

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COUNTY OF WAKE

BEFORE THE CLERK
FILE NO. 18-SP-2634

IN THE MATTER OF KATHLEEN)
HARTSOUGH HOFELLER)
)

MOTION TO DISMISS

Christopher S. Morden, Petitioner in the above captioned action, by and through his undersigned attorney, moves the Court to dismiss the this matter and respectfully shows the Court:

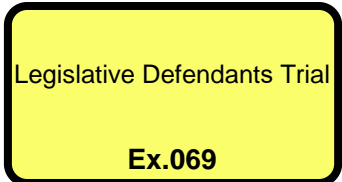
1. On October 29, 2018, Petitioner filed a Petition for Adjudication of Incompetence against Respondent in the above captioned action.
2. On November 6, 2018, this Court found reasonable cause to believe Respondent is incompetent and appointed an interim guardian of the estate and guardian of the person.
3. The Parties have settled their differences by compromise and agreed upon an arrangement wherein the Parties are satisfied Respondent and her assets will be protected and cared for by appropriate individuals or entities.
4. The agreed upon settlement is in the process of being signed. A copy of the agreed upon settlement is attached hereto as Exhibit A and incorporated herein by reference.

WHEREFORE, Petitioner respectfully requests the Court dismiss the above captioned matter.

This the 7th day of February, 2019.

MONROE, WALLACE & MORDEN, P.A.
Attorneys for Petitioner

By: 
Nickolas B. Sherrill
3225 Blue Ridge Road, Suite 117
Raleigh, NC 27612
(919) 876-1400



STATE OF NORTH CAROLINA

VERIFICATION


COUNTY OF WAKE

Christopher S. Morden, being first duly sworn depose and say: that he is the Petitioner in the above matter, and that he has read the foregoing motion, that the same is true of his own knowledge except as to those matters and things therein alleged upon information and belief and as to those he believes it to be true.


Christopher S. Morden

Sworn to and subscribed before me this the 7 day of February, 2019.




NOTARY PUBLIC
Ellen M. Mohr
Name of Notary (typed or printed)
My Commission Expires: 6/17/23

SETTLEMENT AGREEMENT

THIS AGREEMENT made and entered into as of the last day executed below by and between CHRISTOPHER S. MORDEN (“Petitioner”) and KATHLEEN H. HOFELLER (“Respondent”) and such agreement is approved and adopted by ERIN RIDDICK, EVERETT BOLTON, AND MARY WELLS IN THEIR RESPECTIVE CAPACITY AS COURT APPOINTED PARTIES (collectively with Petitioner and Respondent, “the Parties”).

RECITALS:

WHEREAS, on December 28, 1995, Respondent and her husband, Thomas Brooks Hofeller, entered into a Trust Agreement entitled The Hofeller Family Living Trust dated December 28, 1995, which was amended and restated on July 18, 2016 by a document entitled the First Amendment and Restatement of Trust Agreement (“the Hofeller Family Living Trust”);

WHEREAS, Thomas Brooks Hofeller died August 16, 2018;

WHEREAS, pursuant to the terms of the Hofeller Family Living Trust, upon the death of Thomas Brooks Hofeller all the Trust Estate is to be distributed to The Surviving Spouse’s Trust to be held, administered and distributed in accordance with the provisions of Article IX of the Hofeller Family Living Trust;

WHEREAS, Respondent is the current Trustee of the Hofeller Family Living Trust and, by extension, The Surviving Spouse’s Trust under the terms of the Hofeller Family Living Trust;

WHEREAS, on October 29, 2018, Petitioner filed a Petition for Adjudication of Incompetence against Respondent in a case pending in the Superior Court of Wake County, North Carolina, bearing the file number 18-SP-2634; and

WHEREAS, the Parties have settled their differences by compromise and agreed upon an arrangement wherein the Parties are satisfied that Respondent and her assets will be protected and cared for; and

NOW THEREFORE, in consideration of the foregoing and in further consideration of the covenants, representations and warranties contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree to bind themselves as follows:

1. SETTLEMENT.

- a. Respondent and Linda F. Johnson, as Trustee, shall execute The Kathleen H. Hofeller Irrevocable Trust dated February ____, 2019 (“the Irrevocable Trust”) attached hereto as Exhibit A.
- b. Respondent shall cause all her personal assets which she has control or power of appointment over, except for those items described in Paragraphs c, d, e and f hereunder, to be transferred into the Irrevocable Trust. Such transfer shall happen as quickly as it can reasonably be done. However, for any assets which are subject to any waiting periods or

time periods for which there may be a penalty for their current transfer and/or liquidation (i.e. Certificates of Deposit which may be mid-term), Respondent may wait until they are able to be transferred without penalty.

