

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

WAKE COUNTY

18 SP 2634

IN THE MATTER OF

KATHLEEN HARTSOUGH HOFELLER

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INTERIM REPORT OF
THE GUARDIAN *AD LITEM*

NOW COMES Erin B. Riddick, Guardian *ad litem* for Respondent Kathleen Hartsough Hofeller in this matter and reports as follows:

PROCEDURAL HISTORY

The undersigned is the appointed Guardian *ad litem* under N.C.G.S. §35A-1107 charged with representing the best interest of Respondent. The undersigned was appointed Guardian *ad litem* by the Wake County Clerk of Superior Court on or around October 29, 2018.

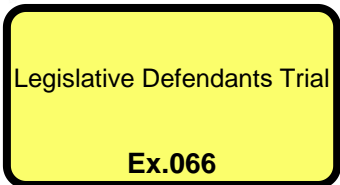
The Respondent in this proceeding is Kathleen Hartsough Hofeller, hereto referred to as "Respondent." Respondent is an elderly female who resides at 2427 Springmoor Circle, in the Springmoor Life Care Retirement Community, in Raleigh, North Carolina. The Petition for Adjudication of Incompetence and Application for Appointment of Guardian was filed on or around October 29, 2018 by Christopher S. Morden, Esq., attorney for the Respondent, hereinafter "Petitioner."

The Guardian *ad litem* has interviewed Petitioner's attorney, Nickolas B. Sherrill, Esq., in regards to the allegations contained in the Petition. The undersigned has been unable to reach Respondent for an interview, as Respondent's whereabouts are unknown at this time. The undersigned has also spoken with Allison Weaver, caregiver of Respondent at Springmoor.

The Guardian *ad litem* has not requested a multidisciplinary evaluation for this proceeding.

BACKGROUND

Respondent is a seventy-one (71) year old female who resides in an independent apartment in the Springmoor Life Care Retirement Community in Raleigh. Since the death of Respondent's husband in August of 2018, Petitioner alleges that Respondent has been the victim of a gift card payment scheme, and has also attempted to transfer a large sum of money to India.



Petitioner also alleges that Respondent may be under the influence of her estranged daughter, Stephanie Lizon. On November 1, 2018, after being served with a copy of the Petition and Notice of Hearing, Respondent left the Springmoor Retirement Community. It is the understanding of the undersigned that Respondent was last seen by Springmoor staff, entering a vehicle with her daughter and another individual. Since leaving Springmoor, Respondent has not been located.

It is the understanding of the undersigned that Respondent has executed both a Health Care Power of Attorney and a Durable Power of Attorney. Neither of these documents name Respondent's daughter, Stephanie, as her agent.

JURISDICTION AND SERVICE

N.C.G.S. Chapter 35A defines the exclusive procedure for adjudicating an adult incompetent and the appointment of a guardian. N.C.G.S. §35A-1103 establishes that the clerk in each county shall have original jurisdiction over adjudication matters. Venue for an incompetency matter rests in the county of residence or domiciled or is an inpatient in a treatment facility. If the county of residence or domicile cannot be determined, venue shall be the county where the respondent is present.

Respondent is a resident of Wake County, North Carolina, and therefore jurisdiction before this court is proper.

N.C.G.S. §35A-1109 requires that Respondent be personally served by the sheriff of the county where Respondent is either a resident or domiciled. The statute also requires Petitioner to mail copies of the notice and petition to Respondent's next of kin or interested parties and that proof of such mailing or notice be filed with the Clerk. It appears that all parties, and all parties known to have an interest in this proceeding, have been served or have received actual notice of the proceedings.

