

June 5, 2026

**APPELLATE DIVISION REAFFIRMS PRINCIPLES OF CONSTITUTIONAL DUE  
PROCESS IN CONTESTED GUARDIANSHIP PROCEEDINGS**

*By: Thomas R. Lahey, Esq.*

On February 20, 2026, the Appellate Division issued an Opinion regarding the constitutional due process that is required to be afforded to litigants in contested guardianship matters.

*In the Matter of F.M.W., an alleged incapacitated person*, the panel was asked to consider whether the trial court violated the constitutional due process rights of the alleged incapacitated person and her respondent sister, R.W., when the trial court determined to appoint the Office of the Public Guardian for Elderly Adults as guardian for F.M.W. over R.W.'s objections without conduct a full plenary hearing.

F.M.W. lived with R.W., her sister and caregiver. F.M.W. was referred to Adult Protective Services (APS") after an anonymous referral reported concerns of neglect of F.M.W. After several months of investigation, F.M.W. was evaluated by two physicians engaged by APS who concluded that F.M.W. was an incapacitated person. APS filed a guardianship action.

Court-appointed counsel was appointed for F.M.W. R.W., filed an Answer seeking to be appointed as guardian for F.M.W. The issue of F.M.W.'s capacity was uncontested. The only issue which was contested was the appointment of an appropriate guardian for F.M.W.

F.M.W.'s court-appointed counsel produced a report which outlined concerns regarding the care R.W. administered to F.M.W. and R.W.'s fitness to serve as guardian for F.M.W., citing to interviews with persons with personal knowledge of F.M.W.'s condition and R.W.'s ability to care for F.M.W.

The trial court conducted a telephonic hearing and took testimony from APS, R.W.'s attorney, and F.M.W.'s court-appointed counsel. After stating the statutory preference for a family member and

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noting that both examining physicians concluded that F.M.W. cannot care for herself, the trial court ruled that R.W. would be inappropriate to serve as F.M.W.'s guardian and appointed the Public Guardian. An Order memorializing the Court's ruling was issued.

On appeal, R.W. argued that the trial court erred by failing to take witness testimony from any witness preferred by R.W. in support of her application to seek appointment as guardian for F.M.W. Of note, F.M.W. passed away while the appeal was pending. Nevertheless, the Appellate Division issued an Opinion in light of the significant public policy implications of the appeal.

The Appellate Division concluded that the trial court had violated the constitutional right to due process of F.M.W. and R.W. by failing to make findings of fact and conclusions of law regarding R.W.'s fitness to serve as F.M.W.'s guardian. The Appellate Division found that, when adjudicating an individual as incapacitated and appointing a guardian, the trial court is required to determine if the alleged incapacitated person is unfit to govern themselves and manage their affairs and determine the suitability of the individual(s) seeking appointment as guardian. The trial court is required to analyze the pleadings, the physician certifications, the report of court-appointed professionals, and take testimony of individuals with personal knowledge of the alleged incapacitated person's condition and circumstances and must place its findings of fact – by clear and convincing evidence – on the record. If the action is contested, the court shall conduct a plenary hearing and take testimony from interested parties and experts, as appropriate. Without doing so, the trial court deprives the alleged incapacitated person and interested litigants of the right to confront the evidence brought before the court and conduct cross-examination.

This case highlights the important role that the courts play in protecting the rights of individuals who may lack the capacity to govern their own affairs. *F.M.W.* reaffirms the right to due process and the constitutional safeguards which are set forth in statutes and the New Jersey Court Rules.

For more information on this ruling and its potential impacts, please contact Thomas R. Lahey, Esq. at [arlahey@spsk.com](mailto:arlahey@spsk.com).

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