

Elder Law NEWS

AUGUST 2021

BRITNEY SPEARS CASE PUTS RENEWED FOCUS ON GUARDIANSHIPS AND LESS RESTRICTIVE ALTERNATIVES

Britney Spears's legal fight to wrest back control over her personal and financial affairs has flooded the issue of guardianship in Klieg lights. While a full guardianship may be necessary for many individuals who are incapable of managing their own affairs due to dementia or intellectual, developmental or mental health disabilities, the Spears case underlines the option of more limited alternatives.

Every adult is assumed to be capable of making his or her own decisions unless a court determines otherwise. If an adult becomes incapable of making responsible decisions, the court will appoint a substitute decision maker, usually called a "guardian" or a "conservator," depending on the state.



LAW OFFICES OF
BARRY R. CRIMMINS P.C.

Phone: (781) 344-2886 Email: info@brc-law.com



Elder Law NEWS

AUGUST 2021

Guardianship is a legal relationship between a competent adult (the “guardian”) and a person who because of incapacity is no longer able to take care of his or her own affairs (the “ward”). The guardian can be authorized to make legal, financial, and health care decisions for the ward. The National Center for State Courts says that about 1.3 million adults are living under guardianships or conservatorships with some \$50 billion in assets.

The standard under which a person is deemed to require a guardian differs from state to state, and because guardianships are subject to state law, data on them is hard to collect and protections against abuse vary widely. Netflix’s popular movie, *I Care a Lot*, [spotlighted some weaknesses](#) in the guardianship system that make it possible for an unscrupulous guardian to take control of an elderly person’s life and bleed their resources dry.

The Spears Case: An Unusual Situation

Britney Spears has been under a court-ordered conservatorship that has controlled her career and finances since 2008. Her father, Jamie Spears, was appointed her temporary conservator





Elder Law NEWS

AUGUST 2021

when the pop singer was allegedly struggling with mental health issues and had been hospitalized, and a Los Angeles court later made the conservatorship permanent.

On July 14, a Los Angeles judge [approved the resignation](#) of Spears's court-appointed lawyer and granted her request to hire her own lawyer. The 39-year-old singer told the judge that she wants to end the long-running conservatorship that put her father in charge of her estimated \$60 million fortune and business affairs, and others in control of such personal decisions as whether she can marry and have a baby. "I'm here to get rid of my dad and charge him with conservatorship abuse," she said.

Whatever the merits of this controversial case, what makes Spears's situation so unusual is the fact that she does not appear to be incompetent, at least when it comes to her professional accomplishments. In the 13 years since the conservatorship was put in place, she has continued her career as a pop star, earning millions from a four-year concert residency act in Las Vegas and serving as a judge on the television reality show "The X Factor."





Elder Law NEWS

AUGUST 2021

Another anomaly is the fact that until now Spears was represented by a court-appointed attorney who, she argued, did not represent her wishes or interests. However, while the media has given wide coverage to Spears's side of the dispute, we have heard almost nothing from the professionals handling her affairs, who are constrained from publicly disclosing confidential information.

It's easy to see why conservatorship, which takes away a person's right to make decisions about significant aspects of his own life, is considered among the most restrictive legal remedies in the American judicial system. For this reason, courts are legally required to seek alternatives that will safeguard the ward's finances and wellbeing but with the fewest restrictions, in an effort to protect that person's rights.

Protections Without Total Loss of Control

In the case of an elderly person who may no longer be able to handle some or all of her own affairs, there are various approaches that provide protection without stripping that person of control over all decisions, as in Spears's case.



A large crowd of people is gathered outdoors, many wearing face masks. They are holding various signs, including "LOL", "SUSPEND JAM!", "#FREE BRITNEY", "LOU M. TAYLOR SHE'S NOT THAT INNOCENT! STONEBRIDGE OWES BRITNEY \$600", "INVESTIGATE LOU M. TAYLOR", "Britney IS HUMAN", "FREE BRITNEY", "WE STAY with you", "FREE BRITNEY", "what goes around comes around and the crowds are waiting", "ALL NEW", "BRITNEY", "FREE BRITNEY", "LOU!", "JAIL", "FREE BRITNEY", "AND THE (unintelligible) TIME IS UP", "SONS", "ORDER", "EARS", "ER ST. NER.", "EM", "Britney", "#F".

Elder Law NEWS

AUGUST 2021

Many people in need of help can make responsible decisions in some areas of their lives but not others (such as making major financial decisions). Families might consider setting up what's called a "limited guardianship." Most states allow judges to appoint guardians with limited powers that are specifically tailored to the alleged incapacitated person's needs. For example, a court can appoint a guardian to oversee a person's housing and health care, but not to manage the person's bathing, eating, and socialization. Conservators can be appointed to handle the financial affairs of someone who is not good with money, without having any power to manage health care decision making—the options are almost infinite.

