

Restoration Case Law Chart

ALABAMA (1)

Case	<i>Cates v. Cates and Cates</i> , 943 So.2d 798 (2006)
Factual Summary	The protected individual, a woman in her seventies, was appointed her two children as co-guardians after being adjudged incapacitated. The individual got married without the knowledge or consent of the co-guardians. Six years into the guardianship, the individual filed a motion to terminate the guardianship and conservatorship. The guardian ad litem objected to the motion, attaching a letter from the neurologist who reexamined the individual stating she was suffering from Alzheimer's disease. Both the guardian and the guardian ad litem opposed the petition
Legal Authority Relied on by the Court	Ala.Code 1975, § 26-2A-144(a); Ala.Code 1975, §§ 26-2A-110(a) and 26-2A-158(a)
Evidence Relied on by the Court	The court found that "the ward cannot perform the tasks of daily living and caring for herself"
Disposition	Petition denied; affirmed on appeal
Petitioner	The protected individual
Guardian's Response	Opposed
State	Alabama
Population	Older individual
Things to Note	

ALASKA (0)

ARIZONA (1)

Case	<i>Petramala v. Maricopa County and Conservator of Petramala</i> , 2012 WL 601336 (Ariz.App. Div. 1 2012)
Factual Summary	The protected individual was appointed a guardian after his court-appointed guardian ad litem showed by clear and convincing evidence that he was in need of a guardian. Five years later, the individual petitioned to terminate the guardianship or, in the alternative, order that he be entitled to make all legal decisions for himself. The court terminated the conservatorship and limited the guardianship to medical, psychiatric, and other professional care and counseling.
Legal Authority Relied on by the Court	<p>"The trial court has wide latitude to perform its statutory duty to safeguard the well-being of the ward,' and we will not reverse a guardianship order absent an abuse of discretion." <i>In re Guardianship of Kelly</i>, 184 Ariz. 514, 518, 910 P.2d 665, 669 (App.1996)</p> <p>"Arizona law requires a person who petitions for the appointment of a guardian for an alleged incapacitated person to prove the need for a guardian by clear and convincing evidence." <i>In re Guardianship of Reyes</i>, 152 Ariz. 235</p>
Evidence Relied on by the Court	The individual's motion to terminate the guardianship was based on his argument that he was never incapacitated and that Arizona's guardianship statutes are unconstitutional and violate federal law. But he did not offer any evidence or argument that he was no longer incapacitated under A.R.S. 14-5307
Disposition	Petition denied; affirmed on appeal
Petitioner	The protected individual
Guardian's Response	Does not say
State	Arizona
Population	Does not say
Things to Note	Individual argues his guardianship violates the ADA and his constitutional due process rights

ARKANSAS (1)

Case	<i>In re Guardianship of the Estate of Strickland</i> , 50 Ark. App. 7, 902 S.W.2d 238 (Ark. 1995)
Factual Summary	The protected individual was appointed her father as guardian of the estate because she was a minor and was to inherit a wrongful death settlement from her mother's estate. When her father died, her aunt and uncle became her guardians. The individual filed a motion to terminate the guardianship once she had attained her

	majority. The trial court denied the petition due to the individual's lack of maturity and judgment.
Legal Authority Relied on by the Court	Arkansas Code Annotated § 28-65-401: a guardianship may be terminated by court order after such notice as the court may require: if the guardianship was solely because of the ward's minority and either the ward attains his majority or the disability is removed
Evidence Relied on by the Court	Individual testified that she is 23 years old, not under any psychiatric care, is mentally and emotionally mature enough to handle her money, and is attending beauty college. One co-guardian testified that the individual could handle her money and the guardianship should be terminated
Disposition	Petition denied; reversed on appeal
Petitioner	The protected individual
Guardian's Response	One co-guardian supported
State	Arkansas
Population	Minor
Things to Note	Individual was a minor when guardianship began but guardianship continued after reaching age of majority. Filed motion to terminate upon reaching age of majority

CALIFORNIA (1)

Case	<i>Conservatorship of the Hermans</i> , 2013 WL 5036555 (Cal.App. 4 Dist.)
Factual Summary	The protected individual, a woman in her thirties, was appointed a conservator of the person upon the petition of her parents, due to her inability to make critical decisions based on her Prader-Willi syndrome. Twelve years later, the individual petitioned for modification to remove "the power to control social and sexual contacts and the power to control marriage." A few months later, she filed a petition for termination of the general conservatorship. The court concluded the conservators should retain the power to control the individual's residence, to marry, to enter contracts, and control social and sexual contacts and relationships. Citing to Probate Code § 2351.5, the court stated the conservators satisfied their burden of demonstrating the individual should be subject to a limited guardianship
Legal Authority Relied on by the Court	Probate Code § 2351.5 "On appeal, we may not reweigh the evidence and are bound by the trial court's credibility determinations." <i>Estate of Young</i> (2008) 160 Cal.App.4 th 62, 76
Evidence Relied on by the Court	Two conservators testified; the protected individual testified; the individual's doctor testified; the protected individual's assisted living home submitted a report stating that the individual should not have her rights restored Note: the individual's doctor, a psychologist who performed a research study on Prader-Willi syndrome, testified that the individual should have all rights restored except the right to contract.
Disposition	Petition denied; affirmed on appeal (Plenary conservatorship modified to a limited conservatorship)
Petitioner	The protected individual
Guardian's Response	Opposed
State	California
Population	IDD (Prader-Willi syndrome)
Things to Note	Appellate standard of review: clear and convincing

COLORADO (1)

Case	<i>Estate of Keenan v. Colorado State Bank & Trust</i> , 252 P.3d 539 (Colo. App. 2011).
Factual Summary	Protected individual was appointed a guardian, conservator, and trustee of an income trust funded by a medical negligence settlement arising from a catastrophic brain injury. A few years later, the guardian resigned based on a report concluding the individual no longer met the statutory definition of incapacity. The court did not terminate the conservatorship, but replaced the conservator.
Legal Authority Relied on by the Court	A conservator may, in some circumstances where reasonable and in good faith, oppose a protected person's motion to terminate a conservatorship and be paid out of the protected person's funds for opposing the termination §15-14-425(2)(x) The common law impliedly allows a guardian to oppose the ward's motion to terminate the relationship by holding that a guardian could be paid out of the ward's funds for, reasonably and in good faith, opposing the

	motion to terminate. <i>In re Guardianship of Cookingham</i> , 45 Cal.2d 367, 289 P.2d 16, 19. Further, the common law recognizes that opposing a motion to terminate does not necessarily create a conflict of interest
Evidence Relied on by the Court	The protected individual's statements at trial
Disposition	Petition denied; affirmed on appeal (and replaced guardian with new conservator)
Petitioner	The protected individual, pro se with supplement by counsel
Guardian's Response	Opposed
State	Colorado
Population	Brain injury
Things to Note	The court was not persuaded by the protected individual's reliance on Rule 6 of the NGA's Model Code that it is "a breach of fiduciary duty to oppose a plea for termination of the guardianship or conservatorship [and] the fiduciary is bound to assist the ward in doing so" "To discourage or prohibit a guardian from opposing a motion to restore capacity in every instance could 'allow the petition for restoration to be considered without the presentation of all of the facts.'" <i>Cookingham</i> , 289 P.2d at 19. "Such lack of evidence would prejudice protected persons where their interests 'require that the guardianship should continue unrevoked.'" See <i>Palmer</i> , 38 N.H. at 420

CONNECTICUT (0)

DELAWARE (0)

Case	<i>In the Matter of Watson</i> , 2000 WL 713772 (Del.Ch. 2000)
Factual Summary	The protected individual's daughter-in-law is her guardian. The individual's nephew filed a petition to remove the guardian and to terminate the guardianship entirely or, if not, appoint the nephew or others as guardian. The court found that the petitioner failed to demonstrate good cause.
Legal Authority Relied on by the Court	"This court is authorized by statute to remove a guardian for good cause where the removal is in the best interest of the ward." See <i>In re Lamanna</i> , Del., No. C.M. 7783-NCC.
Evidence Relied on by the Court	The psychiatric examination indicating that the individual needs a guardian and the testimony of the guardian ad litem that she needs a guardian
Disposition	Petition denied
Petitioner	The protected individual's nephew
Guardian's Response	Opposed
State	Delaware
Population	Does not say
Things to Note	

FLORIDA (5)

Case	<i>Connell v. Guardianship of Connell</i> , 476 So.2d 1381 (1985)
Factual Summary	The protected individual was appointed her son as her guardian of the property after being adjudged incompetent. Less than one year later, the individual's brother filed a petition for restoration, alleging the individual's recovery and renewed capability to understand and manage her assets.
Legal Authority Relied on by the Court	West's F.S.A. § 744.464(4)
Evidence Relied on by the Court	The individual's financial decisions had not been demonstrated to be so imprudent as to reflect incompetency. The medical testimony from a court-appointed committee of a general physician and a psychiatrist who examined the individual stated that she was competent to manage her affairs. The protected individual testified at trial
Disposition	Petition granted; affirmed on appeal
Petitioner	The protected individual's brother
Guardian's Response	Opposed
State	Florida
Population	Does not say ("adjudged incompetent")

Things to Note	
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Case	<i>In re Guardianship of Bockmuller</i> , 602 So.2d 608 (1992)
Factual Summary	The protected individual was appointed a guardian of the person and a guardian of the property after being adjudicated incapacitated. While living in a retirement home, the individual was visited by an attorney, and allegedly the individual told the attorney that she wanted to go home and would hire him to assist her in that endeavor. The attorney petitioned for restoration. The trial court denied the petition and the attorney continued to bring petitions
Legal Authority Relied on by the Court	§§ 744.3215(3)(a), 744.464(2)€ Fla.Stat. (1989)
Evidence Relied on by the Court	The trial court found as a matter of law that there was no conflict or adverse interest or any other basis for removal of the guardians.
Disposition	Petition denied
Petitioner	The protected individual’s attorney, on behalf of a person of interest to the protected individual
Guardian’s Response	Opposed
State	Florida
Population	Older individual
Things to Note	The attorney for the protected individual is denied attorney fees for representing her in the restoration petitions because the individual did not have the right to contract and, although she has the right to counsel, that counsel must be contracted for by one of the guardians or appointed by the court. See §§ 744.3215(3)(a), 744.464(2), Fla.Stat. (1989)

Case	<i>In re Maynes-Turner</i> , 746 So. 2d 564 (Fla. Dist. Ct. App. 1999).
Factual Summary	A year and a half after being declared incompetent following serious injury, the protected individual filed a suggestion of capacity. The trial court only partially restored her rights because the examining doctor worried about the possibility that she might make harmful decisions. The appellate court reversed and directed the trial court to restore to full competency
Legal Authority Relied on by the Court	“In our present day paternalistic society we must take care that in our deal for protecting those who cannot protect themselves we do not unnecessarily deprive them of some rather previous individual rights.” <i>In re McDonnell</i> , 266 So.2d 87, 88 (Fla. 4 th DCA 1972)
Evidence Relied on by the Court	The examining doctor reported objective findings consistent with full competency, indicating that the protected individual was aware and knowledgeable during his examination and was aware of the proceedings and knew the state of her affairs.
Disposition	Petition granted
Petitioner	The protected individual, with counsel
Guardian’s Response	Does not say
State	Florida
Population	Brain injury
Things to Note	

Case	<i>McJunkin v. McJunkin</i> , No. 2D04-1523 (Fla. 2d DCA 2005)
Factual Summary	The protected individual, a 79-year-old man, was appointed a guardian when he was declared to lack capacity. Two years later, he filed a Suggestion of Capacity.
Legal Authority Relied on by the Court	§ 744.1012, Florida Statutes (2003)
Evidence Relied on by the Court	Court-appointed doctor testified that the individual was capable of exercising all of the rights that had been removed, opined that the argued that he should be restored, and stated that it was doubtful that he was ever incapacitated. A number of lay witnesses also testified in the individual’s favor. Only one witness opposed the individual – his former guardian ad litem who said he didn’t see any change since the guardianship proceedings were initiated
Disposition	Partially restored; fully restored on appeal
Petitioner	The protected individual
Guardian’s Response	Does not say

State	Florida
Population	Older individual
Things to Note	Opinion discusses the dangers of the trial court taking a paternalistic approach to guardianship

Case	<i>In re: Guardianship of William Berchau</i> , Pinellas County Circuit Court, Date of Order: Dec. 4, 2013
Factual Summary	Limited guardianship of 99-year-old Florida man terminated upon determination of capacity. The court-appointed guardian was appointed when the state learned that the protected individual tried to sell his home for less than market value. The guardian placed the protected individual in an Alzheimer’s unit despite strong professional opinion and evidence that he did not belong there.
Legal Authority Relied on by the Court	Does not say
Evidence Relied on by the Court	Doctor found that the individual is capable of exercising all of his rights and recommended that he be discharged from his court-ordered guardianship and be free to live where he wants
Disposition	Petition granted
Petitioner	The protected individual
Guardian’s Response	Does not say
State	Florida
Population	Older individual
Things to Note	News coverage of story: http://www.abcactionnews.com/news/local-news/i-team-investigates/elderly-pinellas-man-freed-from-alzheimers-unit-after-i-team-looks-at-his-case

GEORGIA (0)

HAWAII (0)

IDAHO (0)

ILLINOIS (8)

Case	<i>Mathews v. Sargent</i> , 175 Ill.App. 287, 1912 WL 2877 (Ill.App. 2 Dist. 1912)
Factual Summary	The protected individual was appointed a conservator after being “adjudged feeble minded” on the petition of her daughter-in-law. Two years later, the individual filed a petition for restoration and the conservator hired a law firm to oppose the petition for restoration. The jury found in the individual’s favor and the court entered an order restoring her rights. The former conservator then asked the court for reimbursement of money paid to his attorneys in opposing the petition and the court granted. The individual appealed and the appellate court affirmed the order compensating the conservator but disallowed the claims for expenses and attorney fees. The conservator appealed to this court.
Legal Authority Relied on by the Court	§ 17, Chapter 86: “the conservator shall manage the estate of his ward frugally and without waste.”... “He shall appear for and represent his ward in all suits and proceedings unless another person is appointed for that purpose.”
Evidence Relied on by the Court	“[O]n receipt of notice that his ward desired to be restored, the conservator should have consulted or interviewed his ward, and if satisfied that she had recovered, placed no obstacles in her way. If, on the other hand, he doubted her ability to care for herself and manage her estate, he should have laid the matter before the county judge. Moreover, [the conservator] knew that the daughter in law employed a law firm to oppose the restoration”
Disposition	Petition granted (on appeal, individual ordered to pay conservator fees but not attorney fees in his opposing the petition for restoration)
Petitioner	The protected individual
Guardian’s Response	Opposed
State	Illinois
Population	Does not say (“adjudged feeble-minded”)
Things to Note	

Case	<i>In re: Guardianship of Bird</i> , 1978 WL 218167 (Ohio App. 8 Dist. 1978)
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Factual Summary	The protected individual was appointed a guardian after the probate court found her to be “an incompetent person by reason of mental disability.” One year later, the individual’s brother filed a motion to terminate, alleging that “the need for a guardian no longer exists” because [the individual] “is capable of taking care of herself, her property, and to provide for herself and her family.”
Legal Authority Relied on by the Court	R.C. 2111.47
Evidence Relied on by the Court	The individual’s doctor testified that, “no definite statement can be made as to whether or not she will or will not maintain this state;” another doctor testified that the individual is a “paranoid schizophrenic in a latent state.”
Disposition	Petition denied; affirmed on appeal
Petitioner	The protected individual’s brother
Guardian’s Response	Does not say
State	Ohio
Population	Mental illness
Things to Note	

Case	<i>In re Bolander</i> , 88 Ohio App.3d 498, 624 N.E.2d 322 (Ohio App. 1993)
Factual Summary	The protected individual, a blind woman, was appointed a guardian of the estate after her niece petitioned for guardianship. The guardian was appointed because the court found that the individual was incompetent as a result of being legally blind. The individual was given a psychiatric evaluation, which found her to be competent but vulnerable. Then the individual petitioned for restoration
Legal Authority Relied on by the Court	R.C. 2111.02; R.C. 2111.47 provides that upon the presentation of “satisfactory proof” that the reason or the guardianship no longer exists, the probate court must order its termination. In interpreting this statute, the Supreme Court has held that when the necessary proof has been submitted, the probate court has a mandatory duty to end the guardianship. <i>In re Breece</i> (1962), 173 Ohio St. 542, 20 O.O.2d 155, 184 N.E.2d 386
Evidence Relied on by the Court	Psychiatrist’s report stated that the individual was competent, rebutting presumption of continuing incompetence
Disposition	Petition denied; reversed on appeal
Petitioner	The protected individual
Guardian’s Response	Does not say
State	Ohio
Population	Physical disabilities (legally blind)
Things to Note	Court: “As long as she is determined to be competent, she may spend her money as she pleases.”

