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John Pacenti

Marriage annulment upheld in controversial guardianship case

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© March 2, 2016 | Filed in: **Uncategorized.**

In a decision underscoring the great power of the courts over seniors in guardianships, an appellate court in West Palm Beach upheld the annulment of a couple's marriage in a controversial case that has already set legal precedent.



Glenda Martinez Smith smiles as her husband Alan Smith opens his eyes while waiting for a doctor's appointment last year. (Richard Graulich / The Palm Beach Post)

A panel of judges on the [4th District Court of Appeal](#) ruled 2-1 to uphold the annulment of the 2011 marriage of Glenda Martinez and J. Alan Smith, formerly of Boynton Beach.

The [Palm Beach Post](#) wrote about the case last April after Martinez won the right to care for Smith as he had specified in his pre-need directives before falling ill. The case showed how incapacitated seniors' legal rights were taken away in guardianships.

Even though Martinez succeeded in ousting the guardian last year, she was not able to convince the 4th DCA to undo Palm Beach County Circuit Judge David French's ruling to annul the couple's marriage.

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Judge David French listens to arguments in a case at the South County Courthouse. (Damon Higgins/The Palm Beach Post)

The majority of the 4th DCA appellate panel – Judges Dorian Damoorgian and Melanie May – said the couple married without the approval of French as stipulated by the guardianship of Smith.

Martinez’s attorney Jennifer Carroll argued that the requirement flew in the face of state statute, but Damoorgian said in the written ruling that a court could indeed make such a requirement.

Judge Martha Warner, however, in a 8-1/2 page dissenting opinion, said the right to marry is a fundamental right guaranteed by the U.S. Constitution. The dissent possibly sets up the case for the Florida Supreme Court to look at the issue.

Warner noted evidence of how Martinez and Smith fell in love, vacationed together and how he named her his health care surrogate before a 2010 car accident sent his health on the decline. Warner said the only restriction put on Smith by the guardianship was the right to enter into contracts regarding finances.

Warner also noted how Martinez opposed court-appointed guardian John Cramer’s decision to put Smith in a nursing home, where Martinez felt Smith received sub-par care and how a court-appointed attorney to represent Smith failed him.

The 4th DCA eventually ruled that Martinez – not Cramer – was Smith’s designated health surrogate. She brought him home last year and takes care of him to this day

“I do not believe due process of the ward was sufficiently protected,” Warner wrote, adding that the Legislature’s intent in guardianship is to protect the rights of the ward, not infringe upon them.

“This has not happened in this case,” the judge went on. “Instead, this frail gentlemen has been deprived of his fundamental right to marry, in proceedings which violated his fundamental rights to due process and without a consideration of his best interest.”

In January, The Post published its investigative series into guardianship of seniors and the role of judges. One judge in particular, Martin Colin, is married to guardian and his friend, French, heard the majority of her cases. As a result, Chief Judge Jeffrey Colbath transferred Colin and instituted a plan to train court personnel on probate matters, among other reforms.

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