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ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

22414

APPEAL FROM HORRY COUNTY
Court of Common Pleas

RECEIVED

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Larry B. Hyman, Jr., Circuit Court Judge

SC Court of Appeals

Case No. 2014-CP-26-1665
Appellate Case No. 2015-000680

Emily Carlson and Alice Preyer, ... Petitioners,

v.

John C. Dockery, III, ... Respondent.

In re Emily Cheshire Dockery,

Of whom Emily Carlson and Alice Preyer are the Respondents,

and

Emily Cheshire Dockery is the Appellant.

RECORD ON APPEAL
VOLUME I

Thomas C. Brittain, Esquire
Mary Madison B. Langway, Esquire
4614 Oleander Drive
Myrtle Beach, SC 29577
(843) 449-8562
Attorneys for Appellant

James F. McCrackin, Esq.
3751 Grissom Parkway, Suite 300
Myrtle Beach, SC 29577
(843) 448-3500
Attorney for Respondents

V. Lee Moore, Esq.
P.O. Box 14737
Surfside Beach, SC 29587-4737
(843) 650-9757
Guardian Ad Litem for Appellant

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STATE OF SOUTH CAROLINA

PROBATE COURT

COUNTY OF HORRY

IN THE MATTER OF: EMILY CHESHIRE DOCKERY

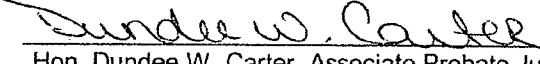
CASE NUMBER: 2010-GC-26-68 (Guardianship)
2010-GC-26-69 (Conservatorship)

ORDER APPOINTING COUNSEL

Upon reading the petition in the above matter, this court finds that the appointment of counsel is appropriate for the allegedly incapacitated person or minor.

THEREFORE, IT IS HEREBY ORDERED that V. Lee Moore, be appointed attorney for the allegedly incapacitated person or minor and granted the powers and duties of that position. The attorney also has the powers and duties of a guardian ad litem.

Executed this 1st day of December, 2010.


Hon. Dundee W. Carter, Associate Probate Judge

ACCEPTANCE

I agree to serve as attorney and guardian ad litem in this matter.

Executed this _____ day of _____, 2010.

Signature: _____

Name: V. Lee Moore

Address: Post Office Box 14737

Surfside Beach, SC 29587-4737

Telephone: (843) 650-9757

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF HORRY) Case No. 2010-GC-26-68 & 69

Emily Carlson and Alice Preyer,)
)
Petitioner,)
)
vs.)
)
John C. Dockery, III, and)
)
In re EMILY CHESHIRE DOCKERY, an)
Alleged Incapacitated Person,)
)
Respondents.)

ORDER GRANTING MOTION TO
STRIKE COUNTERCLAIM OF EMILY
CHESHIRE DOCKERY

PROBATE COURT
HORRY COUNTY, SC
2011 APR 25 AM 8:07
DEIRDRE W. EDMONDS
PROBATE JUDGE

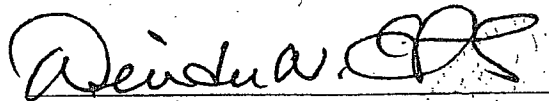
The above matters came before me for hearing on April 6, 2011, on Petitioner's Motion to Strike the Counterclaim filed in the above matters by Respondent Emily Cheshire Dockery. Present at the hearing was James F. McCrackin, Esquire, appearing on behalf of the Petitioners, Thomas C. Brittain, Esquire, appearing on behalf of Respondent Emily Cheshire Dockery, William H. Monckton, Esquire, appearing on behalf of Respondent John C. Dockery, III, and V. Lee Moore, Esquire, the court-appointed guardian ad litem for Respondent, Emily Cheshire Dockery, the alleged incapacitated person in these matters.

Upon consideration of the pleadings and the matters presented by counsel at the hearing, I find and conclude the Motion to Strike Counterclaim should be granted.

It is, therefore, ORDERED, ADJUDGED AND DECREED that Petitioner's Motion to Strike is granted and that the Counterclaim filed by Respondent Emily Cheshire Dockery on February 4, 2011 is STRICKEN.

IT IS SO ORDERED.