Case	<i>In re Estate of Wellman</i> , 174 Ill.2d 335, 673 N.E.2d 272, 220 Ill.Dec. 360 (Ill.Dec. 1996)
Factual Summary	The protected individual, a man in his nineties, was appointed a guardian after being adjudicated mentally disabled. Less than one year later, the protected individual petitioned for restoration and the court granted restoration. The trial court permitted the former guardian to appeal the judgment “on behalf of the estate.”
Legal Authority Relied on by the Court	“Following the restoration of a ward, the now-competent former ward is capable of representing, and has the right to represent, his or her own interests. Thus, the guardian no longer has standing to represent in court the interest of the former ward.” <i>Hayden</i> , 105 Ill. App.3d at 63-66 “Upon a ward’s restoration, the guardian lacks standing to appeal therefrom.” <i>In re Guardianship of Love</i> , 19 Ohio St.2d 111. “Courts reason that the guardian lacks a legally sufficient interest in the ward’s restoration to allow the guardian to contest it on appeal. The guardian is simply a trustee and can have no interest in this regard adverse to the recovery by the ward”
Evidence Relied on by the Court	The extent of the individual’s confusion or dementia varied due to his anemia and blood transfusions, and drug therapy had helped with those conditions; the individual had the mental ability to communicate with his physician, understand his mental and physical conditions, and to make responsible decisions concerning his health care; the individual had the mental ability to make and communicate decisions concerning the control and management of his finances and his estate
Disposition	Petition granted; affirmed on appeal
Petitioner	The protected individual, with counsel
Guardian’s Response	Opposed; tried to appeal

State	Illinois
Population	Older individual
Things to Note	Case focuses on the right of a guardian to appeal a decision to restore an individual, using the funds from the individual's account See dissent

Case	<i>In re: Guardianship of Towey</i> , 1996 WL 488790 (Ohio App. 5 Dist. 1996)
Factual Summary	The protected individual, an eighty-year old woman, was appointed a guardian while living in assisted living due to heart problems, mental lapse, and a diagnosis of dementia. One month later, the individual petitioned to terminate the guardianship, arguing she did not need a guardian
Legal Authority Relied on by the Court	R.C. 2111.041
Evidence Relied on by the Court	Court-ordered independent investigation of the individual found that the individual's judgment is moderately impaired and thus she is not competent to make wise decisions and it is thus appropriate to continue guardianship.
Disposition	Petition denied; affirmed on appeal
Petitioner	The protected individual
Guardian's Response	Opposed
State	Ohio
Population	Older individual
Things to Note	

Case	<i>In re Guardianship of Poulos</i> , 2011 WL 6317373 (Ohio App. 8 Dist. 2011)
Factual Summary	The protected individual was appointed a guardian of the person and the estate after a court investigator and an expert evaluation found her "to exhibit cognitive impairments and signs of dementia." One year later, the individual petitioned to terminate the guardianship, asserting her competency to conduct her own affairs and that the guardians have not acted in her best interests.
Legal Authority Relied on by the Court	Pursuant to R.C. 2111.47, a guardianship may be terminated upon "satisfactory proof" that the necessity for the guardianship no longer exists." "Satisfactory proof" is that which "causes the presumption to disappear" or "counterbalances the presumption" or "leaves the case in equipoise." <i>In re Guardianship of Breece</i> (1962), 173 Ohio St. 542, 556
Evidence Relied on by the Court	The court relied on the expert evaluation prepared at the appointment of guardianship which indicated she had Alzheimer's disease that was progressive and irreversible and also on the court investigator's findings that she exhibited cognitive impairments. It also relied on the individual's testimony at trial, which indicated that she was confused and memory deficient. The court did not accept testimony from lay witnesses prepared to testify for the individual because counsel presented no expert evidence to current competency or to otherwise rebut the presumption that she continues to be incompetent in accordance with the prior evidence.
Disposition	Petition denied; affirmed on appeal
Petitioner	The protected individual, with counsel
Guardian's Response	Opposed
State	Ohio
Population	Older individual
Things to Note	"With regard to the termination of a guardianship, we note that there is a presumption that once a person is found to be incompetent that he or she remains incompetent but the presumption is rebuttable." <i>In re Guardianship of Michael</i> , Franklin App. No. 07AP-264, 2007-Ohio-5967, citing <i>In re Guardianship of Breece</i> (1962), 173 Ohio St. 542, 556 Case highlights the importance of an expert evaluation. The court wouldn't accept testimony from lay witnesses without an expert evaluation showing that the individual had regained capacity

Case	<i>In re the Estate of Fallos</i> , 386 Ill.App.3d 831, 898 N.E.2d 793, 325 Ill.Dec. 746 (Ill.App. 2008)
Factual Summary	The protected individual, a physically disabled man in his fifties, became partially paralyzed and confined to

	a wheelchair due to a serious car accident. He can communicate through writing and nothing indicates that he has diminished cognitive abilities. He fell from his wheelchair and was not found for three days. He suffered from delusions during this time period and was unable to communicate, so the hospital psychologist recommended he be placed under guardianship. He was placed under plenary guardianship with Catholic Charities. One year later, the individual sent a note to the court asking it to take note of the progress he had made, the court scheduled a hearing, reappointed the guardian ad litem, and determined that the individual was not asking that guardianship be removed and it simply maintained the status quo. Soon after, the individual filed a petition to terminate guardianship, stating he had the capacity to perform skills necessary to care for himself and his estate.
Legal Authority Relied on by the Court	§ 11a
Evidence Relied on by the Court	The record shows by clear and convincing evidence that the individual is not “totally without capacity” to direct others concerning the care of his person. He can communicate his wishes in letters to the court. The most recent psychological report states that he is of average intelligence. The trial court observed that he was intellectually vigorous
Disposition	Petition denied; reversed and remanded on appeal
Petitioner	The protected individual
Guardian’s Response	Opposed
State	Illinois
Population	Brain injury (delusions); physically disabled
Things to Note	<p>“Case law regarding guardianship for adults who are only physically disabled is exceedingly scarce. Rarer still are cases where, as here, the physically disabled adult disputes the need for guardianship.”</p> <p>“The moving party in a petition to terminate has the burden to show that the existing order should be terminated. The standard is whether the ward’s capacity to perform the tasks necessary for the care of his person or the management of his estate has been demonstrated by clear and convincing evidence.” “We note the unique circumstances of this case make it almost unfair to place the burden on [the individual] to demonstrate the need to terminate or modify guardianship. The initial guardianship order was put in place during [the individual’s] lowest state of cognitive functioning following an injury that left him without nourishment and delirious”</p>

Case	<i>Struck v. Illinois State Guardian</i> , 2012 Ill. App (1 st) 120568-U (September 4, 2012)
Factual Summary	The protected individual was appointed a guardian after being adjudicated a disabled adult. The individual’s son filed 16 appeals relating to the guardianship. In the instant case, the son filed a motion seeking restoration.
Legal Authority Relied on by the Court	Upon the filing of a petition by or on behalf of a disabled person, the court may revoke the guardianship if the ward’s capacity to perform the tasks necessary for the care of his person or the management of his estate has been demonstrated by clear and convincing evidence. § 11a-20. Termination of adjudication of disability – revocation of letters
Evidence Relied on by the Court	“[The petitioner] provided no factual basis to restore [the protected individual]”
Disposition	Petition denied; affirmed on appeal
Petitioner	The protected individual’s son
Guardian’s Response	Does not say
State	Illinois
Population	Does not say
Things to Note	“Once a person is adjudicated disabled, that person remains under the jurisdiction of the court, even when a plenary guardian of the person has been appointed. The court has a duty to judicially interfere and protect the ward if the guardian is about to do anything that would cause harm. To fulfill this duty, the court’s authority is not limited to express statutory terms.” <i>In re Mark W.</i> , 228 Ill.2d 365, 375 (2009)

INDIANA (2)

Case	<i>Cochran v. Amsden</i> , 104 Ind. 282, 3 N.E. 934 (Ind. 1885)
Factual Summary	The protected individual was appointed a guardian after she was adjudged to be a person of unsound mind.

	Less than one year later, a petition for restoration was filed and a jury found her to be of unsound mind and denied the petition for restoration
Legal Authority Relied on by the Court	Rev. St. 2545-2553
Evidence Relied on by the Court	Does not say
Disposition	Petition denied; affirmed on appeal
Petitioner	Does not say
Guardian's Response	Does not say
State	Indiana
Population	Does not say
Things to Note	This case, decided in 1885, states, "not every person with impaired mental powers can be declared incapable of managing his estate."

Case	<i>In the Matter of the Guardianship and Estate of Carver</i> , 12 N.E.3d 994, 2014 WL 2002042 (Ind.App.)
Factual Summary	The protected individual was appointed a guardian "due to incapacity." One year later, the individual petitioned for the guardianship to be terminated or, in the alternative, that a different guardian be appointed.
Legal Authority Relied on by the Court	Indiana Code § 29-3-5-3; Indiana Code § 29-3-1-7.5(2)
Evidence Relied on by the Court	The trial court relied primarily on expert medical opinion that the individual continues to require a guardian. It also relied on the individual's in-court testimony
Disposition	Petition denied; affirmed on appeal
Petitioner	The protected individual
Guardian's Response	Opposed
State	Indiana
Population	Mental illness
Things to Note	Appellate standard of review: abuse of discretion. "An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances presented." See <i>In re Guardianship of Atkins</i> , 868 N.E.2d 878, 883 (Ind.Ct.App.2007)

IOWA (10)

Case	<i>Hall v. Hall</i> , 124 N.W. 621 (N.W. 1920)
Factual Summary	The protected individual was appointed her daughter as her guardian after being adjudged "insane."
Legal Authority Relied on by the Court	None mentioned
Evidence Relied on by the Court	The fact that the protected individual believes that her children have not treated her as they should is not sufficient in itself to justify continuance of the guardianship. The trial court's finding that the individual was "not sufficiently strong mentally to be able to transact business or to take charge of her property" is not supported by any substantial evidence in the record
Disposition	Petition denied; reversed on appeal
Petitioner	The protected individual
Guardian's Response	Does not say
State	Iowa
Population	Mental illness ("adjudged insane")
Things to Note	

Case	<i>Coomes v. Mayer</i> , 201 Iowa 405, 205 N.W. 645 (1925)
Factual Summary	The protected individual, a 79 year old woman, was appointed a guardian of the property "upon the investigation of relatives, but finally with her written consent." The relatives learned that the woman was being courted by a man they didn't trust. Six months later, the protected individual sued her guardian of the property to terminate the guardianship on the ground that she is now capable of managing her own property

Legal Authority Relied on by the Court	§ 3222 of the Code of 1897
Evidence Relied on by the Court	The individual was examined as a witness and cross-examined at trial. Her writing is very limited and she has never written a check or a letter. She knows little about her business that was left to her by her late husband. One medical doctor testified that the individual was normal for her age but her mentality was that of a child. Three other physicians testified that the individual's condition was normal for her age, both physically and mentally.
Disposition	Petition denied; reversed on appeal
Petitioner	The protected individual
Guardian's Response	Opposed; Guardian was defendant
State	Iowa
Population	Older individual
Things to Note	Central focus of case is the fear that the individual's new husband will influence her to the detriment of her property rights and take away her money and business that was left to her by her late husband. "The only fact appearing in the record as a reason for continuing this guardianship is that her new husband will assert influence over her to enable him to despoil her and defraud her of her property. Such apprehensions are not to be indulged in....If he shall hereafter through undue influence despoil her of her property, the law affords ample remedy."

Case	<i>Perry v. Roberts</i> , 206 Iowa 303, 220 N.W. 85 (Iowa 1928)
Factual Summary	The protected individual, a man in his sixties, was appointed a plenary guardianship after he was adjudicated to be mentally incompetent. Less than one year later, the protected individual filed a petition for termination.
Legal Authority Relied on by the Court	The burden of proof is on the petitioner to show "that he is no longer a proper subject thereof" <i>Waters v. Waters</i> , 201 Iowa, 586 "The real object and purpose of the guardianship is to preserve and conserve the ward's property for his own use, as distinguished from the benefit of others." <i>Huffman v. Beamer</i>
Evidence Relied on by the Court	The court looked to the reasons why a guardian was appointed, which were that he poorly managed his farm and made poor financial decisions and "the only way to save [his] investments was to place the property under the custody and management of a guardian, not because the ward lacked the ability to properly manage but due to his mental incapacity" also, he lived in a very unclean house, which put his health in jeopardy "The record discloses that the mental deficiency shown at the time the guardian was appointed still continues, and, in fact, is constantly growing more marked."
Disposition	Petition denied; affirmed on appeal
Petitioner	Does not say
Guardian's Response	Does not say
State	Iowa
Population	Does not say ("mental incompetency")
Things to Note	

Case	<i>In re Hawk's Guardianship</i> , 227 Iowa 232, 288 N.W. 114 (Iowa 1939)
Factual Summary	The protected individual, a man in his thirties, was appointed a guardianship of the property due to his failed attempt to operate a restaurant, which he ended up selling for a loss. The protected individual filed petition to terminate 11 years later, citing over \$2,0000 in fees and expenses for the guardian and his attorney fees. The protected individual was previously under guardianship and it was terminated in an uncontested action. Shortly after it was terminated, he was cheated out of real property. The individual's brother then became guardian of the property, which the individual initially consented to.
Legal Authority Relied on by the Court	"A person of unsound mind is one who is incapable of transacting the particular business in hand." <i>Seerley v. Sater</i> "The accepted test of mental unsoundness is the ability and competency of a person to manage his property

	and business affairs in a rational manner.” <i>Richardson v. Richardson</i>
	“While we recognize the right of every person to conduct his own business and to manage his private affairs, nevertheless a guardianship should not be terminated when it appears, in an action prosecuted for that purpose, that it will be detrimental to the welfare of the ward to have the guardian removed.” <i>Haworth v. Stanley</i>
Evidence Relied on by the Court	The individual is mentally competent, but he is below average mentally, has no business experience, and the guardian has not interfered with his personal earnings. It’s better for the individual to have the guardian to look after his real estate Several witnesses testified on behalf of the protected individual but no testimony from the guardian
Disposition	Petition denied; affirmed on appeal
Petitioner	The protected individual
Guardian’s Response	Neutral. Alleged that the determination of the issue was for the court. Offered no testimony
State	Iowa
Population	Does not say
Things to Note	

Case	<i>Olson v. Olson</i> , 242 Iowa 192, 46 N.W.2d 1 (Iowa 1951)
Factual Summary	The protected individual, a man in his seventies, was appointed his son as his guardian after being adjudged incompetent based on his inability to manage his business affairs and care for himself, and that he lived with relatives who were believed to exercise undue influence over him. Three years later, the individual filed a petition for restoration
Legal Authority Relied on by the Court	§ 670.2(1), Codes 1946 and 1950, I.C.A.
Evidence Relied on by the Court	The individual cares for himself better than many men his age, he personally tends to his farms, and he drives his car adequately. A physician testified favorably to his physical and mental condition, the record discloses no mental incompetence, he named his children in order and gave details about them, and ten or more witnesses testified as to his competence “The only fact appearing in the record as a reason for continuing this guardianship is the natural apprehension that her new husband has acquired sufficient influence over her to enable him to despoil her and to defraud her of per property. Such apprehensions are not to be indulged in...it is not proper that we should be impelled by mere apprehensions to sustain a guardianship over a person otherwise competent.”
Disposition	Petition denied; reversed on appeal
Petitioner	The protected individual
Guardian’s Response	Opposed
State	Iowa
Population	Older individual
Things to Note	The individual’s competence was challenged initially because he kept large sums of money on his person and hidden about in his home. But the reason he did this was because he lost thousands of dollars by depositing it in banks who then went under

Case	<i>In the Matter of the Guardianship of the Property of Stark</i> , 254 Iwo 598, 118 N.W.2d 537 (Iowa 1962)
Factual Summary	The protected individual, a woman in her sixties, voluntarily agreed to the appointment of Wright County State Bank as her guardian of property. One year later, the individual petitioned for termination, which was denied and affirmed on appeal because the court believed the guardianship was in her best interests because termination would probably result in dissipation by her son, an alcoholic, of her assets due to her generosity.
Legal Authority Relied on by the Court	The ward has the burden to prove she no longer needs a guardianship. § 670.11
Evidence Relied on by the Court	Although the evidence indicates and the trial court found the individual to be mentally competent, she suffers from a broken hip which requires her to use a four-legged walker or crutches and thus needs assistance because of this disability.

