

SENATE BILL 2190

By Crowe

AN ACT to amend Tennessee Code Annotated, Title 34, Chapter 1; Title 34, Chapter 3 and Title 71, Chapter 6, Part 1, relative to conservatorship arrangements.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 34-3-106, is amended by adding the following as a new, appropriately designated subdivision:

() Upon the consent of the respondent, communicate, visit, or interact with other persons, subject to Section 2(c);

SECTION 2. Tennessee Code Annotated, Title 34, Chapter 3, is amended by adding the following as a new, appropriately designated section:

(a)

(1) Unless specifically authorized by court order, a conservator shall not restrict a respondent's right of communication, visitation, or interaction with other persons, including the right to receive visitors, telephone calls, or personal mail.

(2) If a respondent is unable to express consent to communication, visitation, or interaction with a person due to a physical or mental condition, then consent of the respondent may be presumed based on the respondent's prior relationship history with the person.

(b) A conservator may, for good cause shown, move the court to have restrictions placed on a person's ability to communicate, visit, or interact with a respondent in accordance with subsection (c). Good cause includes:

(1) Whether any protective orders have been issued to protect the respondent from the person seeking access to the respondent;

(2) Whether abuse, neglect, or financial exploitation of the respondent by the person seeking access to the respondent has occurred or is likely to occur;

(3) Documented wishes of the respondent to reject communication, visitation, or interaction with specific persons; or

(4) Any other factors deemed relevant by the court.

(c)

(1) A court may order restrictions placed on the communications, visitations, or interactions a person may have with a respondent upon a showing of good cause by the conservator.

(2) In determining whether to issue an order in accordance with subdivision (c)(1), the following factors shall be considered by the court:

(A) Whether any protective orders have been issued to protect the respondent from the person seeking access to the respondent;

(B) Whether the person has been charged with abuse, neglect, or financial exploitation of the respondent;

(C) Whether the respondent expresses a desire to communicate, visit, or interact with the person;

(D) If the respondent is unable to communicate, whether a properly executed living will, durable power of attorney, or advance directive contains a preference by the respondent with regard to the person's communication, visitation, or interaction with the respondent; and

(E) Any other factors deemed relevant by the court.

(3) Prior to issuing an order pursuant to this subsection (c), the court shall consider the following restrictions in the order listed:

(A) Placing reasonable time, manner, or place restrictions on communication, visitation, or interaction between the respondent and

another person based on the history between the respondent and the person or the respondent's wishes, or both;

(B) Requiring that communication, visitation, or interaction between the respondent and another person be supervised; or

(C) Denying communication, visitation, or interaction between the respondent and another person; provided, that, unless the court finds that the person poses a threat to the respondent, supervised communication, visitation, or interaction under subdivision (c)(3)(B) shall be ordered prior to the denial of any communication, visitation, or interaction.

(d)

(1) If any interested person, including the respondent, reasonably believes that subsection (a) or an order issued pursuant to subdivision (c)(1) has been violated, then such person may move the court to:

(A) Require the conservator to grant a person access to the respondent;

(B) Restrict, or further restrict, a person's access to the respondent;

(C) Modify the conservator's duties; or

(D) Discharge and replace the conservator pursuant to § 34-3-108.

(2) Notwithstanding actions available to the court pursuant to subdivision (d)(1), a conservator who is found to be knowingly isolating a respondent and who has violated subsection (a) or an order issued pursuant to subsection (c) shall be subject to discharge and replacement pursuant to § 34-3-108.

(e)

(1) Except as provided in subdivision (e)(2), the court shall schedule a hearing on a motion filed pursuant to subsection (b) or (d) no later than sixty (60) days after the date the motion is filed. The court may, in its discretion, order mediation to be conducted between the parties and the respondent prior to the hearing. If mediation results in agreement of the parties and the respondent with regard to communication, visitation, or interaction with the respondent, the agreement shall be approved and memorialized in an order by the court.

(2)

(A) If the motion states that the respondent's health is in significant decline or that the respondent's death may be imminent, the court shall conduct an emergency hearing as soon as practicable, but no later than ten (10) days after the motion is filed.

(B) When a scheduling order is issued for a motion filed pursuant to subdivision (e)(2)(A), the court shall also order that supervised communication, visitation, or interaction with the respondent be granted during the period prior to the hearing.

(3) Notice of the hearing, a copy of the motion, and a copy of any order issued pursuant to subdivision (e)(2)(B), if applicable, shall be personally served upon the respondent and any person against whom the motion is filed, and nothing in this section shall affect the respondent's right to appear and be heard in the proceedings.

(f)

(1) The court may award the prevailing party in any action brought under this section court costs and reasonable attorney's fees; provided, however, that

an award of court costs or attorney's fees shall not be paid out of the respondent's estate.

(2) The court, upon motion or upon its own initiative, shall impose upon a conservator who is found to be knowingly isolating a respondent and who has violated subsection (a) or an order issued pursuant to subsection (c) an appropriate sanction, including an order to pay court costs and reasonable attorney's fees of the other party or parties; provided, however, that no sanction shall be paid out of the respondent's estate.

SECTION 3. Tennessee Code Annotated, Title 34, Chapter 3, is further amended by adding the following as a new, appropriately designated section:

(a) A conservator shall promptly notify a respondent's closest relatives and any person designated by the respondent to be notified, along with the appropriate contact information and upon the conservator's knowledge of such event and information, in the event:

(1) The respondent's residence has changed;

(2) The respondent is staying at a location other than the respondent's residence for more than seven (7) consecutive days;

(3) The respondent is admitted to or discharged from a nursing home or assisted-care living facility as defined in § 68-11-201;

(4) The respondent is admitted to a medical facility for:

(A) Emergency care in response to a life-threatening injury or medical condition; or

(B) Acute care; or

(5) The respondent dies; provided, that notification of the respondent's death shall be made in person or by telephone.

(b)

(1) A conservator is not required to provide notice in accordance with subsection (a) if:

(A) A person who is entitled to notice under subsection (a) informs the conservator in writing that the person does not wish to receive such notice; or

(B) The respondent or a court order has expressly prohibited the conservator from providing notice to the person.

(2) A conservator shall not provide contact information in accordance with subsection (a) if an order of protection or restraining order has been issued pursuant to title 36, chapter 3, part 6, against the person on behalf of the respondent.

SECTION 4. This act shall take effect upon becoming a law, the public welfare requiring it, and shall apply to conservatorships created before, on, or after the effective date of this act.