

A betrayal of trust



Unguarded

How the courts fail the vulnerable.
First of a three-part series

Couple discovers that man's court-appointed guardian is not only a felon, but has ravaged their already-shaky finances



READING EAGLE: SUSAN L. ANGSTADT

Hank and Marie Frisby of Philadelphia lost tens of thousands of dollars and were forced to sell their Wyncote, Montgomery County, home through a woman appointed as guardian for Hank. No charges have been filed against the guardian, who has a criminal record, but the couple believes they have been swindled.

BY NICOLE C. BRAMBILA
READING EAGLE

AFTER MARIE FRISBY'S husband fell prey to an all-too-common financial scam directed at the elderly, Montgomery County's Orphans Court appointed a professional guardian to protect his estate.

The couple, who had separated over mounting debt and increasingly aggressive creditors, reconciled and Marie Frisby moved back into their colonial-style home on a quiet, tree-lined street in Wyncote.

With a guardian in place handling the estate, the financial woes that had plagued Marie and Hank Frisby for more than two years finally seemed behind them.

And then a county deputy sheriff knocked on their door.

The Police and Fire Credit Union, the

deputy said with an apology, was foreclosing on their property.

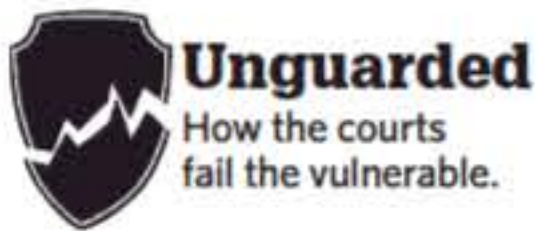
"I was like, 'This can't be true,'" said Marie Frisby, 70.

Then she added, speaking of her husband's court-appointed guardian, "Gloria Byars told me everything was being taken care of."

In 2016, Byars was named the guardian for Hank Frisby, 79, during the time the couple had separated and filed for divorce.

[See *Guardian* >>> A4]

Guardian with criminal past leaves couple scrambling



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How the courts fail the vulnerable.

[From A1 >>>]

When the court rules an adult incapacitated and appoints a guardian, the individual loses the right to make health care decisions, to determine where he lives or how his money is spent. Guardians make those decisions.

If the Frisbys were astonished to learn the court-appointed guardian had not been paying the mortgage and other bills, their surprise would pale in comparison to the revelations yet to come.

Unbeknownst to them, Byars had been convicted multiple times of financial theft.

Her most recent arrest came in 2005. She pleaded guilty to felony fraud and was sentenced to 37 months in a federal prison after cashing \$20,000 in blank checks found rummaging through trash cans at a Virginia post office.

Federal dockets show Byars was paroled on supervised release in 2008, the same year — according to her LinkedIn account — she began working in Philadelphia with RES Consulting, which provides guardian services.

Although a story on her Virginia arrest can be found through an online search of “Gloria Byars,” Adult Protective Services in at least two counties — Montgomery and Philadelphia — frequently recommended to the court that she serve as guardian.

Unlike California and Texas, which ban convicted felons from hanging out a shingle, Pennsylvania has no such standards. Like most states, Pennsylvania statute does not require a criminal background check.

Any remedy would require judicial and legislative fixes.

A proposed rule — used only as guidance for the courts — is before the Pennsylvania Supreme Court. It’s uncertain, though, if and when justices will adopt the proposal.

Advocates for the elderly were appalled that the very agencies tasked with protecting the frail and vulnerable took no steps to ensure they would not be further victimized.

“Guardianship is a law of protection,” said Elaine Renoire, president of the National Association to Stop Guardianship Abuse.

Renoire added: “You can’t protect people if you remove them from dangerous situations and put them in another one. It’s outrageous.”

Byars, 57, who has not been charged with any criminal conduct related to her actions as a court-appointed guardian, declined to comment for this story. A judge has called her conduct reckless and she has since been removed from her cases.

Philadelphia Corporation for Aging President Holly Lange, whose agency repeatedly recommended Byars, declined to comment, and Robert Stump, a guardian with RES Consulting, did not return multiple phone calls.

