

derscored how blanket registration requirements, although civil in nature, could confer harm to this class of offender. The majority, however, held that those found NGRI could still be mandated to register as sex offenders.

Disclosures of financial or other potential conflicts of interest: None.

## Applicable Standard of Review of Decision to Remove the Guardian of Estate and Trustee of a Special Needs Trust

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**Abuse of Discretion Is the Correct Standard of Review for Decision to Remove Guardian of an Estate and Trustee of a Special Needs Trust, Not De Novo Review. The Assistant Clerk May Not Only Consider Whether the Guardian and Trustee Complied With the Special Conditions of the Trust, But Also Whether He Acted Prudently and in the Best Interest of the Beneficiary**

DOI:10.29158/JAAPL.3753L8-18

*In re Estate of Skinner*, 804 S.E.2d 449 (N.C. 2017), Supreme Court of North Carolina reviewed an assistant clerk's decision to remove the guardian of the estate and trustee of a special needs fund of an incompetent individual and determined what should be the correct legal standard and application for such a review.

### Facts of the Case

On April 13, 2010, the assistant clerk of the superior court found Cathleen Bass Skinner (at the time Cathy Bass) incompetent on account of disability, related to the presence of early stages of dementia and a seizure disorder, and appointed Wake County Human Services as her guardian.

On August 3, 2010, Mark Skinner married Ms. Bass and moved to be appointed as her guardian. He

sought counsel of two attorneys for these actions. On August 2, 2011, Mr. Skinner was appointed permanent guardian of Mrs. Skinner's person by the assistant clerk of the superior court.

Mrs. Skinner's mother, Kathleen Bass, died in August 2012 and named Mrs. Skinner as a beneficiary. Mrs. Skinner's siblings, Douglas Bass and Nancy Clark, filed a motion to have Ms. Clark appointed guardian of Mrs. Skinner's estate. Mr. Skinner filed a competing motion to be appointed guardian of his wife's estate.

On October 9, 2013, the assistant clerk appointed Mr. Skinner guardian of Mrs. Skinner's estate on the basis that Mr. Skinner and Mrs. Skinner were legally married, shared an apartment, and appeared to love each other. The Assistant Clerk also found that Mrs. Skinner would be at risk of losing her Social Security disability benefits and Medicaid assistance if her inheritance was not placed in a Special Needs Trust. The assistant clerk laid out the conditions that Mr. Skinner had to satisfy before he could be appointed the guardian of Mrs. Skinner's estate: that he secure a bond in the amount of \$250,000; that he set up a Special Needs Trust for Mrs. Skinner; and that no inheritance be spent except pursuant to the provisions of the Special Needs Trust. In addition, he was required to report all receipts and expenditures annually to Ms. Clark.

After posting the requisite bond, Mr. Skinner executed the Cathleen Bass Skinner Special Needs Trust, which was approved by the assistant clerk in March 2014.

In July 2014, Mr. Bass and Ms. Clark petitioned to have Mr. Skinner removed as the guardian of Mrs. Skinner's estate and to appoint Ms. Clark as successor trustee of the trust on the grounds that Mr. Skinner had violated his duty to report and account. The assistant clerk reviewed the evidence and found that Mr. Skinner had used the trust fund for personal expenditures, including paying for legal fees, buying a new house, furniture, and appliances and investing in a prepaid funeral insurance policy. The clerk concluded that Mr. Skinner lacked appropriate judgment and had breached his fiduciary duties and subsequently removed him as the trustee and guardian of Ms. Skinner's estate. Mr. Skinner filed a notice of appeal in trial court.

The trial court affirmed the assistant clerk's order. On appeal to the court of appeals, Mr. Skinner asserted that there was insufficient evidence to show

that he had mismanaged the trust fund or converted it to his own use. Further, he argued that the trial court failed to find that he had abused his discretion, acted with a dishonest motive, acted beyond the bounds of reasonable judgment or violated any specific provisions of the trust and that the assistant clerk failed to give deference to his discretionary decisions.

The court of appeals reversed the assistant clerk's order. The court found that the trial court had issued its ruling on the basis of an incorrect understanding of the applicable law, making its ruling subject to *de novo* review on appeal. On review, the court of appeals found that the assistant clerk erred in determining that the assets under the Trust had to be preserved for Ms. Skinner's long-term health needs; that the trust did not bar the use of the funds to purchase a prepaid burial insurance policy; that the purchase of the house, furniture, and appliances constituted a permissible use of trust resources because they improved Mrs. Skinner's quality of life; that being the sole beneficiary of the trust did not mean that she had to live in a state of bizarre isolation and that Mr. Skinner's use of trust funds for his legal fees constituted an honest mistake, not a "serious breach of trust" (*Skinner*, p 452).

Mr. Bass and Ms. Clark appealed, claiming that the appeals court erred by failing to limit its review of the assistant clerk's order to determine whether an abuse of discretion had occurred.

#### *Ruling and Reasoning*

The Supreme Court of North Carolina noted that the assistant clerk is equivalent to a trial tribunal and that the assistant clerk had the authority, pursuant to N.C. Gen.Stat. § 35A-1290 (2015, recodified 2017) and N.C. Gen.Stat. § 36C-7-706(b) (2015), to remove Mr. Skinner as the guardian and trustee of the Special Needs Trust.

The court noted that Mr. Skinner was required to carry out his duties reasonably and prudently and in a manner that served Ms. Skinner's best interests. Instead, the Assistant Clerk's findings of fact demonstrated that Mr. Skinner expended more than 90 percent of the monies committed to his custody for Ms. Skinner's use and care within a short time after receiving them in ways that either directly or indirectly benefited himself while leaving insufficient funds in the trust to either preserve the assets or take care of Ms. Skinner's long-term needs.

