

The Blind Side of Guardianships

Candace Dellacona: Welcome to the Sandwich Generation Survival Guide with your host, Jody Argentino, and me Candace Dellacona. Hi Jody. Hi Candace. Glad to be back. Finally, we took a little hiatus. Yeah, we both enjoyed the summer. We got the kids back to school, and now we're digging into another episode of our podcast, and we're gonna be talking today about the blind side of guardianships.

Jody Argentino: We've touched a little bit on some current events, but I think this is our first, uh, like delve into talking about our practice areas and how those things are represented in the media.

Candace Dellacona: Yeah, that's exactly right, Jody. We have our respective practices that in some ways are interrelated, and I think this topic is an example of sort of the overlap between our respective practices and there has been a lot of news coverage on the topics of guardianship, uh, specifically in the sort of pop culture field, if you will.

Jody Argentino: Yeah, the, um, with, you know, Britney Spears and, um, and then with, um, Michael Orr, um, which are probably the two, at least off the top of my head, the two most famous ones that, um, that we see in regular mainstream media.

Candace Dellacona: Yeah, that's exactly right. So for, for our listeners who are not familiar, we'll first talk about Michael Orr, um, who is the young man who's now, um, a, an adult man of.

Candace Dellacona: Professional football player who, uh, whose life story became the subject of the movie, the Blindside that was, I think very skillfully acted in by, um, Sandra Bullock and a couple of other great actors. And, and the background basically is that Michael Orr was the very talented young man in Tennessee who.

Candace Dellacona: Had this gift for football and didn't have a, a, a great or close relationship with many of his family of origin. And the TUI family, husband and wife sort of stepped in, took over and became what he thought or what he perceived to be were his parents. And, um, his understanding right, Judy, was that he was adopted.

Jody Argentino: Yeah. And that's the really interesting thing. And the other word that's being was tossed around is conservatorship, which, um, in my not estate planning brain is the same pretty much as a guardianship. It's just in a different, like some states call it different things.

Candace Dellacona: Yeah, it's exactly right. I think it's just a different term of art chosen.

Jody Argentino: So the difference being that the. This guy thought he was adopted, which means he is the natural. He's considered the natural born child of, um, of birth parents, of birth parents of adoptive parents. So when someone's adopted, all of their birth records sort of go away, right? And it's as if the adoptive parents gave birth to the child under the law.

Jody Argentino: And so in this situation. He was under the impression apparently that he had been adopted by then. Yes. But what they had actually done was a conservatorship, which is completely different and really odd considering he was over the age of 18.

Candace Dellacona: That's right. Well, it's not odd in the sense that there are circumstances in which, you know, we as parents or we as loved ones, um, or advocates, would seek a guardianship or a conservatorship on behalf of an adult.

Candace Dellacona: And we'll get into those examples of why that may be appropriate. But I think what's important to point out in this case is that apparently Michael thought. As you point out that he was legally adopted and, and it turned out, um, that when he went, I believe, to renegotiate his contract, um, he didn't have the requisite authority to sign off and like on his

Jody Argentino: own contract.

Candace Dellacona: That's right. 30 plus year old man. Exactly right. And so the question became why and when he looked into his records, he realized that the tui weren't his parents, they were his conservators. And in, in being his conservators, they had certain rights over him as, uh, you know, a, a, an adult who was quite capable, it seems of handling his own affairs,

Jody Argentino: right.

Jody Argentino: So. Interestingly, right? You adopt someone, you have a stronger legal relationship, but less control over that adult individual because you can do an adult adoption. Um, and they could have done an adult adoption, and I'm not sure why they didn't do an adult adoption, except that it would've made Michael literally one of their children, but it wouldn't have given them any control over Michael because.

Jody Argentino: He was just an, he was an adult, so I think they said it. Uh, I read somewhere that they had said, well, it was quicker to do it this way, or something like that was like the excuse, but it, it's a completely different vehicle.

Candace Dellacona: So, yeah. So for our listeners, let's talk about what guardianship or conservatorship actually is and what the ramifications of an A guard guardianship order.