Montgomery County Aging & Adult Services Administrator Doreen Hespell referred questions to Kaitlyn Foti, a spokeswoman for county commissioners, who have

If the Frisbys were astonished to learn the court-appointed guardian had not been paying the mortgage and other bills,



Gloria Byars



READING EAGLE: SUSAN L. ANGSTADT

Marie Frisby and her husband, Hank, had to sell their Wyncote home to pay accumulating bills, including tens of thousands in fees to Byars and her attorney, Robert L. Feliciani III. “As far as I’m concerned,” Marie Frisby said, “both of them were fleecing Hank.”

wasn’t paying all the bills,” Marie Frisby said.

Byars may not have been keeping up with the bills, but she meticulously kept track of her charges, which she submitted to the court.

An invoice dated Feb. 14, 2017, shows more than \$17,000 in guardianship fees assessed over eight months that included: \$750 for a birthday party with a live band for all her wards complete with a birthday cake for each (Hank Frisby is diabetic); \$375 for a three-hour visit with him at the nursing home to play games; and \$500 to sit with him for four hours during a dialysis treatment.

Her invoice reads like a taxi meter clicking away charges for everything she did: \$37.50 to pay bills; \$12.50 to read text messages; \$125 to email her attorney.

She even charged \$12.50 to write a check to her own company, Global Guardian Services, for her monthly fee.

Eventually they negotiated a lower fee, but had Marie Frisby not advocated for her husband, he very likely would have had to pay the entire amount because judges routinely sign off on guardianship expenses, advocates said.

Eight months after Byars’ removal, much remains unaccounted for.

For example, why couldn’t Byars manage on Hank Frisby’s sizeable pension income, which included retirement pay for a brigadier general? And what became of the more than \$20,000 in retirement income held in escrow before Byars’ appointment?

Marie Frisby doubts they’ll receive an accounting. Because expenditures are court approved, it’s unclear what, if any, recourse the Frisbys might have.

‘Unfit to serve’

If Montgomery Aging officials knew they had repeatedly recommended a convicted

Pennsylvania reporting requirements

State law requires guardians to file, among other things, the following with the court annually about those under their care:

- Current estate principal and how it is invested as well as income.
 - Expenditures since the last report.
 - Major medical or mental problems of the incapacitated person.
 - Description of living arrangements and a list of support services the incapacitated is receiving.
 - The number and length of times the guardian visited the incapacitated person in the past year and an opinion as to whether the guardianship should continue or be terminated.
- A 2005 report by the Joint State Government found these requirements were not uniformly enforced across the state and that court administrators generally only collected information on the total number of guardianship petitions and appointments.

Source: Title 20 Pennsylvania statute



READING EAGLE: SUSAN L. ANGSTADT

The Global Guardian Services LLC office of Gloria Byars in Lansdowne, Montgomery County.

About guardianship

When the court finds an adult incapable of informed decision-making, a judge can appoint a substitute decision maker called a guardian. The law allows for the appointment of guardians — imbued with the power to make decisions about health care, marriage and divorce, living arrangements and more — for the person, the estate or both.

Source: Pennsylvania statute

oversight.

“In recommending a guardian, our office of Aging and Adult Services follows state regulations, which do not require a criminal background check,” Foti said in an email to the *Reading Eagle*.

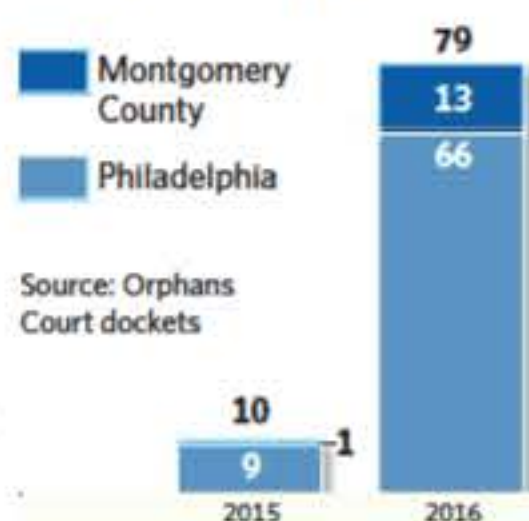
That’s little comfort for the Frisbys.

Marie Frisby estimates — between guardian and attorney’s fees, and the money that’s unaccounted for — they lost roughly \$80,000 in the nearly 15 months Byars served as guardian.

