Montana State Legislature

Exhibit Number: 5

The following exhibit is a booklet that exceeds the 5-page limit therefore it cannot be scanned. The booklets' cover has been scanned to help you when requesting information. The exhibit is on file at the Montana Historical Society and can be viewed there.

Montana Historical Society Archives, 225 N. Roberts, Helena, MT 59620-1201; phone (406) 444-4774. For minutes in paper format, please contact the Montana State Law Library, Justice Building, 215 N. Sanders, Helena, MT 59620; (406) 444-3660. Tapes and exhibits are also available at the Historical Society (tapes are retained for five years). Scanning done by: Susie Hamilton

EXHIBIT 5
DATE 3/4/05
SB 112

Court of Appeals of Arizona,
Division 1, Department E.
In re the Marriage of: Peggy RUVALCABA, By and Through her temporary guardian, Betty STUBBLEFIELD,
Petitioner-Appellant,
v.
Francisco RUVALCABA,
Respondent-Appellee.
No. 1 CA-CV 90-400.

April 8, 1993.

Guardian petitioned for dissolution of marriage on behalf of her incompetent adult daughter. The Superior Court of Mohave County, Cause No. 30566, Leonard C. Langford, J., dismissed the petition, and guardian appealed. The Court of Appeals, Grant, J., held that: (1) guardian could petition for dissolution of marriage on behalf of incompetent adult ward; (2) "substituted judgment" standard was appropriate standard to be applied in determining whether ward desired to dissolve her marriage in cases where evidence of ward's desires while competent existed; and (3) clear and convincing evidence was required to resolve the dispute.

Reversed and remanded.

Fidel, J., filed specially concurring opinion.

West Headnotes

[1] Mental Health ⚷476
257Ak476 Most Cited Cases
Statute conveying to guardians "the same powers, rights and duties that a parent has with respect to an unemancipated minor child" did not preclude guardian from bringing action for dissolution of marriage on behalf of incapacitated adult ward. A.R.S. § 14-5312, subd. A.

[2] Mental Health ⚷476
257Ak476 Most Cited Cases
Divorce statute, permitting either party to marriage to initiate proceeding, did not preclude guardian from asserting incompetent adult ward's right
to divorce. A.R.S. § 25-314, subd. B.

[3] Mental Health ⚷476
257Ak476 Most Cited Cases
Under current state of law, in which guardians were permitted to refuse medical care on behalf of their incompetent wards, that same guardian could not be prohibited from maintaining action for dissolution of marriage on behalf of incompetent adult ward.

[4] Divorce ⚷43
134k43 Most Cited Cases
Spouse who has been adjudged to be "incapacitated" retains the means to dissolve his or her marriage. A.R.S. §§ 14-5101, 25-314.

[5] Mental Health ⚷476

© 2005 Thomson/West. No Claim to Orig. U.S. Govt. Works.

257Ak476 Most Cited Cases
When a spouse is unable, because of incapacity, to assert his or her right to petition for dissolution of marriage, spouse's guardian may assert that means of terminating marriage on behalf of ward. 16 A.R.S. Rules Civ.Proc., Rule 17(g); A.R.S. §§ 14-5101, 14-5312, 25-314.

[6] Mental Health ⚷476
257Ak476 Most Cited Cases

[6] Mental Health ⚷507
257Ak507 Most Cited Cases
"Substituted judgment" standard was appropriate standard to be applied by trial court in determining whether adult incompetent ward desired to dissolve her marriage in cases where evidence of the ward's desires when competent existed; thus court could consider any otherwise admissible evidence manifesting incompetent's own desires while competent to terminate marriage, including written manifestations of incompetent's intent such as petition for dissolution signed by incompetent prior to incapacity as well as any statements made to third party such as guardian, family members or friends while competent.

[7] Mental Health ⚷507
257Ak507 Most Cited Cases
Where guardian for adult incompetent ward petitions for dissolution of ward's marriage, statements made by incompetent during competency to third parties, which were hearsay, required guarantees of trustworthiness of hearsay admissions that might not be present when guardian sought dissolution on behalf of ward, because guardian possessed insufficient knowledge of relationship between the parties to establish statutorily required "irretrievable breakdown" or because guardian might have ulterior motives for seeking dissolution. 17A A.R.S. Rules of Evid., Rules 602, 803(24), 804(b)(5); A.R.S. § 25- 312.

[8] Mental Health ⚷508
257Ak508 Most Cited Cases
Where guardian for incompetent adult ward brings dissolution action on behalf of ward, competent spouse's testimony is not automatically rendered trustworthy or entitled to greater weight by mere virtue of fact that other spouse has been rendered incapacitated and consequently unable to testify on his or her own.

[9] Mental Health ⚷517
257Ak517 Most Cited Cases
Where guardian petitions for dissolution of marriage of incompetent adult ward, reviewing court must rely on trial court's ability to evaluate credibility of witnesses and to determine admissibility of each witness' testimony and accorded its appropriate weight. 17A A.R.S. Rules of Evid., Rules 602, 803(24), 804(b)(5); A.R.S. § 25-312.

[10] Mental Health ⚷507
257Ak507 Most Cited Cases
Where guardian for adult incompetent ward petitions for dissolution of ward's marriage, testimony from third parties, including guardian, about incompetent's preincapacitation comments on state or his or her marriage may be used to establish

© 2005 Thomson/West. No Claim to Orig. U.S. Govt. Works.

irretrievable breakdown of the marriage. A.R.S. § 25-314, subd. A.

