

CASE STUDY

John (81) and Jane (76) Doe have been married 50+ years and have resided in their home in Lansdale, Montgomery County for 35 years. They ran a successful family business until they sold it and retired 10 years ago. They are comfortable financially and are essentially debt free. Besides their home valued at 250,000, they have a joint investment account with Wells Fargo Advisors worth \$750,000 and each has an IRA, John's being worth \$200,000 and Jane's \$100,000. They have combined net income from Social security of \$2,225/month.

The Does have three adult children. Alice (46), lives with her husband in Seattle, Washington and is a public school teacher. They have two children ages 16 and 18. John, Jr. (43) is divorced, lives in Chicago, is a sales manager, and travels frequently. He has a son who is a college sophomore. Susan (40) lives with her disabled husband and three children ages 9, 11, and 13 in Hatfield, Montgomery County. She is employed as a social worker for an agency in Norristown.

John has heart disease, diabetes, and arthritis which limit him physically. He insists on driving, but the local police have ticketed him twice in the past six months for erratic driving. Jane is well physically but has been diagnosed with mild to moderate dementia, is frequently confused, and recently wandered out of the home. Two years ago, the Does named Susan their agent under general durable POAs and since then, she has been helping them with their finances, paying bills, shopping, and Dr. appointments. The POAs permit gifting up to the annual gift exclusion. Susan was also added to her parents' checking and investment accounts for ease of access and monetary transfers. Lately, her parents have relied more and more on Susan largely because of her proximity and willingness to help but also because they are somewhat estranged from their son since his divorce and they perceive Alice's infrequent visits and contact as a lack of affection for them.

Feeling over-burdened, Susan began looking into personal care facilities that could meet her parents' needs (they have no long-term care insurance) but when they learned of it, they insisted they would never go. Instead, they offered

to pay for an addition to Susan's house so they could live with and be cared for by her. They also offered to pay Susan a monthly stipend to cover household expenses and a bit more. She agreed and construction is under way. When, John, Jr. learned of these developments, he was livid and began accusing Susan of turning their parents against him and Alice and attempting to steal their money.

John hired a Montgomery County lawyer who has filed guardianship actions for both Does, seeking appointment of independent plenary guardians and a petition that seeks to compel Susan to account for her actions as agent. Susan, as agent, attempted to hire an attorney to represent her parents but the Orphans' Court has appointed separate counsel for each of the Does. Each is upset and contesting an adjudication of incapacity. Indeed, John wants to change his will. The lawyer Susan sought to have represent her parents, now represents her. Alice is presently unrepresented and is inclined to align with her brother but has conflicting concerns. She has approached you about representing her.

She tells you there was a great deal of rivalry and animus amongst she and her siblings while growing up and for the past 10-15 years, contacts between them have been infrequent and largely unnecessary given their geographic separation. She was shocked when told what a contested guardianship hearing will cost and that her legal fees might not be paid from her parents' estates. Assuming your willingness to take on the case, what is your strategy?

The following Issues are among those being discussed:

1. What to do about John, Sr.'s driving?
2. Are the POAs valid?
3. Are neuro-psychological evaluations (and their attendant costs) necessary?
4. Should any guardianship be limited vs. plenary?
5. If guardians are to be appointed, should Susan be guardian of the persons?
6. What neutral options exist for guardian of the estates?
7. How can Alice and John, Jr. be assured of receiving necessary contact with and information about their parents?
8. Can all the legal fees get paid from the Does' estates?
9. How best to salvage Does' relationships with their children?

