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PERSPECTIVE

Why won't the court free Britney?

By Timothy D. Reuben
and Stephanie I. Blum

On June 23, during a hearing challenging the continuance of her years-long conservatorship, pop singer Britney Spears said, "I want to have the real deal. I want to be able to get married and have a baby ... I deserve to have a life. ... I deserve to have the same rights as anybody does by having a child, a family, any of those things, and more so."

Here are the objective facts: An immensely talented 39-year-old woman and mother of two who has generated millions and millions of dollars through intensive work and performance has been subject to a conservatorship for 13 years; various complaints have surfaced through the years about her conservator father, whom she dislikes and distrusts but who receives substantial (i.e., hundreds of thousands of dollars) income from her incredible work efforts; multiple professionals are also feeding at her economic trough to the tune of hundreds of thousands of dollars, all paid for by the talented and constantly working woman; and, according to Britney, there has been a complete and humiliating deprivation of her rights and privacy, including being required to work as much as seven days per week, a forced IUD, and multiple forced medications (like lithium) and "treatments."

This scenario was only made possible by the power of the state acting through our courts, and so Britney asks: "Again, it makes no sense whatsoever for the State of California to sit back and literally watch me with their own two eyes, make a living for so many people and pay so many people ... and be told I'm not good enough." And let's not forget that the basis for the order initially made back

in 2008 was an incident triggered by the understandable frustration and depression of a woman who was post-partum, in the midst of a nasty divorce, and trying to see her children while being chased and harassed by multiple and typically offensive paparazzi — a circumstance that would make most people lose their cool.

So, now as a judge you are confronted with compelling, extensive and extremely credible testimony from this woman describing how she has been abused and is crying out for "help" to the court that put her in this position. She details how she has been forced to work, "threatened" and "bullied" by her team, abused by her therapist, and humiliated with no privacy.

With all the troubling testimony, possibly one of the most problematic and telling statements was when Britney stated: "Ma'am I didn't know that I could petition the conservatorship to end it. I'm sorry for my ignorance, but I honestly didn't know that."

When quizzed about this, the court-appointed attorney who has purportedly been representing her and making hundreds of thousands of dollars doing so refused to explain how Britney Spears did not know this rather fundamental fact, stating: "It's difficult for me to respond ... without breaching attorney-client privilege and so therefore I won't." A few moments later, that same attorney did state: "If my client directs me to file a petition to terminate I'm happy to do that. So far she has not done that." But if she did not know of her right to seek termination, how could she possibly have "instructed" him to do so?

Ironically, the lawyer's comment about his lack of instruction came after Spears had just repeatedly testified not once but at least five times: "My requests are just

to end the conservatorship without being evaluated. I want to petition basically to end the conservatorship."

So why did this lawyer, who was purportedly appointed to represent her, not make these rights crystal clear to her? He certainly was compensated for years.

Despite the clear legitimacy of Britney's earnest pleas and her attorney's implicit acknowledgement of his failure to act as she indicated was her goal, the court ultimately did nothing. All the parties and their multitude of attorneys were there before the court for this testimony. Nonetheless, the judge concluded she had no ability to act: "Some of the issues that Ms. Spears raised this afternoon do require a proper petition to be before me

for me to consider ... There is no petition before the court. ... They do require petitions."

A petition to end the conservatorship still has not been filed since the June 23 hearing. However, Spears' court-appointed lawyer and one of her co-conservators (not her father) have since requested to resign from the case. The next hearing on the matter is set for Wednesday, July 14th, in Los Angeles.

The Probate Code, like the Family Code, gives the court extremely broad discretion to craft orders appropriate to the circumstances, and of course, among other things, a court may sua sponte reconsider its own order (see, e.g., Probate Code Section 1850), or alternatively issue an order to show cause why the conservatorship should not be terminated with an expedited briefing schedule. But the court asked no questions of the father, the

Timothy D. Reuben is the founding principal of Reuben Raucher & Blum, a litigation boutique located in Brentwood. He handles matters at both the trial and appellate level and in arbitration and specializes in complex matters including real estate, intellectual property, unfair competition, and related business disputes. He can be reached at treuben@rrbattorneys.com.



