

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

In Re: RESPONDENT,)
An alleged incapacitated adult) [DOCKET NUMBER]

ANSWER AND REPORT OF GUARDIAN *AD LITEM*

COMES NOW, GUARDIAN AD LITEM, Court appointed Guardian *ad litem* for RESPONDENT, an alleged incapacitated adult, and for her report pursuant to §37.2-1003 of the Virginia Code states the following:

Jurisdiction & Procedural Background

1. The Petition for Appointment of Guardian and Conservator was filed on December 16, 2010. I was appointed Guardian *ad litem* for RESPONDENT pursuant to an Order of this Court entered on December 16, 2010.

2. This Court has jurisdiction of this matter because RESPONDENT lived at STREET ADDRESS, prior to his current stay at Manor Care Fair Oaks. RESPONDENT is currently a resident at Manor Care Fair Oaks, located at 12475 Lee Jackson Memorial Highway, Fairfax, Virginia. The Commonwealth of Virginia is RESPONDENT's home state, as that term is defined in Va. Code §37.2-1037(a), because RESPONDENT has been physically present in the Commonwealth for more than six consecutive months immediately preceding the filing of this petition.

3. I do not believe the facts of this case warrant the appointment of independent counsel for RESPONDENT. This matter does not appear to be adversarial and from my investigation, I believe RESPONDENT's rights and

interests are being adequately protected without the additional protection (and cost) of appointing independent counsel.

4. I do not believe the facts of this case warrant that RESPONDENT attends the January 7, 2011 hearing in this matter.

5. I certify that I served RESPONDENT with a copy of the Petition, the Notice, and the Order Appointing Guardian *ad litem*. I hereby certify that I advised RESPONDENT of his rights pursuant to §§37.2-1006 and 37.2-1007 of the Virginia Code, including his right to counsel, his right to a jury trial, his right to attend the hearing, to compel the attendance of witnesses, to present evidence on his own behalf, and to confront and cross-examine witnesses.

6. On October 15, 2010, RESPONDENT executed a Virginia General Durable Power of Attorney naming his sister and the Petitioner, NAME, as his agent. The Petitioner, NAME, does not want to continue serving as the agent for RESPONDENT. No agent for medical decisions has been designated by RESPONDENT under any advance medical directive; and no guardian, committee or conservator is currently acting for RESPONDENT in the Commonwealth of Virginia or in any other jurisdiction.

7. RESPONDENT is unmarried and has no children. He has an aunt: RELATIVE1, a cousin: RELATIVE2, and a brother: RELATIVE3. The Petitioner certifies that she has sent notice of the proceedings to the necessary parties pursuant to §37.2-1004(B) of the Virginia Code (1950), as amended.

8. RESPONDENT was found lying on his apartment floor and brought to Reston Hospital Center on September 28, 2010. He has a huge facial ulcer starting on the left side of his face and ending near his nose. RESPONDENT is unable to explain why he never had the ulcer treated when it first became apparent. He has bone infections, a broken leg, and various other ailments. His apartment is unsanitary and in disarray; it appears he had hoarding tendencies. RESPONDENT behaves in a belligerent and bellicose manner to his family, the staff at Manor Care Fair Oaks, and to his doctors.

Investigation

Respondent/RESPONDENT

9. I visited RESPONDENT on Monday, January 3, 2011, in his room at Manor Care Fair Oaks. His door was closed and he responded to come in when I knocked. I explained the purpose of the guardianship/conservatorship petition. I served RESPONDENT the papers and advised him of his rights. I believe he understood what I was telling him.

10. RESPONDENT's responses to me were short and terse. He was upset that I bothered him with "this stuff" and asked me to leave. He told me he did not have any objections to his sister, NAME, acting as his co-guardian together with ATTORNEY (Petitioner's counsel), and with ATTORNEY acting as his conservator. When I mentioned the name of ATTORNEY, RESPONDENT said he liked ATTORNEY. He then told me to close the door on my way out of his room.

