District Court, Boulder County, State of Colorado 1777 6th Street, Boulder, Colorado 80302 (303) 441-3750 DATE FILED: September 18, 2023 9:25 PM CASE NUMBER: 2015PR30176	
In the Matter of the Guardianship of: **WYNN ALAN BRUCE**	**▲COURT USE ONLY▲**
	Case Number: **2015PR30176** Division **2**

ORDER RE: REQUESTOR'S MOTION FOR AN ORDER OF GOOD CAUSE FOR ACCESS TO GUARDIANSHIP RECORDS

This matter is before the Court on Requestor Shelly Bradbury's Motion for an Order of Good Cause for Access to Guardianship Records, filed in this action on May 16, 2023. Upon receiving the request for access, the Court issued a procedural order, providing the parties to the proceeding a deadline to file any responses. On June 7, 2023, Douglas Bruce, the father of Wynn Bruce, filed a letter response in opposition to the request. The Requestor filed a Reply in support of her Motion on June 20, 2023.

BACKGROUND

In April 2022, Wynn Bruce died from injuries he sustained after performing an act of self-immolation outside the United States Supreme Court. Mr. Bruce was the protected person in Boulder County Case No. 2015PR30176. Following the filing of Petitions for Guardianship and Conservatorship in 2015, the Court appointed a Guardian and Conservator for Mr. Bruce in this

proceeding. The guardianship and conservatorship were terminated following Mr. Bruce's death in 2022.

Requestor Shelly Bradbury ("Requestor") is a journalist with the *Denver Post* and has been the *Post's* lead reporter covering Mr. Bruce's life and death since last year. Bradbury Declaration, ¶¶ 1-2, Exhibit 1. According to the Motion and news articles referenced in the Motion, Mr. Bruce was a Colorado climate activist. Following his death, a friend of Mr. Bruce sent an email exchange to Requestor. Bradbury Declaration, ¶ 3, Exhibit 2. The original email chain was between Mr. Bruce and his father, and discussed guardianship proceedings. Motion, Exhibit 2. On September 6, 2022, Requestor submitted a request to the Boulder County Court, seeking certain records, reports, and filings regarding this probate proceeding. Bradbury Declaration, ¶ 4, Exhibits 1 & 3. On October 27, 2022, the Court Clerk's Office responded by notifying Requestor that the request had been denied. Motion, Exhibit 3. The response further instructed the Requestor to file a motion requesting a court order for access to the records. The instant Motion was filed May 16, 2023.

The Motion notes that in Colorado, guardianship and conservatorship court records are generally not accessible to the public. In support, the Requestor argues that the Court may authorize inspection of non-public guardianship and conservatorship court records "based on a finding of good cause." The Requestor maintains that good cause exists to open the subject records to public inspection because (1) the interest in informing the public about the guardianship system in general, and Mr. Bruce's guardianship in particular, outweighs any countervailing interests, and (2) even if there is a countervailing privacy interest, it does not outweigh the compelling public interest in disclosure.

In his letter response, Douglas Bruce requests that the Motion be denied. He contends that the media has already provided the public with a fulsome picture of Mr. Bruce's life, and that no

substantial or legal cause exists to open the highly personal records. Douglas Bruce contends that if the petition is granted, it will only aggravate the pain and suffering Mr. Bruce's family and friends experienced, and that it will not serve a public interest because that interest has already been met through extensive media reporting.

In Reply, the Requestor urges that any remaining privacy interests belong solely to Mr. Bruce, a deceased adult who openly shared information about his guardianship. The Requestor argues that disclosure is necessary to better understand how individuals subject to guardianships are served by the system. Finally, the Reply contends that even if the concerns raised in the Response preclude disclosure, there is ample information the Court may release that would serve the public interest without implicating privacy concerns.

ANALYSIS

I. The Requested Records are not Accessible to the Public Unless the Court Orders Otherwise for Good Cause Shown

With certain exceptions, court records are accessible to the public. Chief Justice Directive 05-01 (last amended January 2022) ("CJD 05-01"), § 4.10. This access is consistent with the longstanding common-law right of public access to judicial records. *McWilliams v. Dinapoli,* 40 F.4th 1118, 1130 (10th Cir. 2022). The right of access is not absolute, however. *Id.* Indeed, the Colorado Supreme Court has held that there is no constitutional right to access any and all court records in cases involving matters of public concern. *People v. Owens*, 420 P.3d 257, 258 (Colo. 2018); citing *United States v. Hickey,* 767 F.2d 705, 709 (10th Cir. 1985) (distinguishing between the acknowledged right of the public and press to attend trial proceedings and a claimed right to access court files). In Colorado, information in court records is not accessible to the public if federal statute or regulation, state statute, court rule, court order, or CJD 05-01 prohibits disclosure of the information. CJD 05-01, § 4.60(a).