Stephanie I. Blum is a Certified Family Law Specialist and named partner who heads the Family Law Department at Reuben Raucher & Blum in Brentwood. She can be reached at sblum@rrbattorneys.com.



mother, the conservator of the person, or the co-conservator of the estate. Instead, the court oddly claimed ignorance on how to proceed: “I don’t know what the steps would be to the point where a matter would actually be on the court’s calendar.” The judge merely confirmed her willingness to consider future matters (which is her obligation anyway) and as reflected in the minute order, placed the status conference “off calendar.” In effect, the judge returned control over the future of the estate to the team of people that Britney Spears had just indicted, the team who she testified abused her.

This would seem to fly in the face of justice. However, while the California Code of Judicial Conduct has six canons, not a single one requires that a bench officer actually do justice. When an obvious wrong is displayed in front of a judge, which only occurred here because the court exercised the enormous power of the state to take away Britney’s liberty and financial resources, isn’t a judge supposed to, consistent with the law, do justice and promptly take legally proper action to stop this obvious miscarriage once it became apparent?

Canon 1 requires “integrity” and Canon 2 requires avoidance of the appearance of impropriety, and while those might be tangentially relevant, a review of the notes and subparts make clear that actually doing justice is not the focus of those canons. Canon 3 does require a judge to

“perform the duties of the judicial office impartially, competently, and diligently.” But what about justice? None of the notes about Canon 3 actually require that, although Canon 3B(7) does state: “A judge shall dispose of all judicial matters fairly, promptly, and efficiently.”

The manner in which the 13-year conservatorship of this young woman was handled was hardly fair, prompt or efficient. But what about doing justice? Is that just implied?

The requirement to reach out and right a wrong that the state has allowed to happen — i.e., do justice — is not contained in the judicial oath of office either. The California Constitution, which contains the oath, requires that a judge uphold and defend the U.S. and California constitutions and not advocate against the government. But judges don’t have to promise to do justice.

Britney Spears wanted her testimony public despite the apparent desires of the conservators that the hearing be closed. But she stated: “I think they’ve done a good job at exploiting my life ... I feel like it should be an open court hearing, and they should listen.” Her articulating that position in and of itself speaks of a woman who should not be under conservatorship. She described truly horrific abuse and wants to sue all of those feeding at the trough. “The people who did that to me should not be able to walk away so easily.” She even told the judge: “My dad and anyone involved in this

conservatorship and my management who played a huge role in punishing me when I said no, ma’am, they should be in jail.”

So did the judge seeing this obvious wrong immediately and decisively act to end this state imposed situation? No she did not. The canons don’t compel a judge to act to stop such wrongdoing even when displayed in open court and even when he or she can legally do so. The oath of office also doesn’t compel it.

That is just not acceptable. We expect more from our judicial officers. And some do more. But clearly the Britney conservatorship has been mishandled by our courts, which bear significant responsibility for the abuse this gifted woman has suffered, and as she herself actually points out, she is likely not the only person who has suffered a travesty created by the imposition of the power of the state. That is not to say that complex situations may require a judge to exercise both judgment and power in the quest to solve challenging problems, and in the sometimes murky context of conservatorship, divorce, custody and even complex business affairs, judges can only do their best to follow the law and make appropriate orders. Inevitably, mistakes will happen or circumstances change, and some situations cannot ever have an optimal outcome. But bench officers who wield this enormous power should not sit by and wait when an obvious and indisputably unfair situation created by

their orders comes before them. They need to act when legally appropriate to do so. And they need to do justice — which should be more clearly spelled out in their canons.

Actress Rosamund Pike recently received a best actress Golden Globe award for her performance in the Netflix comedy/thriller “I Care A Lot,” where she portrays a sophisticated, well-dressed, well-spoken professional conservator who is trusted by the court, but in fact she is rapaciously taking economic advantage of elderly victims in a devilish and malicious way, stealing their assets and robbing them of their freedom. Courts can sometimes be fooled by the well-rehearsed presentations of professionals who politely claim a desire to help those in need but ultimately are only focused on lining their own pockets; but when the truth is revealed, a judge must promptly act. The Britney scenario is an embarrassment to the California justice system. One can only hope that those who are involved with it take notice and learn from it. And perhaps we also need a new canon that calls for doing justice consistent with the law, and dissuades a court from sitting on its hands. ■

RRB
REUBEN RAUCHER & BLUM^{PC}
ATTORNEYS AT LAW