

1 All right. So that leaves us with the  
2 competing Motions for New Trial. I believe the original  
3 application, the ball is -- the ball is to you, if I'm not  
4 mistaken. The original application for new trial is yours?

5 MR. LEIGHNER: The Motion for New Trial?

6 THE COURT: Yes.

7 MR. LEIGHNER: Yes, Your Honor.

8 THE COURT: You may proceed.

9 MR. LEIGHNER: Your Honor, at the trial we  
10 had raised the objection several times as to the appointment  
11 of Laura Martinez as guardian of the person. And the basis  
12 of that objection is primarily under Section 1104.102.

13 The statute clearly provides a pecking order  
14 of priority for those who are to be appointed as guardian  
15 for an incapacitated ward. And first and foremost, that  
16 would be the incapacitated person's spouse, if he had one,  
17 which in this case he did not. And then it provides if  
18 there is more than one person who may be eligible that is  
19 otherwise found suitable and able to do it, then if one of  
20 those persons is as a next of kin to the ward, it is the  
21 closest next of kin who has the second priority.

22 Our client is the great niece of the  
23 decedent -- I mean of the ward. The siblings, the other  
24 interested persons of a higher entitlement under the statute  
25 have all waived their appointment and their -- actually

1 their involvement in the guardianship all together, for the  
2 most part.

3 So the statute clearly says that the person  
4 nearest of kin to the incapacitated person is entitled and  
5 is not -- there's no "may" or "should." Is entitled to the  
6 guardianship if the incapacitated person's spouse is not one  
7 of the eligible persons.

8 Laura Martinez is not related to the ward at  
9 all. In fact, Laura Martinez was the source of the  
10 activities and information that caused, prior to that, this  
11 Court to grant a temporary guardianship which required,  
12 among other things, findings that it was necessary to have a  
13 temporary guardian appointed to protect the ward and his  
14 property from harm. And nonetheless, over our objection,  
15 without any basis in the order of how he got there, the  
16 judge appointed, over our objection, he appointed Laura  
17 Martinez as guardian of the person and my client as guardian  
18 of the estate. I don't know if -- if he was thinking that  
19 the statute only applies if, well, you got one guardianship,  
20 you don't get two.

21 But clearly, clearly she is entitled to be  
22 appointed guardian. The case law and the statutes clearly  
23 reflect that. Reversed and rendered, when a grandchild is  
24 appointed guardian absent finding that the son, who is at a  
25 higher level of next of kin, was unsuitable. That the son

1 was entitled. It's as simple as that. And the statute is  
2 as simple as that. And that is the basis of our motion for  
3 New Trial and Motion to Reconsider, is that is reversible  
4 error, and we believe it should be corrected on a Motion to  
5 Reconsider and an order, rather than on appeal.

6 And we have a proposed order granting the  
7 Motion for New Trial, which in and of itself would extend  
8 this Court's jurisdiction for another thirty days. And we  
9 have, as part of that order granting a new trial, further  
10 order and findings of the Court which basically recite the  
11 prior order, except changing the guardian of the person.

12 Additionally, my client can and has the right  
13 to waive and consent to another guardian of the person to be  
14 appointed over her entitlement. And she is -- is willing to  
15 do that for the appointment of Mary Werner, a professional  
16 guardian, to serve as guardian of the person rather than  
17 having a guardian of the estate and person, this being a  
18 very large, complicated estate and -- well, there's lots of  
19 issues going on. So we have proposed that, and we have a  
20 blank line in the appointment of the guardian of the person  
21 for either my client, Tonya Barina, or Mary Werner, who's  
22 also agreed to serve as guardian of the person under the  
23 circumstances if the Court should determine that  
24 appropriate.

25 If that order is entered, we have another