Candace Dellacona: Conservatorship order are. So guardianship or conservatorship. And for my purposes, I'm familiar with guardianship, so I'm going to choose that term, Jody, if it's okay throughout the discussion. But I think what you point out is while adults can be adopted. The adoption when the person's an adult proves affiliation and guardianship.

Candace Dellacona: Allows for the guardians some measure of control over the person, whether it's their healthcare decisions and or their finance decisions. I think that's a really important distinction to make so that you can adopt a child and obviously as their parent you have control over their healthcare decisions and their financial decisions within, within reason.

Candace Dellacona: And there are some, some finer points and exceptions to that. Upon that adoptive child reaching the age of 18, they become an adult and they are masters of their own domain, as we say, and they can make healthcare decisions and they can make financial decisions even to their own detriment. And in my area of law, I.

Candace Dellacona: There are circumstances where guardianship needs to be sought on behalf of an adult for various reasons. There are issues like sickness and uh, you know, mental capacity issues, whether something that these, you know, young people are born with when they become adults, they have capacity issues. Um, whether men mental or physical, that necessitates their parents or a loved one stepping in.

Candace Dellacona: Um, or they're, they're not making great financial decisions for one reason or another. And that's, that's more in the category of guardianship or conservatorship,

Jody Argentino: which doesn't create affiliation. That's right. Which is it, it just creates a, I'm gonna say a legal relationship. It's a fiduciary relationship.

Jody Argentino: Right. Yeah. Yeah, absolutely. Yeah. And I was saying how that's you, you know, I come across guardianship sometimes in, um, in family law in that like recently there had to be one appointed for a defendant in, um, a domestic violence situation because she, I. Was really incapacitated. She wasn't understanding anything that was going on.

Jody Argentino: Um, and so it ended up that the, I think it's the Office of Public Guardian, um, became involved. And of course there there's no affiliation there. There's no, it's just a random person that is appointed, I mean, not random. They do this for a living, but it's. Not even, it's not a family member. It doesn't need to be a family member.

Jody Argentino: There's no anything other than a fiduciary relationship, right. Happening there

Candace Dellacona: right now, you know, to, to delve a little further into Michael Orris case and then, you know, kind of span out and talk about other examples like Britney Spears, um, Michael's case. He was under the impression that these people were.

Candace Dellacona: Now related to him as an adopted son, he didn't realize that he didn't have authority over his own assets or his own decisions. Okay? And there have been allegations that he was sort of tricked into signing documents and things were misrepresented. Additional allegations include that monies are, are not accounted for.

Candace Dellacona: Um, so what happened two weeks ago is the court in Tennessee dismissed the conservatorship and now the question becomes what sort of fraud, if any, was committed. And, and likely they'll do some kind of accounting. Um, which it would surprise me if the IES haven't been doing all along because here in New York, um, guardianship.

Candace Dellacona: Guardianship requires the accounting when you are in charge of someone else's money and they're your ward. Um, whether it's a familial relationship with the guardian, um, or not a professional guardian like a lawyer, um, that person is supposed to submit to the court accountings from time to time at least annually.

Jody Argentino: I mean, aren't they,

Candace Dellacona: don't they have to do like tax returns or things like that too? Yeah, for sure. I mean, so there, there's a question here of, of what happened in the last 10 or so years, um, or

how was the information presented to Michael in such a way that he really didn't seem to understand what they had done?

Candace Dellacona: Um, and, and, you know, is there some kind of fraud here in terms of how it was explained, what they did on his behalf? So, you know, I, I wish him well, I think. You know, on so many levels. Um, however, however the facts come down, it seems like there's certainly a breakdown of, of communication and, and some really hard feelings here.

Jody Argentino: And I, I just sit there and I'm thinking, how does this person not know what was going on with his own finances for so long? I mean, you know, we deal with a lot of people who put their heads in the sand, you know, I've been guilty of it myself, but, um, like on a certain issue, but we're talking about someone who is having like million dollar contracts.

Jody Argentino: So, yeah.

