

Woman in guardianship series is free



Linda Bous smiles at a family member after getting her rights restored Thursday at the Sarasota county Justice Center.

Published: Thursday, February 5, 2015 at 2:13 p.m.

All the rights that most adults take for granted — to spend their own money, to travel, to vote, to marry, to enjoy dinner out at a Red Lobster — once again belong to Linda Bous.

Bous, 67, did not hesitate today when 12th Judicial Circuit Judge Charles Williams asked her if she wanted to say anything at the hearing to restore her rights and terminate a full adult guardianship of more than nine months.

A small and soft-voiced woman born in Scotland, she spoke out clearly and briefly about the injustices she believes were done to her.

Distraught from her husband's death in January 2014, Bous had been found by a medical team to be lacking capacity to make her own decisions and was placed by her emergency temporary guardian in an assisted-living facility. In October, [her desperate phone call to the Herald-Tribune](#) set in motion the legal process that led to her freedom today.

“It was a terrible loss, to lose my husband and best friend of almost 30 years,” Bous told the judge. “But if I had had my rights at that time, none of this would have happened.”

The Sarasota resident acknowledged that when someone from the Department of Children and Families visited her home, she was ill and needed assistance. But with help, she said, she could

have handled the paperwork for her husband's estate and resumed her life without him. "I feel that I was abused," she told the judge, "because I had no chance to speak for myself."

Florida's elder guardianship system, a patchwork of legal and customary procedures designed to protect and care for state residents suffering from dementia or frailty, is based on a statute that is considered a model in the United States. But in practice, critics say, the statute's provisions to ensure due process for proposed wards are routinely ignored.

The system can be bewildering for wards and their families, who often lack access to legal expertise. And while someone can be placed under guardianship in a matter of days, getting out has felt like a long and mysterious process for Bous and her sister-in-law, Jane McElree. "I have no idea what's supposed to happen next," McElree said today. "When are we going to find out where Linda's bank accounts are?"

Florida law has a checklist of 14 rights that an elder may surrender as a result of the guardianship process. If a ward has capacity to exercise some of these rights, the thinking goes, the guardianship can be limited and less intrusive. But in the paperwork of a typical case file, a Herald-Tribune investigation found, the examining committee members simply check all the boxes on the list of rights.

"A full or plenary guardianship should be the very last resort," said Brenda K. Uekert, principal research consultant for the National Center for State Courts. "But in most cases that's not true. In most cases, a full guardianship is simply easier."

Bills are pending in the Florida Legislature that would make it harder for guardians and attorneys to disregard the best interests of wards under their protection, and to discourage the routine practice of ordering emergency guardianships without a hearing — as happened in Bous' case.

Her story is unusual in one regard: It is rare for the attorney a judge appoints for the ward at the beginning of a guardianship to re-open the case later. Usually wards or their families must find another attorney to file paperwork for a restoration of rights, and pay a retainer upfront — which can range from \$3,000 to \$8,000.

Before today's hearing, Bous' court-appointed attorney, Marc Soss, returned her house keys and some identification cards. Williams ruled that Bous' guardian must provide a full accounting of all her belongings. "The system does have checks and balances, and you have an excellent lawyer in Mr. Soss," Williams told Bous, adding, "Good luck."

Bous' former guardian, present with her attorney, also wished her luck when the hearing ended. Bous responded with a wry smile. But then she planted a kiss on the cheek of Soss as he gave her copies of documents in her case file — papers she had never been allowed to see.

Finally at liberty to go where she pleased, Bous left the downtown judicial center with McElree and family friend John McCarthy, quietly discussing how she might go about getting her U.S. residency status back in order. It was lunchtime, but neither of the women felt like eating anything.

Bous said her plans for the immediate future — aside from the necessary bureaucratic steps to get her life back in order — include that outing to the Red Lobster, where she and her husband had their first date, and return visits to the facility where she has been confined since May.

“I’ll miss some of the people,” she said. “A lot of the people, they like somebody to talk to because they can’t remember anything. I know some of them are in there forever.”

Someday she intends to travel, visiting relatives in British Columbia and Scotland. But for now, she is intrigued by the idea of a normal life.

“It’ll be fun,” she said. “I have a list made up already of what I have to pick up at the grocery store.”