Colorado court records in probate protected proceedings, including but not limited to adult conservatorships and adult guardianships, are not accessible to the public, unless the court orders otherwise. CJD 05-01, § 4.60(b)(7); C.R.S. §§ 15-14-317(4)(b) & 15-14-420(6)(b). Both statutes provide that the court may authorize access "based on a finding of good cause." In general, when interpreting the good cause requirement of a statute, a trial court has discretion to "consider factors it deems relevant" to determine whether good cause exists. *High Plains Library District v. Kirkmeyer*, 370 P.3d 254, 260 (Colo. App. 2015).

Unfortunately, there is no published Colorado case law applying the statutory good cause standards to probate protected proceeding records. The Court has also surveyed caselaw from other jurisdictions and has been unable to locate meaningful precedent for guidance. Perhaps the closest authority is *In re Caminite*, 57 Misc.3d 720 (County Court, Nassau County, New York, 2017), cited by the Requestor in the Motion. However, as discussed below, New York law provides that probate protected proceeding records are presumptively accessible to the public.

When making a statutory good cause determination, a trial court may look to decisional law applying the good cause standard in analogous settings. *Hane v. Tubman*, 899 P.2d 332, 333 (Colo. App. 1995). In the Motion, the Requestor notes that the similarity between access rights to adoption records and guardianship records is pertinent. *Cf.* C.R.S. §§ 15-14-317(4)(b) & 15-14-420(b)(b) *with* C.R.S. § 19-5-305(1). In this analogous situation, Colorado appellate courts have held that the good cause standard is not met when access to the records is immaterial to litigants' legal claims. *See W.D.A. v. City and County of Denver*, 632 P.2d 582, 585 (Colo. 1981) (good cause did not exist where access to adoption record would not assist in resolving the issue for final decision, which was an independent question of law); *In re R.M.C.*, 514 P.3d 963, 970 (Colo. App. 2022) (good cause to access adoption records did not exist where petitioner's claim turned on a

purely legal issue, rendering access to the underlying adoption records unnecessary). Unfortunately, neither of these authorities addresses the situation where a journalist or member of the press requests access to documents that are presumptively excluded from public access.

In *In re Caminite*, the petitioner sought to seal the guardianship records. In contrast to Colorado, New York provides that public access to documents in guardianship proceedings is presumptively permitted, unless a litigant sufficiently demonstrates to the court "good cause" why the record should be sealed in accordance with Mental Hygiene Law § 81.14.[1] 57 Misc.3d at 723. The Court pointed out that guardianship proceedings are unique and different from most other forms of litigation because the respondent (alleged incapacitated person) is not accused of wrongdoing or fault. Instead, "even though the person alleged to be incapacitated has not put their medical or psychiatric condition into issue nor waived their physician-patient privilege, the petitioner claims that the respondent is suffering from either a disease, illness, condition or injury which significantly impairs her or his ability to care for their needs, and thus a guardian with extensive powers is necessary to be appointed to prevent harm to that individual." *Id.* at 722 (internal citation omitted). To protect the respondent's constitutional rights and civil liberties, the process is designed as an adversarial process requiring petitioner to prove incapacity by clear and convincing evidence. *Id.*[2]

[1] Citing an American Bar Association Commission on Law and Aging survey from 2016, the *Caminite* Court observed that 9 states seal significant portions of records in guardianship cases and that 13 states mandate that guardianship hearings be confidential, the documents contained therein be sealed, and public access to the records be granted only upon good cause shown. The Court characterized New York as being in the majority of states that mandated the inverse. 57 Misc. 3d at 723.

[2] Similarly, in Colorado, the process is adversarial and a court visitor is assigned and adult respondents are provided with legal counsel to represent their interests if they request an attorney, the visitor recommends appointment, or the court determines the respondent needs representation. See C.R.S. §§ 15-14-305 through 311.

The *Caminite* Court further observed that the tragic reality is that the majority of respondents have significant functional limitations which severely impair their ability to manage their lives or express their needs and wishes. "What would they have said – if they were not cognitively impaired – about the public having access to their medical, psychiatric and financial information?" *Id.* Thus, when New York courts are faced with a request to seal a court record, the public's right to information and access to court proceedings, versus the individual's right to privacy are pitted against each other. *Id.* at 723. After weighing these interests, the *Caminite* Court held that in light of New York's existing public policy strongly favoring the public's access to probate protected proceeding files, the petitioner had failed to sufficiently demonstrate good cause to warrant sealing the record because the petitioner had failed to demonstrate that public access would likely result in harm to a compelling interest. *Id.* at 726-27.