Candace Dellacona: The flip side though is that what was the role of the two E in that? Right. So many professional athletes, some of whom are my clients. Are so busy with sort of managing their own careers that they entrust people that they trust with these tasks. Like filing tax returns, like doing the banking, like doing the financial management.

Jody Argentino: That makes sense.

Candace Dellacona: You know, so I mean, I would say from from Michael's perspective, I'm gonna bet if, if what he believes to be true is actually true. That he trusted these people whom he counted as his parents, siblings, they made money off of him.

Jody Argentino: That's, that's crazy. Yeah. And I mean, when you talk about making money off your kid, right?

Jody Argentino: I mean, I think Britney Spears is, that's a great segue. Can't, great segue. So let's talk, let's talk

Candace Dellacona: about that. So, um, so Britney Spears was a resident. I. Or is a resident, I think of, of the great state of California. Um, California does refer to its guardianships as conservatorships. And one of the really interesting things about California is that guardianships can go on.

Candace Dellacona: Forever, even for young people. Uh, I think one of the things that New York sort of prides itself on is that our guardianship statute, which is under Article 81 of the mental hygiene law, is supposed to be tailored to suit the individual so that a Britney Spears type person with Britney's, um, perhaps issues or, or what her issues seem to be.

Candace Dellacona: And again, I, you know, I don't know what they are exactly, but. What we read in the media is that it seems that she has some mental health challenges. Um, you know, and, and so in New York, I think there would've been sort of a revisiting of the issues once her symptoms of her mental illness troubles maybe were abated by, um, you know, doctors' care.

Candace Dellacona: And, and the question in California was, how the heck did it go on so long? Um, right. First of all, and second of all. My goodness. Did they get paid a lot?

Jody Argentino: I feel, I feel like I saw somewhere the hourly rate and it was some, some really absurd amount that like, I don't even, uh, uh, I don't even know. But I did read somewhere her, um, her allowance was like \$2,000 a week.

Jody Argentino: Yeah. Like that she was provided and we're talking about Brittany Spears, right? Like we just like take a step back. For a moment there, like, that is a minimal allowance for someone that is responsible for, um, the amount of, uh, I'm gonna say shows, tours, et cetera, that, that she does. Um, but with her, I. The way they got to the conservatorship right, was because she had the mental health issues or addiction issues, et cetera.

Jody Argentino: When we go back to Michael or for a hot second, like there was no capacity issues there. That's

Candace Dellacona: right. Well, I mean that we know of good. That we know of, right. But we're like, we don't know how to get there. Right. I mean, that's a really good point, Jody. Right. So, so I think it's important for our audience to know that a lot of these laws are state laws and they differ greatly from state to state.

Candace Dellacona: So, so what the law may be. In terms of a threshold question in New York, um, that would, would maybe necessitate the appointment of a guardianship, may not be the same in Tennessee, and it clearly is not the same in California. Although Gavin Newsom did sign a law into place in 2022 that. Does seem to address some of the issues that Britney herself has faced with her never ending guardianship and all of those people making money off of her.

Candace Dellacona: But I think your point, Jody, about even the allowance and taking a step back and looking at the optics, right? This, this amazing woman, this artist and performer. Was selling out arenas, literal arenas was working likely, you know, seven days a week. Um, clearly had incredible talent and yet, and yet a court said that she couldn't manage her own affairs.

Candace Dellacona: Um, you know, so in some ways that entire picture is contradictory in and of itself. Um, that, you know, right. You can

Jody Argentino: understand that. It'd be like during a period of time when she had a breakdown or she had a, you know, a. I don't know, a mental health crisis or whatever it was. Sure, sure. How did it go? Like 13 years?

Jody Argentino: I think it was 13 years. Like, yeah. And I mean, it's, uh, that's absurd in that time. Like, yeah.

Candace Dellacona: Didn't she have children? Yeah. Well I think she had children already. But I think what's important to point out, and you know, we're two women sitting here. Right. And I, and I don't think that we should overlook. One of the major points is that, that she's a woman.