Alternatives to Guardianship

Sometimes, guardianship isn't the answer at all. If a person can execute estate planning documents, she can also sign a durable power of attorney and a health care proxy, which allows someone to assist her with decisions without court involvement. This is important for several reasons. First, it prevents a court from ruling that someone is "incapacitated," which carries with it a stigma and can be hard to undo, as Britney Spears is finding. Second, it puts the person in



Elder Law NEWS

AUGUST 2021





Elder Law NEWS

AUGUST 2021

For an article on what may lie ahead in the Britney Spears case, [click here](#).

For an article on how guardianships can lead to abuse by University of Virginia Family Law Professor Naomi Cahn, [click here](#).

For more on guardianship, [click here](#).

YOU MAY BE OVERESTIMATING YOUR SOCIAL SECURITY BENEFITS

Studies have found that workers overestimate how much they will receive in Social Security benefits when they retire. Having a good understanding of the realities can help you plan for retirement.



LAW OFFICES OF
BARRY R. CRIMMINS P.C.

Phone: (781) 344-2886 Email: info@brc-law.com



Elder Law NEWS

AUGUST 2021

[Researchers from the University of Michigan studied](#) the expectations of workers and found great uncertainty about future Social Security benefits as well as a tendency to overestimate the amount they think they will receive. Half of the workers surveyed in the study did not know their benefit amount. The average overestimation of the benefit was \$307 a month, more than one-quarter of the average forecasted benefit.

The study found that as workers got older, however, they were more likely to understand their benefits and less likely to overestimate benefit amounts.

Nationwide Retirement Institute's annual [Social Security survey](#) similarly found that future retirees over age 50 expect to receive a higher payment than what actual retirees receive. In this survey, respondents were off by nearly \$200 a month. And almost 70 percent of Baby Boomers mistakenly believe that if they claim Social Security early, their benefit will go up automatically when they reach full retirement age. Not surprisingly, the Nationwide survey also found that more than half of workers are not confident in their understanding Social Security or how much money they will receive.





Elder Law NEWS

AUGUST 2021

many will receive less than this amount based on their work and earnings history. The maximum monthly Social Security benefit that an individual can receive in 2021 is \$3,895 if they wait until age 70 to collect. And keep in mind that many retirees have their [Medicare Part B and Part D premiums deducted](#) from their Social Security checks.

To gain a solid understanding of your expected Social Security benefits, you can create a [my Social Security account](#). The account will give you retirement benefit estimates based on what you are currently earning.

For more information about Social Security, [click here](#).



LAW OFFICES OF
BARRY R. CRIMMINS P.C.

Phone: (781) 344-2886 Email: info@brc-law.com



Elder Law NEWS

AUGUST 2021

MEDICARE WOULD COVER DENTAL, VISION, AND HEARING UNDER SENATE DEMOCRATS' SPENDING PLAN

The Senate Democrats proposal for a \$3.5 trillion spending plan includes expanding Medicare to provide dental, vision, and hearing benefits. The proposal is now being negotiated in Congress.

Currently Medicare does not offer much in the way of dental, vision, and hearing benefits. [Medicare Part A](#) will cover certain emergency or necessary procedures that are received in the hospital. For example, if you are hospitalized after an accident and require jaw reconstruction, Medicare Part A will pay for the dental work required as part of that procedure.





Elder Law NEWS

AUGUST 2021

[Medicare Part B](#) offers very limited coverage of some vision and hearing services. For example, while Medicare Part B won't cover routine eye exams, it does cover yearly glaucoma screenings for people at high risk and cataract surgery, among a few other limited exceptions. Part B will also cover some diagnostic hearing and balance exams if they are ordered by a doctor, but it will not cover routine hearing exams or hearing aids. There is no coverage at all for routine dental work.

Many people choose [Medicare Advantage plans](#), which are run by private insurers, instead of traditional Medicare because it is possible to get some dental, vision, and hearing benefits in most plans. According to the [Kaiser Family Foundation](#), 79 percent of people in Medicare Advantage plans have vision coverage, 74 percent have dental coverage, and 72 percent have hearing aid coverage.

Under the Democrats' proposal, Medicare beneficiaries would be able to receive dental, vision, and health benefits through traditional Medicare. The exact details of the proposal are unknown, but in a [2019 bill](#) that passed the House, Medicare beneficiaries would have paid 20



Elder Law NEWS

AUGUST 2021

For more information about the Democrats' proposal, [click here](#).