

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

<b>In re:</b>	*	
	*	
<b>WILLIAM R. BLANCHARD,</b>	*	<b>Case No. 01-01415-0B7</b>
	*	
<b>Debtor.</b>	*	
	*	

**ORDER**

This case came on Creditor, Joseph E. Miniclier’s Motion to Dismiss for Lack of Jurisdiction pursuant to Florida Statute §744.441(Doc. No. 10).

William M. and Stephanie Blanchard (“the Blanchards”) were appointed co-guardians over the person and property of William R. Blanchard (“the Debtor”) on November 20, 2000 by the 18<sup>th</sup> Judicial Circuit Court in and for Brevard County, Florida, after a determination of total incapacity. Letters of Guardianship were issued the same day. The Blanchards filed a petition under Chapter VII of the Bankruptcy Code on February 26, 2001 on behalf of the Debtor. The Blanchards filed the bankruptcy petition without first filing a petition of authorization and approval of the Circuit Court as required by Florida Statutes §744.441.

A court-appointed guardian may file a voluntary bankruptcy petition on behalf of an incompetent if the guardian is authorized to do so. *In re Buda*, 252B.R. 125, 127 (Bankr.E.D.Tenn. 2000) (citations omitted). State law generally determines who has authority to file a bankruptcy petition on behalf of another. *In re Kjellsen*, 53 F.3d 944, 946 (8<sup>th</sup> Cir. 1995). The powers and the limitations of a guardian to act are set out in Chapter 744, Florida Statutes. *Cnty. Fed. Sav.& Loan Assoc.of Palm Beaches v. Wright*, 452 So.2d 638, 642 (Fla. 4<sup>th</sup> DCA 1984). Florida Statutes §744.441 provides:

After obtaining approval of the court pursuant to a petition for authorization to act, a plenary guardian of the property, or a limited guardian of the property within the powers granted by the order appointing the guardian or an approved annual or amended guardianship report, may:

- (11) Prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of the guardian in the performance of his or her duties.

The filing of a bankruptcy petition enacts certain protections of a debtor and the debtor's property from creditors and enables a debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy. *See* H.R.Rep. No. 595, 95<sup>th</sup> Cong., 1<sup>st</sup> Sess. 340 (1978), *reprinted in* 1978 U.S.C.C.A.N. 6296-97. The filing of a petition is a "claim or proceeding for the protection of the estate and of the guardian." The Blanchards are required by §744.441 to obtain approval from the Circuit Court prior to filing a bankruptcy petition on behalf of the Debtor.

Accordingly, it is

**ORDERED, ADJUDGED and DECREED** that the Motion is due to be **GRANTED**;  
and it is further

**ORDERED, ADJUDGED and DECREED** that Debtor's Chapter VII case is **DISMISSED**.

Dated this 27th day of July, 2001.

/s/ Arthur B. Briskman  
ARTHUR B. BRISKMAN  
United States Bankruptcy Court