Candace Dellacona: And I do think that there is a real historical context here of women in Hollywood, celebrity women who are somehow labeled as quote unquote unstable. And um,

you know, unfortunately there's a pretty dark history with. People being labeled in such a way as, as not being fit and not having the requisite capacity to manage their own affairs.

Candace Dellacona: Um, you know, in, in, in years gone by, they called it hysterical. Um, you know, now we're calling it, you know, various mental health issues, but what remains to be seen. But

Jody Argentino: there's still a stigma. There's still a stigma for minorities, right?

Candace Dellacona: Yeah. Well, I mean, you know. Yes, and, and I, I think it's interesting too that one of the people appointed as Guardian over Britney was her father, whom I understand, didn't even have a close relationship with her and was making a.

Candace Dellacona: You know, a very generous salary just serving in that role as her guardian paying himself, paying the lawyer. Um, and you know, while those things do happen in New York, um, it seems to me that certain states are better at having a bit of oversight to make sure there is not the same level of abuse.

Candace Dellacona: Although there is a pretty famous here in new famous artist here in New York City, um, whose family allege alleges that. The guardian is taking advantage of him. So, you know, no state is immune to these sorts of troubles. What you're doing is you're taking away a person's civil rights with, with guardianship.

Candace Dellacona: I mean, that's really the heart of the matter,

Jody Argentino: which should, which in all stretches of the imagination, if it needs to happen to protect somebody should be short-lived.

Candace Dellacona: Yes. And, and so let's talk about the duration, right? Because someone like Britney Spears. Someone like Michael Orr who may be youthful and, and at, at that point, maybe not able to handle his own financial affairs with significant amounts of money being thrown his way from being a professional football player.

Candace Dellacona: You would think that after a certain amount of time, whether it's medical treatment or financial, um, you know, education, um, that these two individuals in particular could probably have had their guardianships tailored much differently and. Arguably Michael or shouldn't have happened, but you know, let's talk about my area of law, which is guardianship for seniors.

Candace Dellacona: Um, where, where those seniors have a memory impairment issue that will not improve. Yeah. Right. Like dementia. Yeah. Um, Alzheimer's. That's scary. Sure, sure. And so, you know, as a cautionary tale for our listeners, um, to avoid guardianship as you become an older adult, which is a horrible proceeding, don't get me wrong.

Candace Dellacona: While we're, we're more sort of humane in New York, it's still a court, it's still a judge taking away your civil rights. You have a power of attorney in place, you have a healthcare proxy in place, and a guardianship will likely not be needed for you. Having those

advanced directives in place will ameliorate the necessity to have a guardianship proceeding under Article 81 in New York.

Jody Argentino: Which is great. 'cause then you are making the decisions when you have the capacity to make those decisions and you are choosing

Candace Dellacona: the person to help you out that you trust. Exactly. Exactly. So you know, while guardianship can certainly. Certainly fill a role in our society, whether, you know, you have a loved one with a mental illness that sort of prevents them for, from advocating for themselves or making the best healthcare decisions or, or sort of keeping up with, with the, the necessities of life.

Candace Dellacona: Um. Or you have someone who has some mental health issues that will hopefully be short-lived or, or those for a senior, you know, guardianship can fill a role with what's needed. It's just a matter of making sure that it's actually an appropriate remedy.

Jody Argentino: Right. And that the people involved are acting appropriately.

Jody Argentino: I don't know how the judge in California, um, like allowed. The judges, I imagine it wasn't just one Right. Over the fourth of 13 years.

Candace Dellacona: Yeah.

Jody Argentino: But, um, so I, I found, um, wasn't his hourly rate. The hourly rate I was thinking was in the OR case, but this one was \$16,000 a month was his salary plus, uh, office space plus, um, a percentage of, uh, various deals.

Jody Argentino: Like as you were an agent, right? Right. You're like, he gets \$16,000 a month. But she gets \$2,000 a week. Right. So like a quarter of what he gets. But she's like, that doesn't even make any sense. And she's

Candace Dellacona: the earner,

Jody Argentino: right? And she's like 40 years old. Yeah,

Candace Dellacona: yeah, yeah.