April 25, 2011
Conway, South Carolina


Deirdre W. Edmonds
Horry County Probate Judge

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE PROBATE COURT
FIFTEENTH JUDICIAL CIRCUIT
CASE NO: 2010-GC-26-68 and 69

EMILY CARLSON AND,)
ALICE PREYER)

Petitioners,)

vs.)

JOHN C. DOCKERY, III)

Respondent.)

In re: EMILY CHESHIRE DOCKERY)

ORDER GRANTING
MOTION TO CONTINUE

PROBATE COURT
HORRY COUNTY, SC
2011 MAY -9 AM 8:14
DEBORAH L. MOORE
PROBATE JUDGE

The above matters came before me for hearing on April 6, 2011, on Emily Cheshire Dockery's Motion to Continue the hearing on the merits until a later date. Present at the hearing was James F. McCrackin, Esquire, appearing on behalf of the Petitioners, Thomas C. Brittain, Esquire, appearing on behalf of Respondent Emily Cheshire Dockery, William H. Monckton, Esquire, appearing on behalf of Respondent John C. Dockery, III, and V. Lee Moore, Esquire, the court-appointed guardian ad litem for Respondent, Emily Cheshire Dockery, the alleged incapacitated person in these matters.

Upon consideration of the Motion and the matters presented by counsel at the hearing, I find and conclude the Motion should be granted. Therefore, this matter shall be continued until June 30, 2011 at 8:30 am.

The Court also finds that all parties shall participate in mediation prior to the final hearing, which final hearing is scheduled for June 30, 2011.

It is, therefore, **ORDERED, ADJUDGED and DECREED** that Ms. Dockery's Motion to Continue is granted, that the merits hearing in these matters shall be held on June 30, 2011, at 8:30 A.M. and that the parties shall participate in mediation prior to the June 30th, 2011 hearing.

IT IS SO ORDERED.


The Honorable Deirdre W. Edmonds
Horry County Probate Judge

May 9, 2011
Conway, South Carolina.

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Emily Carlson and Alice Preyer,

Petitioner,

vs.

John C. Dockery, III,

Respondent.

In re: Emily Cheshire Dockery

IN THE PROBATE COURT

CASE NO.: 2010-GC-26-0068 and 69

ORDER GRANTING MOTION TO
APPOINT A MEDICAL EXAMINER

DEIRDRE W. JOHNS
PROBATE JUDGE

2011 JUL 26 PM 4:49

PROBATE COURT
HORRY COUNTY, SC

The above matters came before me for hearing on April 6, 2011, on Ms. Emily Cheshire Dockery's Motion to appoint a Medical Examiner pursuant to *SC Code Ann. 62-5-303 (b)*. Present at the hearing was James F. McCrackin, Esq., appearing on behalf of the Petitioners; Thomas C. Brittain, Esq., appearing on behalf of Respondent Emily Cheshire Dockery; William H. Monckton, Esq., appearing on behalf of Respondent John C. Dockery, III; and V. Lee Moore, Esq., the court-appointed Guardian ad Litem for Respondent, Emily Cheshire Dockery, the alleged incapacitated person in these matters.

Upon consideration of the pleadings as well as the matters presented at the hearing, the Court finds that said Motion should be granted. The Court also finds that Dr. Goldschmidt is an acceptable medical examiner in this action and he should be appointed in this matter. Dr. Goldschmidt, who previously examined Mrs. Dockery, shall be advised by the attorneys to re-visit any issue or conduct any additional exams he deems necessary in accordance with the Petition for Appointment of Guardian and Petition for Appointment of Conservator. Further, the parties have agreed that Dr. Jeff A. Benjamin shall be appointed as a medical examiner in this

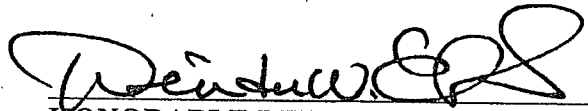
action. Based upon same, the court's prior appointment of James Vest, M.D. as an examiner should be rescinded.

Therefore, it is

ORDERED, ADJUDGED and DECREED that Mrs. Dockery's Motion to appoint a Medical Examiner is granted and Jeff A. Benjamin, D.O. and Leonard Goldschmidt are hereby appointed as medical examiners in these actions.