	The evidence indicates that the principal reason that the individual filed for termination was so she would be free to help her son financially. Her son is an alcoholic and a serious financial drain, and the mother appears unable to resist his frequent requests for financial help
Disposition	Petition denied; affirmed on appeal
Petitioner	The protected individual
Guardian's Response	Opposed
State	Iowa
Population	Physical disability (broken hip), heart attack, and suffers from depression
Things to Note	<p>This case involves a voluntary guardianship of property</p> <p>The trial court found the individual was “of sound mind but unable to manage her affairs in a rational manner” and thus termination would not be in her best interest</p> <p>Cites <i>Perry v. Roberts</i>, 206 Iowa 303: “the real object and purpose of the guardianship is to preserve and conserve the ward’s property for his own use, as distinguished from the benefit of others...the ultimate goal to be reached is appellant’s protection, care and well-being. Conservation of his estate is for that object, and none other.”</p> <p>Cites <i>Haworth v. Stanley</i>, 200 N.W. 410: “While we recognize the right of every person to conduct his own business and to manage his private affairs, nevertheless a guardianship should not be terminated when it appears it will be detrimental to the welfare of the ward.”</p>

Case	<i>Suplee v. Stonebraker</i> , 195 N.W.2d 678 (1972)
Factual Summary	The protected individual, a 76-year-old man, was appointed his granddaughter as his voluntary conservator after he filed the petition based on his inability to manage his property due to his age. Two years later, the protected individual filed a petition for dismissal of conservator, alleging his capability to manage his own property. The plaintiff in this case is the ward’s daughter. The guardian ad litem did not appear at trial. The trial court terminated the guardianship, finding him to be competent and in his best interests to terminate the guardianship. The appellate court overturned because the record did not show enough evidence to find that the ward was competent
Legal Authority Relied on by the Court	The wishes of a competent ward do not excuse performance of statutory duties by the fiduciary, including the obligation to account, report, and secure court approval in major matters. <i>In re Anderson’s Guardianship</i> , 247 Iowa 1292, 78 N.W.2d 788 (1956)
Evidence Relied on by the Court	“There is more than an indication that the petition was motivated by the ward’s concern for the conservator, who not only failed to adequately account but may have been unable to do so.”
Disposition	Petition granted; reversed and remanded on appeal
Petitioner	The protected individual
Guardian's Response	Does not say
State	Iowa
Population	Older individual
Things to Note	

Case	<i>In the Matter of the Guardianship and Conservatorship of Schmidt</i> , 401 N.W.2d 37 (1987)
Factual Summary	The protected individual, a blind woman in her eighties who is partially paralyzed, was appointed a guardian upon her filing a petition for one. Less than one year later, the individual’s stepson petitioned to terminate the guardianship. The trial court denied the petition. The appellate court affirmed, holding that the protected individual’s stepson did not have authority to petition for termination of guardianship.
Legal Authority Relied on by the Court	Iowa Code §633.679 states that authority to petition for termination is limited to the ward.
Evidence Relied on by the Court	“It is apparent that the ward cannot attend to her own affairs.”
Disposition	Petition denied; affirmed on appeal
Petitioner	The protected individual’s stepson
Guardian's Response	Does not say
State	Iowa

Population	Older individual
Things to Note	

Case	<i>Hedin v. Gonzalez</i> , 528 N.W.2d 567 (Iowa 1995)
Factual Summary	The protected individual, a man in his thirties who is “mildly mentally retarded,” was appointed his older sister as his guardian after he signed a voluntary guardianship petition. Six years later, he petitioned for removal of guardian and termination of guardianship and lost. On appeal, he argued that the Iowa guardianship statute is unconstitutional because it denies him due process and the enjoyment of his liberty interest, and that it is unconstitutionally vague and overbroad. Also, he argues that in a voluntary guardianship termination proceeding, the guardian must establish that the guardianship continue by clear and convincing evidence. In the district court, the crux of the case was whether the individual should be allowed to marry his girlfriend, who is also under guardianship, which the guardian opposed
Legal Authority Relied on by the Court	Extensive. See case
Evidence Relied on by the Court	Extensive. See case
Disposition	Petition denied; reversed on appeal
Petitioner	The protected individual
Guardian’s Response	Opposed
State	Iowa
Population	IDD
Things to Note	<p>Iowa Supreme Court Holding: (1) burden of persuasion rests on the party who initiated guardianship; (2) if guardianship was voluntarily imposed with no contested hearing, the ward must make a prima facie showing that he has some decision making capacity; (3) in determining whether a guardianship is to be modified or terminated, the district court must consider whether a limited guardianship is appropriate; and (4) in considering an application to terminate or modify a guardianship, the court may make a finding of incompetency only if it finds that the ward’s decision making capacity is so impaired that the ward is unable to care for his personal safety or unable to attend to or provide for such necessities as food, shelter, clothing, and medical care, without which physical injury or illness may occur. Under this test, evidence must be submitted that shows the ward is unable to think or act for himself as to matters “concerning the ward’s personal health, safety, and general welfare.”...in making a determination whether guardianship should be modified or terminated, the court must consider the availability of third-party assistance to meet a ward’s need for such necessities, However, neither party shall have the burden to produce such evidence</p> <p>Case has interesting history of guardianship</p> <p>Case has good explanation for why clear and convincing is the standard</p> <p>This case overturned prior case law (<i>in re conservatorship of Schrock</i>) which held that termination of a voluntary conservatorship is properly denied where ward does not prove a capacity to manage his business affairs without guidance and assistance by others</p>

Case	<i>In the Matter of the Guardianship and Conservatorship of Sluyter</i> , 812 N.W.2d 726, 2012 WL 470219 (Iowa App. 2012)
Factual Summary	The protected individual, a woman in her eighties with multiple sclerosis and diabetes, was appointed her two children as co-guardians after she fell, was hospitalized, and a clinical psychologist found her to demonstrate mild cognitive decline. In addition, she was diagnosed with a major depressive disorder and needed monitoring of medications, hydration, and fall safety. One year later, after the co-guardians tried to sell her home, the individual filed a petition to terminate guardianship, stating she wanted to return to her home. The trial court found the individual made a prima facie showing that she had decision-making capacity, but the co-guardians met their burden of showing her decision-making capacity was so impaired that the guardianship should not be terminated.
Legal Authority Relied on by the Court	Iowa Code § 633.675(3)

Evidence Relied on by the Court	A second evaluation conducted by the same doctor found the protected individual continued to have mild neurocognitive decline. Also, she did not know all her medications or why she was taking them and she continued to show symptoms of depression
Disposition	Petition denied; affirmed on appeal
Petitioner	The protected individual
Guardian's Response	Opposed
State	Iowa
Population	Older individual
Things to Note	

Case	<i>In the Matter of the Guardianship and Conservatorship of F.W. JR</i> , 824 N.W.2d 561, 2012 WL 5355801 (Iowa App. 2012)
Factual Summary	The protected individual, a man in his seventies, was appointed his spouse as his guardian when he was recovering from a fall and acute intoxication withdrawal. His wife petitioned for guardianship because “he was no longer able to care for himself and not able to carry out important decisions concerning his personal financial affairs.”
Legal Authority Relied on by the Court	Iowa Code § 633.675
Evidence Relied on by the Court	A clinical neuropsychologist examined the individual and testified that he had some mental impairments such as slowed processing speed and poor memory but was not in need of guardianship or conservatorship and he was capable of making financial decisions and caring for his health. The guardian ad litem testified that the individual is capable of taking care of himself and his finances. A lay witness testified that he joined the individual for lunch often and found him to be completely normal and sharp. The individual’s long-time primary physician testified that he handles his own medications. The individual himself testified and he was “lucid and rational” and “able to comprehend the questions posed and answered them logically.” Note: the guardian presented testimony of three expert witnesses who opined the individual was in need of a guardianship and conservatorship
Disposition	Petition granted; affirmed on appeal
Petitioner	The protected individual, with counsel
Guardian's Response	Opposed
State	Iowa
Population	Older individual
Things to Note	Good example of supported decision-making. Court: “although there are many things [the individual] can no longer do for himself, he is financially able and personally willing to secure third party assistance when needed.” (the individual has the help of many third parties to care for himself and his estate)

KANSAS (0)

KENTUCKY (0)

LOUISIANA (1)

Case	<i>Interdiction of Charlie Dobbins</i> , 535 So.2d 1079 (So. 1989)
Factual Summary	The protected individual, a man in his nineties, was appointed a guardian after his nephew filed a petition for interdiction and a court appointed doctor found the individual had cerebral vascular disease with advancing senility which he did not expect to improve. Further, even though the individual was “with it”, the doctor concluded that did not necessarily indicate that he was that way all the time, and he concluded that the individual had lost much of his ability to make good judgments and thus it was unclear whether he could administer his own affairs. Three years later, the individual filed a petition to revoke the guardianship
Legal Authority Relied on by the Court	Interdiction ends with the causes which gave rise to it. LSA-C.C. Art. 420
Evidence Relied on by the Court	“evidence indicated that [the ward] groomed himself and worked on the plantation to best of ability, [the ward] was aware of his physical limitations and medical needs, and the doctor testified that [the ward] was

	competent and that the doctor believed that he was capable of making his own decisions in regard to his welfare and financial matters if they were explained to him” The individual testified on his own behalf and presented three other witnesses, including one doctor
Disposition	Petition granted; affirmed on appeal
Petitioner	The protected individual
Guardian’s Response	Opposed; testified at trial
State	Louisiana
Population	Older individual
Things to Note	In Louisiana, guardianship is called “interdiction”

MAINE (2)

Case	<i>Wattrich v. Blakney</i> , 151 Me. 289, 118 A.2d 332 (Me. 1955)
Factual Summary	The protected individual was appointed his sister as his guardian after being adjudged to be incompetent to manage his own affairs. Four years later, the individual filed a petition to dismiss the guardian and restore him to capacity. The trial court dismissed the guardian. The guardian appealed and lost on appeal
Legal Authority Relied on by the Court	Sec. 29, Ch. 158, R.S.1954
Evidence Relied on by the Court	Does not say
Disposition	Petition granted; affirmed on appeal
Petitioner	The protected individual
Guardian’s Response	Opposed; appealed the trial court’s decision
State	Maine
Population	Does not say
Things to Note	Court: “‘Removal of guardian’ of incompetent is sought for malfeasance or other illegal actions of the guardian, whereas ‘dismissal of guardian’ is sought where original reasons for appointment no longer exist and incompetent is capable of managing his own affairs”

Case	<i>Guardianship of Lander</i> , 697 A.2d 1298 (Me.1997).
Factual Summary	A public guardian was appointed for the protected individual in an uncontested appointment. Five years later, the individual successfully petitioned for termination. Six months later, a second petition for appointment of a public guardian was filed and granted. One year later, the individual petitioned for termination, alleging he was no longer incapacitated. The court denied the petition because the protected individual petitioner, who had the burden of proof, failed to provide evidence of a change in circumstances.
Legal Authority Relied on by the Court	Because the Maine Legislature has not allocated the burden of proof in termination proceedings for adult guardianships, the general rule applies and places the burden on the moving party
Evidence Relied on by the Court	The protected individual did not provide evidence of a change in circumstances
Disposition	Petition denied
Petitioner	The protected individual, with counsel
Guardian’s Response	Opposed
State	Maine
Population	Does not say
Things to Note	Court: “because the legislature neither directly nor indirectly allocated the burden of proof in termination proceedings for adult guardianships, the general rule applies and places the burden on the moving party.”

MARYLAND (1)

Case	<i>In re Rosenberg</i> , 211 Md.App. 305, 65 A.3d 203 (Md. App., 2013)
Factual Summary	The protected individual consented to appointment of a guardian of property due to her inability to manage her financial affairs due to side effects of her brain surgery and Parkinson’s disease. Two years later, she

	<p>urged her guardian to petition for termination. The court denied the request and the guardian appealed. The appellate court vacated the circuit court’s order refusing to terminate the guardianship of property and remanded for a new hearing because it could not say, based upon the record, that the circuit court required the guardian to shoulder the burden of proof in the petition for termination.</p>
Legal Authority Relied on by the Court	<p>The circuit court relied on § 13-221 of the Estates and Trusts Article, which requires it to determine “whether there has been a cessation of the disability.” In making that decision, the circuit court considered “what is in the best interest of [the protected individual]”</p> <p>The appellate court relied on <i>Wink v. State</i>, which states that “references in our decisions to the reasonable satisfaction of the trial court mean that the trial judge must find the essential facts by a preponderance of the evidence.” <i>Wink v. State</i>, 317 Md. 330, 340-341, 563 A.2d 414 (1989). The general rule in civil cases is that a matter at issue must be proved by a preponderance of the evidence. <i>Addington v. Texas</i>, 4412 U.S. 418, 423, 99 S.Ct. 1804, 60 L.Ed.2d 323 (1979). “Nothing in 13-221 states or even suggests otherwise.”</p> <p>Rule 10-710 §7 requires that the petitioner wishing to terminate a guardianship of property on the grounds that the disability, which justified the imposition of the guardianship, has ceased or substantially diminished, must file a certificate, signed by a physician who has examined the person within 21 days of the filing of the petition, attesting to the cessation of the disability</p>
Evidence Relied on by the Court	<p>The circuit court relied on the court-appointed medical examiner’s testimony that the individual has dementia secondary to Parkinson’s disease and self-neglect, has impaired executive functioning, can communicate only simple decisions, requires a guardian of property and of person, requires 24 hour supervision, and does not have the mental capacity to understand the nature of a guardianship.</p> <p>The appellate court relied upon the lack of evidence in the record</p>
Disposition	Petition denied; Vacated and remanded on appeal
Petitioner	Guardian, on request by the protected individual
Guardian’s Response	Opposed (after making the request)
State	Maryland
Population	Older individual (suffering side effects of brain surgery, which she underwent for Parkinson’s disease)
Things to Note	<p>Appellate court determined that the circuit court may consider less restrictive alternatives to a full guardianship of property if it deems such a course of action fitting and appropriate</p> <p>Appellate court goes into great detail to describe the legal authority and explain what and why burdens of proof and standards of proof should be in a petition for termination of guardianship</p> <p>Note: guardianship of the property only</p>

MASSACHUSETTS (2)

Case	<i>In the Matter of Priscilla Schenck</i> , 12 Mass.App.Ct. 532, 427 N.E.2d 23 (1981)
Factual Summary	<p>The protected individual consented to guardianship due to her physical incapacity caused by her cerebral palsy. Protected individual is very happy with her guardian and did not wish for him to be removed, but a guardian ad litem sought his removal based on questionable expenditures he made. At trial, it was undisputed and the judge found that the individual is mentally competent and capable of making arrangement for the management of her property. Regardless, the judge refused to terminate the conservatorship because he found the individual is “entirely dependent on others to provide for her physical needs, manage her estate, and disperse her funds, and she requires the protection of the Probate Court.”</p>
Legal Authority Relied on by the Court	“A conservator may be discharged when it appears that the conservatorship is no longer necessary.” § 18, as emended by St. 1934, c. 204, s 2
Evidence Relied on by the Court	At trial, the individual’s response to questioning was rational and coherent. The court-ordered psychiatric examination indicated “insufficient evidence to support the need for a guardianship based upon mental disability.”
Disposition	Petition denied; reversed on appeal
Petitioner	The protected individual
Guardian’s Response	Supported
State	Massachusetts

Population	Physical incapacity (cerebral palsy)
Things to Note	Protected individual voluntarily consented to guardianship due to her <i>physical</i> incapacity

Case	<i>In re Guardianship of Zaltman</i> , 65 Mass.App.Ct. 678, 843 N.E.2d 663, 2006
Factual Summary	The protected individual was appointed a permanent guardian of the person based on mental illness rendering her incapable of taking care of herself and making her own medical decisions. A few months later, the individual filed a petition to terminate the guardianship, based upon her physicians informing her that she no longer needed a guardian. The circuit court judge pronounced that “the ward does not have the capacity to file anything” and thus denied the ward her right to petition for removal of the guardianship. The appellate court reversed, based on the statutorily protected right to petition for removal of guardianship
Legal Authority Relied on by the Court	“Even if the ward lacked the capacity to make her own treatment decisions at the time, her expressed preference must be treated as a critical factor in the determination of her best interests...since it is the patient’s true desire that the court must ascertain.” <i>Guardianship of Roe</i> , 383 Mass. At 445, 421 N.E.2d 40
Evidence Relied on by the Court	Particularly pertinent was the changed opinion of the same physician whose input impacted the decision at the permanent guardianship hearing, and the evidence of friction between the ward and the guardian and appointed lawyer
Disposition	Petition denied; vacated on appeal and ordered an evidentiary hearing to determine petition for termination
Petitioner	The protected individual, with counsel
Guardian’s Response	Does not say; Did nothing to investigate or pursue the merits of the petition to discharge the guardianship
State	Massachusetts
Population	Mental illness
Things to Note	<p>“The interest of a guardian and a ward are perhaps at their most adverse when a petition for removal is filed, and the alleged failure of the guardian to fulfill her fiduciary duties to the ward is at issue. We need not and do not determine whether an incompetent ward could retain a lawyer himself in such circumstances” <i>See</i> J.H. Cross, R.D. Fleischer, & J.S.J. Elder, Guardian[ship] and Conservatorship in Massachusetts § 3.18A (Supp. 2002)</p> <p>“Courts should be skeptical of challenges by a guardian to the authority of ward’s counsel to appear and prosecute a petition for discharge.” Cross, Fleischer, & Elder, Guardianship and Conservatorship in Massachusetts § 3.18A (Supp.2005)</p>

