

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE CHARLES J. THOMAS JAS TERM, PART 20B
Justice

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In the Matter of the Application of

JUDY [REDACTED],

INDEX NO.: 28033/01

For the Appointment of a Guardian
of the Person and Property of

CARMEN C [REDACTED],

Respondent

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The following papers numbered 1 to read on this motion by
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Order to Show Cause..... 1-12
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Petitioner moves for an order finding co-guardian Gladys
B [REDACTED] in contempt of this court's order dated January
8, 2003 preventing Ms. C [REDACTED] from fulfilling her duties as
temporary guardian of Carmen C [REDACTED].

Carmen C [REDACTED] was an eighty-nine (89) year old divorcee, who
had two (2) daughters and four (4) sons, who at the time of the
proceeding was living in a separate apartment in her daughter
Gladys B [REDACTED] Shields' house located in South Ozone Park.

On December 13, 2001, after hearing evidence on the issues
of capacity Justice Milano found Mrs. C [REDACTED] to be an
incapacitated person and on May 2, 2002 appointed Gladys Bennett-
Shields as the Guardian of Carmen C [REDACTED].

On September 19, 2002, daughter Judith C [REDACTED] moved to vacate
the signed by Judge Milano order appointing Gladys B [REDACTED]

~~Shields~~ claiming that Mr. ~~C. [redacted]~~ was not being properly cared for. On January 8, 2003 the prior order was revoked by this court and the court appointed both daughters, Judith ~~C. [redacted]~~ and Gladys B ~~[redacted]~~, as temporary co-guardians for a period of six months. The court advised both guardians as follows...

The Court: During the course of that guardianship both of you have one hundred percent rights with your mother... You are both equally responsible for your mother's health welfare and well being; not you over her or her over you.

The Court: If you want to settle it, yes.

Mrs. S ~~[redacted]~~: I will settle it, yes.

The Court: Temporary co-guardianship starts immediately. You don't have to wait for papers.

Mrs. S ~~[redacted]~~: I need to know what happens at the end of the six months:

The Court: I will put the case on the calendar... I will deal with it. I am giving you a chance to work it out among yourselves which is always my goal when there is family involved. I am reluctant to bring in a stranger with family. If you can not get along, I will have to.

The Court: We are dealing with what we have in front of us now. There is a situation where your mother is sick. She needs help and care.

The Court: You want to tell me yes. Judge, I agree with temporary guardianship for six months.

Mrs. S ~~[redacted]~~: Of course I do. [Trans. 12-14]

Ms. C ~~[redacted]~~ brought this motion to hold Gladys Bennett-Shields in contempt of this court's order. A hearing on the ~~motion for contempt was held on July 1, 2003 and continued~~

through July 9, 2003. At the hearing the following individuals testified. Petitioner, Judith C [REDACTED], Dr. Sessan Farjami, an internist, Police Officer Gordon Newton, Emergency Medical Technician Daniel Casey, Ginette Brovard, Sgt. Claude Barnaby, Gladys B [REDACTED] and Ivy Soto.

At the conclusion of the hearing the court makes the following findings of fact.

On May 8, 2003 Ms. Caban notified Ms. Bennett-Shields that she planned to take her mother to her house to visit for a couple of days. On May 11, 2003, Mother's Day, Ms. Caban arrived at Ms. Bennett-Shields's house to pick up her mother. When she arrived Mrs. Caban was dressed and sitting in a wheelchair. When Ms. Caban went to leave with her mother, her sister stopped her, they argued and Mrs. Bennett-Shields called 911. Ms. Caban left the house and waited for the police to come. When they did not show Ms. Caban eventually left.

On May 14, 2003 Carmen Caban, who was suffering from assorted ailments including open bed sores, began to take a turn for the worse and Ms. Caban told her sister that she believed it would be best for their if she was relocated to a nursing facility. Ms. Caban returned to her sister's home to see her mother on May 30, 2003. At the time Ms. Caban found her mother in distress and unresponsive and had suffered significant weight loss since she had last seen her. Ms. Caban called Emergency Medical Services (hereinafter referred to as EMS) and Ms.

B [REDACTED] tried to stop her. EMS responded and examined Mrs. C [REDACTED]. Ms. B [REDACTED] informed EMS that she (Ms. B [REDACTED]) was her mother's guardian.

Ms. B [REDACTED] told the EMT technician that the guardianship had not yet been determined and that she was still her mother's custodial guardian. Ms. B [REDACTED] showed the EMS technicians the prior order of Judge Milano which had been vacated by this court on January 8, 2003. The EMS technicians left without taking any medical action.

Later that evening at about 8:15 p.m. Ms. C [REDACTED] returned to visit her mother, feed her and get her ready for bed. When she arrived her sister would not let her in. An argument ensued between the two sisters. The following morning Ms. C [REDACTED] began to make certain inquiries about having her mother reevaluated. Ms. C [REDACTED] spoke to Dr. Farjami about her mother's condition and he advised her that she should bring her mother to the Emergency Room right away.

At about 2:30 in the afternoon, of the 31st of May, Ms. C [REDACTED] returned to her sister's home and found that her sister had placed a chain on the front gate preventing her from entering the property and her mother's apartment. Ms. C [REDACTED] climbed the fence and went to the door of her mother's apartment. After calling out several times she went to the front door and began ringing the bell and knocking on the front door. After about five minutes Ivy Soto, the home care aid to Mrs. C [REDACTED] at the time,

came to the door. Through the closed door Ms. [REDACTED] identified herself as Judy [REDACTED], Mrs. [REDACTED]'s daughter and told her she was there to see her mother and take her to the hospital. The home care aid refused to allow her in as Ms. [REDACTED] had told her not to open the door to her. Ms. [REDACTED] climbed back over the fence and then called 911 and requested assistance from EMS. EMS came and waited about five minutes until Ms. [REDACTED] arrived. Still Ms. [REDACTED] refused to allow Ms. [REDACTED] to enter. The police showed up almost one hour later and the EMS technicians as well as Police Officer Newton went into the [REDACTED]'s house while Police Officer Costas stayed outside on the sidewalk with Ms. [REDACTED]. Ms. [REDACTED] advised Police Officer Costas that she was the co-guardian.

