

**JURISDICTIONAL DISPUTES IN ADULT GUARDIANSHIP CASES UNDER
THE UNIFORM ADULT GUARDIANSHIP PROTECTED PERSONS
JURISDICTION ACT**

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Introduction

With the aging baby boomer generation, the large number of blended families due to the ever steady divorce rate, the desire for seniors to move to warmer climates in their “golden years”, disputes concerning jurisdiction pertaining to adult guardianship matters are undoubtedly going to be on the increase. The intent of this article is to provide a broad summary and guide to the recently enacted legislation known as the Uniform Adult Guardianship Protected Persons Jurisdiction Act¹ (referred to herein as “UAGPPJA” or “the Act”) in order aid practitioners that find themselves sailing through uncharted waters.

This article will address the UAGPPJA as it applies to a fairly common hypothetical scenario. Max Magoo is an 80 year old widower. He has 2 adult children, Mary and Jill from a marriage that ended by divorce 35 years ago. He has one adult child, Alex, from a second marriage with the wife, Marsha that recently died. Mr. Magoo lived in Illinois most of his life but 10 years ago he and Marsha, moved to a retirement community in Phoenix, Arizona near their son Alex and his wife. Mary and Jill live in the

northwest suburbs of Chicago with their respective families. Marsha never really had a friendly relationship with Max's daughters but since residing in Arizona, Mr. Magoo has regularly made return trips to Illinois to live with his daughter Mary for sometimes weeks at a time so that he can spend time with his daughters and grandchildren. In spite of the friction between Marsha and the daughters, Marsha was very happy to have Max leave for extended stays with his daughters in recent years because he was showing increasing signs of dementia, agitation and paranoia that was making it more and more difficult for her to live with him and meet his needs. Living with Mary in Illinois seemed to have a calming effect on Max, and Mary, being a stay at home mom was able to assist her dad with his needs including bringing him to see his doctors that he had been seeing before moving to Arizona for various other medical conditions including diabetes and congestive heart failure. Max has his own room in Mary's house where he keeps clothes and other personal tangible property.

Recently, while staying with Mary for an undetermined period of time, Mr. Magoo suffered a stroke and was hospitalized in Lake County Illinois and after his discharge from the hospital he was placed in an assisted living facility near Mary's home in Lake County. The staff at the facility told Mary that someone needs to be appointed guardian for him and it should be done expeditiously because they are concerned about treating his diabetes and he is having violent outbursts and could be a danger to himself and others.

Mary wants to know if she can be appointed guardian of her dad's person and estate and is concerned that her half-brother Alex will want to be appointed guardian and

have her dad sent back to Arizona. Mary does not believe Alex has a clue as to the seriousness of her dad's condition and feels that if he is returned to Arizona she will not be able to care for him, he will not be able to see his grandchildren and his health will deteriorate rapidly.

The Illinois Probate Act prior to 2010.

With respect to the issue of jurisdictional questions, prior to 2010, there was very little guidance provided to litigants in Mary's position or the courts in the Illinois Probate Act. In fact, you might find it surprising to know that there was no mention of "jurisdiction" at all in the IPA with respect to adult guardianships. The knee jerk reaction by most practitioners as to an alleged ward who may not have a "home" in the State of Illinois might be that there is simply no jurisdiction under the IPA to adjudicate him a disabled person. Curiously, the only guiding statutory provision under the IPA pertains to venue.

Section 5/11a-7 of the Illinois Probate Act states:

"If the alleged ward is a resident of this state the proceedings shall be instituted in the court of the county in which he resides. If the alleged ward is not a resident of this state, the proceedings shall be instituted in the court of the county of which his real or personal estate is located." ii

Under this section, jurisdiction over an adult guardianship matter is simply assumed provided the alleged ward is either a resident of Illinois or has real or personal property in some county in Illinois. Therefore, the first question to answer is whether the alleged ward is "a resident of this state" to determine the proper county for venue purposes.

However, whether an alleged ward is a "resident" to begin with, without further statutory

guidelines creates significant issues of fact in a multistate jurisdictional dispute. Further, even if a party were to concede that an alleged ward was not a resident of this state, it would appear that simply having real property or having a “personal estate” in a county in Illinois would make that county an appropriate venue for a guardianship proceeding. This begs the question: “What would be considered a “personal estate?” Would this literally include the shirt on one’s back? A bank account at a national bank with branches all over the country? A burial plot? Moreover, there is very little case law to assist in deciding the issue of jurisdiction to adjudicate a respondent to be a disabled person who may only be in the state temporarily. ⁱⁱⁱ

The Basics of The Uniform Adult Guardianship and Protected Persons Jurisdiction Act

The Act was passed by various states in order to provide uniform laws to determine jurisdiction, better communication amongst the courts and guidance in transferring adult guardianship matters between states. According to the Uniform Law Commission, as of the writing of this article more than half of the states have passed the Act in some form or have introduced legislation to enact it. The state of Illinois adopted the UAGPPJA and it became effective January 1, 2010.^{iv}

Like most statutes the Act uses terminology that is specific to its purpose. Accordingly, the UAGPPJA defines certain very important terms not found in the IPA.