MICHIGAN (3)

Case	<i>Lyster v. Estate of Munck</i> , 54 Mich. 325, 20 N.W. 83 (Mich. 1884)
Factual Summary	The protected individual was appointed a guardian when he got sick and was adjudged incompetent. Less than one year later, the guardianship was terminated due to his regaining competence. The guardian settled his account with the individual and was discharged by the court. Thereafter, a physician who amputated the individual’s limb appealed the order terminating the guardianship. The physician seeks to have the guardianship continue, not because the individual is incompetent, but rather to investigate the doctor’s claim and receive payment for the operation. The protected individual’s physician appealed the termination of the guardianship
Legal Authority Relied on by the Court	To order the continuation of the guardianship for the sole purpose of resolving the doctor’s dispute over the unpaid bill “would subject the individual to an arbitrary exercise of power over his property and would create a duty and liability on the part of the guardian never contemplated by the legislature and intolerable under our constitution and laws.”
Evidence Relied on by the Court	Does not say
Disposition	Petition granted
Petitioner	The protected individual
Guardian’s Response	Opposed
State	Michigan
Population	Does not say
Things to Note	Primary issue of the case: physician contests termination of guardianship so that he can collect payment for the procedure conducted during the guardianship

Case	<i>Henderson v. Henderson</i> , 206 Mich. 36, 172 N.W. 623 (Mich 1919)
Factual Summary	The protected individual, a man in his mid-seventies, was appointed his son as his guardian after he was adjudged mentally incompetent under the state statute. Four years later, the protected individual filed for termination, arguing that he has a right and is perfectly competent to control and manage his own property and that he knows more than his sons about his estate
Legal Authority Relied on by the Court	Comp.Laws 1915, § 13950
Evidence Relied on by the Court	Various lay and expert witness testimony
Disposition	Petition denied; affirmed on appeal
Petitioner	The protected individual filed suit against his guardian
Guardian's Response	Opposed; Guardian was defendant
State	Michigan
Population	Older individual
Things to Note	Jury trial

Case	<i>In re Minock's Estate</i> , 218 Mich. 97, 187 N.W. 345 (1922)
Factual Summary	The individual was appointed a guardian of the estate upon the wife's petition and being adjudged insane. The individual's nephew was guardian first and then a bank became guardian. Twelve years later, the individual filed a petition to be adjudicated sane, which the court granted. In the instant case, the individual has filed a petition to have his property turned back over to him and the bank discharged as his guardian
Legal Authority Relied on by the Court	Comp.Laws 1915, § 13950
Evidence Relied on by the Court	The record does not show that any order has been made that the individual is now competent to manage his property (even though the individual was adjudicated sane)
Disposition	Petition denied; affirmed on appeal
Petitioner	The protected individual
Guardian's Response	Does not say
State	Michigan
Population	Mental illness ("adjudged insane")
Things to Note	Court: "Just because an individual is adjudicated to be sane does not mean that the management of his property must be turned over to him as of course. Before a guardian is required to turn over the estate, a hearing should be had to determine the individual's competency. An adjudication that the individual is sane is not enough."

MINNESOTA (4)

Case	<i>In re the Conservatorship of Haack</i> , 2009 WL 818580 (Minn.App. 2009)
Factual Summary	The protected individual voluntarily requested her conservatorship because she recognized the need to have an outside person manage her financial affairs. About 13 years later, her children petitioned to terminate the conservatorship. The trial and appellate court did not terminate the conservatorship as termination is not in her best interests. Her children (the petitioners) are not neutral third parties – they are beneficiaries of the trust assets upon the individual's death
Legal Authority Relied on by the Court	Minn.Stat. § 524.5-401(2) (2008)
Evidence Relied on by the Court	"Nothing in the record establishes that [the protected individual] no longer needs the assistance or protection of a conservator"
Disposition	Petition denied; affirmed on appeal
Petitioner	The protected individual's children
Guardian's Response	Does not say
State	Minnesota
Population	Does not say
Things to Note	Case focuses on issues re: neutral third parties as conservators

Case	<i>In re Guardianship of the Person of Meyer</i> , 2010 WL 3463710 (Minn. App. 2010).
Factual Summary	Protected individual was appointed a plenary guardian when he was 18 years old, based on his mental and physical impairment resulting from a snow tubing head injury when he was 9 years old. Petition denied because the protected individual petitioner failed to establish a prima facie case for termination and the trial court properly concluded that guardianship continues to be in the protected individual's best interest
Legal Authority Relied on by the Court	An adult is an incapacitated person if he "is impaired to the extent of lacking sufficient understanding or capacity to make or communicate responsible personal decisions" and "has demonstrated deficits in behavior which evidence an inability to meet personal needs for medical care, nutrition, clothing, shelter, or safety, even with appropriate technological assistance." Minn.Stat. § 524.5-101, subd. 6 (2008)
Evidence Relied on by the Court	The court-appointed visitor's report stated that the individual's incapacity is consistent with past reports, and guardianship continues to be appropriate because the individual remains a very vulnerable person The social worker testified that the individual needs nearly continuous care and he has difficulty managing money. Significant debt was resolved only through guardian's intervention. Also, although the individual communicates ambitious plans to support himself, his ability to follow through has not changed. The individual has failed to actively participate in doing the required tasks at his residential facility
Disposition	Petition denied; affirmed on appeal
Petitioner	The protected individual, with counsel
Guardian's Response	Does not say
State	Minnesota
Population	Brain injury
Things to Note	

Case	<i>In re the Guardianship of Strgar</i> , 2013 WL 141703 (Minn.App. 2013)
Factual Summary	The protected individual, an older woman suffering from ulcers and malnutrition due to severe neglect from her son caretaker, was appointed a guardian after the hospital petitioned. Two years later, the individual and her son filed a petition to remove the guardian or, in the alternative, appoint the son as successor guardian. The individual asserted she is able to care for herself with the help of her son. The trial court denied the petition. The appellate court affirmed, stating that the individual's current medical condition, expressed intention to return to her son's home if given the opportunity, and history of rapid decline when not in a hospital or nursing home demonstrate her continued need for a guardian.
Legal Authority Relied on by the Court	Minn.Stat. § 524.5-317(b) (2012)
Evidence Relied on by the Court	The individual's primary physician and her guardian both testified that the individual continues to need a guardian to make decisions for her on a daily basis and that she has a fixed delusion about her health problems
Disposition	Petition denied; affirmed on appeal
Petitioner	The protected individual and her son
Guardian's Response	Opposed; testified at trial
State	Minnesota
Population	Older individual
Things to Note	Appellate court: "the fact that [the individual] is mentally competent to make major decisions regarding her medical care does not mean that she does not need a guardian."

Case	<i>In the Matter of the Guardianship of Bostrom</i> , 2014 WL 801776 (Minn.App. 2014)
Factual Summary	The protected individual, a woman with mental illness, was appointed a guardian when the court found she was ill with a psychotic disorder secondary to a traumatic brain injury, which grossly impaired her judgment and behavior. Three months later, the individual petitioned for restoration, arguing that because she is able to care for her own needs, she made a prima facie case that she is no longer an incapacitated person.
Legal Authority Relied on by the Court	Minn.Stat. §524.5-317(b) (2012)
Evidence Relied on	The district court denied her petition because it found she continues to be ill with an organic brain injury,

by the Court	which grossly impairs her behavior and judgment, and her demeanor and responses in court showed her lack of insight into her current abilities and that she continues to be delusional. For instance, she testified that she wouldn't take her medications if the guardianship were terminated because she did not need them
Disposition	Petition denied; affirmed on appeal
Petitioner	The protected individual
Guardian's Response	Does not say
State	Minnesota
Population	Brain injury (injury caused a psychotic disorder)
Things to Note	

MISSISSIPPI (1)

Case	<i>Campbell v. Conservatorship of Campbell and AmSouth Bank</i> , 5 So.3d 470 (MS App. 2008)
Factual Summary	The protected individual was appointed a conservator after he suffered a serious brain injury and was declared mentally incompetent. Almost 20 years later, the court terminated the conservatorship of the person but not of the estate. The protected individual filed a petition to terminate the conservatorship over his estate three years later.
Legal Authority Relied on by the Court	The court relied solely on legal authority to establish a conservatorship, not to terminate one A "management competency test" adopted by the court in <i>Harvey v. Meador</i> , 459 So.2d 288 (Miss. 1984)
Evidence Relied on by the Court	The ward has a history of dissipating his estate and the money allotted to him for monthly living expenses. The guardian ad litem and medical expert concluded that he is mentally able to make everyday decisions but the court concluded this does not mean he is fiscally and financially responsible. Also, there's a lack of evidence from family members or friends of the individual stating that he has the ability to manage his property and assets Note: There was also evidence that the individual had progressed over the past 10 years, acquiring a GED, starting a family, and earning a college degree. Two physicians determined the individual seemed competent to manage his financial affairs
Disposition	Petition denied; affirmed on appeal
Petitioner	The protected individual
Guardian's Response	Supported
State	Mississippi
Population	Brain injury
Things to Note	Court took a paternalistic approach → evidence shows he is mentally competent and able to make necessary decisions for himself but this does not prove he is fiscally and financially responsible Note: Conservatorship of estate only

MISSOURI (3)

Case	<i>Harrelson v. Flourney</i> , 229 Mo.App. 582, 78 S.W.2d 895 (Mo.App. 1935)
Factual Summary	The protected individual was appointed a guardian after being adjudged "of unsound mind and incapable of managing his affairs." Seven years later, the protected individual filed a petition for restoration, alleging that he was not at such time insane or of unsound mind. The guardian filed a motion to dismiss, arguing that the individual is not of sound mind so that he is unable to file a petition for his own restoration.
Legal Authority Relied on by the Court	"Under § 493, upon alleged restoration to rightness of mind or discharge from guardianship, the same issues as to sanity or insanity at the time of the later inquiry and as to the capacity of the subject to manage his affairs are in question as were in question upon the previous inquiry under § 448 upon the original inquiry under which he was adjudicated to be a person of unsound mind and incapable of managing his affairs. The only difference in such inquiries is as to the burden of proof."
Evidence Relied on by the Court	Lay witness testimony
Disposition	Petition denied; reversed and remanded on appeal
Petitioner	The protected individual
Guardian's Response	Opposed

State	Missouri
Population	Does not say
Things to Note	

Case	<i>In re: Estate of Werner</i> , 133 S.W.3d 108 (2004)
Factual Summary	The protected individual was appointed a guardian and conservator based upon a circuit court’s determination that she was “totally incapacitated and disabled.” Three years later, the individual petitioned for termination. The court terminated the conservatorship and modified the guardianship to let her drive and vote but otherwise leaving the guardianship intact. The protected individual appealed.
Legal Authority Relied on by the Court	§ 475.083, RSMo Supp.2002 governs termination of guardianships and sets out seven circumstances under which an adult guardian’s authority terminates. While this case focuses on (3) and (7), each ground for termination comes back to one premise: that the guardianship is no longer legally proper and should be dissolved.
Evidence Relied on by the Court	Evidence that the individual was doing better, living in her own apartment, working, and meeting her food and clothing needs was not sufficient to establish by a preponderance of the evidence that the individual could continue to do so without the court-ordered assistance that she had been receiving. This suggests that the reason for her recovery had been because of the support Petitioner-ward did not establish that she could continue to meet her essential requirements without the court-ordered assistance
Disposition	Petition denied; affirmed on appeal
Petitioner	The protected individual
Guardian’s Response	Opposed except for the restoration of right to drive and to vote, supported termination of conservatorship
State	Missouri
Population	Does not say
Things to Note	“Even if a [ward] suffers a physical or mental condition that prohibits his meeting essential requirements, but can, without court-ordered support, receive and evaluate information or communicate decisions to such an extent that he or she can fully meet essential requirements, the guardianship is no longer appropriate” The petitioner has the burden of establishing by a preponderance of the evidence that the ward’s capacity to meet essential requirements had been restored

Case	<i>In re the Estate of Posey v. Bergin</i> , 299 S.W.2d 6 (2009)
Factual Summary	The protected individual was appointed his daughter as his guardian after the probate court found him to be incapacitated and disabled as a result of the effects of his alcohol dependence and abuse on his physical and mental condition. One year later, the individual filed a petition for restoration and termination, claiming that he has been sober and has thus recovered from the cognitive impairments and the conditions for his guardianship no longer exist.
Legal Authority Relied on by the Court	§ 475.083.1(2)
Evidence Relied on by the Court	The individual and the guardian both presented numerous witnesses, depositions, and exhibits The trial court relied on the two doctor’s testimony that failed to show that the individual no longer needs a guardian and conservator, and also on the individual’s own testimony in which he couldn’t recall where he lived during his last trial and what year his son died and expressed no remorse for assaulting residents at his care facilities
Disposition	Petition denied; affirmed on appeal
Petitioner	The protected individual
Guardian’s Response	Opposed; testified at trial
State	Missouri
Population	Alcohol addiction
Things to Note	Great detailed explanation of testimony

Case	<i>In re Scheuer's Estate</i> , 31 Mont. 606, 79 P. 244 (Mont. 1905)
Factual Summary	The protected individual was appointed a guardian after being adjudged incompetent to manage his own affairs. Two years later, a friend of the individual petitioned for restoration and it was granted. A few months later, the former guardian, still pretending to act as guardian, presented to the court a petition for the sale of the individual's real estate, for the purpose of raising money to discharge the amount that the former guardian was owed. The petition was granted and the individual appealed.
Legal Authority Relied on by the Court	Immediately after a petition for restoration is granted, the guardian shall make his final reversion of his office by the restoration of the ward, the only power or authority possessed by the guardian is to make such report and turn over to the proper person all property with which he is chargeable on such report. <i>Curtis v. Devoe</i>
Evidence Relied on by the Court	The fact that he was restored
Disposition	Petition granted
Petitioner	The protected individual's friend
Guardian's Response	Does not say
State	Montana
Population	Does not say ("adjudged mentally incompetent to manage his own affairs")
Things to Note	Central focus of case is regarding a former guardian trying to sell the individual's real estate after the individual has been restored

NEBRASKA (0)

NEVADA (0)

NEW HAMPSHIRE (1)

Case	<i>In re Guardianship of E.L.</i> , 911 A.2D 35 (N.H. 2006).
Factual Summary	The protected individual was appointed a guardian after being diagnosed with bipolar disorder and deemed incompetent to be sentenced for his conviction of sexually assaulting his wife and being confined to the psychiatric unit at the prison. The guardian was appointed to ensure that he took his prescribed medication and followed medical advice. Two years later, he was deemed competent and transferred to the prison's general population. He currently has a treatment team who monitors his medicine and health. Ten years after the guardianship was established, the individual petitioned to terminate his guardianship. The probate court denied the petition, and the individual appealed, arguing that the probate court erred in finding the guardian proved beyond a reasonable doubt that he remains incapacitated to make his own medical decisions and that no less restrictive alternative to guardianship exists
Legal Authority Relied on by the Court	When a ward seeks to terminate guardianship, unless the motion is without merit, the court shall hold a hearing similar to that provided for in a petition for guardianship, at which the guardian shall be required to prove the ground for appointment of a guardian. The guardian must prove beyond a reasonable doubt the existence of each factor in regards to the individual's capacity to care for himself or herself or his or her estate, namely that: (1) the ward remains incapacitated; (2) guardianship is necessary; (3) no suitable alternative resources exist; and (4) guardianship is the least restrictive form of intervention.
Evidence Relied on by the Court	Psychiatrist conducted an evaluation of the individual and reported that the limited guardianship should continue The court found the reasons the limited guardianship was granted remain. The individual remains incapacitated with respect to making medical decisions. The limited guardianship is the least restrictive alternative. A power of attorney would not suffice because the individual could cancel it. There's evidence that the individual is doing better because of the support he receives in making sure he takes his medication to treat his bipolar disorder. The individual has expressed a desire to stop taking the medicine. If he does so, he could become dangerous and revert back to his condition prior to the guardianship
Disposition	Petition denied; affirmed on appeal
Petitioner	The protected individual, with counsel
Guardian's Response	Opposed
State	New Hampshire
Population	Mental illness (bipolar disorder)
Things to Note	

