

DISTRICT COURT, BOULDER COUNTY, COLORADO	
Court Address: 1777 SIXTH STREET P.O. BOX 4249, BOULDER, CO, 80306-4249	
In the Matter of: WYNN BRUCE	DATE FILED: May 19, 2023 2:31 PM CASE NUMBER: 2015PR30176
	△ COURT USE ONLY △
	Case Number: 2015PR30176 Division: 2 Courtroom:
Procedural Order: Requestors Motion for an Order of Good Cause for Access to Guardianship Records	

The motion/proposed order attached hereto: ACTION TAKEN.

The Court is in receipt of the Motion attached to this Procedural Order. Any Responses shall be filed by June 9, 2023.

Issue Date: 5/19/2023



ROBERT GUNNING
District Court Judge

**COMBINED COURT, BOULDER COUNTY,
COLORADO**

Court Address:
1777 6th St.
Boulder, CO 80302

**In the Matter of the Guardianship of Wynn Alan
Bruce**

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BOULDER COUNTY, CO

COURT USE ONLY

Case Number:

Division:

**REQUESTOR'S MOTION FOR AN ORDER OF GOOD CAUSE
FOR ACCESS TO GUARDIANSHIP RECORDS**

Requestor Shelly Bradbury, a reporter with *The Denver Post*, by and through her undersigned counsel hereby moves pursuant to § 15-14-317(4)(b), C.R.S. and § 15-14-420(6)(b), C.R.S. for an Order of Good Cause for access to the guardianship records of Mr. Wynn Alan Bruce, a deceased adult. The good cause standard is met here. The public has a compelling interest in learning about Mr. Bruce's life, which was ended, tragically, last year by self-immolation outside the Supreme Court of the United States. And given increasing public attention and efforts to reform guardianship and conservatorship systems,¹ access to Mr. Bruce's

¹ See Elizabeth Moran, *2021 Guardianship Legislation: Highlights and Trends Effectuating Improved Processes and Outcomes in U.S. Guardianship Systems*, Am. Bar Assn., (Mar. 14, 2022) https://www.americanbar.org/groups/law_aging/publications/bifocal/vol-43/bifocal-forty-three-four/2021-guardianship-trends/.

guardianship records not only will provide the public with a more fulsome picture of the climate activist's life, but also will inform public discussion about the guardianship system more generally. Any countervailing privacy interests that may remain following Mr. Bruce's death do not outweigh these compelling interests in disclosure. For the reasons herein, this Court should grant the Order of Good Cause to allow requestor to inspect Mr. Bruce's guardianship records.

BACKGROUND

In April 2022, Mr. Bruce, a Colorado climate activist, died from injuries he sustained after performing an act of self-immolation outside the Supreme Court of the United States. Shelly Bradbury, *Boulder climate activist dies after apparent act of protest outside U.S. Supreme Court on Earth Day*, The Denver Post, (April 24, 2022) <https://perma.cc/J87R-FGE6>. His death garnered substantial public attention and media coverage from national and international news organizations. See, e.g., Ellie Silverman and Ian Shapira, *Outside the Supreme Court, a life of purpose and pain ends in flames*, The Washington Post, (April 26, 2022) <https://perma.cc/2LZ2-FXTV>; Chris Cameron, *Climate Activist Dies After Setting Himself on Fire at Supreme Court*, N.Y. Times, (April 24, 2022) <https://perma.cc/F5NW-BQZH>; Adam Gabbatt, *US climate activist dies after setting himself on fire outside supreme court*, The Guardian, (April 25, 2022) <https://perma.cc/CR7U-69YN>. Reporting emphasized Mr. Bruce's life of activism, his commitment to spirituality, and his mental health struggles. See Ellie Silverman and Ian Shapira, *Outside the Supreme Court, a life of purpose and pain ends in flames*, The Washington Post, (April 26, 2022) <https://perma.cc/2LZ2-FXTV>; Chris Cameron, *Climate Activist Dies After Setting Himself on Fire at Supreme Court*, N.Y. Times, (April 24, 2022) <https://perma.cc/F5NW-BQZH>.

Ms. Bradbury is a journalist with *The Denver Post* and has been the *Post's* lead reporter

covering Mr. Bruce's life and his death last year. Bradbury Decl. ¶¶ 1-2, Ex. 1. After his death, a friend of Mr. Bruce sent an email exchange to Ms. Bradbury. Bradbury Decl. ¶¶ 3; Ex. 2. The email chain, between Mr. Bruce and his father, discusses his guardianship proceedings. In that correspondence, Mr. Bruce appears to express concerns about his guardianship arrangement, writing: "I feel horrified by the legal/financial situation I am in," and that "[m]y personhood was dismissed..." Ex. 2. After further research in connection with her reporting, Ms. Bradbury learned that since at least 2010, Mr. Bruce has been subject to a guardianship administered by the Boulder County Probate Court. On September 6, 2022, Ms. Bradbury submitted a request to the Boulder County Court seeking:

- "[R]eview of all records filed post-2010 in Bruce's guardianship case in Boulder Co.[]";
- "[C]opies of annual Guardian's & Conservator's Reports since 2020[]"; and
- "[A]ny filings that discuss Bruce's complaints about his guardianship and/or conservatorship."

