WEST VIRGINIA CODE: §44A-3-17

§44A-3-17. Petition by certain persons for access to persons in guardianship; hearing and court order.

(a) As used in this section, unless the context otherwise requires, “relative” means a spouse, parent, grandparent, stepparent, child, grandchild, sibling or half sibling. The term includes said relationships that are created as a result of adoption.

(b) A relative may file a petition in circuit court seeking access to and information about a protected person which may include the opportunity to have visitation and contact with the protected person. The petition may be filed in the circuit court of the county in which the protected person resides or if the protected person has been admitted to a health care facility in a county other than that in which he or she resides in the circuit court of the county in which the heath care facility is located.

(c) The court shall schedule a hearing on the petition within sixty days of the petition being filed: Provided, That if the petition alleges that the protected person’s health is in recent significant decline or he or she is at imminent risk of death, an emergency hearing shall be scheduled as soon as practicable. The court may continue a hearing for good cause shown.

(d) Service of process upon the guardian shall be by personal service, consistent with the West Virginia Rules of Civil Procedure. Service of the petition shall be effected at least ten days prior to the scheduled hearing date: Provided, That where an emergency hearing is sought pursuant to subsection (c) of this section, service of process upon the guardian shall be as far in advance of the scheduled hearing date as possible.

(e) Upon notice and hearing the court may:

(1) Deny the petition;

(2) Order the guardian to allow the petitioner access to the protected person upon finding, by a preponderance of the evidence, that the guardian is preventing access by the petitioner to the protected person, and that contact with the petitioner is in the best interests of the protected person.

(f) The court may, in its discretion, order the disclosure to the petitioner of such confidential information, as delineated in section one of article three of chapter twenty-seven of this code, as it may deem appropriate.

(g) The court may, in its discretion, award the prevailing party in an action brought under this section court costs and reasonable attorney’s fees. Court costs and attorney’s fees awarded under this subsection may not be paid from the protected person’s estate, unless the court orders otherwise.

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(h) If the court grants the petition it may, in its discretion, retain jurisdiction over the matter and modify its order consistent with the best interests of the protected person.

(i) The provisions of this section apply to all guardianship of protected persons regardless of the date guardianship was established.

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