

# Guardianships in the Media, Can Utah Statutes Protect Against Abuse?

by Kathie Brown Roberts and Allison Barger

The Netflix movie *I Care A Lot*, which premiered in mid-February 2021, begins with the outrageous scene of professional guardian Marla Grayson (Rosemund Pike) knocking on the door of Jennifer Peterson (Diane Wiest) and informing her that the court “has ruled that you require assistance in taking care of yourself.” Marla, with court order in hand, tells incredulous Jennifer that Marla is now Jennifer’s guardian, and Jennifer is required to leave her home immediately. Jennifer is put into a car, whisked away to an assisted living facility, and drugged while Marla and her cohorts proceed to shamelessly sift through her belongings and ready her home for sale. Aspects of this movie follow the infamous Nevada case of former professional guardian April Parks very closely.

April Parks and her guardianship company, “A Private Professional Guardian, LLC” made national news headlines beginning in 2015, when she, in concert with her husband, a lawyer, and a medical professional, utilized Nevada guardianship statutes to defraud and financially exploit over 150 elderly individuals in the Las Vegas area.

Around the same time that *I Care A Lot* debuted on Netflix, Hulu premiered *Framing Britney Spears*, one episode of a docuseries produced by the *New York Times*. *Framing Britney Spears* focuses on the guardianship/conservatorship of the famous pop star, which began in 2008, and endures to this day. The documentary questions how such a successful and famous entertainer can be, at the same time, “incapacitated” and subject to an involuntary guardianship and conservatorship. A grass roots movement, #FreeBritney, supporting the termination of the conservatorship, developed from a conspiracy theory in which followers believe

that surreptitious signs of protest can be seen on Britney’s Instagram page and other social media platforms.

Both of the movies portray the guardianship process as a way to allow criminals to legally exploit vulnerable adults.

## April Parks Case

In March 2018, the Clark County, Nevada, Grand Jury returned indictments against court-appointed guardian April Parks and her co-defendants Mark Simmons, Gary Neil Taylor, James Melton, and Noel Palmer Simpson. The 270-count indictment alleges that April Parks, the owner of A Private Professional Guardian, LLC, her office manager Mark Simmons, her husband Gary Neil Taylor, certified guardian James Melton, and her attorney Noel Palmer Simpson collectively committed 117 counts of perjury, seventy-three counts of offering false instrument for filing or record, forty-two counts of theft, thirty-seven counts of exploitation, and one count of racketeering. The fraudulent acts were committed between December 2011 and July 2016. *See Indictment, State of Nevada v. James Melton, April Parks, Mark Simmons, and Noel Palmer Simpson*, Case No. C-18-329886-1 (8th Judicial Dist. Ct. of Nev., Feb. 14, 2018) (the Indictment); Amended Indictment, *State of Nevada v. April Parks*, Case No. C-17-321808-1 (8th Judicial Dist. Ct. of Nev., Nov. 5, 2018).

According to a 2017 article by Rachel Aviv in the *New Yorker*, “How the Elderly Lose Their Rights,” Rennie and Rudy North became victim of April Parks one morning in 2013, when, out of the blue, April knocked on their door and told them she was there to “remove” them from their home and that they needed

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to “gather their belongings,” just as in the opening scene from *Care A Lot*. Apparently, Parks previously obtained an ex parte order of temporary guardianship of the Norths in Clark County and transported them to Lakeview Terrace, an assisted living facility, which housed several other individuals over whom Parks had also obtained guardianship. The Norths’ temporary guardianship was granted without notice, without counsel appointed for them by the court, and with a vague medical certification of incapacity from a physician-assistant working closely with Parks. Rachel Aviv, *How the Elderly Lose Their Rights*, *NEW YORKER* (Oct. 2, 2017), available at <https://www.newyorker.com/magazine/2017/10/09/how-the-elderly-lose-their-rights>.

According to the article, subsequent to obtaining an ex parte temporary order, Parks’s pattern was to then petition the court for permanent guardianship and sell the home and the belongings of her wards. In the case of the Norths, their daughter, Julie Belshe, was not notified of the hearing, did not receive the petition for permanent guardianship, and had been described within Parks’s petition as an “addict” who was estranged from her parents. *Id.* Additionally, Parks had a good relationship with the Nevada probate commissioner at the time, who apparently favored professional guardians over family members to serve as guardians. After obtaining permanent guardianship, Parks proceeded to sell the Norths’ home and all their belongings. From the proceeds of the sale, she paid herself and her collaborators exorbitant fees.