Bradbury Decl. ¶ 4; Ex. 1, 3. Request & Denial. On October 27, 2022, Ms. Bradbury received a response from the Boulder County Court notifying her that her request had been denied. Ex. 3, Request & Denial. The response instructed her to file the instant motion requesting a court order for access to the records. *Id.*

Ms. Bradbury now moves this Court for an Order of Good Cause permitting her to inspect Mr. Bruce's guardianship records.

ARGUMENT

A. Legal Standard

A court may authorize the inspection of otherwise non-public guardianship records "based on a finding of good cause," C.R.S. §§ 15-14-317(4)(b), 15-14-420(6)(b), and any requestor, not only an individual with a personal interest in or enumerated right of access to a

particular guardianship file, may make this showing. *See In re R.M.C.*, 514 P.3d 963, 970 (Colo. App. 2022) (explaining that C.R.S. § 19-5-305(1), which has an analogous disclosure requirement, “permits a court to authorize disclosure of [adoption] records to other parties for good cause shown”); *see also* Directive Concerning Access to Court Records section 4.60(b)(5)&(7) (guardianship records are not accessible to the public *unless a court orders otherwise*) (emphasis added). Colorado courts define the good cause standard as “a substantial or legal cause as distinguished from an assumed or imaginary pretense.” *Tucker v. People*, 319 P.2d 983, 986 (Colo. 1957). When interpreting the good cause requirement of a statute, a trial court has discretion to “consider factors it deems relevant” to determine whether good cause exists. *High Plains Library Dist. v. Kirkmeyer*, 370 P.3d 254, 260 (Colo. App. 2015); *see also Wallbank v. Rothenberg*, 140 P.3d 177, 180–81 (Colo. App. 2006).

While there is no published case law applying the statutory good cause standard to guardianship records in this state, Colorado courts have explained that when making its statutory good cause determination, a trial court may look to decisional law applying the good cause standard in analogous settings. *See Hane v. Tubman*, 899 P.2d 332, 333 (Colo App. 1995) (holding that a trial court did not abuse its discretion by looking to related decisional law in interpreting the good cause requirement in C.R.S. § 13-20-602). Here, the similarity between access rights to adoption records and guardianship records is pertinent. *Compare* C.R.S. §§ 15-14-317(4)(b), 15-14-420(6)(b) *with* C.R.S. § 19-5-305(1). In the analogous context of access to adoption records, Colorado courts have determined that the good cause standard is not met where access to the records is immaterial to a litigants’ legal claims. *See W.D.A. v. City and County of Denver*, 632 P.2d 582, 585 (Colo. 1981) (holding that good cause did not exist where access to the adoption record sought would not assist in resolving “the issue for final decision,” which was

an independent question of law); *In re R.M.C.*, 514 P.3d 963, 970 (Colo. App. 2022) (holding that good cause to access adoption records did not exist where a petitioner’s “claim turns on the purely legal issue,” rendering access to the record unnecessary). Here, there is good cause to permit requestor to access Mr. Bruce’s guardianship records; access will enhance the public’s understanding of the guardianship system, which is largely secretive, and serve the public’s interest in knowing how that system may have failed Mr. Bruce.

A. The good cause standard is met here because the interest in informing the public about the guardianship system in general, and Mr. Bruce’s guardianship in particular, outweighs any countervailing interests.

Unlike those cases where Colorado courts did not find good cause for access to analogous records, Mr. Bruce’s guardianship records are crucial and central to the requestor’s needs. For example, in *W.D.A. v. City and County of Denver*, the Denver Zoning authority sought the transcript of an adult adoption case as part of its zoning enforcement action against cohabitants—adoptive father and son—in a dwelling zoned for single family use. 632 P.2d 582, 583. The Supreme Court denied the request because the enforcement action turned only on whether the adoption was legally valid, and therefore did not pose “a need for factual information which may appear in the adoption proceeding record sufficient to override confidentiality provisions.” *Id.* at 584. Similarly, in another case involving a request for access to adoption records, the Colorado Court of Appeals found that the requestor had not shown good cause because he could fully brief his arguments as to the underlying legal issue without access to the records. *In re R.M.C.*, 514 P.3d 963, 970 (Colo. App. 2022). In contrast, here, there is a compelling public interest in obtaining a fulsome picture of Mr. Bruce’s life, and the benefit to public discourse that would result from access to Mr. Bruce’s guardianship records would be completely thwarted without

access.² Accordingly, there is good cause to permit requestor access to information that will enable her to inform the public about the facts of Mr. Bruce's guardianship, how it was established and maintained, and whether Mr. Bruce sought to dissolve or contest it.

