

in a guardianship case in montgomery county pa, in 2021 did orphans court have jurisdiction if the AIP was not allowed in court by the judge even if the psychologist said the AIP would not have any issues if they were in court?

Yes—if the facts are exactly as you describe, excluding the alleged incapacitated person (AIP) from the 2021 guardianship hearing appears to have violated Pennsylvania's Guardianship Act. But I would distinguish that serious statutory error from saying automatically that the Montgomery County Orphans' Court had **no subject-matter jurisdiction** at all.

In 2021, 20 Pa.C.S. § 5511(a) required:

"The alleged incapacitated person shall be present at the hearing" unless the court was satisfied, based on a physician's or licensed psychologist's evidence, that the person's physical or mental condition **would be harmed by their presence**, or the person could not attend because they were outside Pennsylvania.  Pennsylvania ... +1

That requirement was not optional. Pennsylvania court rules likewise required the AIP's attendance unless one of those exceptions was established.  Pennsylvania Co... +1

If the psychologist actually said your mother could attend without harm

That is particularly important. If the psychologist's sworn report, deposition, or testimony said that **your mother's presence would NOT harm her**, then the statutory exception apparently went the opposite direction: §5511(a) required her to be present.

Pennsylvania Superior Court addressed essentially this statutory requirement in *In re Wilkosz*. The issue specifically concerned whether an Orphans' Court could disregard §5511(a)'s requirement that the AIP appear when attendance would not physically or mentally harm her.  Justia Law

So, if the record shows:

1. your mother was physically available to attend;
2. she was in Pennsylvania;

3. the psychologist said attendance would **not harm her**;
 4. there was no other physician/psychologist evidence establishing that attendance would harm her; and
 5. the judge nevertheless prevented her from participating in the incapacity hearing,
- then you potentially have a **substantial §5511(a) violation**.

But was that a lack of "jurisdiction"?

This is where the legal distinction matters.

Montgomery County's Court of Common Pleas, Orphans' Court Division generally had statutory authority to adjudicate a guardianship for a person domiciled or residing in Montgomery County. Pennsylvania law specifically provides for the county in which a guardian may be appointed.  Pennsylvania Ge...

Therefore, I would **not assume that failure to have the AIP present automatically deprived the court of subject-matter jurisdiction and made every subsequent order void ab initio**.

There are two different arguments:

Jurisdiction argument: The court lacked the legal power to hear the guardianship proceeding at all.

Procedural/statutory/due-process argument: The court had jurisdiction over guardianship cases, but conducted this particular guardianship hearing contrary to §5511 and potentially deprived the AIP of fundamental procedural rights.

The second argument appears considerably stronger from the facts you've described.

And the remedy matters. A serious violation can potentially justify **vacating an adjudication** without necessarily establishing that the court never possessed subject-matter jurisdiction. For example, in a different 2021 Pennsylvania guardianship case, the Superior Court ultimately **vacated and remanded** an incapacity/guardianship order because of defects in the proceedings.  Justia Law

The psychologist's exact words could be critical

If you're considering challenging what happened in the August 2021 Montgomery County proceeding, I would focus heavily on the **actual psychologist's report/testimony and the hearing transcript**, rather than simply characterizing this as "lack of jurisdiction."

A potentially stronger formulation would be:

The court adjudicated the AIP incapacitated in violation of the mandatory attendance requirement of 20 Pa.C.S. §5511(a), despite medical evidence establishing that her attendance would not harm her, thereby denying her the participation in the guardianship proceeding that Pennsylvania law expressly guaranteed.

That does not by itself establish that the 2021 order is presently void, especially several years later and after the person's death. Questions involving preservation of the issue, appeal, collateral attack, finality, standing after death, and whether an order is void versus merely voidable are separate issues.

If you give me the exact language from the psychologist's 2021 report about your mother's ability to attend court, and what the August 6, 2021 order says about why she wasn't present, I can analyze whether Pennsylvania law provided the judge any lawful basis for excluding her and whether the stronger argument is void for lack of jurisdiction, voidable statutory error, or a due-process violation.

    ...   Sources

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