

Case Study: Correll v. Commonwealth 269 Va. 3

In *Correll v. Commonwealth*, 269 Va. 3, a legal guardian (Shirley P. Correll) appealed a previous court decision which charged her with neglecting care of her elderly mother (Nellie S. Paxton). Correll claimed that there was not sufficient evidence to support the previous court rulings that she was guilty of willfully or knowingly neglecting her mother's care. Unfortunately, for Correll, the Supreme Court of Virginia upheld the previous two rulings and sentenced Correll to two years in the penitentiary. (*Correll v. Commonwealth*, 2004)

Code 18.2-369 provided the legal lens for "any responsible person who abuses or neglects an incapacitated adult" in this case. The court defined the term, "neglect" as "knowing and willful failure by a responsible person to provide treatment" (*Correll v. Commonwealth*, 2004, n.p.). The court turned to a child abuse statute (Code 18.2-371.1(B)(1)) to clarify the term "willful" as "knowing or intentional, rather than accidental, and be done without justifiable excuse, without ground for believing the conduct is lawful, or with a bad purpose" (*Correll v. Commonwealth*, 2004, n.p.). As the court reached its conclusion, it also bore in mind that it should lean towards upholding the previous court decisions. (*Correll v. Commonwealth*, 2004)

The evidence in the case revolved mostly around Paxton's weight loss, malnourishment, and bed sores. Several medical staff, including doctors and nurses, were influential witnesses in this case. The severity of the bed sores, dehydration, malnourishment, albumin levels, and consequent death from pneumonia were testimony to a longterm neglect of care. (*Correll v. Commonwealth*, 2004)

The court concluded that Correll "knowingly and willfully failed to provide medical treatment to her incapacitated mother" (*Correll v. Commonwealth*, 2004, n.p.). Correll did not follow through on the prescribed six-month checkup. The court reasoned that Paxton's malnourishment and effects of malnourishment were not from noncompliance on Paxton's part nor by an inability to eat. The bed sores, dehydration and malnourishment were the result of prolonged neglect, based on the testimony of the medical staff. Lastly, the court reasoned that the medical issues resulted in "serious bodily injury or disease" for Paxton, also based on the testimony of medical staff. The court reasoned that Correll's neglect was "willful" by borrowing the definition of "willful" from a child abuse statute in order to interpret the law in regard to neglect of an incapacitated adult. (*Correll v. Commonwealth*, 2004)

I agree with the court's determination that Correll knowingly and willfully neglected her mother's care. Correll was her mother's legal guardian and not being cognizant of her mother's condition is not justifiable nor accidental. The doctor told Correll to watch her mother for weight loss and also showed her how to treat the bed sores. Paxton's most noticeable decline happened over the time period of a year (2000) and was even noticed by others, including Correll's sister. The fact that the types of sores Paxton had required a long time to develop and that Paxton's death was likely the result of complications from malnutrition, support ongoing neglect of care. Correll did say that she knew Paxton had bed sores but that Correll did not know how to treat them (contrary to what the doctor testified). The fact that Correll knew about the sores, but did not seek treatment for her mother further supports her "willful" neglect. Although it was not verified who cancelled Paxton's follow-up doctor's appointment, it would be most believable that Correll cancelled it because she is the legal guardian. It does not appear that Correll brought in her mother at the requested 6-month follow-up, in any case. Also, Paxton's decline does not appear to be related to patient non-cooperation since Paxton's health improved and she also willingly ate in the hospital.

In regard to Correll's sentencing, I believe her misdemeanor constituted a Class 4 felony. According to Virginia law, Class 4 felonies can be from a minimum of 2 years to a maximum of 10 years in prison, and fines up to \$100,000. Apparently, Correll received a fairly lenient sentencing.

From a biblical perspective, the government's job is to punish those who do wrong (Romans 13:4). If crime is not punished, then citizens are no longer afraid to engage in criminal activities and the country ceases to be a peaceful place to live. In a country that idolizes youth and promotes survival of the fittest, I believe that court rulings supporting the care of all human life are especially critical. From this perspective, I believe the court could have given Correll a stricter sentencing.

Legal guardians should be qualified, supported and monitored in fulfilling their responsibilities. Background checks and possibly credit checks, and training should be required when appointing legal guardians. Increased state and court administrative activities, community resource engagement and volunteer support can be used to increase monitoring of legal guardians and vulnerable adults. Steps might include mandated reporting by legal guardians, collaborating with community organizations who may also notice signs of neglect, training legal guardians, soliciting volunteers to check on vulnerable adults, increased viewing of reports and taking action when necessary. Technology can be used not only to maintain databases of vulnerable adult reporting data, but also to monitor vulnerable adults through devices or surveillance. (Karp & Wood, 2008) If these strategies had been employed, Paxton's death might have been prevented.

Although it is assumed that Paxton required a legal guardian, I wonder to what extent a legal guardian was necessary. The court should consider if appointing a legal guardian is the best and most necessary solution to protect the incapacitated adult. The functional abilities and challenges of the incapacitated adult should be fully explored to determine which areas truly require assistance, what type of assistance is needed, and which areas the adult is still able to function autonomously. Evaluation of these needs should continue to be ongoing and may result in changes for the care of the adult over time. Legal guardians should also be made aware of community resources in caring for the vulnerable adult. Sometimes, a family member may not be the single best option as a legal caregiver. (Wood, 2012) Caregiver burnout occurs frequently, and I think that a collaborative approach between the courts, state programs, community resources, volunteers and the legal guardian can provide a sustainable and comprehensive approach for incapacitated adults.

Correll v. Commonwealth, 42 Va. App. 311, 591 S.E.2d 712, 2004 Va. App. LEXIS 30 (2004)

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