NEW JERSEY (1)

Case	<i>In re Rogers</i> , 5 N.J. Eq. 46, 1845 WL 1950 (N.J.Ch. 1845)
Factual Summary	The protected individual was appointed a guardian after being found to be “a lunatic.” Two years later, the individual petitioned for restoration. The court-appointed investigator recommended that the individual be restored because he was “of sound mind and memory.”
Legal Authority Relied on by the Court	1 <i>Collinson on Idiots</i> 48, § 12
Evidence Relied on by the Court	The investigator’s report, witness testimony, and the fact that the individual has, for the past eight months, managed and controlled his farming and other business
Disposition	Petition granted
Petitioner	The protected individual
Guardian’s Response	Opposed
Population	Mental illness (“found to be a lunatic”)
State	New Jersey
Things to Note	

NEW MEXICO (1)

Case	<i>In the Matter of Sanders</i> , 108 N.M. 434, 773 P.2d 1241 (N.M. 1989)
Factual Summary	The protected individual was admitted to a treatment center and appointed a treatment guardian (to terminate automatically after 1 year) after having been found incompetent to stand trial. A few months later, the individual petitioned to terminate the treatment guardianship, alleging that he had regained competence to make his own treatment decisions.
Legal Authority Relied on by the Court	“We interpret § 43-1-15(D) as requiring that the petitioner make a prima facie showing that he is capable of making informed treatment decisions in any action initiated by him seeking to terminate the appointment of a treatment guardianship during the period of the existing guardianship. To establish a prima facie case petitioner is required to establish that he is capable of understanding the proposed treatment and its consequences and capable of expressing a decision thereon.” “After the petitioner has presented a prima facie case, the state has the burden to come forward with sufficient evidence to rebut petitioner’s prima facie showing by clear and convincing evidence.” R. 11-301
Evidence Relied on by the Court	The court found, among other things, that the individual was suffering from schizophrenia; he was resistant to taking prescribed medications; he evidenced some improvement but this is due to the prescribed medication; he will cease taking appropriate medication if not required to do so; and as a result of his mental illness he is not capable of informed consent to making his own treatment decisions
Disposition	Petition denied; affirmed on appeal
Petitioner	The protected individual
Guardian’s Response	Does not say
State	New Mexico
Population	Mental illness (schizophrenia)
Things to Note	Different standard of proof: “proceedings to terminate treatment guardianships differ from proceedings seeking the initial appointment as a guardian because the state has already proven the patient’s incapacity to make informed treatment decisions, thus giving rise to a presumption that the patient’s prior condition continues to exist” Importance of case: it squarely addresses the issue of who has the burden of persuasion in a proceeding to terminate guardianship. It noted that proceedings to terminate guardianship differ from proceedings seeking the initial appointment of a guardian because presumably the need for such appointment has already been proven. This then gives rise to a presumption that the ward’s prior condition continues to exist. The court reasoned that the ward – the party against whom there is a presumption – has the burden of going forward to rebut or meet that presumption. But the burden of persuasion continues to rest upon the party upon whom it originally rested – in this case the party who originally initiated the guardianship. Cited in <i>Hedin v. Gonzalez</i>

NEW YORK (14)

Case	<i>In re Brugh. In re Mitchell</i> , 61 Hun 193, 16 N.Y.S. 551 (N.Y.S. 1891)
Factual Summary	The protected individual was appointed a guardian after “declared to be insane,” which the court found occurred as a result of special physical conditions, namely, of pregnancy and childbirth. The protected individual filed a petition for restoration
Legal Authority Relied on by the Court	New York Code Civ. Proc. § 2343
Evidence Relied on by the Court	An examiners report, which includes testimony of physicians who examined the protected individual and determined that she “is of sound mind.”
Disposition	Petition granted; affirmed on appeal
Petitioner	The protected individual
Guardian’s Response	Opposed
State	New York
Population	Mental illness (“insanity of a special type, the result of special physical conditions, namely, of pregnancy and childbirth”)
Things to Note	<p>Very interesting early hint at support for supported decision making: “why should the hypothesis be indulged that [the protected individual] will be compelled, or will attempt, to manage her estate without advice or assistance? Very few women...are accustomed to do so. [The protected individual] herself is properly conscious of her need of such assistance, and she is much entitled to it, so far as we know, as any other woman. When the occasion arises she will be at liberty to choose her own advisors and assistance, and if she should fall into the hands of evil men, equity will interfere by a process other than a commission of lunacy to relieve against fraud and undue influence.”</p> <p>This case cites a 4-part test for of recovery from a state of insanity: (1) a natural and healthy state of the emotions; (2) absence of insane ideas and delusions; (3) the possession of sufficient powers of attentive memory...; (4) practical and reasonable conduct</p> <p>This case states, “the test of a man’s right to be restored to the possession and control of his property is not his competency to manage his particular estate, be it great or small, but his restoration to mental health, and his consequent fitness for the management of the common and ordinary affairs of life”</p>

Case	<i>In re Chanler</i> , 108 Misc. 433, 178 N.Y.S. 469 (N.Y.S. 1919)
Factual Summary	The protected individual was appointed a guardian after being “adjudged insane” and committed to an insane asylum. Twenty years later, the individual filed a petition for restoration
Legal Authority Relied on by the Court	§ 2343 of the Code of Civil Procedure of New York and Matter of Blewitt, 138 N.Y. 148, 33 N. E. 820
Evidence Relied on by the Court	The protected individual is a member of the bar of New York, graduated from Columbia University, is recognized by friends and neighbors as a distinguished and useful member of the community in which he lives, is a trustee of his church, and is a member of large and well-known fraternal organizations
Disposition	Petition granted
Petitioner	The protected individual
Guardian’s Response	Does not say. But does say, “there is no opposition to the petition”
State	New York
Population	Mental illness (Admitted to an insane asylum)
Things to Note	

Case	<i>In re Morgan</i> , 144 Misc. 762, 259 N.Y.S. 389 (N.Y.S. 1931)
Factual Summary	The protected individual was appointed The Citizens’ Trust Company of Utica as “committee of his person and estate” after being adjudged insane and committed to the Utica State Hospital. Five years later, he was released from the hospital and committed into the custody and care of his wife. The Supreme Court replaced the trust company’s “committee of the person” with the individual’s wife but kept the trust company as “committee of the estate.” The protected individual has filed two petitions for discharge since then. The individual’s wife hired an attorney to counsel her in regards to these petitions for termination. The attorney

	<p>now applies for an order directing the trust company (the guardian of the estate) to pay his fee out of the funds that it oversees for the protected individual.</p> <p>Reasoning: if the guardian of the person was doubtful of the ward's recovery when the ward filed for termination, the guardian should have either left the matter to the guardian of the property or consulted the court for instructions. "In no event was she authorized to appear against her ward or involve his estate to prevent restoration of his rights"</p>
Legal Authority Relied on by the Court	The [guardian of the person] is simply a trustee, and has no interest adverse to the recovery of the sanity of the ward. <i>Ensign v. Faxon</i> , 224 Mass. 145, 150, 112 N.E. 948
Evidence Relied on by the Court	There's no statutory provision or any decision regarding whether a guardian of the person may hire counsel, without the advice of the court, to resist the ward's attempt to remove the guardianship, and make the expense a charge upon the ward's estate
Disposition	Denied attorney's request for payment for services rendered
Petitioner	The attorney for the guardian of the person (seeking payment of his legal fees)
Guardian's Response	Opposed
State	New York
Population	Mental illness ("adjudged insane")
Things to Note	<p>This case involves the paying of the guardian's attorney fees (for contesting the petition for termination) out of the protected individual's estate.</p> <p>"For the [guardian] of the person to resist the attempts of the incompetent to be relieved of his [guardianship] is inconsistent with the duty of such [guardian] 'to administer all the comforts and amusement the nature of the case will admit, or the funds of the lunatic afford'</p> <p>In no event was [the guardian of the person] authorized to appear against her ward or involve his estate to prevent restoration of his rights" <i>Mathews v. Sargent</i>, 175 Ill. App. 287, 290</p>

Case	<i>In re Ireland</i> , 246 A.D. 113, 284 N.Y.S. 502 (N.Y.S. 1936)
Factual Summary	The protected individual was appointed his father as his guardian upon being adjudged incompetent. Five years later, the protected individual filed a petition for restoration. The court denied the petition because the proof of the individual being restored is unsatisfactory
Legal Authority Relied on by the Court	Articles 81 and 81-A of the Civil Practice Act
Evidence Relied on by the Court	The court based its opinion on the petition, the superintendent's letter, and the affidavits of the two physicians. There is nothing in the physician's affidavits to indicate upon what the doctors based their opinions nor does it say when the examinations were made or their nature or extent
Disposition	Petition granted; reversed on appeal
Petitioner	The protected individual
Guardian's Response	Does not say
State	New York
Population	Mental illness ("incompetent by reason of lunacy")
Things to Note	Court: "To warrant a discharge of the committee there must be clear and satisfactory proof that the incompetent has been restored to mental soundness, and the burden of proof is on him to establish that fact. The mere discharge from a hospital where the ward was committed is not sufficient to show such restoration of the mental capacity required as to warrant the discharge of the guardianship."

Case	<i>Application of Altier</i> , 187 Misc. 958, 65 N.Y.S.2d 655 (N.Y.S. 1946)
Factual Summary	The protected individual was appointed a guardian after being adjudged "an incompetent veteran." About 14 years later, the Chief Attorney of the U.S. Veterans Administration filed a certificate that the individual was rated competent by the U.S. VA based on an examination and submitted it along with a petition to be adjudged competent. The court dismissed the request because the supporting papers were insufficient. There was no affidavit or testimony of lay witnesses as to the individual's character or behavior, nor was there a physician's certificate of competency. The certificate of the Chief Attorney for the VA is not a substitute.
Legal Authority	"To warrant a discharge of the [guardian] there must be clear and satisfactory proof that the incompetent has

Relied on by the Court	been restored to mental soundness, and the burden of proof is on him to establish that fact. The mere discharge from a hospital where the ward has been committed is not sufficient.” <i>Matter of Ireland</i> , 246 App.Div. 113, 284 N.Y.S. 502
Evidence Relied on by the Court	There was no affidavit or testimony of lay witnesses as to the individual’s character or behavior, nor was there a physician’s certificate of competency. The certificate of the Chief Attorney for the VA is not a substitute for this
Disposition	Petition denied
Petitioner	The protected individual
Guardian’s Response	Does not say
State	New York
Population	Does not say
Things to Note	VA case

Case	<i>In re Scotti</i> , 273 A.D. 992, 78 N.Y.S.2d 713 (N.Y.S. 1948)
Factual Summary	The protected individual petitioned to have his guardianship removed on the ground that he was no longer incompetent. He won and the guardian appealed
Legal Authority Relied on by the Court	<i>Matter of Gibson</i> ; <i>Matter of Ireland</i> (see case for cite)
Evidence Relied on by the Court	Does not say
Disposition	Petition granted; affirmed on appeal
Petitioner	The protected individual
Guardian’s Response	Opposed; appealed the trial court’s decision
State	New York
Population	Does not say
Things to Note	The appellate court held that the trial court should have given the guardian an opportunity to cross-examine the medical experts for the protected individual petitioner and an opportunity to have an examination of the individual conducted by her own physician

Case	<i>In re Partridge</i> , 277 A.D. 865, 98 N.Y.S.2d 301 (N.Y.S. 1950)
Factual Summary	The protected individual was appointed a guardian after being determined to be incompetent due to paralysis below the waist which requires her to be under constant physical care. She petitioned for termination because she would like control of her own checkbook and release from the control of the guardianship, which must be called on to do things for her which she can do for herself
Legal Authority Relied on by the Court	Does not say
Evidence Relied on by the Court	Physician testimony that the ward was competent at the present time and had been so for a year at the time of the hearings The individual has relatives who want to assist her. She is thus assured of attention to her needs and welfare and any recurrence of a mental condition would be promptly detected and treated. Also, the individual is not, in the event of any recurrence, to inflict harm upon herself or others. Further, her property is in the main outside of her control because she is the beneficiary of trusts which she cannot touch. It appears that the individual is intelligent and understands her investments and property, and for the time being is entirely rational
Disposition	Petition denied; reversed and modified order on appeal
Petitioner	The protected individual
Guardian’s Response	Does not say
State	New York
Population	Physical disability (paralysis below the waist)
Things to Note	Court: “We include to the view that [the individual] should be given the encouragement and opportunity that recognition of competency and enlarged responsibility for herself would give. We think that [the individual]s mental health might be well served by giving her the measure of self-dependence which she appears capable of assuming”

Case	<i>Application of George Abrams, an Incompetent Person</i> , 25 Misc.2d 610, 199 N.Y.S.2d 894 (N.Y.S. 1960)
Factual Summary	The protected individual was adjudged incompetent due to mental illness.
Legal Authority Relied on by the Court	The common law (<i>Matter of Barnes</i> , 185 Misc. 215, 220, 56 N.Y.S.2d 386, 390)
Evidence Relied on by the Court	There is nothing presented to show that the petitioner has recovered. The release from a state institution does not suffice. The conclusory statement of a physician who found the individual to be free of the symptoms of his illness and able to handle his own affairs is insufficient because there is no indication that the physician specializes in the treatment and care of persons with mental illness, and the doctor did not state the facts upon which he based his opinion
Disposition	Petition denied; affirmed on appeal
Petitioner	The protected individual
Guardian's Response	Does not say
State	New York
Population	Mental illness
Things to Note	

Case	<i>In the Matter of Donald F.L.</i> , 242 A.D.2d 536, 662 N.Y.S.2d 75 (N.Y.S. 1997)
Factual Summary	The protected individual filed a petition to discharge his guardian. The trial court denied the motion because the individual failed to follow the court's direction to submit to an examination before a court-appointed psychiatrist and to appear for a deposition by the respondent.
Legal Authority Relied on by the Court	Mental Hygiene Law § 81.36; cf., <i>Matter of O'Hear</i> , 219 A.D.2d 720, 631 N.Y.S.2d 743
Evidence Relied on by the Court	There is insufficient evidence to support a finding that the individual is able to provide for his personal needs or manage his affairs
Disposition	Petition denied; affirmed on appeal
Petitioner	The protected individual
Guardian's Response	Does not say
State	New York
Population	Does not say
Things to Note	

Case	<i>In re Penson, etc.</i> , 289 A.D.2d 155, 735 N.Y.S.2d 51 (N.Y.S. 2001)
Factual Summary	The incapacitated individual was restored to capacity upon a record establishing that he lives independently with his wife in Florida, understands his limitations, and has a plan in place to help him carry out his life.
Legal Authority Relied on by the Court	Mental Hygiene Law article 81
Evidence Relied on by the Court	The individual established that he lives independently with his wife, understands his limitations, and has sought the assistance of an attorney and financial professionals in formulating a financial plan that secures his future and provides him with a degree of self-determination and participation in the decisions affecting his life. Also, the court observed the individual who testified under oath.
Disposition	Petition granted; affirmed on appeal
Petitioner	The protected individual
Guardian's Response	Does not say. Note: The interim guardian supported
State	New York
Population	Does not say
Things to Note	Case is a good example of supported decision making

Case	<i>In the Matter of Abraham S.; Paul S., et al.</i> 291 A.D.2d 452, 737 N.Y.S.2d 542 (N.Y.S. 2002)
Factual Summary	The protected individual was appointed a guardian pursuant to Mental Hygiene Law article 81, after his two sons petitioned for guardianship. One year later, the individual moved to terminate the guardianship. The

	two sons did not submit any papers or evidence in opposition to their father's motion
Legal Authority Relied on by the Court	Mental Hygiene Law article 81
Evidence Relied on by the Court	At the hearing, the court noted "there seems to be no family opposition to this"
Disposition	Petition granted; affirmed on appeal
Petitioner	The protected individual
Guardian's Response	Does not say
State	New York
Population	Does not say
Things to Note	

