

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, THIRD DEPARTMENT

Matter of Marian T. (Lauren R.)

2018 NY Slip Op 08002 (App. Div. 2018) · No. 526577 · Decided November 21, 2018

SUMMARY

The Appellate Division, Third Department, affirmed approval of the adoption of a 64-year-old woman with a profound intellectual disability by the operators of her family care home. The court held that Domestic Relations Law § 111(1)(a) authorized the Surrogate's Court to dispense with the adoptee's consent when she lacked the capacity to consent, based on a best-interests analysis. The court also clarified that a guardian ad litem has no authority to consent to an adoption on the adoptee's behalf.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Pritzker, J.; Garry, P.J.; Devine, J.; Clark, J.; Aarons, J.
JURISDICTION	New York
DECIDED	November 21, 2018
DOCKET	526577
DISPOSITION	affirmed
PROCEDURAL POSTURE	Respondent appealed from an order of the Surrogate's Court of Otsego County granting petitioners' application to adopt her.
STANDARD OF REVIEW	Appellate review of the Surrogate's Court's determination approving the adoption and dispensing with the adoptee's consent; the court reviewed the statutory authority and the record supporting the best-interests determination.
PRECEDENTIAL VALUE	published intermediate appellate opinion
PARTIES	Lauren R. v. Marian T., petitioners

TOPICS

- adoption
- family law procedure
- statutory interpretation
- guardian ad litem
- guardianships

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether New York law permits adoption of an adult adoptee who is over age 14 and unable to communicate consent.
2. Whether the court may dispense with the adoptee's consent when the adoptee lacks the capacity to consent and adoption is in the adoptee's best interests.
3. Whether a guardian ad litem has authority to consent to an adoption on behalf of an incapacitated adoptee.
4. Whether the record supported approval of the adoption as being in respondent's best interests.

HOLDINGS

1. An unmarried adult or married adults together may adopt another person without an age restriction on the adoptee, and a court has statutory authority to dispense with the consent of an adoptee over age 14.
2. When an adoptee is incapable of giving consent, the decision whether to dispense with consent is a uniquely judicial determination governed by the same best-interests analysis used to decide whether to approve the adoption; consent is not automatically waived merely because the adoptee lacks capacity.
3. A guardian ad litem has no authority to consent to an adoption on behalf of the adoptee; dispensing with consent is a uniquely judicial function that cannot be delegated.
4. The record supported the determination that adoption was in respondent's best interests and that her consent was properly dispensed with.

KEY QUOTATIONS

"This is not to say that a judge or surrogate should automatically waive consent when adjudicating a case with an adoptee incapable of consent; rather, given that the facts are necessarily sui generis, the determination as to whether consent should be waived is encompassed within the same best interests analysis that a judge or surrogate must undertake when making the determination of whether to approve the adoption" (*2)

"To be clear, no such authority exists nor is it relevant that the guardian ad litem may be acting in a parens patriae role" (*3)

"Whether a judge or surrogate should dispense with consent in an adoption is a uniquely judicial function" (*3)

FACTUAL BACKGROUND

Petitioners operated a family care home in which respondent, a 64-year-old woman with a profound intellectual disability and very limited verbal ability, had lived for approximately 12 years. Respondent could not meaningfully articulate consent, although an adoption form had been signed with an "x." Psychological evaluations, testimony, and a guardian ad litem's recommendation supported the conclusion that respondent was loved, safe, happy, and content with petitioners and that adoption was in her best interests.

PROCEDURAL HISTORY

Petitioners, operators of a family care home, petitioned the Surrogate's Court for adoption of respondent, a 64-year-old woman with a profound intellectual disability. The Surrogate's Court appointed Mental Hygiene Legal Service, ordered psychological evaluations, interviewed respondent, appointed a guardian ad litem, and granted the adoption petition after a hearing. The Appellate Division affirmed, but rejected the Surrogate's Court's reasoning that the guardian ad litem had implied authority to consent on respondent's behalf.

DISPOSITION

affirmed

CASES CITED

- Matter of Robert Paul P., 63 NY2d 233, 237 [1984]
- Matter of Adult Anonymous II, 88 AD2d 30, 32-33 [1982]
- Matter of Haylee RR., 47 AD3d 1093, 1095-1096 [2008]
- Matter of Dessa F., 35 AD3d 1096, 1097-1098 [2006]
- Matter of George L. v Commissioner of Fulton County Dept. of Social Servs., 194 AD2d 955, 956 [1993]
- Matter of Michael B., 80 NY2d 299, 319 [1992] (Bellacosa, J., concurring)