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Recent Developments: In re Adoption/ Guardianship No. 10935: Best Interests Standard Applies When a Guardian of the Person of a Minor Child Wishes to Resign

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In re Adoption/Guardianship No. 10935

The Court of Appeals of Maryland recently issued the proper standard for granting a co-guardian's resignation petition in *In re Adoption/Guardianship No. 10935*, 342 Md. 615, 679 A.2d 530 (1996). In affirming the disposition of the trial court, the court of appeals held that a co-guardian of the persons of minor children may properly resign from the guardianship through a showing of good cause or if it is in the best interests of the children. Through a careful examination of early common law, statutory interpretation, and the law of sister states, the court determined the appropriate test for considering resignation petitions in this area of family law.

In 1989, the petitions of Carl Bauer ("Carl") and Mavis Bauer ("Mavis") for appointment as guardians of their three minor grandsons were granted. As guardians, the Bauers were responsible for the health, schooling, and rearing of their grandchildren. In 1994, Carl moved out and Mavis sought a limited divorce. In turn, Carl filed a petition in the Circuit Court for Montgomery County to resign as co-guardian of the three boys, claiming emotional abuse and mental anguish. Mavis opposed the petition, contending that it was not in the children's best interests, since there was an intervening duty assumed by Carl to support the children. The trial court found no duty to support the children and granted Carl's peti-

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By Karen Anderson

tion as a summary judgment action. Mavis appealed to the Court of Special Appeals, and the Court of Appeals of Maryland intervened and granted certiorari to resolve the question of what standard applies in a resignation case.

Beginning its analysis, the court of appeals looked to section 13-702 of the Estates and Trusts Article of the Annotated Code of Maryland regarding guardians of the person. *In re Adoption/Guardianship No. 10935*, 342 Md. at 623-24, 679 A.2d at 533-34. Finding no explicit language providing for the resignation of co-guardians, the court considered the legislative intent of the statute. *Id.* at 624, 679 A.2d at 534. The court noted that the broad language of the statute was designed to provide the lower courts with equitable jurisdiction in furthering "the incompetent ward's best interests." *Id.* (quoting *Wentzel v. Montgomery General Hospital*, 293 Md. 685, 701-02, 447 A.2d 1244, 1252 (1982)).

Next, the court explained that the common law disfavored guardianship resignation. *Id.* at 625-26,

679 A.2d at 535. The court pointed out, however, that the law as evolved in sister states supported a guardian's petition to resign, so long as it was "for good cause or is in the best interests of the ward." *Id.* at 627, 679 A.2d at 535. Thus, the court of appeals adopted this standard for Maryland. *Id.* The court bolstered its opinion by briefly noting that it would be in the best interests of the child to allow guardians to resign when they are no longer willing to perform their functions as guardians. *Id.* at 629, 679 A.2d at 536.

Relying on several Maryland cases, the court further concluded that a guardian does not necessarily assume a duty to support a child merely by obtaining an appointment as guardian of the person of a minor child. *Id.* at 628-29, 679 A.2d at 536. Based on this analysis, the court of appeals held that the trial court erred in considering the duty to support the children in granting Carl's petition to resign as co-guardian. *Id.* at 629-30, 679 A.2d at 537. Moreover, Mavis' appellate issue regarded a duty of support and did not address the standard applicable to a guardian's resignation. Accordingly, rather than vacate and remand the circuit court disposition, the court of appeals: (1) announced the appropriate standard to be applied in these cases; (2) modified the lower court order; and (3) emphasized that this order did not speak

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to the issue of duty of support. *Id.* at 630-31, 679 A.2d at 537.

In re Adoption/Guardianship No. 10935 represents the first co-guardian resignation case in Maryland. It clarifies that a petition for resignation as guardian of the per-

son of a minor child should be granted where there is good cause or where it is in the best interests of the ward. This may prompt Maryland attorneys to consider including specific support provisions in guardianship petitions.

Indeed, this case underscores the concept found in Maryland law that assuming the role of guardian of the person of a minor child does not automatically trigger a duty of support for the child.

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