In recent years, there has been increased public attention to adult guardianship and conservatorship systems. Media reporting about individual guardianships, like reporting about Britney Spears's conservatorship, served as a catalyst for public debate about the sufficiency of oversight of individual guardianships and the guardianship system generally, prompting policymakers to advocate for sweeping reforms. Sophie Austin, *After #FreeBritney, California to limit conservatorships*, The Associated Press, (Sept. 30, 2022) <https://perma.cc/ARP6-GGYX>; Marianne Goodland, *Deadly Care: Scrutiny mounts as 14 Coloradans die under care of Office of Public Guardianship*, Colorado Politics, (May 3, 2022) <https://perma.cc/3CVE-KLA9>. The *New York Times*'s reporting about Britney Spears's conservatorship—which ended in 2021 when an L.A. Superior Court ordered its termination—would not have been possible without access to non-public guardianship records detailing the level of control Ms. Spears's father exercised over her life, and her repeated attempts to challenge the court-ordered arrangement. Liz Day, Samantha Stark, and Joe Coscarelli, *Britney Spears Quietly Pushed for Years to End Her Conservatorship*, N.Y. Times, (June 22, 2021) <https://perma.cc/VL3H-23UP>. Here in Colorado, reporting on the guardianship system has revealed that there is little oversight, Jennifer Kovalski, *Colorado guardianships can bleed estates with little to no oversight*, Denver7, (May 18, 2021) <https://perma.cc/GG46-D2ZU>, and a lack of transparency that has shielded the exploitation and abuse of the elderly, rendering it “the perfect crime.” Pam Zubeck, *How Courts*

² See the New York Times's reporting on Britney Spears, *infra*, which relied on access to non-public conservatorship records.

and guardians exploit the elderly and their estates and get away with it, The Colorado Springs Indy, (January 8, 2020) <https://perma.cc/QW7D-RKM9>. Indeed, a number of recent deaths has spurred scrutiny of adult guardianships in the state. Marianne Goodland, *Deadly Care: Scrutiny mounts as 14 Coloradans die under care of Office of Public Guardianship*, Colorado Politics, (May 3, 2022) <https://perma.cc/3CVE-KLA9>.

Mr. Bruce's act of self-immolation on Earth Day captured the nation's and world's attention. *See, e.g.*, Shelly Bradbury, *Boulder climate activist dies after apparent act of protest outside U.S. Supreme Court on Earth Day*, The Denver Post, (April 24, 2022) <https://perma.cc/U4MB-BNSL>. But in the wake of his highly publicized death, important questions about his life remain unanswered. In the absence of an express statement, media organizations have been careful not to attribute a motive to Mr. Bruce's self-immolation. Family members and associates have commented publicly on his ongoing mental health-related struggles, along with his faith, and his activism. *See, e.g.*, Ellie Silverman and Ian Shapira, *Outside the Supreme Court, a life of purpose and pain ends in flames*, The Washington Post, (April 26, 2022) <https://perma.cc/2LZ2-FXTV>. Because acts of self-immolation that may be seen as protests linger in the public consciousness, there is a public and historical interest in painting a full and accurate picture of Mr. Bruce's life. *See, e.g.*, Michael E. Ruane, *Vietnam critic's end was the start of family's pain*, Washington Post, (Nov. 1, 2015) <https://perma.cc/7Z9V-CQWN>; Annie Correal, *What Drove a Man to Set Himself on Fire in Brooklyn?*, N.Y. Times, (May 28, 2018) <https://perma.cc/J5US-CGWW>.

Mr. Bruce's guardianship is key to that understanding. Guardianships and conservatorships are intended to serve the interests of the individual who is placed under their auspices. But critics have noted the potential for abuse enabled by the guardianship system, and

the mental toll that often accompanies being subject to a long-term guardianship. See Chandra Bozelko, *Britney Spears' conservatorship can be both totally legal and quite bad for her. Many are.*, NBC News, (Nov. 14, 2020) <https://perma.cc/A35Q-HRZP>; Amanda Morris, *After #FreeBrittney, Senate bill seeks changes to guardianships*, The Washington Post, (March 30, 2023) <https://perma.cc/UQ9X-BPL9>. For example, in an email to his friend about his guardianship, Mr. Bruce wrote:

Mr. Bruce: I feel horrified by the legal/financial situation I am in, and I very much request a chance to talk with you about subjective subject matter - my vision for my life.”

...

Mr. Bruce: Yes, the person who visited me and had my legal adulthood and rights removed.