“I thought,” Marie Frisby said, when calculating the

Appointing a felon guardian

Gloria Byars, who was convicted of financial fraud, was appointed to serve as guardian to incapacitated adults in Philadelphia and Montgomery counties. Here is a tally of her appointments:



Source: Orphans Court dockets

READING EAGLE: CRAIG SCHAFFER (GRAPHIC); NICOLE BRAMBILA (REPORTING)

loss, “‘Oh my god, Hank is being scammed again.’”

Financial mess

The court appointed Byars permanent guardian of Hank Frisby in March 2016. Less than 15 months later Byars would be removed. But in that time, at least two government liens would be levied against the Frisbys’ home.

Before the court appointed another guardian, Byars would sell the Frisbys’ second house, leaving Hank Frisby’s daughter and grandson homeless.

And the couple would be forced to sell their Wyncote home to pay all the unpaid bills, including tens of thousands in fees to Byars and her attorney, Robert L. Feliciani III. (Guardians routinely hire or consult with attorneys who prepare their legal documents.)

Feliciani, who has a Montgomery County practice that advertises expertise in orphans court litigation and fiduciary representation, did not respond to a phone call and email seeking comment.

Because the deputy’s knock on the door came just six weeks after Marie Frisby moved back in, it’s unclear what financial mess Byars may have stepped into with her appointment nine months earlier. What is clear, though, is the expectation Byars would straighten things out was never realized.

“She had been guardian all that time, and the debt just kept going up because she

Professional guardians, incapacitation, common

Data for area suggests family members rarely take reins, judges rarely deny filings

BY NICOLE C. BRAMBILA
READING EAGLE

Advocates have raised concerns about the inability to monitor the system that protects the nation's vulnerable and elderly, and those concerns are illustrated in the way Berks County Orphans Court tracks annual filings: by hand, in a desk ledger.

The county's hand tally is expected to be replaced with an electronic statewide case management system by year's end that will allow Pennsylvania — for the first time — to track a variety of issues, including elder abuse.

Currently, no one can say how many adults are under guardianship in Pennsylvania or how widespread elder abuse by a guardian is. No one tracks guardian caseloads, which, if too large, can hamper the quality of care. And, as yet, there are no statutory standards for who can become a guardian nor any mechanisms to flag the unscrupulous.

Guardianship is the process of determining whether an adult — usually 60 and older — is capable of informed decision-making. If they're not, a guardian with broad authority over the individual is appointed.

Because an incapacitated adult loses those rights, which are then given to a family member or professional, guardianship raises a host of civil liberty concerns. But the lack of reliable data, despite decades of hand-wringing, and a growing list of bad actors threatens to significantly undermine the public's confidence in the guardian system.

It's an issue policymakers will need to soon confront, as the number of older adults in the U.S. is projected to nearly double over the next three decades.

Given the magnitude of potential harm by a system with little to no monitoring, the *Reading Eagle* sought to examine court practices, indus-

try trends and areas in need of public scrutiny. Fifteen months ago the newspaper began examining annual caseload reports and court dockets in three counties: Berks, Chester and Philadelphia.

Information available in the dockets varies by county. Accessing the dockets in Berks and Chester required multiple trips to the counties' orphans court to look up individual cases that were entered by hand into a database for analysis. The newspaper looked at records for 2016.

Searches typically require a party name. Chester County officials, however, provided 2016 case numbers. The adult cases totaled 95.

Because Berks does not have a numbering system that identifies incapacitation cases, the docket search required combing through more than 600 cases to identify adult guardianships. In addition to appointing guardians, Orphans Court also oversees legal issues including adoptions, probate, inheritance and estate tax disputes.

For Berks, the newspaper examined 122 of the 134 filings in 2016, the most recent full year data was available. Data for Philadelphia, which covered three years beginning in 2014, was provided on condition of anonymity by a source with docket access.

Statewide statistics were mined from annual caseload reports published by the Administrative Office of Pennsylvania Courts.

