WEST VIRGINIA CODE: §44A-2-9

§44A-2-9. Hearing on petition to appoint.

(a) The court may hear the petition for the appointment of a guardian or conservator or may designate the mental hygiene commissioner in the circuit to serve as the trier of fact at the hearing on the petition: Provided, That the court shall be the trier of fact at the hearing on a petition for the appointment of a conservator for a missing person. If a mental hygiene commissioner is appointed, a mental hygiene commitment proceeding may not be held simultaneously with a proceeding for the appointment of a guardian or conservator. The designated mental hygiene commissioner shall submit written findings of fact and recommendations to the court upon conclusion of the hearing. The court may accept or reject the recommendations of the mental hygiene commissioner. Only the court may enter an order appointing a guardian or conservator.

(b) The hearing may be held at such convenient place as the court or mental hygiene commissioner directs, including the place where the alleged protected person is located. The hearing shall be closed to the public. The proposed guardian or conservator shall attend the hearing except for good cause shown. Any individual or entity may apply for permission to observe or participate at the hearing, and the court or mental hygiene commissioner shall grant the request if reasonably satisfied that the applicant's participation would be in the best interests of the alleged protected person.

(c) The alleged protected person is entitled to attend the hearing, to oppose the petition, to be represented by an attorney, to present evidence, to compel the attendance of witnesses and to confront and cross-examine all witnesses. If the alleged protected person is present at the hearing, the court or mental hygiene commissioner shall verbally inform the person of such rights, of the contents of the petition, and of the purpose and legal effect of the appointment of a guardian or conservator. Except in the case of a missing person, the hearing shall not proceed if the alleged protected person is not present unless there is an affidavit of a physician presented to the court, qualified expert testimony to warrant a finding that the presence of the individual is not possible due to a physical inability or that such presence would significantly impair his or her health, or evidence that the person refuses to appear.

(d) The standard of proof to be applied in determining whether the alleged protected person is a person for whom a guardian or conservator should be appointed is clear and convincing evidence.

(e) The court shall make specific findings of fact and conclusions of law in support of any orders entered.

(f) Upon request, a transcript of the proceedings of appointment shall be provided for the purposes of an appeal.

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(g) In the case of a hearing held on a petition for the appointment of a conservator for a missing person, the court must be satisfied by clear and convincing evidence that the person has been missing and their whereabouts are unknown for six months or more and the appointment of a conservator is necessary to protect the interests of and to manage the estate and the financial affairs of the missing person. If the court finds there is no necessity to appoint a full conservator, the court may appoint a limited conservator to manage the estate and financial affairs of the missing person. The court may, only as a last resort, appoint a sheriff to serve as a conservator for a missing person.

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