Case	<i>In the Matter of Marvin W.</i> , 306 A.D.2d 289 (2003)
Factual Summary	The protected individual filed a motion to terminate the guardianship. The trial court denied the motion without a hearing. The appellate court reversed, stating that the trial court erred in denying the motion to terminate without conducting a hearing, because Mental Hygiene Law § 81.36(c) requires that a hearing be held to determine whether a guardianship should be terminated
Legal Authority Relied on by the Court	Mental Hygiene Law § 81.36(c) requires that a hearing be held to determine whether a guardianship should be terminated
Evidence Relied on by the Court	Evidence not sufficient to meet the clear and convincing standard to satisfy the burden of proof of the person objecting to the termination of the guardianship.
Disposition	Petition denied; reversed on appeal and remitted for a new determination after a hearing
Petitioner	The protected individual
Guardian's Response	Does not say
State	New York
Population	Does not say
Things to Note	

Case	<i>In re Guardianship of Dameris L.</i> , 956 N.Y.S.2d 848 (Sur. 2012)
Factual Summary	Protected individual, a female in her twenties, had her husband and mother appointed co-guardians based on "mild to moderate mental retardation" and "her high dependence on others for medical and financial matters." Shortly after, the individual's husband and co-guardian petitioned to revoke the mother's letters as co-guardian because they wanted to move. The court terminated the guardianship because it found a network of supported decision making was in place to support the individual, thus eliminating the need for a guardianship and using the least restrictive alternative standard.
Legal Authority Relied on by the Court	Article 12 of the UN Convention on the Rights of Persons with Disabilities § 81.03: in determining the conditions under which a guardian may be appointed, the court is specifically directed to consider "the sufficiency and reliability of available resources provide for personal needs or property management without the appointment of a guardian"
Evidence Relied on by the Court	The court found that guardianship is no longer warranted because there is now a system of supported decision making in place that constitutes a less restrictive alternative to guardianship The court found that the individual demonstrated that she is able to exercise her legal capacity, to make and act on her own decisions, with the assistance of a support network which has come together for her since she first appeared in court
Disposition	Petition granted
Petitioner	Co-guardian (the protected individual's husband)
Guardian's Response	Supported by both co-guardians
State	New York
Population	Mental illness
Things to Note	Court: Proof that a person with an intellectual disability needs a guardian must exclude the possibility of that person's ability to live safely in the community supported by family, friends, and mental health professionals

Case	<i>In the Matter of the Application of Buffalino</i> , 39 Misc.3d 634, 960 N.Y.S.2d 627 (N.Y.S. 2013)
Factual Summary	The protected individual, a man in his sixties, consented to appointment of a guardian. He later petitioned for termination of the guardianship and the guardian petitioned for expansion of his powers as guardian. The guardian's petition was denied
Legal Authority Relied on by the Court	"A consent guardianship is created on the basis of the individual's agreement thereto and it does not morph into a non-consent guardianship with its inherent finding of incapacity because an emergency occurs and an expansion of powers becomes necessary"
Evidence Relied on by the Court	Because this is a consent guardianship and there has been no finding of incapacity, the court must treat the guardian's application as a new guardianship petition
Disposition	Petition granted
Petitioner	Mental Hygiene Legal Services (MHLS) moved for order discharging voluntary guardianship. Successor guardian moved for order determining ward to be incapacitated and appointing a guardian
Guardian's Response	Opposed
State	New York
Population	Consented to guardianship
Things to Note	This case highlights the difficulties inherent in consent guardianships when there has been no finding of incapacity.

NORTH CAROLINA (0)

NORTH DAKOTA (2)

Case	<i>In the Matter of the Guardianship of Renz</i> , 507 n.w.2D 76 (1993)
Factual Summary	The protected individual has a long history of alcohol abuse and is an admitted alcoholic. She was appointed a limited guardian over her finances and full guardianship over her living arrangements after a rehabilitation center refused to admit her again unless a guardian was appointed for her. One year later, the individual petitioned the court for termination of the guardianship, based on her recent sobriety.
Legal Authority Relied on by the Court	The court considered prognostic evidence in proceedings which bear on an individual's rights. See <i>Steckler v. Steckler</i> , 492 N.W.2d 76, 81 (N.D. 1992)
Evidence Relied on by the Court	The individual is unable to care for her personal cleanliness or that of her home, even with support services; several witnesses testified as to the unsanitary condition of her home and failure to attend to her incontinence
Disposition	Petition denied; affirmed on appeal
Petitioner	The protected individual
Guardian's Response	Does not say
State	North Dakota
Population	Alcohol abuse (hospital refused to admit her unless guardian appointed for her)
Things to Note	Appellate standard of review: clearly erroneous Court: "the fact that [the individual] has maintained sobriety while in a structured setting does not in itself imply that she no longer is an incapacitated person"

Case	<i>In re Guardianship and Conservatorship of G.L.</i> , 793 N.W.2d 192 (N.D. 2011).
Factual Summary	Protected individual was appointed a guardian when he was involuntarily admitted to the psych unit, based on the onset of dementia and cognitive decline. Less than one year after guardianship was established, the guardian and Protective Services petitioned to terminate, based on a second-opinion neuropsychologist's report.
Legal Authority Relied on by the Court	A guardian and a conservator are entitled to reasonable compensation for services under N.D.C.C. §§ 30.1-28-12 and 30.1-29-14, and a district court has discretion to determine the amount of reasonable compensation
Evidence Relied on by the Court	The second-opinion neuropsychologist's report stating that the individual's cognitive functioning was improved and his thought disorder was controlled on medication
Disposition	Petition granted

Petitioner	Guardian
Guardian's Response	Supported
State	North Dakota
Population	Older individual (dementia)
Things to Note	

OHIO (16)

Case	<i>Rhoads v. Rhoads</i> , 29 Ohio App. 449, 163 N.E. 724 (Ohio App. 1927)
Factual Summary	The protected individual, an 80-year-old man, was appointed his son as his guardian after being adjudged incompetent due to an accident he suffered by falling on some ice. Two years later, the individual filed a petition to terminate the guardianship, arguing that he is not currently, and was never, an incompetent person and he was unable to appear on his behalf at the hearing for appointment of a guardian.
Legal Authority Relied on by the Court	“The rule is settled in Ohio that a non-expert or lay witness should not be permitted to testify or give his opinion as to the mentality or lack of mentality of a ward until he shall have testified to facts within his knowledge, tending at least in some degree to indicate mental capacity or the lack of same”
Evidence Relied on by the Court	All the witnesses testifying for either party were lay witnesses. “Witnesses were permitted to express an opinion when they had not testified to any facts within their knowledge tending to indicate mental weakness, and no witness was asked to base his opinion wholly upon the facts and circumstances concerning the ward which he had detailed to the court.” No witness testified to any instance where the protected individual had made a bad deal, lost a dollar, or failed or neglected in any way to properly conserve and take care of his property and estate “The individual testified at trial and was cross-examined, and he showed a mind as clear as that of any other ordinary person who possesses the same opportunities and surroundings as him. He testified to his age, the day, month, and year of his birth, gave the names of his children and where they live, detailed where he resided in different periods of his life, and described the property now in the possession of his guardian and placed a value upon it.”
Disposition	Petition denied; reversed on appeal
Petitioner	The protected individual
Guardian's Response	Opposed
State	Ohio
Population	Older individual
Things to Note	

Case	<i>In the Matter of the Guardianship of Barr</i> , 156 N.E.2d 357 (1958)
Factual Summary	The protected individual was appointed a guardian upon petition by her next of kin, due to her advanced age and physical disability. She consented to the appointment of the guardian. Five years later, she petitioned for termination.
Legal Authority Relied on by the Court	To terminate a guardianship under Revised Code § 2111.47, there must be satisfactory proof that the necessity for the guardianship no longer exists or that the letters of appointment were improperly issued. <i>In re Williams' Guardianship</i> , Ohio App., 151 n.e.2D 602, 603
Evidence Relied on by the Court	The individual testified, stating that she would not be physically able to care for her own affairs and that she wanted to give her nephew POA to represent her. The court-appointed doctor examined the individual and testified that she was mentally competent but physically incompetent to handle her own affairs without assistance.
Disposition	Petition denied
Petitioner	The protected individual
Guardian's Response	Does not say
State	Ohio
Population	Older individual
Things to Note	Individual initially consented to guardian; guardian appointed due to physical impairments and old age

Case	<i>In the Matter of the Guardianship of Williams</i> , 151 N.E.2d 602, 78 Ohio Law Abs. 98 (1958)
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Factual Summary	The protected individual filed for termination of guardianship alleging that the guardian was appointed for him on the sole ground that he was elderly, infirm and had failing eyesight, and he was persuaded to consent to the guardianship because he thought it was necessary in order to get a divorce
Legal Authority Relied on by the Court	In a consensual guardianship, the individual cannot terminate the guardianship by merely withdrawing his consent. Revised Code § 2111.47 provides that the court has authority to determine in a proper hearing whether the necessity for the guardianship continues to exist
Evidence Relied on by the Court	Court: “The evidence supports the finding of the court” and “the necessity for the continuance of the guardianship is amply shown by the record in this case”
Disposition	Petition denied; affirmed on appeal
Petitioner	The protected individual
Guardian’s Response	Does not say
State	Ohio
Population	Older individual
Things to Note	Individual initially voluntarily consented to the appointment of a guardian

Case	<i>In re Guardianship of Nitschke</i> , 113 Ohio App. 243, 117 N.E.2d 628 (Ohio App 1961)
Factual Summary	The protected individual was adjudicated to be mentally incompetent and appointed a plenary guardian upon application of his wife. One year later, the protected individual filed an application for restoration. The probate court denied the petition and the individual appealed, arguing that the decision is against the weight of evidence and contrary to law because all of the medical witnesses testified that he had been restored to competency and mentally and physically able to care for himself and property.
Legal Authority Relied on by the Court	Upon satisfactory proof that the necessity for guardianship no longer exists, the probate court shall order that the guardianship terminate. §2111.47 of the Revised Code The burden of establishing capacity rests on the ward, and before the guardianship will be determined he must show that he is mentally stronger and better able to manage his affairs than he was at the time of his appointment. 26 Ohio Jurisprudence (2d), 538, Guardian and Ward, § 230
Evidence Relied on by the Court	Testimony of six witnesses, including two psychiatrists called by the protected individual, one psychiatrist called by the guardian, protected individual’s wife, and the protected individual himself
Disposition	Petition denied; reversed and remanded on appeal
Petitioner	The protected individual
Guardian’s Response	Took a “position of strict neutrality” and neither supported nor opposed the termination
State	Ohio
Population	Alcohol and drug abuse (Nervous breakdown, brought about by marital stress, business pressures, and alcohol and drug abuse)
Things to Note	Appellate court lays out a test: “As we understand it, when an application for restoration to competency is made, the test is whether the ward has made substantial progress and whether he is at present competent to manage his affairs, both personal and financial. Should the condition recur at some future time, it will be sufficient at that time to bring a new proceeding and cause a new examination to be made.”

Case	<i>In re Guardianship of Love</i> , 19 Ohio St.2d 111, 249 N.E.2d 794 (Ohio St. 1969)
Factual Summary	The protected individual was appointed a guardian after the probate court declared her to be an incompetent person for reasons of physical and mental disability. Two years later, the individual was restored and the guardianship was terminated after the court found the individual had recovered from his mental disability. The guardian then appealed from the order finding that the individual had regained his mental competency and terminating the guardianship
Legal Authority Relied on by the Court	§ 2101.42; § 2111.47
Evidence Relied on by the Court	The guardian is not an interested party whose rights are affected by the Probate Court’s decision, nor is she an aggrieved party under the restoration order. The record fails to show any interest of the guardian adverse to the ward in the order of termination
Disposition	Petition granted; affirmed on appeal
Petitioner	The protected individual
Guardian’s Response	Opposed; appealed the trial court’s decision
State	Ohio

Population	Does not say (“incompetent for reasons of mental and physical disability”)
Things to Note	Issue: the guardian’s right to appeal an order terminating the guardianship and restoring the individual

Case	<i>In re Guardianship of Sadie</i> , 1976 WL 189179 (Ohio App. 11 Dist. 1976)
Factual Summary	Facts focus on the guardian’s appeal of the trial court’s decision to terminate the guardianship due to satisfactory proof that the ward regained his mental competency.
Legal Authority Relied on by the Court	The guardian does not have standing to appeal the judgment terminating the guardianship where there is satisfactory proof that the ward has regained his mental competency and the necessity for the guardianship has ceased to exist, and where the records does not reflect any interest of the guardian adverse to the ward in such order of termination, or show that the guardian has been aggrieved in any manner by the order of termination. <i>In re Guardianship of Love</i> (1969), 19 Ohio St. 2d 111
Evidence Relied on by the Court	Court: “The individual was alert and assertive in her response to counsel’s and the Court’s questions”
Disposition	Petition granted; affirmed on appeal
Petitioner	Does not say
Guardian’s Response	Opposed; appealed the trial court’s decision
State	Ohio
Population	Does not say
Things to Note	

Case	<i>In re Guardianship of Gallagher</i> , 2 Ohio App.3d 218, 441 N.E.2d 593 (Ohio App. 1981)
Factual Summary	The protected individual was appointed a plenary guardian following a finding of incompetency due to “advanced age and physical infirmity.” One year later, the individual petitioned to terminate the guardianship, arguing that she is mentally competent to take care of herself.
Legal Authority Relied on by the Court	R.C. 2111.02; R.C. 2111.47; <i>In re Irvine</i> (1943), 72 Ohio App. 405, 52 N.E.2d 536
Evidence Relied on by the Court	The testimony of a priest who knew the individual well and stated that “she is of sound judgment and good reasoning;” a doctor who examined the individual testified that he could see sometime in the future a guardian of the person would be required, but so far the individual was cooperative.
Disposition	Petition denied; reversed on appeal
Petitioner	The protected individual
Guardian’s Response	Opposed
State	Ohio
Population	Older individual
Things to Note	

Case	<i>Old Phoenix National Bank of Medina v. Oenslager</i> , 1987 WL 18683 (Ohio App. 9 Dist 1987)
Factual Summary	The protected individual was found to be “incompetent by reason of advanced age and mental and physical disability,” and was appointed a guardian. One year later, the guardian petitioned to terminate the guardianship. The court found that the individual no longer needed a guardian by reason of any mental or physical disability, and ordered that the guardianship be terminated
Legal Authority Relied on by the Court	R.C. 2101.27 governs a proceeding to terminate the guardianship of an incompetent “The court is under a mandatory duty to terminate the guardianship when there is satisfactory proof presented that the necessity for the guardianship no longer exists.” <i>In re Guardianship of Breece</i> (1962), 173 Ohio St. 542, 556
Evidence Relied on by the Court	The protected individual and her doctor testified
Disposition	Petition granted; affirmed on appeal
Petitioner	The guardian
Guardian’s Response	Supported

State	Ohio
Population	Older individual
Things to Note	

Case	<i>In the Matter of the Guardianship of Stiver</i> , 1990 WL 94245 (Ohio App. 12 Dist. 1990)
Factual Summary	The protected individual was appointed his son as his guardian upon the son's petition, at which the trial court found the individual was incompetent by reason of "advanced age and mental disability." One year later, the individual filed a motion to terminate the guardianship, alleging that the disability which required the guardianship had been removed, or in the alternative, that the letters of guardianship were improperly issued.
Legal Authority Relied on by the Court	R.C. 2111.47
Evidence Relied on by the Court	The trial court found that the individual does not comprehend financial information and concluded that others are trying to deceive him; that if the individual were living independently, he would not take his medicines and would not adequately care for personal needs; and that his character is such that he would not accept outside services to fulfill his personal needs. The trial court also noted that the individual's aggressive personality hurts his case – he struck several people with his cane, and has threatened others with death or serious bodily harm
Disposition	Petition denied; affirmed on appeal
Petitioner	The protected individual
Guardian's Response	Does not say
State	Ohio
Population	Older individual
Things to Note	Court: "[the individual] is essentially arguing that his witnesses were more credible. However, matters as to the credibility of the witnesses are for the trier of fact to decide."