Among the newspaper's findings:

- Statewide, court filings have risen at a quicker pace over the past two decades than the demographic most likely to be involved in an incapacitation case: those 60 and older, which grew more moderately.
- Although Philadelphia, Montgomery and Allegheny counties had more cases in 2016, Berks had a higher rate per capita: 4.18 per 10,000 population. Philadelphia had

a rate of 3.86 and Allegheny 2.55.

Adult Protective Services, a hospital or nursing home filed two out of every three petitions in 2016 alleging incapacitation in Berks, Chester and Philadelphia.

Philadelphia's professional guardians carry significantly heavier caseloads than the nationally recommended ratio of 1:20. From 2014 through 2016, the top 10 professional guardians in Philadelphia were appointed, on average, to 52 cases.

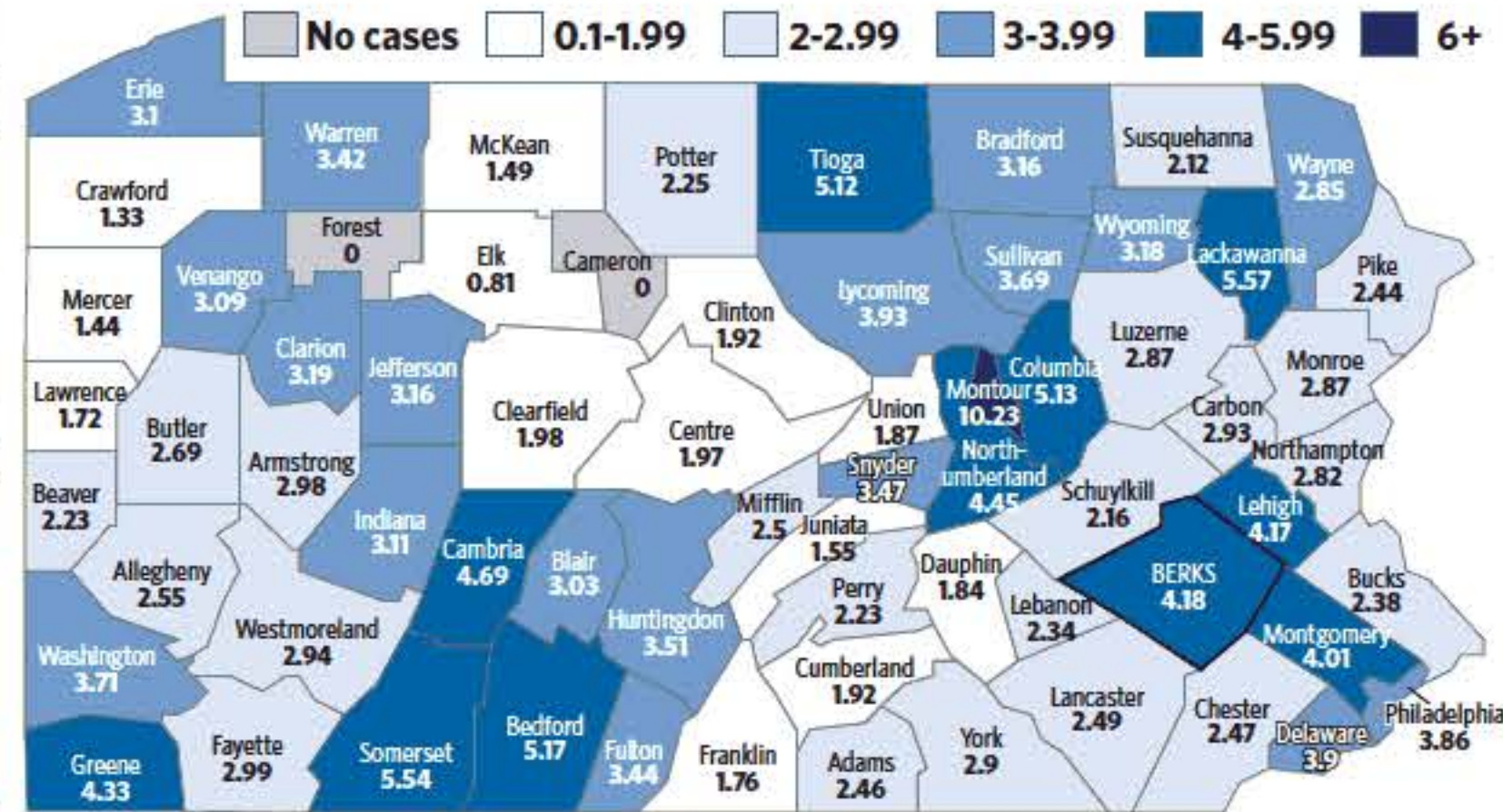
Among the reviewed cases from Berks and Chester resolved in 2016, the courts declared every adult before them incompetent. Not a single pe-

tion was denied, a finding that troubled advocates.

