

675 P.2d 1013
Supreme C

by members of a religious sect called Kingdom Come Ministry”, and is being “deceived and imposed upon by artful, deceiving and designing persons.”

The testimony and evidence presented during the five day trial demonstrated that Robin Polin is eighteen years old and is congenitally **deaf**. She cannot speak and communicates in her primary language which is a combination of American Sign Language and signed English. Robin is *1014 bilingual; her second language is written English. Additionally Robin possesses above average intelligence as demonstrated by the evidence presented by both petitioners and respondents.

Robin’s academic achievement level does not equal that of eighteen year olds who are not hearing impaired, primarily because of the communication problems with which she is faced. Yet, in spite of the serious communication difficulties which face all **deaf** persons, Robin’s academic plans include graduating from high school and continuing on to college.

Robin is a registered voter, a licensed driver, and has demonstrated her ability to travel independently. She has held part-time jobs during summer vacations like many high school students.

While attending Edison High School, Robin became acquainted with other **deaf** students. Through social activities with her friends, Robin became curious about Christianity, and sought information from an established Tulsa church with an active ministry to the **deaf**. Robin’s parents, having raised her according to her Jewish heritage, objected to her association with the Christian ministry. They wanted her to adhere to Jewish beliefs and felt that they should answer any religious questions posed by their daughter. Open conversation was difficult however, since Paul Polin, throughout the eighteen years of his daughter’s life, never learned to communicate with Robin in her primary language, signed English.

Between March, 1982 and April, 1983, Robin made the decision to adopt the Christian faith as her own, and sought to combine this faith with her ethnic heritage. Mr. Polin opposed Robin’s choice, and ordered his daughter either to conform to his wishes or leave his home. Robin chose to leave on April 26, 1983. On April 28, 1983 Mr. and Mrs. Polin petitioned to have their daughter declared incompetent and sought guardianship of her person and estate.

After a five day trial Special Judge Robert D. Frank found Robin Andrea Polin to be “judgmentally immature” and therefore incompetent under the laws of Oklahoma. In his

lengthy decision, Judge Frank observed that the apparent motive in bringing the action was the discord surrounding Robin’s religious choice. Yet, in outlining the factors which did *not* contribute to his decision, Judge Frank listed religious choice first, followed by Robin’s average to above average intelligence, her academic achievement level, and her employability.

The sole effect of the creation of “judgmental immaturity” as a standard by which to judge one incompetent to manage her person or property manifests itself as an abridgment of Robin Polin’s constitutionally guaranteed

rather extravagant gifts. *In the Matter of the Guardianship of Bogan*, 441 P.2d 972 (Okl.1968). In *Bogan*, we applied 58 O.S.1961 § 852 and defined “incompetent” and “incapable” to mean

any person who, though not insane, is, by reason of old age, disease, weakness of mind, or from any other cause, unable or incapable, unassisted, of properly taking care of himself or managing his property, and by reason thereof would be likely to be deceived or imposed upon by artful or designing persons.

Id. at 974 (quoting *In re Guardianship of Prince*, 379 P.2d 845 (Okl.1963)).

We adopted this definition in 1912 as dispositive of the Legislature’s intent to protect *property* of alleged incompetants from being usurped by artful and designing persons. This definition existed as part of the language of California’s incompetency statute. We applied it in order to uphold appointment of a guardian for two sisters who were “so ig 830047>5Q f1 (6IBT(er)-5(s)6IBT2 reW*nBT)6(tarW*nBT6(i)-97st6(is)40

incompetent be “incapable of taking care of himself and managing his property”, and sets a standard much higher than mere “judgmental immaturity”. 58 O.S.1981 § 852. That she needs additional training and guidance as she continues to mature shows nothing more than the needs for experience, training and guidance exhibited by all young adults. Robin’s needs differ because of her disability, but Robin understands her special needs and has been trained to cope with her communication difficulties. She knows when and how to seek appropriate aid when she requires special assistance.

The trial court’s creation of a vague standard such as “judgmental immaturity” cannot be permitted as camouflage for the single effect of its decision, the denial of Robin Polin’s right to her religious beliefs. To permit this standard to exist places a construction upon our statute beyond the intent of its drafters and well outside the limits of the Oklahoma and United States Constitutions.

The Tenth Circuit held a guardianship proceeding void for lack of notice under 58 O.S.1981 § 851 when the intent of the proceeding was to facilitate deprogramming of a young adult. The court remanded for trial the tort claims of the alleged incompetent for false imprisonment, holding that the case arose from a “situation in which there is a gross concerted interference with a very

fundamental right, the right to choose one’s religion, and it is this underlying factor that makes the case actionable, or which greatly aggravates it.” *Taylor v. Gilmartin*, 686 F.2d 1346, 1362 (10th Cir.1982); *cert. denied*, 459 U.S. 1147, 103 S.Ct. 788, 74 L.Ed.2d 994 (1983).

A similar misuse of the Oklahoma incompetency statutes is effected by the trial court’s decision against Robin Polin. The decision is therefore REVERSED.

IRWIN, LAVENDER, DOOLIN and OPALA, JJ.,
concur.

SIMMS, V.C.J., concur in judgment.

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