

Richard A. Courtney, CELA
Certified Elder Law Attorney
4400 Old Canton Road, Suite 220
Jackson, Mississippi 39211
601-987-3000 or 1-866-ELDERLAW
For more Articles, go to: www.elderlawms.com



Court Finds Good Neighbor is Better Guardian Than Family Members

A 2009 Florida court case involved the consideration of who should be the guardian for an elderly woman – family members who were presumptively favored by the state law, or a good neighbor. The court reaffirmed that the best interest of the incapacitated person will trump the statutory presumption in favor of family members.

Three competing petitions were filed for guardianship of the person and property of 97-year old Estelle Barker, two by first cousins and the third by a neighbor, Walter Knight. Both cousins alleged they had visited Barker at various times, but their testimony was unsubstantiated and ultimately each was deemed unfit to serve and the neighbor was appointed. The neighbor, Knight, was a former marine and had known Barker since he was a child. Knight would see Barker come out on the porch of her home around 7:00 a.m. each day and sit alone all day. Knight began stopping by to bring Barker coffee and food, to visit with her, and to wash her clothes and clean her house. Barker had appointed him as her attorney-in-fact after another relative abused that position, forging checks on Barker's account. An adult protective services officer described Knight's relationship with Barker as being "like a mother-son relationship." When Barker's doctor made the decision to place Barker in a nursing home, Knight continued to visit her there six days a week for two hours each day. Knight testified that he intended to continue visiting Barker, washing her clothes, and bringing her snacks whether he was appointed guardian or not.

The court determined, based on Knight's fitness and Barker's demonstrated wish to entrust her care to Knight, that he was the most appropriate person to serve notwithstanding the fact that he was unrelated. On appeal the court found that, while the guardianship statute gives family members preference, the inquiry does not end there and the best interest of the ward trumps all other considerations. The court also rejected a claim that Knight had a conflict as sole beneficiary under Barker's Will since she had no significant assets other than her home and the record showed that Knight selflessly used his own money for Barker's care while her relatives remained minimally involved in her life.

Morris v. Knight, 2009 Fla. App. LEXIS 1124 (February 11, 2009)