The indictment also describes the case of Beverley Flaherty, an eighty-seven-year-old woman with dementia and trust assets in the neighborhood of \$700,000. In that pleading, the State of Nevada alleges that Parks, working with her lawyer Noel Palmer Simpson, filed guardianship documents and a petition for appointment as successor Trustee of Flaherty’s trust despite knowledge that Flaherty was now deceased. Indictment at 3. The indictment further alleged that certified guardian James Melton changed Flaherty’s IRA beneficiary designation to himself, purchased a pre-paid funeral plan for himself from Flaherty’s trust account, and transferred title of Flaherty’s Ford Explorer to himself and a family member. *Id.* at 8–9.

The *New Yorker* article was not the first time that Clark County, Nevada, had been in the news relating to exploitation of seniors and incapacitated persons under guardianship. In 2015, the *Las Vegas Review-Journal* highlighted the criminal exploitation by a Clark County professional guardian named Patience Bristol, who used a ward’s money to pay for personal expenses and gambling debts. Lochhead, Colton, *Clark County’s Private Guardians May Protect – Or Just Steal and Abuse*, *LAS VEGAS REVIEW-JOURNAL* (Apr. 13, 2015, updated Oct. 13, 2017) available at <https://www.reviewjournal.com/local/clark-countys-private-guardians-may-protect-or-just-steal-and-abuse/>. The article explained that while private guardians may

charge reasonable fees, the court would not delve into the billings unless there was a complaint by a ward or family member. *Id.* For that reason, Bristol’s financial exploitation was not discovered until the protected person complained to the court.

Following the April Parks indictments and arrest, in 2018, the Nevada Legislature made several sweeping changes to the guardianship statutes including the addition of requirements for private professional guardians in Nevada Revised Statutes 159.059. These changes include the requirement that professional guardians be certified by the Center for Guardianship Certification and also licensed in Nevada (unless exempt). Other changes to the Nevada Code after 2018 included the addition of a protected person’s right to counsel, right to notice provisions, regulation changes to professional guardians, requirement of a court order to sell real property, and codification of a “Protected Person’s Bill of Rights” in Nevada Revised Statute 159.328. A portion of Nevada’s Protected Person’s Bill of Rights follows below:

- (a) Have an attorney at any time during a guardianship to ask the court for relief.
- (b) Receive notice of all guardianship proceedings and all proceedings relating to a determination of capacity unless the court determines that the protected person lacks the capacity to comprehend such notice.
- (c) Receive a copy of all documents filed in a guardianship proceeding.
- (d) Have a family member, an interested party, a person of natural affection, an advocate for the protected person or a medical provider speak or raise any issues of concern on behalf of the protected person during a court hearing, either orally or in writing, including, without limitation, issues relating to a conflict with a guardian.
- ....
- (j) Engage in any activity that the court has not expressly reserved for a guardian, including, without limitation, voting, marrying or entering into a domestic partnership, traveling, working and having a driver’s license.
- (k) Be treated with respect and dignity.
- (l) Be treated fairly by his or her guardian.
- (m) Maintain privacy and confidentiality in personal matters.
- (n) Receive telephone calls and personal mail and

have visitors, unless his or her guardian and the court determine that particular correspondence or a particular visitor will cause harm to the protected person.

(o) Receive timely, effective and appropriate health care and medical treatment that does not violate his or her rights.

....

(s) Ask the court to:

- (1) Review the management activity of a guardian if a dispute cannot be resolved.
- (2) Continually review the need for a guardianship or modify or terminate a guardianship.
- (3) Replace the guardian.
- (4) Enter an order restoring his or her capacity at the earliest possible time.

Nevada Rev. Stat. § 159.328(1).

One of the most notable changes to Nevada Rev. Stat. 159 in 2018 included a wholesale deletion of the word “incompetents” and substitution with “persons who are incapacitated.” The definition of “incapacity” was added in Nevada Rev. Stat. 159.019:

A person is ‘incapacitated’ if he or she, for reasons other than being a minor, is unable to receive and evaluate information or make or communicate decisions to such an extent that the person lacks the ability to meet essential requirements for physical health, safety or self-care without appropriate assistance.