Case	<i>In the Matter of the Guardianship of Anderson</i> , 1993 WL 544419 (Ohio App. 5 Dist. 1993)
Factual Summary	The protected individual was appointed a guardian of the person and estate. Two years later, the individual petitioned for termination of the guardianship. The trial court found the individual to continue to be incompetent and the need for guardianship to continue to exist.
Legal Authority Relied on by the Court	R.C. 2111.47
Evidence Relied on by the Court	The individual testified; the guardian testified that there has been no change with daily ups and downs and that a guardianship was still necessary; the individual's doctor submitted a medical report to the court in which he stated that the individual was mentally alert and coherent but in poor physical condition which can prevent her from taking care of herself and others. The evidence presented was not substantial and overwhelming to the extent to overcome the presumption and to satisfy the court that the necessity for the guardianship no longer exists. Court: "the most telling evidence is [the individual's] own testimony wherein she calls her guardian a crook and states that the trial court should go down on his knees at church and ask for forgiveness for what he has done to her"
Disposition	Petition denied; affirmed on appeal
Petitioner	The protected individual
Guardian's Response	Opposed; testified at trial
State	Ohio
Population	Does not say
Things to Note	Appellate standard of review: whether the trial court erred by the manifest weight of the evidence in denying the request to terminate the guardianship. "A judgment supported by some competent, credible evidence will not be reversed as against the manifest weight of the evidence." <i>C.E. Morris Company v. Foley Construction Company</i> (1978), 54 Ohio St.2d 279

Case	<i>Brown v. Haffey</i> , 96 Ohio App.3d 724, 645 N.E.2d 1295 (1994)
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Factual Summary	The protected individual, an elderly woman, was appointed a plenary guardian pursuant to a court-ordered psychiatric examination indicating mental incompetency due to organic brain syndrome, an irreversible condition. Twelve years later, the protected individual filed a motion to terminate the guardianship. The court granted the petition because of a psychiatric examination that indicated “insufficient evidence to support the need for a guardianship based upon mental disability.”
Legal Authority Relied on by the Court	R.C. 2111.49(C) shifts the burden of proving competency from the ward to the guardian. Hence, guardians who possess a good faith belief that termination is not in the best interest of the ward or the estate now have to testify should they wish to prove continuing incompetency by clear and convincing evidence Pursuant to C.P.Sup.R. 40, the probate division of the court of common pleas has discretionary power with regard to authorizing payment of attorney fees
Evidence Relied on by the Court	The psychiatric examination
Disposition	Petition granted; affirmed on appeal
Petitioner	The protected individual
Guardian’s Response	Does not say
State	Ohio
Population	IDD (mental incompetency due to organic brain syndrome, an irreversible condition)
Things to Note	The guardian, as fiduciary, has two procedural paths open to him upon receipt of notice of motion to terminate guardianship: (1) contest the motion or (2) order psychiatric examination

Case	<i>In the Matter of the Guardianship of Smead</i> , 1997 WL 50144 (Ohio App. 12 Dist. 1997)
Factual Summary	The protected individual was appointed her daughter as her guardian due to “mental impairment because of physical illness.” Less than one year later, the individual’s son filed a motion to terminate the guardianship
Legal Authority Relied on by the Court	R.C. 2111.47
Evidence Relied on by the Court	Both the protected individual and her son testified in favor of terminating. The guardian testified in opposition of terminating. The protected individual introduced a deposition by a doctor who treated the individual in the past who opined that she was competent when he last saw her, one year prior to the trial, but said he didn’t know her present condition at the time of trial. The court investigator testified that he still believed a guardianship was necessary
Disposition	Petition denied; affirmed on appeal
Petitioner	The protected individual’s son
Guardian’s Response	Opposed; testified at trial
State	Ohio
Population	“Mental impairment because of physical illness”
Things to Note	Cites <i>In re: Breece</i> (1962)

Case	<i>In re: the Guardianship of Morton</i> , 2006 WL 574404 (Ohio App. 2 Dist. 2006)
Factual Summary	The protected individual, a woman in her sixties suffering from severe Parkinson’s disease, was appointed her daughter as her guardian after her daughter petitioned, contending the mother was incompetent. Less than one year later, counsel for the individual petitioned to terminate the guardianship on the basis that the individual’s condition had improved, including an evaluation form completed by a doctor who stated the individual was not mentally impaired and recommended termination.
Legal Authority Relied on by the Court	R.C. 2111.47
Evidence Relied on by the Court	The neuropsychologist who evaluated the individual recommended that guardianship continue.
Disposition	Petition denied; affirmed on appeal
Petitioner	The protected individual, with counsel
Guardian’s Response	Opposed; testified at trial
State	Ohio
Population	Parkinson’s disease
Things to Note	

Case	<i>In the Matter of Guardianship of Clara Michael</i> , Unpublished decision, 2007 WL 3293364 (Ohio App.).
Factual Summary	The protected individual was appointed her two children as co-guardians of the person and two other individuals as co-guardians of the estate. Over the next few years, the individual was evaluated by doctors six times and many motions were filed for a less restrictive alternative and for termination of the guardianship. Five years after the guardianship was established, the individual's children and co-guardians of the person filed a petition to terminate the guardianship and a motion for a less restrictive alternative. Thereafter, the individual was involved in a car accident. One co-guardian of the estate objected to termination because the individual was a victim of exploitation before the guardianship was established. The court denied both motions but appointed the individual's daughter and co-guardian of the person as sole guardian of the person and the estate. The son and daughter appealed. The appellate court affirmed because the appellants failed to present evidence to counterbalance the presumption of incompetence or leave the case in equipoise.
Legal Authority Relied on by the Court	R.C. 2111.47: a guardianship may be terminated upon satisfactory proof that the necessity for the guardianship no longer exists
Evidence Relied on by the Court	At the hearing, the individual testified. She was able to recite her address but could not name her son. She did not recognize the co-guardian of the estate. She said she had eight children but she actually has six. However, she was able to name all six children. A doctor testified that the individual's memory was good but she had memory decline, she could make her own decisions and was competent, but could be easily intimidated Court: "the fact that [the ward] could not identify her family members or express any ability to manage funds or have any understanding as to the value of her funds and who paid her bills for years was convincing evidence that she could not take proper care of herself or her property."
Disposition	Petition denied; affirmed on appeal
Petitioner	Co-guardians
Guardian's Response	One co-guardian opposed
State	Ohio
Population	Does not say
Things to Note	There is a rebuttable presumption that once a person is found to be incompetent that he or she remains incompetent. <i>In re Breece</i> , 173 Ohio St. 542, 553, 184 N.E.2d 386 (Ohio St. 1962). The evidence necessary to satisfy the requirement of "satisfactory proof": where the presumption is rebuttable, the production of evidence disputing or contrary to the presumption causes the presumption to disappear where such evidence to the contrary either counterbalances the presumption or even when it is only sufficient to leave the case in equipoise The court found that the expert physician's testimony regarding his examination in April was not as relevant as the court's observations of the individual at the hearing in December

Case	<i>Guardianship of the Person and Estate of Betty Jean DiCillo</i> , 2007 WL 1113964 (Ohio App. Ct. 2007).
Factual Summary	The protected individual, an elderly woman, was appointed her son and daughter as her co-guardians based on evidence of dementia and her mental and physical incompetency to care for herself. Two years later, the protected individual petitioned to terminate the guardianship based on the ground that she was no longer under a disability. The trial court denied the petition and the appellate court affirmed.
Legal Authority Relied on by the Court	Pursuant to R.C. 2111.47, a guardianship may be terminated upon satisfactory proof that the necessity for the guardianship no longer exists There is a rebuttable presumption that once a person is found to be incompetent that he or she remains incompetent. <i>In re Breece</i> , 173 Ohio St. 542, 553, 184 N.E.2d 386 (Ohio St. 1962) Where there is credible evidence in the record to support a finding that the ward is incompetent by reason of vascular dementia, and that the ward is incapable of properly caring for herself, the trial court's decision denying termination of the guardianship must be upheld. <i>See In re Guardianship of Morton</i> , 2d Dist. No.2005-CA-22, 2006-Ohio-1139, at 18
Evidence Relied on	Expert testimony from a psychiatrist who examined the individual prior to the hearing stating that the

by the Court	individual continued to be mentally impaired and suffer from dementia – She is unable to make sound decisions regarding her medical care, living arrangements, and finances; and incapable of caring for herself During trial, the court observed the individual’s inability to stay focused during questioning Note – the protected individual presented no contrary expert medical testimony but rather relied on lay witness testimony, such as her former financial advisor and her brother, that she was competent and able to carry on relevant conversation. The court determined that this did not refute the expert testimony that she was mentally impaired and incapable of caring for herself
Disposition	Petition denied; affirmed on appeal
Petitioner	The protected individual and her daughter
Guardian’s Response	Supported
State	Ohio
Population	Older individual (dementia)
Things to Note	There is a rebuttable presumption that once a person is found to be incompetent that he or she remains incompetent. <i>In re Breece</i> , 173 Ohio St. 542, 553, 184 N.E.2d 386 (Ohio St. 1962) The protected individual’s daughter testified that she would help her mother if the guardianship was terminated

Case	<i>In the Matter of Guardianship of Weller</i> , 2011 WL 5453000 (Ohio App. 2 Dist. 2011)
Factual Summary	The protected individual had a stroke and suffered from aphasia (the inability to express oneself or to understand what people are saying). The probate court appointed him a guardian of the estate after determining that he was competent as to his person but incompetent as to his estate, upon a petition filed by the individual’s friend. The individual appealed the order subjecting him to a guardianship of his estate, which was pending at the time of this case. Then the individual filed a motion to terminate the guardianship pursuant to R.C. 2111.47, which the probate court denied as premature. The probate court eventually terminated the guardianship and restored the individual.
Legal Authority Relied on by the Court	R.C. 2111.47
Evidence Relied on by the Court	Does not say
Disposition	Petition for guardianship granted (petition in this case was denied as premature; appeal dismissed as moot due to the probate court’s order terminating the guardianship)
Petitioner	The protected individual
Guardian’s Response	Does not say
State	Ohio
Population	Stroke
Things to Note	This case focuses primarily on the issue of mootness in regards to the individual’s appeal of his guardianship order

OKLAHOMA (2)

Case	<i>In re: Revard’s Guardianship</i> , 134 Okla. 202, 272 P. 480 (Okla. 1928)
Factual Summary	The protected individual was adjudged incompetent and appointed a guardian. Six years later, the individual filed a petition for restoration. The trial court found that he was restored to mental capacity but it postponed and suspended judgment until the obligations of the guardians of the ward were satisfied and paid. The appellate court determined that this was not within the trial court’s power. The guardian opposed because he was personally liable for the individual’s debts.
Legal Authority Relied on by the Court	Court: “The statutes do not authorize or empower the appointment of a guardian merely because the individual may be negligent of his debt or heavily indebted, neither does § 1452 or any other statute make it a condition precedent to the restoration and discharge from guardianship that the debts personally assumed or obligated by the guardian on behalf of the ward be paid.”
Evidence Relied on by the Court	The district court found the individual to be mentally competent but did not restore him due to the personal debt that he owed to his guardians. The appellate court found this to be beyond the court’s power and not

	based on the issues in the case.
Disposition	Petition denied; reversed on appeal
Petitioner	The protected individual
Guardian's Response	Opposed
State	Oklahoma
Population	Does not say
Things to Note	

Case	<i>Mellott v. Lambert</i> , 161 Okla. 276, 18 P.2d 532 (Okla. 1933)
Factual Summary	The protected individual, a woman in her thirties, was appointed a guardian based on a petition that the individual herself joined in. One of the reasons for the guardianship was because she was “a spendthrift.” Three years later, the individual filed a petition for restoration, which the court denied.
Legal Authority Relied on by the Court	§1452 of C.O.S. 192 prescribes restoration procedure. It states, “the petition shall be verified, and shall state that such person is then sane. If it be found that the petitioner be of sound mind and capable of taking care of himself and his property, his restoration to capacity shall be adjudged and the guardianship of such person, if such person be not a minor, shall cease.”
Evidence Relied on by the Court	Uninterested witnesses testified on behalf of the individual that she is competent to transact business and handle her own affairs. The individual herself testified and was observed by the court, which noted that she is a spendthrift and there is a risk that she will throw away her money but “that is her affair” and it is not grounds to put a person under guardianship.
Disposition	Petition denied; reversed on appeal; affirmed on second appeal
Petitioner	The protected individual
Guardian's Response	Opposed
State	Oklahoma
Population	Does not say (“a spendthrift”)
Things to Note	

OREGON (2)

Case	<i>In re Sneddon</i> , 76 Or. 470, 149 P. 527 (Or. 1915)
Factual Summary	The protected individual, a man in his seventies, was appointed his wife, son, and daughter as his guardians after being adjudged by the court to be “of unsound mind.”
Legal Authority Relied on by the Court	§ 3 of chapter 342, Laws Or. 1913
Evidence Relied on by the Court	The court relied on testimony from the guardians, family members, and expert testimony from examining physicians Court: “Neither in the motion filed in that court to have the guardians discharged after the jury had determined [the ward] to be sane nor in the joint supplemental affidavit made by [the ward] and his son is it stated that the petitioner is capable of conducting his own affairs”
Disposition	Petition granted; reversed on appeal; affirmed on second appeal
Petitioner	The protected individual
Guardian's Response	Opposed
State	Oregon
Population	Older individual
Things to Note	Court: too much importance was attached by the county court (appellate court) to the verdict and decree of the circuit court (trial court)

Case	<i>Brown v. MacDonald and Associates, LLC</i> , 260 Or.App. 275, 317 P.3d 301 (Or. App., 2013)
Factual Summary	The protected individual, an elderly gentleman, was appointed a conservator after the court found him to be financially incapable under ORS 125.400. His son filed the petition soon after the individual married his third wife, who had criminal convictions for fraud and identity theft. Three years later, the protected individual filed a motion to terminate, contending he was no longer financially incapable. He lost and appealed, asserting four assignments of error of the probate court. The appellate court reserved because it

	found the record was legally insufficient to support the probate court’s conclusion that the fiduciary proved by clear and convincing evidence that the protected individual continues to be financially incapable. The fiduciary who opposed the motion to terminate the conservatorship failed to prove, by clear and convincing evidence that the protected individual continued to be financially incapable.
Legal Authority Relied on by the Court	The fiduciary has the burden of proving by clear and convincing evidence that a protected person continues to be incapacitated or financially incapable if a motion to terminate a protective proceeding is filed and the fiduciary opposes the motion. ORS §125.090(1) ‘Financially incapable’ means a condition in which a person is unable to manage financial resources of the person effectively for reasons including, but not limited to, mental illness, mental retardation... ‘Manage financial resources’ means those actions necessary to obtain, administer and dispose of real and personal property, intangible property, business property, benefits and income. ORS § 125.005(3)
Evidence Relied on by the Court	The court relied on expert testimony from the protected individual’s CPA, doctors, and acquaintances that the he was capable of managing his financial affairs, was living within his means, and had adequate financial security. Factors presented by the conservator, namely that the protected person was at risk of financial exploitation, had negligently managed his finances, and had failed to cooperate with his conservator, were not explicitly related to the protected person's lack of legal capacity and could not serve as a basis for continuing conservatorship.
Disposition	Petition denied; reversed on appeal
Petitioner	The protected individual and his wife
Guardian’s Response	Opposed
State	Oregon
Population	Older individual
Things to Note	The appellate court overturned the probate court’s decision to deny the petition to terminate because “mere evidence that a person was at risk of exploitation or had made bad financial decisions does not support a determination that a person is ‘financially incapable’ unless there is also evidence that the risk of exploitation or bad financial management was <i>caused by the person’s lack of capacity.</i> ” The protected individual resisted the conservatorship heavily in various ways over the two years Note: only a financial conservatorship

PENNSYLVANIA (7)

Case	<i>Decker’s Case</i> , 36 Pa.C.C. 573, 1909 WL 2932 (Pa.Com.Pl. 1909)
Factual Summary	The protected individual was appointed the Bellefonte Trust Company as his guardian after being released from a psychiatric home. Less than one year later, the individual petitioned for restoration. The guardian and the individual’s wife and children opposed the petition.
Legal Authority Relied on by the Court	§ 7 of the Act of May 28, 1907
Evidence Relied on by the Court	The individual called 16 lay witnesses and two physicians. He also testified himself, which showed the court that he was responsive, lucid, and logical. He gave a satisfactory explanation for the difference in his present conduct and that immediately following his commitment in the psychiatric home and explained that his former erratic conduct was “the result of a severe attack of sickness.”
Disposition	Petition granted
Petitioner	The protected individual
Guardian’s Response	Opposed
State	Pennsylvania
Population	Mental illness
Things to Note	

Case	<i>In re Tressler</i> , 114 Pa.Super. 1, 173 A. 737 (Pa.Super. 1934)
Factual Summary	The protected individual, a war veteran injured in service, was appointed a guardian after being declared incompetent to manage his affairs. The protected individual has filed numerous petitions for restoration and for discharge of the guardian, all of which have been denied. The individual presently argues abuse of

	discretion by the lower court for dismissing his petition because it was filed within the time period that the court had established which was a reasonable time in which the matter may remain in abeyance.
Legal Authority Relied on by the Court	50 P.S. § 963
Evidence Relied on by the Court	Court: “there is nothing before us that would indicate that there has been any abuse of discretion by the lower court. The man each month gets his full allotment, he is not hurt by the delay, and the court may interpose a reasonable time in which the matter may remain in abeyance.”
Disposition	Petition denied; affirmed on appeal
Petitioner	The protected individual
Guardian’s Response	Does not say
State	Pennsylvania
Population	Does not say
Things to Note	Court: “while the person declared incompetent may ask to have a discharge of his guardian and a finding of his regained ability at any time, this does not imply that the ward can annoy the court by frequent applications.”