Jody Argentino: And so how it got dragged on and on and on and wasn't it that she wanted to get married and that's why this all came.

Jody Argentino: Like I think that she, she couldn't even. Um, she wasn't allowed to be pregnant. Right. She wasn't allowed to remove her. IUD I think was one of the, like, last straws.

Candace Dellacona: I don't know what precipitated, but I, I think there were several issues of, of sort of crises and, you know, without knowing too much. And, and because of, I don't, I don't, I, I'm not sure, and I don't wanna say, but even if with the, the sort of worst case scenario where there was self harm, um, or something else related, obviously.

Candace Dellacona: Britney Spears had access to the best medical care. Right. She probably worldwide, you know, having, having that level of status and, and, and. And the assets that she does, no doubt she would've had access to the best mental, the mental health, um, specialists that that money could buy. So it remains to be seen why nobody stepped in and, and helped her.

Candace Dellacona: I mean, what I find so interesting is that it really wasn't until sort of a ground swell of support for her from fans, which largely were also young women. Um, who basically said there's something wrong here. And, and a hashtag I think was created called hashtag Save Britney. Um, and it, and it garnered a lot of support.

Candace Dellacona: I mean, you know, one of the things that we should probably do is thank Ms. Spears for, for shedding a light her own, her own horrible, horrible journey. I think. Precipitated a, a real change in the law. And I, and, and just this month, the Uniform Law Commission approved a new Uniform Healthcare Decisions Act.

Candace Dellacona: Um, and really what it is, it came out of the Britney Spears and the Michael or Case, um, which is, you know, an act that basically says individuals should have control over their own healthcare decisions. And, and it, and it reaffirms the importance of preparing. Plans like this in advance and to maintain as much decision making authority as they can.

Candace Dellacona: Um, so the act really what it does is sort of codifies the importance of a person making decisions for themselves if possible, and, and it recognizing the valuable role of that.

Jody Argentino: Yeah. And, uh, it, while you were talking, I actually double checked. There was a whole issue with her IUD so, uh, women under Conservatorships can have forced birth control.

Jody Argentino: Right, right. Like, and they, she wasn't allowed to have her IUD removed. Uh, as you know, a person in their thirties, she couldn't have it removed. That's. I mean, when we talk about the taking away of your own civil rights, like we're, we're talking about bodily autonomy, right? But controlled birth, like forced birth control is, um, it's to, I don't know, to me that hits me like as a, a chilling effect.

Jody Argentino: Yeah. Right. Like it, and that, that I think is one of the things that got a significant amount of attention from, you know, the, the younger female crowd. Or younger crowd with uterus, um, because it feels so invasive. Yeah. To have her father, you know, who she wasn't even close with, determine that she can't remove her birth control device.

Jody Argentino: It's, I mean, you're right. So effective.

Candace Dellacona: It's, it is. And, and then, you know, to play devil's advocate or, you know, the, the flip side of the coin, right, is that you have this person who is in deep distress, um, who may be in a position where, um, she could cause her self harm. I think that there were issues related to childcare for her children.

Candace Dellacona: Um, so while I'm not defending that decision at all, are those. The ability for the law to, to infringe on someone's rights to that degree. I think that was sort of where it came into play, where, you know, is she safe and, and would other people be safe? And is she making decisions, um, sort of rationally or close to rationally,

Jody Argentino: which is the exact point of the conservatorship to begin with.

Jody Argentino: Right, exactly. It's just not never ending.

Candace Dellacona: Right. Like there's, that's exactly, I think that's the heart of the matter to our listeners, right? That for Britney Spears, we're not saying, and I don't think anyone is saying that she wasn't in a crisis, that she didn't need help, that there had to be some, some kind of intervention.

Candace Dellacona: She had endless supplies of money. She had people surrounding her that definitely did not have her best interests, uh, you know, at heart. And they really needed to, to pull her out of that, get her healthy. But it should have ended. And maybe with Michael Orr, it should have never begun.

Jody Argentino: Right. Right. We don't know.