Mr. Bruce's Friend: ...But I am confused, if she said she doesn't think you need a guardian, why was one appointed to you?

Mr. Bruce: It's because it is the legal machine. She was keeping it operating. She said effectively that I need a guardian and have no legal rights to have anyone else involved in helping me make sense of my situation.

Ex. 2.

Further, keeping guardianship records confidential may subvert the interests of the person subject to the guardianship. In declining to seal a guardianship record in New York—where the law allows guardianship records to be sealed for good cause—a trial court wrote that “sealing the record here would have the effect of burying secrets, hiding the truth, and thwarting the best interests of the incapacitated person to be protected from unscrupulous behavior.” *In re Caminite*, 57 Misc. 3d 720, 727 (Nassau Cnty. Ct. 2017). In that case, a proposed guardian had moved to seal the guardianship record of a mentally incapacitated person suffering from a severe cognitive impairment. *Id.* at 726. The movant alleged that the person subject to the guardianship

was experiencing abuse and financial exploitation by those charged with her care, further arguing that sealing was necessary to preserve both the movant's and the subject's privacy interests. *Id.* at 727. But rather than seal the record, the court concluded instead that openness would be a better prophylactic against abuse of someone whose interests were impossible to ascertain. *Id.* (“[T]he bright light cast upon the judicial process by public observation diminishes the possibilities for injustice, incompetence, perjury, and fraud.”) (quoting *Mancheski v. Gabelli Group Capital Partners*, 39 A.D.3d 499, 501 (NY App. Div. 2007)). The same rationale applies here, where Mr. Bruce is unable to provide his own perspective, and where correspondence he gave to Ms. Bradbury suggests he had serious concerns about his guardianship arrangement. Access to Mr. Bruce's guardianship records will enable a full accounting of his life, the pressures he may have faced, the extent to which his guardianship served or did not serve his interests, and whether he may have attempted to dissolve or otherwise contest that legal arrangement. In light of the compelling public interest and need for transparency here, there is sufficient good cause to release Mr. Bruce's guardianship records to the requestor.

B. Even assuming, arguendo, that a countervailing privacy interest existed here, it does not outweigh the compelling public interest in disclosure.

Many jurisdictions, including Colorado, provide for some degree of confidentiality of guardianship records. The rationale for confidentiality is to protect the individual who is subject to the guardianship or pending guardianship proceeding. *See Erica McCrea, A Survey of Privacy Protections in Guardianship Statutes and Court Rules*, Am. Bar Assn., (Feb. 1, 2017) <https://perma.cc/C3Zr-Z959>. In other states, courts have declined to order disclosure of guardianship records where they might divulge sensitive information about a living individual subject to a guardianship. *See In Matter of Du Pont*, 1997 WL 383008 (Del. Ct. Chancery 1997) (unreported) (holding that granting media access to a living person's guardianship record would

unduly infringe on that person's privacy). But privacy and reputational interests are extinguished upon death, and the consensus view is that a decedent's estate does not have standing to enforce privacy or reputational interests of an individual who is no longer alive. *See Justice v. Belo Broad. Corp.*, 472 F. Supp. 145, 147 (N.D. Tex. 1979) (collecting cases); *Flynn v. Higham*, 197 Cal. Rptr. 145, 149 (Cal. Ct. App. 1983) (collecting cases). Further, Colorado law makes it clear that a guardianship "terminates upon the death of the ward." §15-14-318(1), C.R.S.

Tragically, Mr. Bruce, the individual subject to the guardianship, is deceased. Any interest in Mr. Bruce's privacy and protection from reputational harm that would justify continued sealing is therefore no longer present.

Perhaps more importantly, Mr. Bruce's interests may be served by disclosure. As the court acknowledged in *In re Caminite*, the secrecy of guardianship records may conceal the truth to the ultimate detriment of the person subject to a guardianship. 57 Misc. 3d. at 727. The concerns Mr. Bruce expressed within that correspondence paint a picture of someone who believed themselves to be underserved or even harmed by the legal arrangement. Given widespread speculation about his life and the motivations for his death, disclosure of Mr. Bruce's guardianship records may provide facts that set the record straight. At the very least, disclosure will provide a more textured, full picture of an individual who will be counted in history among a very small group who took a most drastic step, presumably in service of their personal convictions.

CONCLUSION

For the foregoing reasons, the Court should grant Ms. Bradbury's motion and enter an Order for Good Cause providing her access to Mr. Bruce's guardianship records.

Respectfully submitted on the 11th day of May 2023.

By /s/Rachael Johnson
Rachael Johnson, #43597
Reporters Committee for Freedom of the Press
Attorney for Requestor
Ms. Shelly Bradbury of *The Denver Post*

Attachment to Order - 2015PR30176