

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18 SP 2634

IN THE MATTER OF)
KATHLEEN HARTSOUGH HOFELLER)
)
)
)

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 October 29, 2018.

The Respondent in this incompetency proceeding is Kathleen Hartsough Hofeller, hereto referred to as "Respondent." Respondent is an elderly female who resides at 2427 Springmoor Circle, in Springmoor Life Retirement Community, in Raleigh, North Carolina. A Petition for Adjudication of Incompetence and Application for Appointment of Guardian was filed on or around October 29, 2018, by Christopher S. Morden, Esq., Respondent's former estate planning attorney, hereinafter "Petitioner." An interim hearing in this matter was held on November 6, 2018, and Wake County Human Services was appointed as interim Guardian of the Person, and Everett Bolton was appointed as interim Guardian of the Estate.

The Guardian *ad litem* has interviewed Respondent and Petitioner. The undersigned visited Respondent's home in Wake County, North Carolina on November 28, 2018 and interviewed Respondent. The undersigned has also spoken with Nickolas B. Sherrill, attorney for Petitioner; Douglas Noreen, attorney for Respondent; Christopher Hartsough, brother of Respondent; William Smale, attorney in fact for Respondent; and Allison Weaver, caregiver of Respondent at Springmoor.

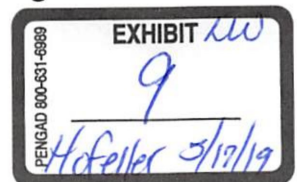
The Guardian *ad litem* has not requested a multidisciplinary evaluation for this proceeding.

BACKGROUND

Respondent is a seventy-two (72) year old female who resides in an independent apartment at Springmoor Life Care Retirement Community in Raleigh. Respondent's husband of over fifty (50) years passed away in August of 2018, and following his death, Respondent fell victim to a fraudulent scheme involving the purchase of gift cards. It is the understanding of the

Legislative Defendants Trial

Ex.068



undersigned that Respondent was also the intended victim of a fraudulent money-wiring scheme during this time. Petitioner filed the current Petition in response to these events, as well as out of concern for Respondent with the re-emergence of Respondent's estranged daughter and removal of her previously appointed attorney-in-fact. Shortly after being served with a copy of the Petition and notice of hearing, Respondent left the State of North Carolina with her daughter, leading Petitioner and other family members to believe she was at risk of financial exploitation and possible harm to her person.

An interim hearing was held on November 6, 2018. After a review of Respondent's medical records from a 2017 evaluation, which indicated a diagnosis of mild cognitive disorder and possible onset of early Alzheimer's dementia, and due to the court's inability to locate Respondent, the interim motion was granted. Wake County Human Services was appointed as Respondent's interim Guardian of the Person, and Everett Bolton, Esq., was appointed as Respondent's interim Guardian of the Estate. Soon after the interim hearing, Respondent returned to North Carolina, and retained Douglas Noreen, Esq., as her attorney in this matter. It is Respondent's position that she is competent and therefore not in need of guardianship.

Since Respondent's return to her home in North Carolina, the parties have been in communication regarding the possible settlement of this matter. It is the understanding of the undersigned that the parties have agreed that Respondent's Health Care Power of Attorney document will remain in place, and that Respondent will undergo a full neuropsychological evaluation in the near future. As to Petitioner's primary concern—the protection of Respondent's estate from exploitation—it is the understanding of the undersigned that an agreement was reached between the parties on February 6, 2019, whereby certain parameters have been enacted to ensure Respondent's funds are protected.

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.

COMPETENCE

N.C.G.S. §35A-1101(7) defines an incompetent adult as “an adult or emancipated minor who lacks sufficient capacity to manage his own affairs or to make or communicate important decisions concerning his person, family or property, whether such lack of capacity is due to mental illness, mental retardation, epilepsy, cerebral palsy, autism, inebriety, senility, disease, injury or similar cause or condition.” North Carolina courts have held that the meaning of competency depends on the context in which this issue arises. Competency must generally be determined in relation to the Respondent’s ability to perform or understand a specific act or function. Idiosyncrasies or the exercise of poor judgment do not exclusively prove incompetency. An adjudication of incompetency, and the appointment of a guardian, is required when an adult does not possess an awareness of his mental limitations and is thus unable to appreciate the natural consequences of his actions.

The undersigned’s inquiry and recommendations 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.

The undersigned has had the opportunity to interview the Respondent as to the allegations contained in the Petition. During our interview she spoke candidly regarding her trip to Kentucky upon receiving the Petition, the harm done to her estate from the fraudulent gift card scheme, and her relationship with her previously estranged daughter. Respondent was adamant that she does not wish to have a guardian appointed, yet stated, that she would not be opposed to having someone help manage her finances, if she is provided some discretion in how her money is spent. While it was apparent from interviewing the Respondent that there were deficiencies in her short-term memory, Respondent was able to articulate her wishes in a cogent manner.

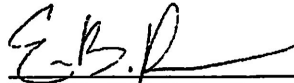
The undersigned has also had the opportunity to review Respondent’s medical records. Respondent underwent an evaluation at Duke Neurology in Raleigh in 2017, where she presented with memory issues. Testing indicated mild cognitive impairment, and her doctor ordered additional neurological testing, as he suspected Respondent may be suffering from “early Alzheimer’s dementia, progressive.” Respondent never submitted to a full neuropsychological evaluation as recommended, as she believed her scores would be affected by her grief at the loss of her husband. While Respondent has not received a full neuropsychological evaluation to date, she was evaluated using the Mini-Mental State Examination (MMSE), where she scored a 28 out of 30 on February 2, 2019. It is the understanding of the undersigned, that Respondent has agreed to undergo a full neuropsychological evaluation in the near future.

RECOMMENDATIONS

It is the understanding of the undersigned that Respondent and Petitioner have entered into an agreement that would protect both the Respondent's person and her estate from further harm. The undersigned is therefore of the opinion that an out of court resolution is in Respondent's best interest, and thus no formal adjudication of incompetence is needed in this matter.

This the 6th day of February, 2019.

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 6th day of February, 2019, the foregoing 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

Tom Sparks
Attorney for Stephanie Lizon
223 S. West St., Ste. 900
Raleigh, NC 27603

Douglas D. Noreen
Attorney for Respondent
Howard, Stallings, From, Atkins, Angell
& Davis, P.A.
P.O. Box 12347
Raleigh, NC 27605

Wake County Human Services
Interim Guardian of the Person
P.O. Box 15832
Raleigh, NC 27620

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

Everett Bolton
Interim Guardian of the Estate
227 West Martin St.
Raleigh, NC 27602

Nickolas B. Sherrill, Esq.
Attorney for Petitioner
Monroe, Wallace & Morden, P.A.
3225 Blue Ridge Road, Ste. 117
Raleigh, NC 27612


Tracy William Smale
Interested Party
107 Kitakashiwa Park Homes
Ichibankan
13-2 Kitakashiwi Dai
Kashiwa-Shi, Chiba-Ken, Japan 278
0836

Stephanie Louise Hofeller Lizon
Interested Party

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

2019 FEB -7 A 9:14
WAKE COUNTY, CSC

By:



Erin B. Riddick, Esq.
Guardian *ad litem* for Respondent
5511 Capital Center Dr.; Ste. 180
Raleigh, NC 27606