Jody Argentino: I mean, that's, that's the, the most curious piece of that whole situation is, is that. What, what, what, what did they base it on? Yeah, what actually happened? I

Candace Dellacona: guess we'll find out. I'm, I'm sure that, you know, once, once all of the, the issues are, are settled, um, and an accounting is done, it'll be clear whether or not there was wrongdoing, I think.

Candace Dellacona: But the bottom line is this young man at the time, you know, seems to say that he had no idea of the rights that he was sort of signing over. So, you know, I, I, I do think, um, it, it, it brought our. Our sort of practices to a place where we really think about the role, um, of these legal remedies in everyday lives and.

Candace Dellacona: I think it's important for parents to think about too, that, you know, you could have a child with, um, some impairments, whether it's addiction issues, um, mental health issues, um, or even, you know, congenital issues that prevent them from making decisions. There are so many, uh, places before you get to guardianship and it's really important to speak to the experts.

Candace Dellacona: I think even in New York, there's a Supported Decisions Act that, um. Is, is sort of, I think in, in some kind of pilot, um, which is the answer to, to not seeking guardianship, you know, sort of at every turn and really putting people that, you know, the alleged incapacitated person feels. Um, I. That they trust in place to help them make decisions together.

Candace Dellacona: Um, so where their deficits are, you have somebody stepping in. So those supported decisions are really important as well. Um, and doing that advanced planning blanket

Jody Argentino: Yeah, doesn't need to be a blanket solution Exactly. For one specific issue, which is why talking to someone like yourself, um, to go over what the situation is, what the individual needs are, and like thinking ahead on it.

Jody Argentino: Yes. Um, is so important, whether it's for you, whether it's for your kids, um, whether it's like a special needs trust situation. I've had that with child support issues involved, you know, um, so it's not just, you know, over 18, but the, sometimes you have to think about these creative planning situations for your kids.

Jody Argentino: Under 18 too.

Candace Dellacona: Yeah.

Jody Argentino: So it, it really does. When things like this happen and you see on like Facebook and they're like, how does this happen? How could that possibly be? It, it's so hard to not just respond and be like, well actually the law allows for the blah, blah, blah, blah. Right? So, but this, this gives us the opportunity kind of.

Jody Argentino: Bat those things around. Yeah. And like, what is this, what happened?

Candace Dellacona: And dig a little further, right? Because things are not always what at first they seem to appear. Um, and you know, there is so much nuance in, in, in these things that have sort of transpired to these two very public figures. Um, and, and hopefully, you know, the, the terrible.

Candace Dellacona: Results that they have endured and suffered will mean that somebody else will not have to. And, and, and certainly our lawmakers have taken notice. Gavin Newsom, like I said, changing the law and, and now the Uniform Healthcare Decisions Act hopefully coming to fruition from the Uniform Law Commission and the states will adopt their versions of it.

Candace Dellacona: Um. So, I mean, this is certainly an interesting topic happens. Yeah,

Jody Argentino: yeah,

Candace Dellacona: exactly right. This is how change, unfortunately,

Jody Argentino: change is born in trauma sometimes. Yeah, right. Like and we see that a, you know, unfortunately a lot and, um. This was so exciting. Thank you. Um, for, well, to our listeners, Candace suggested this and I think it was a brilliant idea, but I also just think Candace is brilliant.

Jody Argentino: So, um,

Candace Dellacona: likewise, Jody is mutual. Admiration comes up with admiration. No, but this was fun, you know, to talk about sort of how current current events can sort of feed into

interesting legal topics that have a bit of nuance and, and you know, there was certainly overlap between the two, two of us. So it was, it was a blast.

Jody Argentino: Yeah, I, I welcome our listeners to send us an email. Send us a, a, a comment if there's something else that is going on that you're like, Hey, how about that? I don't know, Brad Pitt, Angelina Jolie's situation or whatever, right? Like, like, sure, let's talk about it. Um, so, um, but open to suggestion and yeah. Our Facebook page,

Candace Dellacona: Instagram, please message us if you have any questions, and like Jody said, topics, suggestions.

Candace Dellacona: We would love to hear them and we thank you so much for listening.