- c. Pursuant to Article IX, Paragraph (3) of the Hofeller Family Living Trust, Respondent shall exercise her power of withdrawal and direct any such debt as contemplated by Article IX(6)(B)(i) of the Hofeller Family Living Trust to be formally forgiven at the earliest convenience of the Trustee, Kathleen H. Hofeller, but no later than one hundred and eighty (180) days from the execution of this Agreement.
- d. Pursuant to Article IX, Paragraph (3) of the Hofeller Family Living Trust, Respondent shall exercise her power of withdrawal and direct the Trustee, Kathleen H. Hofeller, to distribute the properties located in West Virginia and considered in Article IX(6)(B)(ii) of the Hofeller Family Living Trust directly to Stephanie Louise Hofeller at the Trustee's earliest convenience, but no later than one hundred and eighty (180) days from the execution of this Agreement.
- e. Pursuant to Article IX, Paragraph (3) of the Hofeller Family Living Trust, Respondent shall exercise her power of withdrawal and direct the Trustee, Kathleen H. Hofeller, to distribute the property located in Cochise County, Arizona, and considered in Article IX(6)(B)(iii) of the Hofeller Family Living Trust directly to Tracy William Smale at the Trustee's earliest convenience, but no later than one hundred and eighty (180) days from the execution of this Agreement.
- f. Respondent shall gift to Christopher Hartsough the vehicle which she currently owns half of, and the other half being left to her through the Estate of Thomas Brooks Hofeller. Respondent shall take the steps necessary to make such filings as required with the Wake County Clerk of Superior Court in order to complete this transaction.
- g. Respondent agrees to retain legal counsel to assist her in completing the items listed above in articles a-f. Upon completion of same, Respondent and/or her Attorney shall confirm in writing with Petitioner and/or Counsel for Petitioner that all items have been completed, and that Linda F. Johnson has accepted the appointment as trustee of this Trust.
- h. Upon completion of the items described in Paragraphs c and d hereinabove, The Hofeller Family Living Trust shall be amended as follows:

- i. Article I is hereby revoked in its entirety.
- ii. Article IV is hereby revoked in its entirety and a new Article IV is substituted in lieu thereof, which shall read as follows:

ARTICLE IV

Irrevocability. This Trust shall be irrevocable.

- iii. Article IX is hereby revoked in its entirety and a new Article IV is substituted in lieu thereof, which shall read as follows:

ARTICLE IV

The Surviving Spouse's Trust Introductory Provision.
The Surviving Spouse's Trust shall be held, administered and distributed as follows:

(1) **Direction to Pay All Trust Estate to The Kathleen H. Hofeller Irrevocable Trust** dated February ____, 2019. The Trustee shall pay any and all property which may remain in this Trust or may be added to this Trust in the future to The Kathleen H. Hofeller Irrevocable Trust dated February ____, 2019 immediately upon its receipt.

iv. Article X, Paragraph (1) is hereby revoked in its entirety and a new Article X, Paragraph (1) is substituted in lieu thereof, which shall read as follows:

(1) **Trustee Succession.** If **Kathleen Hartsough Hofeller** should for any reason should cease to act as Trustee, then the successor or substitute Trustee who shall also serve without bond shall be **Linda F. Johnson**, of Fuquay Varina, North Carolina. If **Linda F. Johnson** resigns the office of Trustee, and she is not incompetent or unable, she may designate in writing a successor trustee. If **Linda F. Johnston** is incompetent, unable or otherwise does not designate a successor trustee, **PNC Bank, National Association** is nominated as successor trustee.