### Britney Spears Case

Contemporaneously with the release of *I Care A Lot*, the docuseries episode *Framing Britney Spears* debuted on Hulu. While the details of Spears’s conservatorship are not fully public, both her person and estate are under conservatorship. (In California, the term “conservatorship of person” is synonymous with “guardianship” in other jurisdictions, and the term “conservatorship of estate” is synonymous with the term conservatorship in other jurisdictions.) According to the documentary, James Spears, the father of Britney Spears, was initially appointed both temporary conservator of her person and temporary co-conservator of her estate along with an attorney named Andrew Wallet. The California court granted the conservatorship over Spears because of a series of events in 2007 and 2008 evidencing a mental health breakdown, along with the appearance of a stranger, Sam Lutfi, who quickly befriended Britney and appeared to be exerting undue control over her. The

documentary makes it clear that although Britney is unhappy with her father serving as conservator, she (through counsel) has not petitioned for the termination of the conservatorship.

According to an online article by Allen Secretov:

James’ role as conservator of Spears’ “Person” generally meant that he was given decision-making control and responsibility over Spears’ living situation, health care, meals, clothing, transportation, social needs and recreation, with the primary goal of providing her with the best quality of life possible. Reports and court orders have indicated that Spears’ conservators have had the authority to restrict and limit her visitors, oversee her personal security and dictate her medical and psychiatric treatment.

As co-conservators of Spears’ “Estate,” James and Wallet were responsible for managing Spears’ finances, including collecting and protecting her income and assets, investing her money, paying her bills with her money, making sure her taxes are in order and keeping orderly records of her income and expenditures. As conservator of Spears’ Estate, they were also obligated to file accountings of her finances with the court at least every two years.

**Parsons Behle & Latimer** welcomes Joseph D. Watkins as a new associate in the firm’s Salt Lake City office.



Joseph D. Watkins represents and counsels clients in a variety of matters with a primary focus on defending corporate and individual clients in securities enforcement, regulatory, defense litigation, white collar crime, government and independent investigations matters. Mr. Watkins graduated from the J. Reuben Clark Law School at Brigham Young University. He holds a Master of Laws degree in Taxation from Georgetown University in Washington, D.C.

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Allen Secretov, *What “Framing Britney Spears” Doesn’t Really Answer*, HOLLYWOOD REPORTER (Feb. 17, 2021), <https://www.hollywoodreporter.com/thr-esq/what-framing-britney-spears-doesnt-really-answer-guest-column>.

## Do Utah Guardianship Statutes Provide Insulation from Abuse and Exploitation?

Like Nevada, but unlike California, in Utah, a “guardian” typically controls physical aspects of a person, such as living arrangements and medical care. A “conservator” deals with all aspects of the financial estate of a Protected Person. Both the April Parks scandal and the Britney Spears matter involved the use of “temporary guardianships,” which proceedings serve to quickly appoint a guardian or conservator of the person, usually in the event of an emergency. In the April Parks matter, the temporary guardianship statutes in place at the time allowed for ex parte petitions that would allow the court to issue an order without notice. April Parks supported her petitions with a falsified certification from a physician assistant attesting that emergency help was required. In addition, Parks also spent years building relationships with assisted living facilities and court personnel, the latter of which preferred her services as guardian over family members who may have otherwise had priority.

In Utah, Utah Code Section 75-5-310 does allow for the court to appoint an emergency guardian without notice upon a finding that the welfare of a person requires immediate action. Under this code section, the emergency guardianship may not exceed thirty days without notice or hearing. After the emergency appointment, an interested party can request a hearing within fourteen days. In Utah, the court must make a finding that an emergency exists based on the evidence presented with the petition. Prior to the sweeping changes to the guardianship statutes in Nevada in 2018, the same was required in Nevada; however, April Parks worked with a physician assistant who was allegedly complicit in April Parks’s exploitive actions by making the required certification to the court that an emergency existed.

In Utah, an emergency guardian can subsequently petition the court under Utah Code Section 75-5-310.5 to convert an emergency guardianship into a temporary guardianship. At that point, the court is required to appoint counsel for the protected person under Utah Code Section 75-5-310.5(2), unless an appointment of counsel has already been made, or the protected person has engaged counsel. This is one of the primary differences from the pre-2018 Nevada statutes. Had April Parks been operating in Utah, she could not have converted an emergency guardianship to a temporary guardianship without notice and hearing and without the protected person having counsel. In Utah, an emergency guardian may also subsequently petition for a permanent guardianship under Utah Code Section 75-5-303. Under the foregoing statute, the

protected person also has the right to counsel. If the petitioner, or the petitioner’s nominee is ultimately appointed as guardian, the petitioner may recover fees from the protected person’s estate for the prosecution and/or defense of the petition.

