

IN THE CIRCUIT COURT OF THE 12<sup>TH</sup> JUDICIAL CIRCUIT IN AND FOR MANATEE COUNTY  
IN AND FOR MANATEE COUNTY, FLORIDA  
PROBATE DIVISION

2006MH1209

IN RE: GUARDIANSHIP OF

ROBERT BAIN BALL, JR.,

An incapacitated person,

FILED FOR RECORD  
2015 NOV -5 PM 1:56  
CLERK OF THE CIRCUIT COURT  
MANATEE CO. FLORIDA

ORDER ON SUGGESTION OF CAPACITY

The Petitioner, the Ward, Robert Bain Ball, Jr. filed a Suggestion of Capacity pursuant to F.S. 744.464. The Petitioner claims he is currently capable of exercising all of the delegable and non-delegable rights that were removed.

The Court held a hearing over a two day period to determine whether the Ward has regained capacity and is capable of exercising the delegable and non-delegable rights that were removed.

R. Bain Ball, Sr., the duly appointed Plenary Guardian of the Person and Property for Robert Bain Ball, Jr., an incapacitated person, who is the father of the Ward, filed an objection to the Suggestion of Capacity acknowledging that while the Ward has made significant improvement, he is still unable to exercise the rights that were taken away from him by the operation of the Guardianship.

As a result, an evidentiary hearing pursuant to F.S. 744.1095 took place.

THE LAW

Florida Statute 744.464(3) (b) states;

At the conclusion of a hearing conducted pursuant to s. 744.1095, the court shall make specific findings of fact and based on a preponderance of the evidence enter an order either denying the suggestion of capacity of restoring all or some of the rights which were removed from the ward. The ward has the burden of proving by a preponderance of the evidence that the restoration of capacity is warranted.

Before depriving an individual of all their civil and legal rights, the individual must be incapable of exercising his rights at all, whether wisely or otherwise. See McJunkin v. McJunkin, 896 So.2d 963 (Fla. 2d DCA 2005)

### FINDINGS OF FACT

On June 15, 2006 Robert Bain Ball, Jr., the Petitioner, suffered, among other things, a traumatic brain injury from an automobile accident, which left him in a coma for approximately eighteen months. In early 2008, the Petitioner emerged from his coma and was subsequently moved to NeuroRestorative Rehabilitation Center in Sarasota, Florida.

After years of intensive rehabilitation, on May 20, 2015, the Petitioner filed a Suggestion of Capacity, asserting that he is capable of exercising all of the rights that had been previously removed, to wit:

The right to

Marry

Vote

Personally apply for government benefits

To have a driver's license

To travel

To seek or retain employment

To contract

To sue and defend lawsuits

To apply for government benefits

To manage property or to make any gift or disposition of property

To determine his or her residence

To consent to medical and mental health treatment

To make decisions about his or her social environment or other social aspects of his life.

On June 4, 2015, an objection to the Suggestion of Capacity was filed. On June 25, 2015, an evaluation was conducted by the court appointed examining physician, Dr. Scott Permesly. Further testing was conducted on June 29, 2015.

On August 6, 2015 Dr. Permesly executed and signed his report. He concluded the following;

The Petitioner has the capacity in the following areas,

Decisions concerning travel or where to live

Consent to or refusal of medical or other professional care, counseling, treatment or service

Permitting access to, refusal of access to or consent to release of confidential records and papers

Control or management of real or personal property or income from any source

Management of a business

Acting as a member of a partnership

Making contracts

Payment or collection of debts

Making gifts

Initiation, defense or settlement of lawsuits

Execution of a will or waiving the provisions of an existing will

Decisions concerning education

Admissions to Florida State Hospital or any other public treatment facility on a voluntary basis under the provisions of applicable state law.

### **RULING AND RATIONALE**

After testimony covering two separate days and listening to multiple witnesses including the Petitioner, the Court finds that there is some merit in those opposing the restoration of all of the Petitioner's rights taken away by the imposition of the Guardianship. This court feels that all parties have the best interest of the Petitioner at heart. However the taking away of an individual's liberty and freedom to make choices and decisions for themselves must be looked at with the utmost scrutiny. Clearly the progress of the Petitioner from the accident to present has been remarkable if not miraculous. There are definitely concerns about his judgment and the residual effects of the accident. However the Court notes that the physical limitations may indeed constitute a disability, however there is a clear distinction between a disability and incapacity. The Court also recognizes that many people may suffer from lapses in judgment, anger, and frustration which do not manifest themselves in an appropriate way-however this also does not in and of itself constitute incapacity.

The Petitioner obviously still suffers from and will continue to suffer lingering and permanent conditions related to his accident and his coma. These include his ability to ambulate, his speech, the use of his hands, and his frustration and anger levels. While these manifestations may at times be anti-social, they do not indicate the Petitioner is incapacitated.

This view is best expressed in the body of the opinion in the case of In re Maynes-Turner 746 So.2d 564 (Fla. 3d DCA 1999)

***"...in our present day paternalistic society we must take care that in our zeal for protecting those who cannot protect themselves we do not unnecessarily deprive them of some rather precious individual rights."***

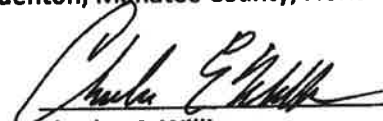
The court notes that the Petitioner has a strong voluntary support team who seem dedicated in looking out for the welfare of the Petitioner. The court feels that the Petitioner is more than capable of managing his affairs without court supervision and compromise of his fundamental rights.

The Court finds that based upon the preponderance of evidence presented and the testimony of the witnesses, including evaluating the testimony of the Petitioner, along with the specific findings made by Dr. Permesly in his final evaluation of the Petitioner and no persuasive testimony to the contrary presented, full restoration of the Petitioner's rights is warranted.

**ORDER OF RESTORATION**

The Court having taken testimony, having considered the medical examination report of Dr. Permesly and being fully advised in the premises, finds that the Ward should be restored to full capacity Accordingly the Plenary Guardian of the Ward shall promptly file a Final Report and Accounting and Petition for Discharge.

Done and Ordered this 2<sup>ND</sup> day of November 2015, in Bradenton, Manatee County, Florida

  
Charles E. Williams  
Circuit Court Judge

cc.

Parties of Record (scanned and emailed)