FURTHER ORDERED that James Vest M.D.'s appointment as a medical examiner in these matters is hereby rescinded and he shall have no further duties and responsibilities in these matters.

IT IS SO ORDERED.


HONORABLE DEIRDRE W. EDMONDS
Horry County Probate Judge

July 26, 2011
Conway, South Carolina.

STATE OF SOUTH CAROLINA

PROBATE COURT

COUNTY OF HORRY

IN THE MATTER OF EMILY CHESHIRE DOCKERY

CASE NUMBER 2010-GC-26-0068 & 0069

ORDER TO SEND VISITOR

IT IS HEREBY ORDERED that JOAN CLARK, LISW, who is trained in (check as appropriate)

_____ law
_____ nursing
 X social work

PROBATE COURT
HORRY COUNTY, SC
2011 OCT 12 PM 4:19
DEIRDRE W. EDMONDS
PROBATE JUDGE

be sent as a visitor where the allegedly incapacitated person resides to observe conditions and report in writing to the Court (FORM #531PC) by date of hearing.

Executed this 12th day of October, 2011.


Honorable Deirdre W. Edmonds
Probate Court Judge

ACCEPTANCE

I agree to serve as visitor in this matter.

Executed this _____ day of _____, 2011

Signature: _____

Name: JOAN CLARK

Address: 223 Maison Drive, Unit 28

Myrtle Beach, SC 29572

Telephone (O): 843-449-8318

(H): _____

STATE OF SOUTH CAROLINA)

IN THE PROBATE COURT

COUNTY OF HORRY)

CASE NO.: 2010-GC-26-0068

Emily Carlson and Alice Preyer,)

Petitioner,)

vs.)

John C. Dockery, III,)

Respondent.)

IN RE: Emily Cheshire Dockery)

**ORDER GRANTING MOTIONS
TO REMOVE VISITOR, STRIKE
VISITOR'S REPORT AND
APPOINT NEW VISITOR**

PROBATE COURT
HORRY COUNTY, SC
2011 OCT 27 PM 12:48
DEBORAH W. JUDICE
PROBATE JUDGE

The above matter came before me for hearing on April 6, 2011, on Ms. Emily Cheshire Dockery's Motion to Remove Te Anne Oehler as Visitor, Motion to Strike Her Report, and Motion to Appoint a New Visitor. Present at the hearing was James F. McCrackin, Esq., appearing on behalf of the Petitioners; Thomas C. Brittain, Esq., appearing on behalf of Respondent Emily Cheshire Dockery; William H. Monckton, Esq., appearing on behalf of Respondent John C. Dockery, III; and V. Lee Moore, Esq., the Court-appointed Guardian ad Litem for Respondent, Emily Cheshire Dockery, the alleged incapacitated person in these matters.

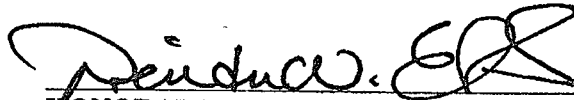
Upon consideration of the pleadings as well as the matters presented at the hearing, the Court finds that said Motions should be granted. Therefore,

IT IS ORDERED, ADJUGED AND DECREED that Ms. Dockery's Motion to Remove Visitor is granted and the court-appointed visitor, Ms. Te Anne Oehler, is hereby removed as visitor in this matter, and further the Motion to Strike Visitor's Report is granted and

Ms. Te Anne Oehler's Visitor's Report dated January 24, 2011 shall be STRICKEN from the record in this matter.

IT IS FURTHER ORDERED, ADJUGED AND DECREED that Ms. Dockery's Motion to Appoint New Visitor is granted and Joan Clark, LISW, a licensed clinical psychologist, is hereby appointed as visitor in this matter, this Order supplementing that certain Order to Send Visitor entered by the undersigned in this matter on October 12, 2011.

IT IS SO ORDERED.



HONORABLE DEIRDRE W. EDMONDS
Horry County Probate Judge

October 27, 2011
Conway, South Carolina.

