outlined as follows:

2007-2008 – Britney was spotted acting out of character (driving with her son not in a car seat, shaving her head, lashing out at the paparazzi, refusing to give children to biological father per custody arrangement).

2008 – Britney was put under a mental health hold at a psychiatric hospital on more than one occasion.

Jamie Spears, Britney's father, petitioned for emergency and temporary conservatorship. The Court granted this petition.

[8] C.R.S. § 15-14-425

2009-2019 – The conservatorship was extended each year.

2012 – Britney's fiancé at the time, Jason Trawick, becomes co-conservator to manage her personal life but not financial affairs.

2019 – Jamie Spears petitions the Court to extend his conservatorship to three other states other than California.

- Jamie temporarily steps down as primary conservator. Britney's care manager, Jodi Montgomery, temporarily takes over Jamie's role as conservator.
- Britney stayed in a mental health facility for a month to overcome a health emergency.

2020 – Britney's brother, Bryan Spears, publicly speaks out saying that the conservatorship was needed at the beginning, but that he knows Britney wants it to end.

- Britney's lawyers file an opposition to the dealing of parts of her conservatorship.
- Britney's lawyers file a request to remove her father as conservator and to permanently appoint Jodi Montgomery. The court denies the request, but does allow the appointment of a co-conservator, Bessemer Trust, at Britney's request.
- The conservatorship is extended another year.

2021 – Jamie Spears claims in court documents his powers as conservator have been limited since the appointment of the co-conservator, Bessemer Trust.

- "Framing Britney Spears" comes out, causing more attention towards Britney's conservatorship.
- Britney's lawyers ask the judge to end the conservatorship. Jamie's father speaks out saying that every decision he has made was in Britney's best interest.
- Britney's lawyer requests to have Jodi Montgomery appointed as permanent conservator.
- Lynne Spears, Britney's mother, demands Jamie Spears' legal fees be repaid to Britney's estate as she believes the fees charged to handle communication to the press violated Britney's request for privacy. Jamie asks the court to deny the request.

- Britney requests to be heard in Court and makes a 24 minute statement.
- The court denies Britney's request to remove Jamie Spears as his role of co-conservator of her estate.
- Britney's attorney and her manager withdraw/resign.
- Bessemer Trust requests to resign as co-conservator. The Court grants this request.
- Britney hires her own legal counsel at the permission of the court.

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