- v. The Hofeller Family Living Trust shall in all other respects remain in full force and effect.
- i. Upon completion of the items described in Paragraphs c and d hereinabove, Respondent shall immediately resign as Trustee of The Hofeller Family Living Trust.
- j. In 2017, Respondent was seen by Dr. Paul Peterson with Duke Neurology, who recommended Respondent follow up with a full neuropsychological evaluation. Within ninety (90) days of the execution hereof, Respondent shall have a full neuropsychological evaluation as contemplated by Dr. Peterson. Respondent shall provide her attorney, Douglas D. Noreen, and the Trustee, Linda F. Johnson, with a written copy of the results therefrom. Respondent shall not be required to share the results therefrom with any other individual, but may do so if she wishes.
- k. The Parties agree not to bring any subsequent or further petition challenging or questioning Respondents capacity unless there is some substantial change or event regarding her health. Should any party bring such challenge without any substantial change or event regarding her health, that standard to be determined by a court of law, the party bringing such action agrees and accepts that they shall be held liable for damages in an amount equal to four times the amount of the attorneys' fees incurred by Respondent.

1. Respondent shall abide by Springmoor's notification policy as outlined on page 16 of the Resident Manual, Part B. In summary, Respondent will notify the Reception Desk when anticipating being away overnight or longer, and leave information about where Respondent can be reached.
2. **RESOLUTION OF INCOMPETENCY PROCEEDING.** Upon execution of this Agreement, Petitioner shall inform the Court of an agreement and that Petitioner will no longer be proceeding with such petition. Should the Court require a hearing, Petitioner shall inform the Court of Petitioner's desire to no longer proceed with the Petition and shall be barred from presenting any evidence to the Court.
3. **MUTUAL RELEASE.** Following the execution of this Agreement and the performance and deliveries contemplated herein, the Petitioner and Respondent, for himself or herself, and for each of their respective heirs, beneficiaries, executors, administrators, personal representatives, parents, subsidiaries or affiliated corporate entities, current or former officers, directors, shareholders, employees, insurers, attorneys, legal representatives, agents, assigns, successors and other persons or entities acting on their behalf or claiming through or under them or any of them hereby fully release, discharge, quit and exonerate each other and their beneficiaries, executors, administrators, personal representatives, parents, subsidiaries or affiliated corporate entities, current or former officers, directors, shareholders, employees, insurers, attorneys, legal representatives, agents, assigns and successors, of and from any and all claims, causes of action, demands, rights, damages, costs, attorney fees, debts, contracts, losses of service, expenses, compensation and sums of money, which any Party now has or claims to have, on account of, relating to or growing out of any claim, however denominated, including, without limitation, any claim asserted as part of the controversy, and any claim, however denominated which could have been asserted as part of the controversy, and any claim, however denominated relating in any way, directly or indirectly, to the subject matter of the controversy, or any claim arising out of any transaction, occurrence, undertaking, agreement, event, status, act or omission from the beginning of time to the effective date of this Agreement. Notwithstanding the foregoing, the Parties do not release each other from their respective executory obligations under this Agreement.
4. **AUTHORITY.** Each party represents and warrants to the other that they have the power and authority to enter into this Agreement and to perform the obligations under this Agreement; that they have not assigned to any other person or entity nor pledged, encumbered, or granted any form of security interest in or to any of the claims, rights, actions, causes of action, or interests, including without limitation, any that are released and/or dismissed under this Agreement.
5. **NO ADMISSIONS.** The Parties acknowledge and agree that this Agreement is in compromise of disputed claims, that the compromises are not to be construed as admissions of liability on the part of any party and that said Parties deny liability and culpability of any type, and intend merely to avoid litigation and buy their peace.
6. **VOLUNTARY ACT.** The Parties acknowledge, represent and agree, each with the other, that they have read this Agreement and the documents referenced herein in their

entirety, have consulted their respective attorneys concerning the same, if desired, and have signed the same as their respective free and voluntary act.