- Of the 325 Philadelphia cases in which the judge made a finding on incapacitation in 2016, only two were denied. Everyone else was deemed incapacitated and a guardian was appointed.
- Adult Protective Services favors the appointment of

Berks leads state in filing rate

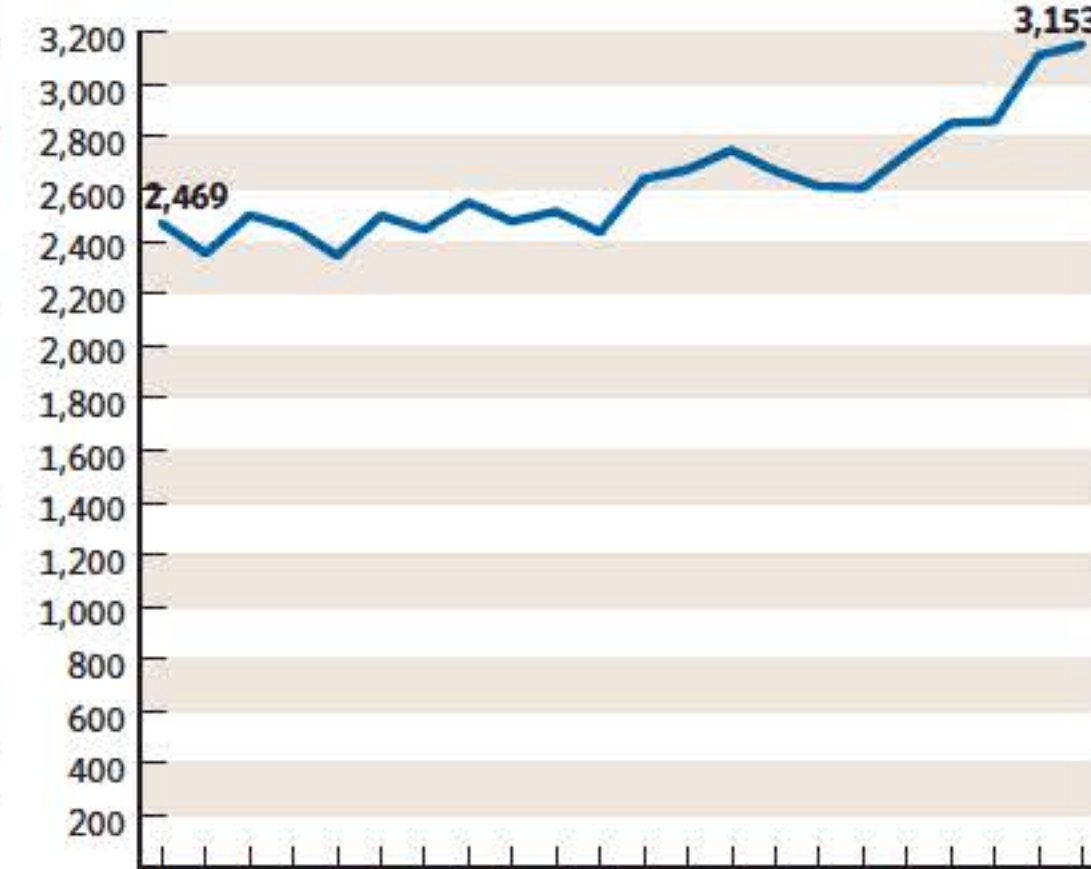
Philadelphia, Montgomery and Allegheny counties in 2016 had more petitions alleging an adult was incapacitated than Berks County. But per capita, Berks filed more. For every 10,000 adults, there were 4.18 petitions filed in Berks compared to 3.86 in Philadelphia and 2.55 in Allegheny. The state ratio in 2016 was 3.12.