Petitioner, NAME

11. I spoke with the Petitioner, NAME, by telephone, about her brother and the guardianship/conservatorship petition. NAME told me she was an 'old woman' and did not have the time or stamina to do all that was necessary for her brother as agent, guardian and conservator. She said that she was retired and lives in [residence state]. She would like to have some input into her brother's care decisions, and acting as co-guardian with ATTORNEY, just made sense. NAME told me that her brother becomes much more pleasant around ATTORNEY.

12. The plan is for RESPONDENT to continue as a patient at Manor Care Fair Oaks for the foreseeable future. In speaking with NAME, it is clear she loves her brother and appears committed to promoting the best for his welfare.

Stand-by Guardian & Conservator, STANDBY

13. Section 37.2-1013 of the Virginia Code provides for a standby guardian for an incapacitated person. This appointment allows the standby guardian to be authorized without further proceedings to assume the duties of his or her office immediately upon the death of the existing guardian. The appointment of the standby guardian must be affirmed biennially by the guardian and the standby guardian by the filing of an affidavit that states that the appointee remains available and capable to fulfill his or her duties.

14. I spoke by telephone with the proposed stand-by guardian and conservator, STANDBY. He is the Respondent's nephew and the son of the Petitioner, NAME, and resides in CITY,STATE. STANDBY told me that he

recently visited his uncle over the Thanksgiving holiday and is in agreement that his uncle needs a guardian and conservator. STANDBY told me that he thought his mother, NAME, was an appropriate person to act as co-guardian, and that ATTORNEY was an appropriate person to act as co-guardian and conservator on behalf of RESPONDENT. STANDBY is willing and able to act as stand-by guardian and conservator on behalf of RESPONDENT.

15. While I was at Manor Care Fair Oaks, I reviewed RESPONDENT's chart and spoke with his nurses. I noted that RESPONDENT was admitted to Manor Care on November 2, 2010. The notes in the file confirm the medical evaluations and the Petitioner's allegations that RESPONDENT has a history of depression, chronic back pain, facial skin cancer, hiatal hernia, and traumatic brain injury. While at Manor Care Fair Oaks, the doctor had the skin on RESPONDENT's face biopsied. The results indicate that RESPONDENT's ulcerated face has squamous cell cancer. The chart indicates that RESPONDENT's doctor, PHYSICIAN, will need to discuss with the co-guardians the treatment options: radiation, chemotherapy or palliative care.

16. The chart also had numerous notes by the doctor and the staff at Manor Care Fair Oaks regarding RESPONDENT's cantankerous behavior. On December 22, 2010, PHYSICIAN wrote: "buttocks wound unavoidable due to patient's lack of cooperation with staff. He refuses to be turned and is usually cursing and abusive to staff and tells them to go away."

Proposed Co-Guardian & Conservator, ATTORNEY

17. I spoke by telephone with ATTORNEY, a discreet and competent attorney admitted to practice of law in the Commonwealth of Virginia, who is the proposed co-guardian and conservator of RESPONDENT. ATTORNEY has been previously appointed by this Court as guardian and conservator for other incapacitated adults and has the experience necessary to deal with this difficult situation. I believe ATTORNEY is an appropriate and suitable choice for the appointment of co-guardian and conservator.

Income, Assets & Debts

18. RESPONDENT has annual gross income of approximately \$28,836 from the federal government. He owns his own home (condominium) with a tax assessed value of \$196,080. He has a bank account, IRAs, and annuities of approximately \$67,760. RESPONDENT has debts of approximately \$26,460.

Admitting Authority

19. Recent changes to the Guardianship Statute allow a guardian to admit a ward to a facility for the first 10 days of admission. It appears that the new statute would help to get RESPONDENT into a facility if he is unable to live safely at his current location. In order for a guardian to have admitting authority, the Court Order must specifically authorize the guardian to consent to the admission of such [incapacitated] person to a facility (Virginia Code Sections 37.2-805.1 & 37.2-1009). I recommend the authority to admit RESPONDENT to a facility be entered by this Court in the final order.

