

An Order Appointing Temporary Guardian and Temporary Conservator was filed with the Anderson County Probate Court on November 13, 2013 in Case Nos. 2012-GC-04-99 & 100. The November 13, 2013 Order Appointing Temporary Guardian and Temporary Conservator appointed Freddie R. Mitchell as the temporary guardian and temporary conservator for Mr. Mitchell.

A final hearing was held on January 31, 2013 concerning the appointment of a guardian and conservator for Mr. Mitchell. An Order Appointing Guardian and Conservator was filed on February 21, 2013. This Order Appointing Guardian and Temporary Conservator continued the appointment of Freddie R. Mitchell as the guardian and the conservator for Mr. Mitchell. The February 21, 2013 Order Appointing Guardian and Conservator is the basis of this appeal.

Helen Mitchell filed a Notice of Intention to Appeal on March 6, 2013. Helen Mitchell then filed Grounds for Appeal on April 5, 2013. Freddie R. Mitchell filed a Return to Grounds for Appeal on April 12, 2013. The Guardian ad Litem filed a report with this Court on May 15, 2013. The Probate Judge filed a Return on June 4, 2013. Based on these documents and the arguments of the parties' attorneys and the Guardian ad Litem, this Court hereby holds as follows:

1. This Court has jurisdiction to hear appeals from the Probate Court pursuant to S.C. Code Ann. §62-1-308(a) (Law. Co-op. 2009).

2. The Probate Court did not commit any error in finding that Mr. Mitchell appointed Freddie R. Mitchell as his attorney-in-fact pursuant to a Uniform Statutory Form financial power of attorney was executed on December 22, 2008 and was recorded

with the Anderson County Register of Deeds on December 30, 2008 in Deed Book 8975 at Page 276.

3. The Probate Court did not commit any error in finding that Mr. Mitchell executed a health care power of attorney on December 22, 2008 in which he lists Freddie R. Mitchell as an agent and listed the Respondent, William Terry Mitchell, as an alternate agent.

4. The Probate Court did not commit any error in appointing Freddie R. Mitchell as the temporary guardian and temporary conservator for Mr. Mitchell in accordance with the provisions of S.C. Code §§62-5-310(A) and 62-5-408(1). Helen Mitchell argues that Freddie R. Mitchell should not have been appointed as the temporary guardian and temporary conservator for Mr. Mitchell because she was not provided with notice of the proceedings prior to the temporary appointment. However, no notice to any interested persons is required if a physician has certified to the Probate Court that a person is incapacitated and no guardian has previously been appointed.¹ The Probate Court does not require a particular time frame in which notice is to be given to interested parties in a case involving the temporary appointment of a guardian, other than the scheduling of a hearing. S.C. Code §62-5-310(D). In a conservatorship case, notice is required to be given to "interested parties as soon thereafter as practicable." S.C. Code §62-5-408(1). In this case, Helen Mitchell and Mr. Mitchell were personally served with the guardianship pleadings, the conservatorship pleadings and the Order Appointing Temporary Guardian and Temporary Conservator on November 13, 2013. In addition, the Probate Court did not commit any error

¹ S.C. Code §§62-5-310(A)(1)(2) & (3).

in appointing Freddie R. Mitchell as the guardian and conservator for Mr. Mitchell at the final hearing on January 31, 2013. Therefore, the February 21, 2013 Order Appointing Guardian and Conservator should be affirmed, except where modified herein.

5. Helen Mitchell alleges that the monies withdrawn from TD Bank by Freddie Mitchell and placed into a conservatorship account were owned by both Harold Mitchell and Helen Mitchell. Freddie Mitchell alleges that the monies withdrawn from TD Bank belonged solely to Harold Mitchell. If any of the monies in the TD Bank account actually did belong to Helen Mitchell, then Helen Mitchell should provide proof of such ownership to Freddie R. Mitchell and Freddie R. Mitchell should reimburse such amount to Helen Mitchell. However, if the parties are not able to resolve whether any of these funds belonged to Helen Mitchell, then this Court should retain jurisdiction over that issue.

6. Paragraph 7 of the February 21, 2013 Order Appointing Guardian and Conservator reads as follows: "That the Petitioner [Freddie R. Mitchell] shall prepare a budget for the monthly expenses of the Respondent, Helen Mitchell, and William Harold Mitchell and shall provide a copy to this Court." The Probate Court did not have jurisdiction to order Helen Mitchell to be subject to a monthly budget. The Probate Court did have jurisdiction to order Mr. Mitchell to be subject to a monthly budget since he was determined to be an incapacitated person by the Probate Court. Therefore, paragraph 7 of the Order Appointing Guardian and Conservator, insofar as it orders Helen Mitchell to be subject to a monthly budget should be reversed. However, it is the opinion

of this Court that Helen Mitchell should participate in the budgetary process and should provide an accurate estimate of Mr. Mitchell's monthly expenses to Freddie R. Mitchell.

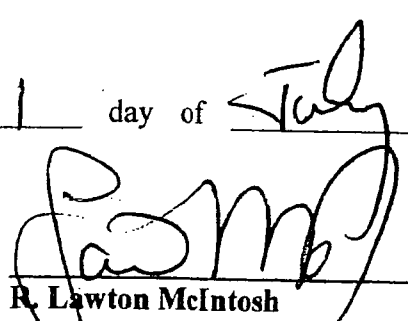
Therefore, based on the foregoing, it is hereby **ORDERED, ADJUDGED AND DECREED**

1. That the February 21, 2013 Order Appointing Guardian and Conservator shall be affirmed, except where modified herein.

2. That if any of the monies in the TD Bank account actually did belong to Helen Mitchell, then Helen Mitchell shall provide proof of such ownership to Freddie R. Mitchell and Freddie R. Mitchell shall reimburse such amount to Helen Mitchell. That if the parties are not able to resolve whether any of these funds belonged to Helen Mitchell, then this Court shall retain jurisdiction over that issue.

3. That Paragraph 7 of the February 21, 2013 Order Appointing Guardian and Conservator, insofar as it orders Helen Mitchell to be subject to a monthly budget shall be reversed.

IT IS SO ORDERED this 1 day of July, 2013
in Anderson, South Carolina.



R. Lawton McIntosh
Circuit Court Judge
Tenth Judicial Circuit