Source: Administrative Office of Pennsylvania Courts and U.S. Census Bureau

Guardians rising

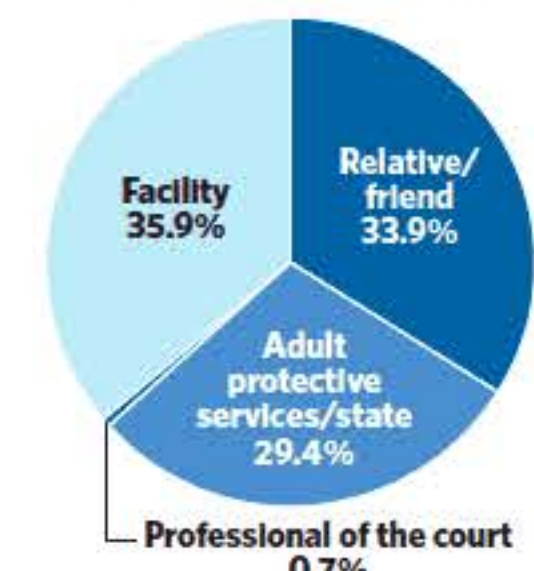
From 1995 to 2015 Pennsylvania courts have seen a 28 percent increase in the number of petitions alleging an adult lacks capacity to manage their affairs.



Source: Administrative Office of Pennsylvania Courts

Alleging incapacitation

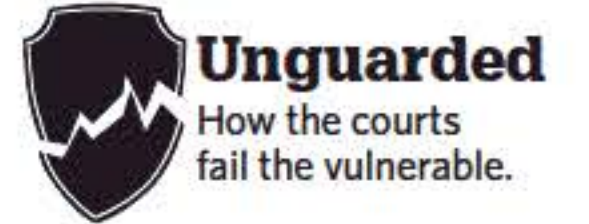
In two out of every three cases in 2016 alleging incapacitation in Berks, Chester and Philadelphia counties, the petitioner was Adult Protective Services, a hospital or nursing home.



Does not equal 100 percent due to rounding.

Source: County Orphans Courts for Berks, Chester and Philadelphia

READING EAGLE: BOB SCHNEIDER (GRAPHIC); NICOLE BRAMBILA (REPORTING)



professionals. In 2016, for example, Berks Area Agency on Aging recommended a professional guardian in 92 percent of their petitions, although the dockets in half of these identified family members living in the state.

Despite the widespread belief that family members more frequently serve as guardian, professionals were more prevalent. For example, in Philadelphia in 2016, 73 percent of the appointments were held by at least one professional guardian.

Researchers said the *Reading Eagle's* investigation was a sorely needed contribution in the national discussion on the guardian system.

"Your study is remarkable and rare," said Erica Wood, assistant director for the American Bar Association's Commission on Law and Aging.

Headquartered in Washington, the commission works to, among other things, secure legal rights and quality care for the aging through research, policy development and advocacy.

Wood added: "There's very little data on adult guardianship in most local courts and at the state level. When it comes to reform of guardianship law and practice, we're really working in the dark."

Not everyone, though, agreed the data was compelling.

"There is no question that there are abuses by guardians around the country, but this has become a witch hunt," said Peter Macy, executive director of the Guardian Community Trust, a nonprofit trustee to for the elderly and disabled in Massachusetts.

The real story, Macy said, is the refusal of lawmakers to fund a system that really works.

"A great article, in my mind, is one that excoriates government for not funding it," Macy said.

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McElhatton, a Philadelphia attorney who did what no one else had thought to do: a background check.

What he found would result in Byars being immediately removed as the Bergs' guardian as well as from dozens of other cases in which Judge John W. Herron had appointed her.

In his response to Byars' petition, McElhatton exposed her Virginia convictions for theft, passing bad checks and forgery. He also asserted — using Byars' own Facebook posts — that she had hired her husband's clean-out company, DEPCO LLC, to remove property from the Bergs' home without disclosing it to the court.

"Based upon the prior convictions and her self-dealing with her husband's company, which was undisclosed, petitioner asserts that Gloria Byars is unfit to serve as plenary guardian and that she be removed from that position," McElhatton wrote.