Case	<i>In re Post</i> , 364 Pa. 535, 73 A.2d 404 (Pa 1950)
Factual Summary	The protected individual, a 59-year-old woman, was appointed a guardian of the estate after a court adjudged her to be unable to care for her property due to “weakness of mind.” The determination was based solely on a psychiatrist’s testimony. At the time, the protected individual was temporarily confined in a psychiatric hospital. Less than one year later, the individual filed a petition to vacate the court’s decision appointing her a guardian. The trial court denied the petition and the appellate court reversed, finding an abuse of discretion by the trial court because it had no justification for denying the petition to vacate the guardianship.
Legal Authority Relied on by the Court	§7 of the Act of May 28, 1907, P.L. 292, 50 P.S. § 963
Evidence Relied on by the Court	The individual testified that she could take care of her own property and that she had saved money and was economical; a physician testified that she was “in a very sane state of mind;” the same psychiatrist who initially testified for the guardianship testified that she was “a definite paranoid type and not completely recovered but was capable at the present time of managing her own affairs and would not become the victim of designing persons.”
Disposition	Petition denied; reversed on appeal
Petitioner	The protected individual
Guardian’s Response	Does not say
State	Pennsylvania
Population	Does not say (“weak-minded person”)
Things to Note	

Case	<i>In re Sigel’s Estate</i> , 169 Pa.Super. 425, 82 A2d 309 (Pa.Super. 1951)
Factual Summary	The protected individual, a woman in her early seventies, was appointed a guardian of the estate after her daughter petitioned for guardianship and the court found her to be “mentally defective in conformity with [the statute].” The individual petitioned for discharge of the guardian
Legal Authority Relied on by the Court	The mental condition of the person at the time of trial is always controlling. <i>Gorgas v. Saxman</i> , 216 Pa. 237, 65 A. 619
Evidence Relied on by the Court	The same doctor that testified at the prior proceeding testified that the individual’s mental illness had progressed considerably and would likely become worse. The individual displayed knowledge of her property and investments. Her testimony exhibited no mental disorder
Disposition	Petition denied; affirmed on appeal
Petitioner	The protected individual
Guardian’s Response	?
State	Pennsylvania

Population	Older individual
Things to Note	

Case	<i>Matter of Earnshaw</i> , 187 Pa.Super. 124, 144 A.2d 480 (Pa.Super 1958)
Factual Summary	The protected individual, a male in his fifties, was appointed a bank and an individual as guardians of the estate upon being adjudicated incompetent. Seventeen years later, the individual petitioned for restoration. The trial court dismissed the petition and the appellate court affirmed because the evidence, including testimony that he was a dependent individual and unable to properly manage his estate, sustained the finding that he was still an incompetent
Legal Authority Relied on by the Court	The court, upon petition and after notice, may find, after a hearing at which good cause is shown, that a person previously adjudged incompetent has become competent. Incompetents' Estates Act of 1951, § 323. "If it appears that one's mind is so affected that as a consequence thereof he is liable to dissipate or lose his property and become the victim of designing persons, the court, if other requirements are met, may refuse to remove a guardian." Language of President Judge Baldrige in Refior's Case, 160 Pa.Super. 305, 50 A.2d 523, 527
Evidence Relied on by the Court	Testimony that the individual is institutionalized on his own farm with a companion constantly at his side to whom he may turn for guidance. He is a dependent individual with a mind so affected that he is unable to properly manage his estate
Disposition	Petition denied; affirmed on appeal
Petitioner	The protected individual
Guardian's Response	Does not say
State	Pennsylvania
Population	Mental illness
Things to Note	Court: "in continuing the guardianship, the trial court wisely performed its duty to protect appellant from dissipating his property and to shield him from the influence of designing persons"

Case	<i>In re Estate of Porter</i> , 463 Pa. 411, 345 A.2d 171 (Pa. 1975)
Factual Summary	The protected individual was declared incompetent to manage his estate due to epileptic seizures and was thereafter appointed a guardian of the estate. Fifty years later, at the age of 79, the individual petitioned for an adjudication of competency under § 323 of the Incompetent's Estates Act of 1955.
Legal Authority Relied on by the Court	§ 323 of the Incompetents' Estates Act of 1955
Evidence Relied on by the Court	A psychiatrist, a psychologist, and a physician who is an expert in geriatrics all testified that the individual is competent. The opposing party did not present any witnesses
Disposition	Petition denied; reversed on appeal
Petitioner	The protected individual
Guardian's Response	Does not say
State	Pennsylvania
Population	Epileptic seizures
Things to Note	Case includes good quotes regarding the protected individual's right to spend his money how he pleases

Case	<i>Estate of Gillis</i> , 22 Pa. D. & C.3d 267, 1982 WL 631 (Pa.Com.Pl. 1982)
Factual Summary	The protected individual, a man in his eighties, was appointed his niece as his guardian after being adjudicated to be a legally incapacitated person. One year later, the petition was vacated and an order to appoint a successor conservator of his estate was ordered.
Legal Authority Relied on by the Court	In a proceeding to remove a prior adjudication of incompetency the petitioner has the burden of establishing his or her competency by a fair preponderance of the evidence." Estate of Porter, 463 Pa. 411, 416 (1975)
Evidence Relied on by the Court	The individual testified, and the court stated that his conduct and testimony indicated that he is familiar with his property and income, and is alert and has a good memory; the owner of the boarding home where he lived testified, and his physician was deposed, all in favor of terminating the guardianship. Note: the guardian's testimony focused entirely on the individual's capacity in the past, not present

Disposition	Petition granted
Petitioner	The protected individual
Guardian's Response	Opposed; testified at trial
State	Pennsylvania
Population	Older individual
Things to Note	

RHODE ISLAND (0)

SOUTH CAROLINA (0)

SOUTH DAKOTA (0)

TENNESSEE (3)

Case	<i>Bradford v. Ragsdale</i> , 10 Beeler 450, 126 S.W.2d 327 (Tenn. 1939)
Factual Summary	The protected individual, a woman in her sixties, was appointed a guardian after being adjudged insane upon a petition filed by her brother after she was arrested for arson. The bank became guardian and tried to sell the individual's land in order to pay debts accrued and provide for continued support at the Central State Hospital, where the individual lived. Less than one year later, the individual, through her husband, filed a petition for restoration, which was dismissed. She appealed and the appellate court dismissed her appeal. She appealed and the supreme court reversed and remanded, based on the reasoning that, "With respect to a proceeding to restore sanity, the application should be made to the court which exercised the original jurisdiction. An application for restoration to sanity is not a new proceeding; it is a continuation of the original guardianship proceeding."
Legal Authority Relied on by the Court	Code 1932
Evidence Relied on by the Court	Does not say
Disposition	Petition denied; reversed and remanded on appeal
Petitioner	The protected individual, with help from her husband
Guardian's Response	Does not say
State	Tennessee
Population	Does not say
Things to Note	

Case	<i>Tate v. Ault</i> , 771 S.W.2d 416 (Tenn 1989)
Factual Summary	The protected individual, a male with limited education and ability to read and write, was appointed a conservatorship because "he is unable to manage his own business and financial affairs, unable to control his spendthrift habits and is fearful that he will dissipate his entire estate." The individual became aware of the purpose of the conservatorship within several weeks of its creation. He filed for termination, arguing that the trial court erred in appointing the conservator because it failed to adhere to the statutory requirements of appointing a guardian ad litem during the trial and of requiring two certificates of incompetency from physicians, and that the trial court erred in failing to dissolve the conservatorship in the light of uncontroverted medical testimony that the ward was competent. The trial court denied the petition. The appellate court affirmed, holding that (1) any error in the trial court's failure to appoint a guardian ad litem or to require certificate of two physicians prior to entering order establishing conservatorship was no jurisdictional, and (2) the trial court did not err in exercising its discretion in dismissing ward's petition.
Legal Authority Relied on by the Court	While the trial court erred in failing to adhere to the statutory requirements, that error is not jurisdictional. A judgment is not void merely because it is erroneous. It is void only if the court rendering it lacked jurisdiction of the subject matter or the parties, or if it acted in a manner inconsistent with due process of law. 11 C. Wright & A. Miller, Federal Practice & Procedure § 2862 (1973) The ward or the petitioner for dissolution of a conservatorship must show the present ability of the ward to manage his estate

Evidence Relied on by the Court	The only clear evidence provided to the trial court was that the individual lacked the ability to manage his affairs in the last several years. The individual provided no affirmative evidence that he has become capable
Disposition	Petition denied; affirmed on appeal
Petitioner	The protected individual
Guardian's Response	Does not say
State	Tennessee
Population	IDD ("unable to control his spending habits and unable to manage his business affairs")
Things to Note	The trial court erred in the petition for appointment of a conservator because it failed to adhere to the statutory requirements of appointing a guardian ad litem and requiring the certificate of two physicians This case is a good example of when the appellate court finds in the record <i>both</i> evidence for restoration and evidence against restoration, but affirms the trial court's decision based on the standard of review and wide discretion granted to the trial court in making the decision

Case	<i>In re Maxwell</i> , 2003 WL 22209378 (Tenn.Ct.App. 2003)
Factual Summary	The protected individual, an elderly woman, was appointed her niece as conservator after she suffered a stroke and the niece filed a petition for guardianship. Less than one year later, the guardian ad litem petitioned the court to consider revoking the conservatorship due to the individual's significant improvement.
Legal Authority Relied on by the Court	Tenn.Code. Ann. § 43-3-108(a) To terminate a conservatorship, the trial court must find that "the ward is capable of managing his own affairs and estate." <i>State ex rel McCormick v. Burson</i> , 894 S.W.2d 739, 745
Evidence Relied on by the Court	The protected individual testified at trial. She was oriented to time and place, knew the purpose of the hearings, and was consistent in expressing her desire to live in her own home. She showed some lapses of memory but her testimony demonstrated a realistic understanding of her own limitations
Disposition	Petition granted; affirmed on appeal
Petitioner	The guardian ad litem
Guardian's Response	Opposed; appealed the trial court's decision
State	Tennessee
Population	Older individual
Things to Note	Appellate standard of review: under Rule 13(d), a presumption of correctness accompanies the trial court's findings of fact, which will not be reversed on appeal unless the evidence preponderates otherwise Case has similarities to supported decision-making

TEXAS (2)

Case	<i>In re Guardianship of Winn</i> , 372 S.W. 3d 291 (Tex. App. 2012).
Factual Summary	The protected individual's mother was appointed as guardian when he turned 18 yrs old, based on his bipolar disorder and intermittent times of "complete incapacity." The individual's father (divorced) petitioned for termination a few months later, arguing that the mother was attempting to use the guardianship to enhance her position in the divorce proceeding and that the evidence supports a restoration of capacity.
Legal Authority Relied on by the Court	At a hearing for a petition to find the ward is no longer incapacitated, the court "shall consider only evidence regarding the ward's mental or physical capacity at the time of the hearing that is relevant to the restoration of capacity." TEX.PROB.CODE ANN. § 694D(a). The petitioner has the burden of proof. Part of the burden requires a "written letter or certificate from a physician licensed in Texas that is dated not earlier than the 120 th day before the date of the filing of the application or after the date on which the application was filed but before the date of the hearing. <i>Id</i> § 694F(a)
Evidence Relied on by the Court	The father petitioner did not meet his burden under § 694F of producing a physician's letter or certificate meeting the requirements of that or otherwise meet his burden of proof to restore the protected individual's capacity
Disposition	Petition denied
Petitioner	The protected individual's father
Guardian's Response	Opposed

State	Texas
Population	Mental illness (bipolar)
Things to Note	

Case	<i>In re Guardianship of Tonner</i> (Texas 2014 case)
Factual Summary	The protected individual was appointed his grandmother as his guardian when he was eighteen due to his “mild retardation, lack of impulse control, and aggression issues.” Four years later, the grandmother died and no successor guardian was appointed. The individual has been living in assisted living, which facilitates many of his daily decisions. The individual petitioned for restoration after he was denied from moving to a group home due to the guardianship and lack of guardian consent. He had to be approved by his guardian for the move, but he had none. On appeal, the individual did not question the legitimacy of the initial guardianship or pursue terminating the guardianship. Instead, he sought to restore his right to marry, to apply for government benefits, to determine his residence, to accept employment, to manage his finances, and to make routine medical decisions.
Legal Authority Relied on by the Court	Tex .Prob. Code Ann. § 3(p)(2) (West Supp. 2013); Tex .Prob. Code Ann. § 694A(3)(A)-(B); Tex .Prob. Code Ann. §§ 694E(a), (c)
Evidence Relied on by the Court	Court: “no one testified that [the individual] could make any life decisions of importance without the support or guidance of his caretakers or medical or mental professionals.”
Disposition	Petition denied; affirmed on appeal
Petitioner	The protected individual
Guardian’s Response	None (guardian is deceased)
State	Texas
Population	IDD (“mild retardation, lack of impulse control, and aggression issues”)
Things to Note	Appellate standard of review: abuse of discretion Court: “the trial court is not necessarily obligated to impose the least restrictive guardianship possible; rather the decision is controlled by the best interests of the ward and the obligation to protect him from himself and others’ control.”

UTAH (0)

VERMONT (0)

VIRGINIA (1)

Case	<i>Baker v. Holland</i> , 175 Va. 520, 9 S.E.2d 298 (Va. 1940)
Factual Summary	The protected individual, a girl in her twenties, was appointed a guardian when she was a minor because her parents died. The guardianship remained in place until the individual was 21 years old, then the guardian was appointed her committee.
Legal Authority Relied on by the Court	§ 1091 of the Code provides for the discharge of a feeble-minded person. If the superintendent of the colony is satisfied that the person is not feeble-minded, he must grant a discharge of such person ‘as not feeble-minded’”
Evidence Relied on by the Court	Court: “the record discloses abundant evidence to sustain the conclusion of the trial court that [the ward] is still feeble-minded and not competent to take possession of her funds.” Court: “The formal discharge of [the ward] by the Central State Hospital is not conclusive evidence that she is capable of managing her estate.”
Disposition	Petition denied; affirmed on appeal
Petitioner	The protected individual
Guardian’s Response	Does not say
State	Virginia
Population	IDD (“feeble-minded”)
Things to Note	

WASHINGTON (1)

Case	<i>In re Bayer</i> , 80 Wash. 340, 141 P. 682 (Wash. 1914)
Factual Summary	The protected individual was appointed her brother as guardian after she was declared to be incompetent. About six years later, the guardianship was terminated.
Legal Authority Relied on by the Court	Court: “The court having found that the ward was sane and competent, she was entitled to the immediate full control of both her person and estate, under §1671, Rem. & Bal. Code”
Evidence Relied on by the Court	Does not say
Disposition	Petition granted; affirmed on appeal
Petitioner	The protected individual
Guardian’s Response	Opposed
State	Washington
Population	Mental illness
Things to Note	

WEST VIRGINIA (0)

WISCONSIN (0)

WYOMING (1)

Case	<i>In re Guardianship of Sands</i> , 301 P.3d 128 (Wyo., 2013)
Factual Summary	The protected individual, a 70-year-old man, was appointed a guardian due to dementia and other medical problems leaving him unable to care for himself. The guardian was a longtime friend. The protected individual filed a petition to terminate the guardianship very soon after the guardianship was ordered, asserting that he was not given notice or opportunity to respond to the appointment of a guardian.
Legal Authority Relied on by the Court	§ 3-2-101. Petition for appointment of guardian; § 3-2-104. Appointment of guardian; § 3-3-101. Petition for involuntary appointment of conservator; § 3-3-104. Appointment of conservator
Evidence Relied on by the Court	The court relied on expert testimony that the protected individual suffered from dementia and needed a guardian's assistance with major decision making. Also on evidence that his home was filled with hoarded articles and trash, was without running water, and had an unsafe electrical system, and he made inappropriate financial decisions. The individual’s doctor testified that he would not have released the individual from the hospital had the guardianship not been in place, and that would not change because his condition would not improve
Disposition	Petition denied; affirmed on appeal but guardian’s role reduced to standby guardian, meaning no active involvement unless necessary and only after consultation with protected individual’s support team. Would automatically expire in one year if protected individual proved able to make safe decisions for himself (guardianship terminated 6 months later upon the protected individual’s petition for review)
Petitioner	The protected individual
Guardian’s Response	Opposed
State	Wyoming
Population	Older individual (dementia)
Things to Note	Court initially denied petition to terminate but reduced the guardian’s role to “standby guardian” and ordered that the guardianship would automatically expire in one year if the protected individual proved able to make safe decisions for himself