

TO DRIVE OR NOT TO DRIVE - THAT IS THE QUESTION

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I was recently appointed by the Court to represent a lady who did not want her children appointed as her guardian. I met with her in her home so I could observe her living situation. Her home was very neat and she was very well oriented there, but her short-term memory was not good about some matters. She definitely did not want her children to take over because "I can manage. I will know when I need their help."

She was not upset about the guardianship proceeding and she was not upset about the children having control of her finances, as long as she could write checks for her necessities. However, when I mentioned that the children wanted her to quit driving - *WOW* - did she come alive! "I've not had any wrecks. I've been driving for (many) years. How would I get around? etc." The potential of losing control of her real estate and investment through a guardianship was not too upsetting - BUT TAKE AWAY THE CAR - *NO!* "I'll know when I shouldn't be driving and I will quit then."

A few months before that appointment, I was appointed to represent a single man in a guardianship proceeding brought by his son. My client did not want to give up his car. "How will I get to the lodge for the weekly dances?" He lived in a retirement home and was really sought out by the ladies for the dances. Some of his statements included: "I only had one little accident. I ran into a curb avoiding someone else. I can still drive carefully. When my granddaughter turned 16, my son got her a car. She totaled it. My son got her another. She wrecked it. Her dad got it fixed and let her continue to drive. She had a third wreck, he fixed the car and still lets her drive. She had three wrecks and I've had only one. Why should she get to drive and not me?" Good observation.

Often if there is going to be a guardianship, the simple solution to this dilemma is to agree with the client that they can continue to drive if they pass a current driver's license test. Our statutes provide for limited guardianships. The guardianship shall allow for as much autonomy of the ward as is reasonable. Because the older person normally respects the judicial authority, I have often suggested that the judge order the ward to take a driver's license test. This way the relatives are not the bad guys. If he/she passes, he/she drives. If not, quit driving. Driving might be limited to daylight hours - often a self imposed restriction.

When my mother and siblings complained about my father's driving, I took a ride with him. I felt comfortable about his driving ability until I had him return home by an unfamiliar route. He couldn't see the street names until he got within 50 feet of the signs. He had never worn glasses. At 85, he could read a newspaper without glasses BUT he was nearsighted. Have your clients get their eye checkups!

Taking away the car means loss of independence, autonomy and control. For many individuals driving is more important than being in control of their finances. The 16 year old granddaughter got

three strikes without being put "out". The elderly person's right to drive should not automatically be taken away because she/he might (or does) get lost or have a fender bender. Teenage drivers and the drinking drivers are a much greater peril to society.

An elderly gentleman announced to his male friends that he was getting married. They inquired about her attributes. Is she rich? No. Is she young, pretty and sexy? No. Is she a good cook? No. Then why are you getting married? Because she can drive at night, he replied. Just because a person is partially incapacitated is not a reason to automatically deprive them of their pride, as much autonomy as reasonable and, if not a serious danger to others, the right to drive.

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