[11] Mental Health ⚷507
257Ak507 Most Cited Cases
Testimony of guardian for adult incompetent ward concerning irretrievable breakdown of ward's marriage, including evidence of statement made by ward prior to being adjudicated incompetent, were admissible in proceeding to dissolve ward's marriage, subject to evaluation of evidence for probative value and trustworthiness; possibility that guardian might have ulterior motive for testimony applied equally to testimony of competent spouse. 17A A.R.S. Rules of Evid., Rule 804(b)(5).

[12] Mental Health ⚷508
257Ak508 Most Cited Cases
Clear and convincing evidence is required to resolve dispute as to whether marriage of adult incompetent ward should be dissolved.
****676 *438** Law Offices of Keith S. Knochel by Micheel J. Hildebrand, Bullhead City, for petitioner-appellant.

Community Legal Services by Sharon Sergent, Phoenix, for respondent-appellee.

OPINION

GRANT, Judge.

This is an appeal from the dismissal by the trial court of a Petition for Dissolution of Marriage filed by a Guardian on behalf of her incompetent adult daughter. We must decide as an issue of first impression whether a guardian can petition for dissolution of marriage on behalf of an incompetent adult ward. We answer the question raised by this appeal in the affirmative for the reasons set forth in this opinion.

FACTS

Peggy and Francisco Ruvalcaba were married on May 26, 1979, in Las Vegas, Nevada. Mr. Ruvalcaba ("husband") is a Mexican national. The couple has one child, Cruz Albert Ruvalcaba, born on May 3, 1984. The Ruvalcabas resided together as husband and wife until February 25, 1989, when Mrs. Ruvalcaba fell from a horse and suffered a severe traumatic head injury resulting in a coma and requiring several months of hospitalization.

Although Mrs. Ruvalcaba ultimately emerged from the coma, throughout the trial proceedings she continued to suffer periods of selective amnesia as well as mental and physical impairments so that the trial court determined that she is an incapacitated person as defined under Ariz.Rev.Stat.Ann. ("A.R.S.") section 14-5101. A neuro-psychological evaluation of Mrs. Ruvalcaba's condition dated April 24, 1990, reported that it was unlikely that she would be capable of testifying for any time from six months to a year and that further evaluation would be necessary to determine if she would ever regain sufficient cognitive functioning to be able to testify on her own behalf. Therefore, for the purpose of the proceedings below, the trial judge determined her to be an unavailable witness as the term is used in Rule 804(a)(4) of the Arizona Rules of Evidence.

© 2005 Thomson/West. No Claim to Orig. U.S. Govt. Works.

Betty Stubblefield ("guardian"), Mrs. Ruvalcaba's mother, was appointed her daughter's temporary guardian in July of 1989 and her permanent guardian in August of 1989.

On August 16, 1989, while her daughter was still in the hospital, Stubblefield, acting in her capacity as temporary guardian under A.R.S. section 14-5312, filed a Petition for Dissolution of Marriage on her daughter's behalf. The petition alleged that the Ruvalcabas's marriage was "irretrievably broken" for purposes of A.R.S. section 25-312(3), that no possibility of reconciliation existed and that the conciliation provisions of A.R.S. section 25-381.09 did not apply. The petition also requested custody of the couple's minor son and child support. On that same date, the guardian also filed a Motion to Show Cause/Temporary Restraining Order against the husband, alleging that the husband had physically abused Mrs. Ruvalcaba on several occasions, threatened harm to her guardian, in the event that Mrs. Ruvalcaba pursued a divorce, and threatened to flee to Mexico with the son. A temporary restraining order was granted by the court. Following a Show Cause Hearing, the court awarded "temporary care, custody and control" of the couple's son to Mrs. Ruvalcaba, "acting by and through her Guardian," subject to reasonable visitation rights to the husband.

In September and October 1990, the husband filed a Motion to Dismiss, which was denied by the trial court, and a Response to the Petition for Dissolution. In the Response, the husband argued, among other things, (1) that only a party to a marriage may file for dissolution under A.R.S. section 25-314(B) and (2) that, in any case, his marriage was not "irretrievably broken" pursuant to A.R.S. section 25-312(3), nor ****677 *439** did he wish to dissolve it. While admitting to certain incidents of physical abuse of his wife occasioned by his drinking problem, the husband maintained that he loved his son and wife and hoped they might be reunited in the future as a family. A Home Study and Custody Evaluation ordered by the court confirmed that the husband and his son had good rapport.

In April of 1990, the guardian petitioned the court for (1) appointment as her daughter's guardian pursuant to Arizona Rules of Civil Procedure 17(g), for the limited purpose of acting on her behalf in the dissolution proceedings, and (2) for permission to testify concerning the status of her ward's marital relationship. The husband opposed both motions and petitioned the court to be appointed his wife's "Rule 17" guardian.

In an Order filed on May 31, 1990, dismissing this action, the trial judge concluded that "the Guardian *Ad Litem,* Betty Stubblefield, does not have the right to bring a dissolution action pursuant to A.R.S. section 14-5312."

At the same time, the court vacated its order granting temporary custody of the couple's son to Mrs. Ruvalcaba.

From the trial court's order of May 31, 1990, the guardian appeals on behalf of her ward,

© 2005 Thomson/West. No Claim to Orig. U.S. Govt. Works.