APPOINTMENT OF INTERIM GUARDIAN

N.C.G.S. §35A-1114 (b) states that the appointment of an interim guardian is appropriate when the motion sets forth facts tending to show: (1) there is *reasonable cause* to believe that the Respondent is incompetent; and (2) the Respondent is in a condition that *reasonably appears* to constitute an imminent or foreseeable risk of harm to Respondent's physical well-being or estate. The undersigned would note that the burden required under this statute is "*reasonable cause*." It is the opinion of the undersigned that "*reasonable cause*" is a low burden of proof for the petitioning party. In essence, the statute is codifying a protective function to preserve the status quo and prevent injury. It is in this light, that the undersigned offers this report:

(1) **Reasonable Cause to Believe That The Respondent Is Incompetent**

The undersigned's inquiry and recommendation focused on Respondent's reasoning ability; awareness of consequences; the ability to deliberate and weigh facts; the ability to understand benefits and consequences of behavior and choices; the ability to transact ordinary business; the ability to manage activities of daily living, such as basic personal hygiene; and, the ability to recognize and react to danger.

Due to the unknown whereabouts of the Respondent, the undersigned has been unable to interview her to determine her ability to understand and appreciate issues related to language and communication, nutrition, personal hygiene, health care, personal safety, residential, employment, independent living, and civil and financial decisions. The undersigned has, however, reviewed the Respondent's medical records that were provided by Petitioner. Records from a 2017 evaluation on the Respondent, performed by Dr. Paul Peterson with Duke Neurology, include a diagnosis of mild cognitive disorder. These records also indicated that Dr. Peterson suspected early Alzheimer's dementia, progressive type, and Respondent was recommended for a full neuropsychological evaluation. It is the understanding of the undersigned that Respondent never followed up with this recommendation.

Based on the interview Petitioner's attorney and a review of Respondent's medical records, the undersigned believes that the Petitioner has met the burden to show reasonable cause to believe that the Respondent is incompetent.

(2) **An Imminent or Foreseeable Risk of Harm to Respondent's Person or Estate**

The undersigned is concerned that both Respondent's well-being and estate are at risk without the appointment of an interim guardian. It is the understanding of the undersigned, that until recently, Respondent has had an estranged relationship with her daughter, Stephanie Lizon. Petitioner alleges that since Stephanie's return to Respondent's life, there have been attempts to have Respondent revoke Power of Attorney document. Respondent was also seen leaving Springmoor Retirement Community with her daughter, and has since been unable to be located. It is the understanding of the undersigned that an Adult Protective Services investigation on the matter is currently ongoing.

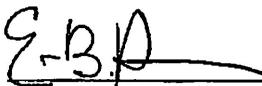
Based on the above-mentioned facts, the undersigned believes that Petitioner has met the burden to show that Respondent is in a condition that reasonably appear to constitute an imminent or foreseeable risk to her well-being and estate.

RECOMMENDATION

The Petitioner has the burden to prove that there is: (1) *reasonable cause* to believe that Respondent is incompetent, and (2) that Respondent is in a condition that reasonably appears to constitute an imminent or foreseeable risk of harm to her well-being or estate. The undersigned is persuaded that Petitioner has met this burden, and that it is the in the best interest of Respondent

to have an interim guardian appointed, until this court can address the issue of incompetency and possible appointment of a guardian.

This the 5th day of November, 2018.

By: 
Erin B. Riddick, Guardian *ad litem* for Respondent
The Walls Law Firm, PLLC
5511 Capital Center Drive; Ste. 180
Raleigh, NC 27606

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 5th day of November, 2018, the foregoing Interim Report of the Guardian *ad litem* was served by placing a copy in the United States mail in a postage paid envelope addressed to the following:

Kathleen Hartsough Hofeller
Respondent
2427 Springmoor Circle
Raleigh, NC 27615

Edwin Giles Peterman
Interested Party
P.O. Box 15832
Washington, D.C. 20003

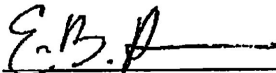
Christopher S. Morden, Esq.
Petitioner
Monroe, Wallace & Morden, P.A.
3225 Blue Ridge Road, Ste. 117
Raleigh, NC 27612

Stephanie Louise Hofeller Lizon
Interested Party
P.O. Box 17
Le Roy, West Virginia 25252

Nickolas B. Sherrill, Esq.
Attorney for Petitioner
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Raleigh, NC 27612

Tracy William Smale
Interested Party
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13-2 Kitakashiwi Dai
Kashiwa-Shi, Chiba-Ken, Japan 277-0836

By:


Erin B. Riddick, Esq.
Guardian *ad litem* for Respondent
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