Section 201. Definitions.

(a) **In this Article:**

(1) “Emergency” means a circumstance that likely will result in substantial harm to a respondent’s health, safety or welfare, and for which the appointment of a guardian is necessary because no other person has authority and is willing to act on the respondent’s behalf.

(2) “Home state” means the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months immediately before the filing of a petition for a protective order or the appointment of a guardian; or if none, the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months ending within the six months prior to the filing of the petition.

(3) “Significant-connection state” means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available.

(b) In determining under section 203 and Section 301(e) whether a respondent has a significant connection with a particular state, the court shall consider:

(1) the location of the respondent’s family and other persons required to be notified of the guardianship or protective proceeding;

(2) the length of time the respondent at any time was physically present in the state and the duration of any absence;

(3) the location of the respondent’s property; and

(4) the extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver’s license, social relationship, and receipt of services.^v

The pertinent sections relating to the determination of jurisdiction are addressed in Sections 203, 204 and 206.

8/203. Jurisdiction. A court of this state has jurisdiction to appoint a guardian or issue a protective order for a respondent if:

- (1) this state is the respondent's home state;
- (2) on the date the petition is filed, this state is a significant-connection state and:
 - (A) The respondent does not have a home state or a court of the respondent's home state has declined to exercise jurisdiction because the state is more appropriate forum; or
 - (B) the respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection state, and before the court makes the appointment or issue the order:
 - (i) a petition for appointment or order is not filed in the respondent's home state;
 - (ii) an objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and
 - (iii) the court in this state concludes that it is an appropriate forum under the factors set forth in Section 206.
- (3) this state does not have jurisdiction under either paragraph (1) or (2), the respondent's home state and all significant-connection states have declined to exercise jurisdiction the is state is consistent with the constitution of this state and the United States; or
- (4) the requirements for special jurisdiction under Section 204 are met.^{vi}

8/204. Special Jurisdiction.

- (a) A court of this state lacking jurisdiction under Section 203(1) through (3) has special jurisdiction to do any of the following:
 - (1) appoint a guardian in an emergency for a term not exceeding 90 days for a respondent that is physically present in this state.^{vii}

In our hypothetical scenario, Mary should be able to obtain a temporary order of guardianship for Mr. Magoo under Section 204 for at least 90 days, as he is physically present in the State of Illinois and the concern for treating his diabetes and harming himself or someone else creates an emergency situation. Moreover, except as provided by this Section 204, the court shall have “exclusive and continuing jurisdiction” until the proceedings have been terminated, or a plenary guardian is appointed or the order as written simply expires.^{viii} However, as far as obtaining an order of plenary guardianship is concerned, Mary will have to provide substantially more facts. The first thing that needs to be determined is whether Illinois or Arizona is Mr. Magoo’s “home state”. We know he moved to Arizona 10 years ago with Marsha. That fact would certainly tend to indicate that Arizona is his home state. However, he spends a considerable amount of time in Illinois, residing at Mary’s house where he has his own room and personal possessions. Inquiry should be made as to where he was physically present in the past 6 consecutive months, exclusive of any temporary absence. Since Marsha died, has he been in Illinois more for the last 6 months prior to filing the petition with only temporary return trips to Arizona? Whether he has an Illinois or Arizona driver’s license or a state identification card and whether he last voted in Arizona or Illinois is something that should be investigated. Answers to questions like this may tend to indicate that Illinois is in fact his “home state” under the Act conferring plenary jurisdiction in Lake County Illinois.

If your investigation tends to indicate that Illinois is not Mr. Magoo's home state perhaps jurisdiction is proper in Lake County Illinois if Illinois is a "significant connection" state under Section 203 (b). Under this section an Illinois may exercise jurisdiction even if Illinois is not Magoo's homestate provided no petition is currently pending in Arizona, no objection is filed by someone entitled to notice and the Illinois court determines that it is an "appropriate forum" under Section 206.^{ix}

The factors the court is to consider in determining whether it is an appropriate forum are:

- (1) any expressed preference of the respondent;
- (2) whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect, or exploitation;
- (3) the length of time the respondent was physically present in or was a legal resident of this or another state;
- (4) the distance of the respondent from the court in each state;
- (5) the financial circumstances of the respondent's estate;
- (6) the nature and location of the evidence;
- (7) the ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;
- (8) the familiarity of the court of each state with the facts and issues in the proceeding; and
- (9) if an appointment were made, the court's ability to monitor the conduct of the guardian or conservator.^x

Therefore, in order to advise Mary appropriately a practitioner should consider devising a checklist of the factors identified in Section 206 to use in an initial consultation and follow-up investigation. Any preference of Mr. Magoo is to be given consideration but may not be dispositive of the issue if it is discovered that his preference subjects him to an abusive or neglectful environment.