In the *New Yorker* article, there is a quote from a fellow ward at Lakeview Manor advising the Norths not to take the medication brought by the nurse if they wanted to be able to go to court to plead their case. A powerful mechanism to ensure due process in Utah is the requirement that the protected person attend the hearing on permanent guardianship, unless there is evidence of fourth stage Alzheimer’s disease, extended comatosis, or IQ of under 25. Utah Code Ann. § 75-5-303(5)(b). If a Utah petition requests that the protected person not attend the hearing, the court *shall order* a court visitor to determine the ability of the protected person to attend the hearing. *Id.* § 75-5-303(5)(a). The Utah Court Visitor Program is an independent arm of the court system that recruits and trains volunteers for the purpose of determining whether a person can attend a hearing but also may conduct other investigations upon request of the court.

In Nevada, a court investigator may be appointed under Nevada Revised Statutes 159.046, but it is not mandatory. However, there is a requirement that the protected person attend the guardianship hearing unless there is medical certification that the person is unable to attend, the court appointed counsel for the protected person waives attendance, or another qualified person certifies that the protected person cannot attend the hearing. In the April Parks case, the same physician’s assistant who would falsely certify incapacity would also supply the necessary certification to excuse the protected person from attending the hearing.

Utah Code Section 75-5-408(3) allows for the court to appoint a temporary conservator with all of the powers of a conservator under sections 75-5-417, 75-5-418, 75-5-419, and 75-5-424 of the Utah Code. The powers of a temporary conservator include the power to sell a home of a conservatee without a court order. However, unlike the statutes in Nevada in place at the time April Parks operated as a professional guardian, a temporary conservator may not be appointed in Utah without notice or hearing under Utah Code Section 75-5-408. In Nevada, however, after the 2018 legislative changes, all sales of real property of a protected person must be confirmed by the court. Nevada Rev. Stat. § 159.134.

In contrast, *Framing Britney Spears* focuses less on procedural abnormalities of how the conservatorship of her person and estate was obtained and instead draws attention to its continued duration. Many of her fans and proponents of the #FreeBritney movement wonder how a talented and successful pop star can, at the same time, be legally unable to handle her affairs. The use of guardianship and conservatorship to assist individuals with mental health problems

has become increasingly common. It is entirely possible for an individual to meet the legal definition of “incapacity” under the law while still maintaining various degrees of functionality.

Utah law prefers limited guardianships – meaning that the guardian’s authority should be limited to only those areas in which a protected person lacks functional abilities. Limiting a guardianship allows for protected persons to exercise their own independence to the extent that they are able. In the case of guardianships sought to assist those with mental health problems, this can be a useful tool to help the individual maintain a sense of autonomy but also ensure that someone is enabled to act on the individual’s behalf when necessary. Full guardianships are appropriate when no other alternative is appropriate. Depending on the severity of the mental health issues of the individual, a full guardianship may be necessary if sufficient evidence is presented to support the petition.

It is also possible to terminate the guardianship if the protected person is no longer incapacitated. In Utah, the protected person or other interested party may petition for the termination of the guardianship/conservatorship under Utah Code Section 75-5-303. The protected person is entitled to counsel and all of the procedure set forth in that code section. California has a

similar procedure for terminating a conservatorship. In the case of Britney Spears, she has not petitioned for the termination of her conservatorship(s), although she has petitioned for the change of conservators from her father to a professional.

In sum, many of the abuses and exploitation committed by April Parks and her cohorts were enabled by the procedure in place for guardianships in Nevada at the time. The Utah Code provides for notice and right to counsel (and the Court Visitor Program), which serve to curb the worst of such abuses. In contrast, Utah’s laws are, in many ways, like the laws in California that appear to have led to Britney Spears’ continuing conservatorship.

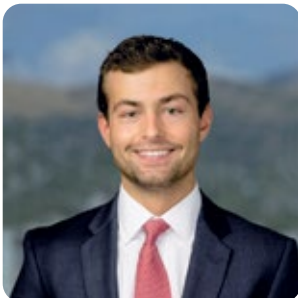
Utah could benefit from codification of a protected person’s Bill of Rights. However, it is important to note that the courts lack proper funding to oversee guardianship and conservatorship cases. The Utah Court Visitor Program is facilitated by volunteers and is limited in its ability to monitor all of the guardianship and conservatorship cases statewide. Additionally, Adult Protective Services also lacks sufficient funding to pursue allegations of abuse unless they are particularly egregious or obvious. Additional legislation and resources would be needed to fully guard against guardianship and conservatorship abuse.

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