

Guardianship Issues Highlighted by #FreeBritney

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The much-discussed case of Britney Spears' conservatorship (which would be referred to as guardianship in New Jersey) highlights the importance of an underappreciated aspect of guardianship law: the guardianship should be only as restrictive and endure for only if is necessary to serve the best interests of the ward. Granted, while Britney's maybe an extreme example, it is this element of guardianship law that the [#FreeBritney](#) movement is really getting at. That is, while there may have been a time when a surrogate decisionmaker was necessary for her, Spears, who is only 39 years old, should at a minimum have her situation re-evaluated.

Britney Spears Guardianship Case

Britney's case certainly highlights the fact that, unless certain rights are expressly reserved, guardianship amounts to the termination of most rights of the incapacitated person. In most cases, little consideration is given to the preservation of the incapacitated person's rights, as the degree of incapacity truly prevents the person from being able to exercise them meaningfully or safely. For example, an older person with advanced dementia, or a younger adult with severe, life-long developmental disabilities, cannot manage assets, pay expenses, care for his or her medical needs, or decide whether to undergo surgery.

Generally, in these cases, a "plenary," or total, guardianship is ordered. However, where appropriate, such as where the ward is a younger person with a less severe disability, he or she may be capable of exercising certain rights and should be given the freedom to do so. In cases not involving millionaire celebrity pop stars, these rights can include the right to vote, to marry (perhaps with the consent of the guardian), to obtain a driver's license, or to manage a bank account (perhaps up to a certain maximum amount).

In addition, it is always the case that, if it can be shown that the incapacitated person has regained capacity, the guardianship can be terminated, with the now formerly incapacitated person's rights fully restored. This is not practical in the overwhelming majority of cases, but it is still important to keep in mind, particularly with younger people whose situations and abilities may develop or change over time. Advances in medication to treat Alzheimer's may make the termination of guardianships more realistic as well.

#FreeBritney

As for Britney, from what has been publicly reported, a case may (emphasize “may,” as all the facts likely are not known) be made that, at the time the guardianship was first imposed, she was undergoing a crisis and needed her life to be legally managed by others. It may even be the case that guardianship has preserved and improved aspects of her life, at least financially. Even assuming that is true, it may be that the need for guardianship no longer exists, and the restriction of her rights, therefore, is not justified; or perhaps her ability to make certain, specified decisions can be restored.

The public reporting also hints that one other possible change – the identity of the guardian – may be appropriate. While the answers to these questions are not yet known in Britney’s case, the court’s continued oversight of the guardianship should give her the opportunity to argue for changes to the status quo.

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