Ms. [REDACTED] permitted Police Officers Newton to go downstairs to the mother's apartment to see her. When they went downstairs Ms. [REDACTED] told the officers her sister was pulling on the downstairs window and causing it to crack. When Officer Newton went down Mrs. [REDACTED] was lying on her back staring at the ceiling and was nonverbal.

Ms. [REDACTED] told P.O. Newton that she had custody of the mother and she did not want Ms. Caban inside and that she was the guardian of her mother.

After speaking to the home care attendant, who said that Ms. [REDACTED] was trying to push the window open and cause a four-inch crack in the window, P.O. Newton requested a supervisor respond

to the house. Shortly thereafter Sergeant Barnaby arrived with another officer. Sgt. C. Barnaby testified from his selective memory as follows:

Q. Officer, when we spoke outside just a moment ago I asked if you were told which sister had custody of the mother?

A. Well, I just figured that the sister -

Q. When we spoke a moment ago outside the courtroom and I asked you if you were told which sister had custody of the mother, what did you tell me?

A. I said that the house the mother was in I figured she had custody of the mother.

Q. But did Ms. ██████████, the lady right there -

A. Right.

Q. Did she tell you that the sister outside was the mother's guardian and had a right to be in the house?

A. No. I can't remember what she said. I just went by the incident of the broken window as to why she was arrested. I really don't remember the whole facts to the story or what they said. [Tr. p.200, 1.6]

The EMS technician examined Ms. C█████████ and left her apartment. Ms. B█████████ advised the EMS technician that she was refusing medical assistance for her mother against medical advice. Gladys B█████████ signed the ambulance report and it was witnessed by one of the officers. When they left the house, Ms. C█████████ was told that they would not be taking her mother to the Emergency Room and that her mother was fine.

Sargent Barnaby then went outside of the house and placed

~~Ms. C█████████ under arrest. When Ms. C█████████ asked what she was being~~

arrested for she was told for cracking the window in the mother's driveway. Ms. [REDACTED] was then taken to Central Booking,

fingerprinted, spent the night in a lock up and was and was arraigned and released the next day. That day an order of protection was issued directing Ms. [REDACTED] to stay away from her sister's house. With an Order of Protection in place Ms. [REDACTED] was unable to check on her mother. Later that day she learned her mother was dead. Upon being told of her mother's death Ms. [REDACTED] went to her mother's apartment and took pictures of her mother's body which showed the poor condition of her mother at that time.

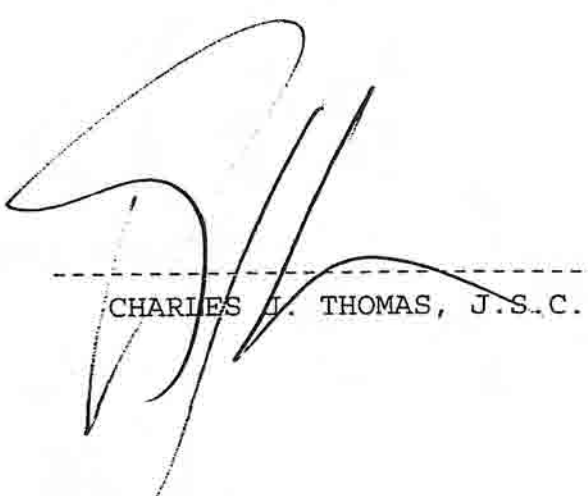
During the hearing Ms. [REDACTED] acknowledged that she knew and understood the court's order and that Judith [REDACTED] had the right to be in her mother's apartment and to procure medical care for her and had agreed to abide by the court's order. At the same time Ms. [REDACTED] acknowledged that she put a chain on the fence on the morning of May 31st to keep Judith [REDACTED] from getting into their mother's apartment and that she had refused to allow her to tend to her mother the prior evening. Such conduct can only be interpreted as an intentional act constituting willful disobedience to this court's lawful mandate.

Based upon these facts the court finds that Gladys [REDACTED] [REDACTED], a person appointed by this court, disobeyed the lawful mandate of this court's order of January 8, 2003, appointing Judith [REDACTED] as a co-guardian of her mother in that she concealed

and misled law enforcement officials and medical technicians as to her lawful status and the lawful status of Judith [REDACTED] as equal co-guardian of Carmen [REDACTED]; that she intentionally refused Judith [REDACTED] access to and frustrated, impaired and impeded her attempts to provide necessary medical care for Carmen [REDACTED]; and that she filed a criminal complaint with law enforcement officials without advising those officials of Judith [REDACTED]'s lawful rights to have access to Carmen [REDACTED] and her residence. The court can only speculate that Ms. [REDACTED] might still be alive had Ms. [REDACTED] been allowed to provide her with medical treatment.

Accordingly, Gladys Bennett [REDACTED] is hereby found to be in contempt of this court's order dated January 8, 2003 and shall be committed to the custody of the Department of Corrections for a term of seven days incarceration. Ms. Bennett [REDACTED] is also directed to pay the sum of \$15,000.00 to Lori Somekh, Esq. As attorneys fees for this matter.

DATED: October 15, 2003



CHARLES J. THOMAS, J.S.C.