Transfer Provisions

If the court ultimately decides that it does not have jurisdiction to appoint a plenary guardian, care should be taken to see that the appropriate transfer orders are entered. Article 3 of the Act provides for how the proceedings are to be transferred to the state with priority jurisdiction. The provisions herein include granting the court authority to direct the guardian to petition for guardianship in the other state^{xi} and that plans for the ward's care in the other state are "reasonable and sufficient."^{xii} Of course what is reasonable and sufficient is subject to argument and discretion of the court. On the receiving end, Section 302 provides the procedural mechanism to confirm acceptance of the guardianship as the transferee state.^{xiii} Among the pertinent provisions are the standard notice requirements to those normally entitled^{xiv} and the receipt of a final order of transfer from the transferring court under Section 301(e).^{xv}

Registration and Recognition

Article 4 of the Act provides for the registration and recognition of guardianship orders.^{xvi} The effect of registering orders from another state shall grant the appointed guardian all powers authorized in the order of appointment unless those powers are prohibited by this state.^{xvii}

Reciprocal Application

Section 501 mandates that in applying the Act, consideration must be given to other states that have also enacted it, in order to provide uniformity.^{xviii}

Jurisdiction and Unjustifiable Conduct

Practitioners should be leery of clients seeking guardianship after removing a respondent from what otherwise would be considered his or her home state in order to establish jurisdiction. Section 707 of the Act provides guidance to the court if it is determined that it may have acquired jurisdiction as the result of “unjustifiable conduct”.^{xix} However, unjustifiable conduct is not defined in the Act. Clearly this provision is intended to address family members that make their control over a disabled person or his assets a priority over the care and management of property provided in another state. In such a situation, the court has several options, including: declining jurisdiction, exercising jurisdiction for a limited purpose in order ensure the safety of the respondent or protect his property, possibly continuing jurisdiction depending on appropriate factors under 206 (c) while taking into account the standards determining jurisdiction under Section 203.^{xx} In addition, if a court finds that it obtained jurisdiction as a result of unjustifiable conduct, it may sanction the party seeking jurisdiction by assessing against that party reasonable attorney’s fees, costs, and even communication and travel expenses.^{xxi}

Conclusion

The UPPAGJJA provides a necessary uniform statutory scheme to address the aging population, changes in family dynamics and the ease and desire of travel and mobility that did not exist generations ago. It is certain that attorneys that practice in the area of adult guardianship matters will have to become very familiar with the Act in order to properly assist clients that have loved ones like Mr. Magoo. Although the Act provides a well needed guideline, there remains sufficient gray area that will be the subject of further litigation and judicial interpretation that we have yet to see develop.

ⁱ 755 ILCS 8/101, *et seq.*

ⁱⁱ 755 ILCS 5/11a-7.

ⁱⁱⁱ *In re Estate of Dunning*, 211 Ill.App. 633, 1918WL 1982 (2nd Dist. 1918) the court rejected the respondent's claim that the Circuit of Mercer County Illinois lacked jurisdiction to determine her to be "insane" and appointing a conservator because she was a resident of Iowa where she moved with her husband because there was evidence that she chose to leave her husband and return to Illinois. The case was reversed due to an improper jury instruction and remanded for a new trial.

^{iv} 755 ILCS 8/101, *et seq.*

^v 755 ILCS 8/102 (1)-(14).

^{vi} 755 ILCS 203 (1)-(4).

^{vii} 755 ILCS 204 (a) (1).

^{viii} 755 ILCS 205.

^{ix} 755 ILCS 8/203 (2)(A)-(B) and 755 ILCS 8/206 (a)-(c)(1)-(9).

^x 755 ILCS 8/206(c)(1)-(9).

^{xi} 755 ILCS 8/301 (d).

^{xii} 755 ILCS 8/301 (d)(3).

^{xiii} 755 ILCS 8/302 (a)-(h).

^{xiv} 755 ILCS 8/302(b).

^{xv} 755 ILCS 8/302(e).

^{xvi} 755 ILCS 8/401 *et seq.*

^{xvii} 755 ILCS 8/403.

^{xviii} 755 ILCS 8/501.

^{xix} 755 ILCS 8/207.

^{xx} 755 ILCS 8/207(3)(A)-(C).

^{xxi} 755 ILCS 8/207(b).