II. The Good Cause Standard Has Not Been Satisfied

Here, with a limited record, the Court is tasked with determining whether the Requestor has demonstrated good cause to access the presumptively non-public records in this probate protected proceeding matter. As set forth above, there is no binding precedent in Colorado and relatively little guidance on how the competing interests are to be weighed. Unlike the requests for non-public adoption records, which were made by litigants seeking to access the records for use in litigation (which requests were denied), here the request is made by a journalist, seeking the records to provide the public with additional information about Mr. Bruce's life and the guardianship system. The Colorado case law interpreting access to otherwise confidential adoption records is therefore of limited utility.

At the outset, the Court notes the long-standing right of public access to most court records. However, unlike certain other states, Colorado provides that certain case types, including probate

protected party court records, are not publicly accessible. This policy determination has been made by the General Assembly and through Chief Justice Directive. In evaluating the Motion, the Court must adhere to this legal mandate and policy directive. Therefore, in the absence of a finding of good cause, the Motion must be denied.

In support of the Motion, the Requestor argues that the public has a compelling interest in learning about Mr. Bruce's life. Additionally, given increasing public attention and efforts to reform guardianship and conservatorship systems, the Requestor maintains that access to the subject records will "not only provide the public with a more fulsome picture of the climate activist's life, but also will inform public discussion about the guardianship system more generally." (Motion, pp. 1-2). In support, Requestor cites to media coverage and news articles that followed shortly after Mr. Bruce's death, along with increased media reporting about guardianship and conservatorship systems, including Britney Spears' conservatorship. (Motion, pp. 2 & 6-8).

As noted by Douglas Bruce in Response, however, there already has been significant media reporting about Mr. Bruce's life in the aftermath of his tragic death. This reporting and resulting news articles were based on substantial information already in the public domain. (Motion, p. 2). Further, unlike certain other states, guardianship and conservatorship records in Colorado are presumptively not publicly accessible. This policy determination has been made by the General Assembly and Chief Justice Directive. Therefore, the general public interest in Mr. Bruce's life and death, and interest in the guardianship and conservatorship system in general, is insufficient to constitute good cause to release the requested records.

In further support of the Motion, the Requestor notes that she obtained an email that Mr. Bruce sent to his friend about the guardianship. Motion, Exhibit 2 (email exchange dated January 12, 2018). The Court finds that this single email exchange, in which Mr. Bruce expressed concerns

about his legal situation and the probate proceeding, is insufficient to establish good cause to overturn the presumption that the probate records are not accessible to the public or non-parties to the proceeding. Based on the information provided, Requestor has not demonstrated how this action is unique to mandate the disclosure of records that are otherwise excluded from public access.

Further, the public interest must be weighed with the countervailing privacy interests. Here, as argued by the Requestor, the privacy interests are diminished due to Mr. Bruce's death. *See In Matter of Du Pont*, 1997 WL 383008 (Del. Ct. Chancery 1997) (unreported) (noting the fact that protected person was still alive in denying access to the record). In certain jurisdictions, it is only the privacy interests of the protected person that must be weighed. *See In re Caminite*, 57 Misc.3d at 727 (in New York, the privacy rights of the alleged incapacitated person are paramount, and not the interests or privacy rights of other litigants). The Court is unaware of any Colorado legal authority strictly limiting the privacy interest at stake to only the protected person. While the privacy interests of the protected person are entitled to great weight, as demonstrated by Douglas Bruce's letter in opposition, privacy interests of friends and family members are necessarily implicated and must be considered by the Court in evaluating good cause. *See* Response, p. 1 ("If this petition is granted it will only aggravate the pain and suffering Wynn's family and friends experience").

The caselaw cited by the Requestor that privacy and reputational interests are extinguished upon death, and that decedent's estate does not have standing to enforce privacy or reputational interests of an individual who is no longer alive is distinguishable. (Motion, pp. 9-10). In *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 147 (N.D. Tex. 1979) and *Flynn v. Higham*, 197 Cal. Rptr. 145, 149 (Cal. Ct. App. 1983), for instance, the Courts held that third parties could not

maintain private causes of action for invasion of privacy on behalf of decedents. Here, Douglas Bruce is not seeking to maintain a tort claim, but rather, noting that Mr. Bruce's family and friends have privacy interests implicated by release of the subject records. Despite Mr. Bruce's death, the Court concludes it cannot completely discount privacy interests of grieving family members and friends in evaluating good cause. The subject records contain personal medical information, mental health information, and financial information belonging not only to Mr. Bruce, but other individuals as well.

Therefore, in weighing the public interest advanced by Requestor and the countervailing privacy interests, the Court finds that Requestor has not established good cause to obtain access to the requested records.

SO ORDERED this 18th day of September, 2023.

BY THE COURT:

/s/ Robert R. Gunning
Robert R. Gunning
District Court Judge