Therefore, the court held, that the assistant clerk had ample justification for determining the grounds for Mr. Skinner's removal, as both the guardian and trustee existed in this case. The North Carolina Supreme Court found that in reversing the assistant clerk's order, the court of appeals focused solely upon the extent, if any, to which Mr. Skinner's conduct violated the specific provisions of the Special Needs Trust. However, the North Carolina Supreme Court noted that the assistant clerk did not remove Mr. Skinner from his position as guardian and trustee because he violated the terms and conditions of the Special Needs Trust, but instead, "on the basis of a belief that Mr. Skinner's actions, regardless of their consistency with specific provisions of the Special Needs Trust, constituted waste and mismanagement of the assets committed to his care" (*Skinner*, p 455).

Thus, the fact that Mr. Skinner's conduct may have been consistent with the terms of the Special Needs Trust did not insulate him from removal. The North Carolina Supreme Court also noted that while the assistant clerk appeared to have erroneously construed some of the provisions of the Special Needs Trust, even if one or more factual findings were made in error, the remaining findings would still suffice to support his legal conclusions. Finally, the court opined that the standard of review of the assistant clerk's decision is, in fact, abuse of discretion and not *de novo* review, as adopted by the court of appeals.

#### *Dissent*

In his dissenting opinion, Justice Morgan said that the assistant clerk had incorrectly determined the purpose of the Special Needs Trust and cited various errors made by the assistant clerk. He stated that this was a misapprehension of law by the assistant clerk and that his decision to remove Mr. Skinner as the trustee and guardian amounted to an abuse of discretion. Finally, in agreeing with the ruling of the court of appeals (that Mr. Skinner should not have been removed as the trustee and guardian and that, instead, the case should have been remanded to the trial court for proper application of the legal standard), Justice Morgan cited prior law: "an abuse-of-discretion standard does not mean a mistake of law is beyond appellate correction" (*Skinner*, p 462, citing *Koon v. U.S.*, 518 U.S. 81, 100 (1996)).

*Discussion*

The North Carolina Supreme Court affirmed the decision of the assistant clerk based on the evidence provided. In doing so, the court noted that even when his actions are in compliance with the conditions of the trust, the assistant clerk may remove the guardian if his actions constituted waste and mismanagement of the trust assets and if his duties as guardian and trustee were not carried out reasonably and prudently and in a manner that served in the best interest of the beneficiary. Further, as in other areas of the law, the court granted broad deference to the decision made by the trial tribunal, in this case the assistant clerk, and reaffirmed that the correct standard of review for the assistant clerk's decision is abuse of discretion.

Disclosures of financial or other potential conflicts of interest: None.

## Extent of State's Ability to Regulate Information Disclosures From Prescription Drug Monitoring Programs

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**An Oregon State Statute Requiring a Court Order Before Disclosing Prescription Monitoring Information to the Drug Enforcement Agency is Pre-empted by the Federal Controlled Substances Act**

DOI:10.29158/JAAPL.3753L9-18

In *Oregon Prescription Drug Monitoring Program v. U.S. Drug Enforcement Admin.*, 860 F.3d 1228 (9th Cir. 2017), the U.S. Drug Enforcement Administration (DEA) successfully appealed a summary judgment by the U.S. District Court for the District of Oregon in favor of the Oregon Prescription Drug Monitoring Program (PDMP) and several unaffiliated intervenors. The PDMP had brought action against the DEA seeking a declaratory judgment

that, pursuant to state law, the DEA must obtain a court order to enforce administrative subpoenas issued under the Controlled Substances Act (CSA). The Court of Appeals for the Ninth Circuit found that the DEA's ability to issue administrative subpoenas related to investigations granted by the CSA preempted state requirements for court orders before releasing PDMP information. The intervenors had argued that the subpoenas violated their Fourth Amendment rights. The court did not adjudicate the intervenors' claim because they lacked the Article III standing necessary to seek different relief than Oregon had sought.

*Facts of the Case*

Oregon's PDMP is established by Or. Rev. Stat. § 431A.855 (year) (renamed from Or. Rev. Stat. § 431.966 in 2015) and is operated by the Oregon Health Authority. When pharmacies in Oregon dispense drugs classified in DEA Schedules II–IV, they are required to report information, including patient name and prescriber details. The reports comprise Protected Health Information (PHI), which, per state law, may be disclosed only in limited circumstances (Or. Rev. Stat. § 431A.865 (2015)). The DEA had issued two administrative subpoenas requesting PHI from the PDMP. In response, the PDMP brought an action to the U.S. District Court for the District of Oregon seeking a declaration that a request for PHI could be honored only when accompanied by a federal court order. Several parties joined the action as “intervenors,” including individual plaintiffs (four patients and one prescribing doctor). The intervenors argued that the DEA's use of administrative subpoenas violated their Fourth Amendment rights concerning PHI. They sought a declaration and injunction “prohibiting the DEA from obtaining prescription records from the PDMP without securing a probable cause warrant” (*Oregon PDMP*, p 1232).

The patients argued that as consumers of various Schedule II–IV medications, knowledge that the DEA could in the future obtain records of their medication use was causing them psychological distress. They also argued that this could adversely affect their future treatment choices and behavior. The prescribing physician argued knowledge that he could be investigated concerning his Oregon prescribing would change his prescribing behavior and made him more reluctant to prescribe Schedule II–IV