

Vera Institute of Justice

Criminal Justice Issues and Prisoners' Rights

<https://www.vera.org/blog/when-guardianship-goes-wrong>

Public Facing Advocacy Writing

A recent Associated Press [article](#) describes the legal ordeal of 54-year-old Nashville songwriter, Danny Tate, who fought to regain control of his life after being declared incapacitated. The apparently ill-conceived guardianship process in Tennessee that wrested Tate's financial, medical, and legal rights from him underscores the value of Vera Institute's innovative [Guardianship Project](#).

In 2007, a judge declared Tate mentally disabled and appointed his older brother, David, as his conservator. Tennessee's term for guardian. Danny, whose costly crack addiction led his brother to petition the court, was neither present nor represented by a lawyer at the hearing that gave David the power to make his medical, financial, and legal decisions. Danny maintains that despite his drug addiction, which he has since overcome, he has always been capable of managing his own affairs. Three doctors reached the same conclusion, leading the judge to restore Danny's constitutional rights in late May after a two-and-a-half year legal battle that drained his once-sizeable estate.

The Tate case exemplifies guardianship's ethical complexities and where it can go nightmarishly wrong. The appointment of a guardian, whereby a court transfers decision-making power to a third party, should be made only when a person is truly incapacitated. It is crucial that the alleged incapacitated person be properly represented by counsel in court, and that the court follows an exhaustive process to determine his or her level of capacity, if any.

The Guardianship Project, where a team of lawyers, accountants, and social workers handle each court-appointed case, is a cost-effective solution to flaws in many existing guardianship systems, including that of New York State, which has no public guardianship program. This model of institutional guardianship marshals an array of resources to serve the best interests of clients that a private guardian cannot, and every effort is made to evaluate whether or not a guardian will be beneficial to a client.

Each year, an estimated one of every 20 older Americans are victims of abuse, which includes physical and emotional abuse, financial exploitation, and neglect. Guardianship can be a means of safeguarding these individuals' finances and assuring that they receive proper medical care, while maximizing their self-determination and independence by avoiding unnecessary and costly nursing-home placements. For people unable to manage their own affairs or advocate for themselves, guardianship can save lives. But, as Danny Tate's case demonstrates, it can destroy lives when handled improperly.

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