7. **SURVIVAL AND BENEFITS.** The warranties, representations and covenants contained in this Agreement shall survive the closing anticipated herein. This Agreement shall be binding upon and inure to the benefit of the Parties and each of their respective successors, assigns, heirs, executors, administrators, personal representatives, beneficiaries, parents, subsidiaries, affiliated corporate entities, current or former officers, directors, shareholders, employees, insurers, attorneys, legal representatives, agents, assigns, successors and other persons or entities acting on their behalf or claiming through or under them.
8. **NO ORAL MODIFICATIONS.** This Agreement may not be altered, amended, modified or rescinded in any way except by written instrument duly executed by all of the Parties.
9. **ENTIRE AGREEMENT.** The Parties agree and acknowledge that this Agreement is not based upon any factual, legal, or other representation or promise made by or on behalf of either of the Parties not contained in this Agreement. The Parties acknowledge and agree that if the facts or law with respect to which this Agreement as executed are, or may be found hereafter to be, other than or different from the facts or law in that connection now believed by either of the Parties to be true, the Parties expressly accept and assume the risk of such possible difference and agree that all provisions of this Agreement shall be and remain effective notwithstanding any such difference. This Agreement contains the entire understanding between the Parties regarding the subject matter hereof and supersedes any prior understanding or agreement between the Parties respecting such subject matter. There are no representations, warranties, arrangements, understandings, or agreements, oral or written, relating to the subject matter of this Agreement, except as fully expressed herein. The terms of this Agreement are contractual and not a mere recital.
10. **FEES.** The Trustee of the Irrevocable Trust, Linda F. Johnson, shall be directed to pay the attorneys' fees incurred by Monroe, Wallace and Morden, P.A. on behalf of Petitioner, Howard, Stallings, From, Atkins, Angell, & Davis on behalf of Respondent, and Fiduciary Litigation Group on behalf of Stephanie Hofeller, an interested party, from the Irrevocable Trust upon the presentation of final bills.

Christopher Hartsough has, since the inception of the proceeding, visited and stayed with Respondent to act as an advisor and in addition covered certain expenses on behalf of Respondent when she was unable to access funds. He shall submit a request for reimbursement for his expenses and include copies of vouchers, account statements, or other supporting evidence of his personal expenses during his stay and those amounts advanced for Respondent. The Trustee shall reimburse such expenditures, which, in the sole discretion of the Trustee, are deemed appropriate upon review of said vouchers, account statements, or other supporting evidence.

11. **GOVERNING LAW.** All questions concerning this Agreement and performance

hereunder shall be governed by and resolved in accordance with the laws of the State of North Carolina.

12. **HEADINGS.** The headings in this Agreement are included only for convenience and reference, said headings are not to be used in construing this Agreement and have no binding effect upon the Parties hereto.
13. **EXECUTION IN COUNTERPARTS.** This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which counterpart, when so executed and delivered, shall be deemed an original, and all of which counterparts, taken together, shall constitute one and the same Agreement. Any party's faxed and/or scanned signature on this Agreement shall be treated as an original.
14. **SEVERABILITY.** If, after the date of the execution of this Agreement, any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, such provision shall be fully severable. In lieu thereof, there shall be added a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and as may be legal, valid, and enforceable, provided that the new provision is approved in writing by the Parties before its addition.

IN WITNESS WHEREOF, the Parties, having read the foregoing Agreement and fully understanding it, voluntarily execute this Agreement effective as of the last date below written.

_____ [Seal] Date: _____
CHRISTOPHER S. MORDEN, PETITIONER

_____ [Seal] Date: _____
KATHLEEN H. HOFELLER, RESPONDENT

_____ [Seal] Date: _____
ERIN RIDDICK, GUARDIAN AD LITEM FOR KATHLEEN HOFELLER

_____ [Seal] Date: _____
**EVERETT BOLTON, COURT APPOINTED INTERIM GUARDIAN OF ESTATE FOR
KATHLEEN HOFELLER**

3 2 2 8

_____ [Seal] Date: _____
**MARY WELLS, WAKE COUNTY ATTORNEY FOR COURT APPOINTED INTERIM
GUARDIAN OF PERSON**

_____ [Seal] Date: _____
NICKOLAS B. SHERRILL, ATTORNEY FOR PETITIONER

_____ [Seal] Date: _____
DOUGLAS H. NOREEN, ATTORNEY FOR RESPONDENT