In the hearing that followed, Byars disclosed she had paid her husband \$11,500 for the Berg cleanout before obtaining court approval. And she admitted to making an irregular \$5,000 cash payment to a nursing home employee.

In his order removing Byars, Herron said her admissions

were extremely concerning. He also described her conduct as reckless.

While Herron moved swiftly to remove her, other Philadelphia judges did not.

For six months she continued serving as guardian to 52 incapacitated Philadelphians. No other Philadelphia judge removed her until after the *Reading Eagle* made dozens of inquiries in January with the court, Adult Protective Services, the Pennsylvania Department of Aging and state lawmakers about her appointments.

Herron declined to comment, as did Judge Matthew D. Carrasfello, who oversees Philadelphia Orphans Court.

The decision to keep Byars on — one court official said — was driven by a shortage of professional guardians. An estimated seven to 10 more are needed to keep up with demand.

Part of the scarcity is purely economic. There's very little money to be made as a guardian, unless the incapacitated has money.

Philadelphia Orphans Court works with more than a dozen professional guardians. Ten of these, including Byars, carry some of the highest caseloads: 22, 48, 54 and more. But none more than Byars, who was appointed in

About the series

Guardianship is the legal process of transferring rights from an adult — usually age 60 and older — to another person or agency appointed by the court. As Pennsylvania ages, the issue raises concerns about civil liberties and, in many cases, due process.

Today

Professional guardians are entrusted to act in the best interest of the vulnerable in their care, but the state has no standards to ensure the courts do not appoint convicted felons.

Monday

Petitions requesting the court find an individual incapacitated follow a very predictable path. A *Reading Eagle* review of more than 100 cases in 2016 found Berks County judges ruled every adult before them incompetent.

Tuesday

Given the coming wave of older adults with dementia — the most common justification for guardianship — and protracted problems of oversight and abuse in the system, can anything be done?

More online

Have you or a loved one had an experience with Pennsylvania's guardianship system? Email your story and contact information to wardstories@readingeagle.com.

Philadelphia alone 75 times from 2014 through 2016, according to court dockets.

National studies recommend a caseload ratio of 1:20.

"Due to the number of cases she had, it would have been overly burdensome to those wards in her care to remove Ms. Byars as guardian absent an available guardian whose

work for other wards would not be adversely affected," said Gabriel Roberts, a court spokesman.

'Lapse in our procedures'

Every court and oversight agency with whom the *Reading Eagle* spoke pointed fingers at one another.

The courts blamed Adult Protective Services for rec-

ommending Byars. Adult Protective Services blamed state statute, which doesn't require a criminal background check. And the Pennsylvania Department of Aging blamed the courts.

"At the end of the day, the court decides when a guardian is appointed, and they have the responsibility to continue monitoring them," Aging Department spokesman Drew Wilburne said.

Sen. Art Haywood, a Philadelphia Democrat and minority chair of the Senate Aging and Youth Committee, declined to comment.

Sen. Michele Brooks, the Aging and Youth Republican chair, referred questions to Chloe Mandara, the committee's executive director, who didn't respond to multiple emails and phone calls.

Only Rep. Tim Hennessey, a Pottstown Republican and chairman of the House Aging and Older Adult Services Committee, responded. But he downplayed Byars' repeated appointments, calling it "a lapse in our procedures in how guardians get appointed."

He forwarded the newspaper's inquiry to the House Judiciary Committee and state Secretary of Aging Teresa Osborne, who did not respond to requests for comment.

But Hennessey also noted

the reluctance of lawmakers to codify standards, likely to spare family members the expense of obtaining a criminal background check.

"We may not be able to totally prevent this type of thing, but we should make it much more difficult for it to happen again," Hennessey said.

A careful vetting, advocates say, doesn't have to be a choice between all or nothing. States with guardian background checks often distinguish between family members and those making a livelihood off appointments.

In the wake of Byars' criminal history coming out, the Montgomery court removed her from her remaining appointments, as did the Philadelphia court, which expects to replace Byars' remaining cases with a new guardian by March 15.

Roberts, the Philadelphia court spokesman, said the court had fielded no complaints and discovered no malfeasance.

For the Frisbys, that's little consolation.

"How can somebody with this kind of record be appointed to handle incompetent people's money?" Marie Frisby asked. "How can the courts let this happen?"

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