Evaluation

20. PHYSICIAN prepared an Evaluation Report of RESPONDENT. His report states that RESPONDENT suffers from traumatic brain injury, a facial ulcer on the left side of his face, a bone infection in his left leg, and a leg fracture. PHYSICIAN opines that RESPONDENT is oriented to himself and alert, but “verbally abusive to those around him. He has very poor insight into his medical problems and in my judgment lacks mental and physical ability to care for himself in a meaningful way.” PHYSICIAN’s prognosis for any improvement in RESPONDENT’s conditions is bleak: “I doubt if he can learn how to care for himself in his current condition.” He states that “I doubt if he [RESPONDENT] will improve, I hope I am wrong.”

21. RESPONDENT’s behavior and responses (or lack thereof) to me during my visit were consistent with the evaluation prepared by PHYSICIAN, the medical chart at Manor Care Fair Oaks, the nurses at Manor Care Fair Oaks, and my observations.

Recommendation & Extent of Guardianship

22. RESPONDENT is a 66-year-old man suffering from recurring brain injury trauma, squamos cell cancer of his face, and bone infections. The prognosis for improvement is poor.

23. Based on the foregoing evidence, the evaluation by PHYSICIAN, and my observations, RESPONDENT is not capable of receiving or evaluating information sufficiently to meet the essential requirements for his health, care and

safety without the assistance of a guardian to make personal decisions for him. A guardian is recommended for RESPONDENT and based upon the prognosis there will be no need for a periodic review.

24. NAME and ATTORNEY are willing to serve as RESPONDENT's co-guardians and appear to be appropriate and suitable choices. The co-guardians should be given the authority to act independently. STANDBY is willing to serve as RESPONDENT's standby guardian and appears to be an appropriate and suitable choice.

25. The guardian should be given plenary powers to make all medical and personal care decisions for RESPONDENT.

26. I recommend that the guardian be required to post bond without surety in the amount of \$1,000.

Recommendation & Extent of Conservatorship

27. Based on the foregoing evidence, the evaluation by PHYSICIAN, and my observations, RESPONDENT is not capable of receiving or evaluating information sufficiently to manage his finances. A conservator is recommended for RESPONDENT and based upon the prognosis there will be no need for a periodic review.

28. ATTORNEY is willing to serve as RESPONDENT's conservator. She appears to be an appropriate and suitable choice. STANDBY is willing to serve as RESPONDENT's standby conservator. He appears to be an appropriate and suitable choice.

29. The Virginia General Durable Power of Attorney dated October 15, 2010, signed by RESPONDENT and naming NAME his agent, should be revoked.

30. I recommend that the conservator be required to post bond with surety in the amount of \$390,000 (total assets, real estate & annual income \$292,676 x factor of 1.33 = \$389,259.08 [rounded up]).

WHEREFORE, your Guardian *ad litem* respectfully requests that (1) NAME ATTORNEY be appointed Co-Guardians on behalf of RESPONDENT; (2) ATTORNEY be appointed Conservator on behalf of RESPONDENT; (3) STANDBY be appointed Standby Guardian and Conservator on behalf of RESPONDENT; (4) the Durable General Power of Attorney be revoked; (5) the Court award the Guardian *ad litem* a fee for her services as detailed in an invoice to be submitted to the Court; and (6) that the Guardian *ad litem* be dismissed.

Respectfully submitted,

GUARDIAN AD LITEM, VSB #39663
Guardian *ad litem* for
RESPONDENT
FIRM
ADDRESS
TELEPHONE
EMAIL

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2012, a true and accurate copy of the foregoing *Answer and Report of Guardian ad litem* was sent via email to ATTORNEY counsel for Petitioner, at EMAIL ADDRESS and mailed, first-class postage prepaid, to the following individuals:

ATTORNEY
Mailing address

PETITIONER
Mailing address

PROPOSED GUARDIAN
Mailing address

PROPOSED CONSERVATOR
Mailing address

GUARDIAN AD LITEM

SAMPLE