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE PROBATE COURT
Case No: 2010-GC-26-0068 AND 69

DEIRDRE W. EDWARDS
PROBATE JUDGE

2011 OCT 31 PM 3:05

PROBATE COURT
HORRY COUNTY, SC

Emily Carlson and Alice Preyer,)
Petitioner,)
vs.)
John C. Dockery, III,)
Respondent.)
In re Emily Cheshire Dockery)

ORDER DENYING MOTION FOR
CONTINUANCE AND GRANTING
MOTION TO ENFORCE SETTLEMENT
AGREEMENT

The above matters came before this Court for a hearing on September 15, 2011, on Emily Carlson and Alice Preyer (hereinafter "Petitioners") Motion to Enforce Settlement Agreement filed September 1, 2011. Respondent, John C. Dockery, III ("John Dockery"), filed a Response to Motion to Enforce Settlement Agreement on September 14, 2011. Emily Cheshire Dockery ("Emily Dockery") filed a Motion for Continuance on September 12, 2011. Both Motions were heard on September 15, 2011.

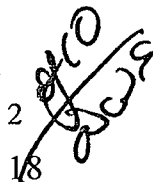
Present at the hearing was James F. McCrackin, Esq., appearing on behalf of the Petitioners; Mary Madison Brittain Langway, Esq., appearing on behalf of Respondent Emily Cheshire Dockery; William H. Monckton, Esq., appearing on behalf of Respondent John C. Dockery, III; and V. Lee Moore, Esq., the court-appointed Guardian ad Litem for Respondent, Emily Cheshire Dockery, the alleged incapacitated person in these matters.

Upon consideration of the pleadings filed in these actions, and the record before me, I make the following findings of fact and conclusions of law:

10/10
DWE

1. On July 22, 2011, the parties participated in mediation with attorney John Leiter serving as the Mediator. The mediation concluded with the Petitioners, John Dockery and V. Lee Moore, Esquire, the Guardian ad Litem for the alleged incapacitated person, reaching a settlement that was subsequently communicated to the Court by the Mediator.
2. A settlement agreement was prepared by Petitioners' attorney, a copy of the final version which is attached hereto as Exhibit A and incorporated herein, and transmitted to all of the parties by email on July 22, 2011, and final version sent to all parties on August 1, 2011. John Dockery's attorney replied by email that he had no objection to the Settlement Agreement on August 2, 2011. Counsel for Emily Dockery informed all of the parties that Emily Dockery would not sign the Settlement Agreement, but did not object to proceeding with a hearing in which the Settlement Agreement would be presented to the Court together with the physician reports, a visitor's report and any testimony regarding Emily Dockery's capacity.
3. Petitioners' counsel informed the Court on July 26, 2011, that the Petitioners, John Dockery and the Guardian ad Litem had reached an agreement, but that Emily Dockery was not willing to sign the Settlement Agreement at that time. Petitioners' counsel further requested guidance from the Court regarding whether the Court would require that the physician reports be completed, and if a new visitor needed to be appointed.
4. Based upon notification from Petitioners' counsel that the matter had been settled by all of the parties except Emily Dockery and having received no objections to its inquiry, on July 26, 2011 the Court removed the contested hearing in these matters scheduled for September 15th and 16th from the Court's calendar and reserved only a short hearing on September 15th to approve the agreement and determine the issue of incapacity as to Emily Dockery.

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A handwritten signature, possibly "J. Leiter", is written over the date "2/18".

5. On August 25, 2011, Counsel for John Dockery informed Petitioners' counsel that John Dockery would not sign the Settlement Agreement. Petitioners' counsel subsequently filed a Motion to Enforce Settlement Agreement.

6. I find and conclude that this Court has jurisdiction to enforce settlement agreements entered into by parties pursuant to *Shelton v. Bressant*, 312 S.C. 183, 439 S.E.2d 833 (1993).

7. I find that Emily Dockery has not shown that a continuance of Petitioners' Motion to Enforce Settlement Agreement is necessary under the circumstances. I specifically find that the Settlement Agreement is not binding on Emily Dockery, and in no way prejudices her rights in these cases. Therefore, I deny Ms. Dockery's Motion for Continuance as to same.

8. I find that the Settlement Agreement should be enforced as to John Dockery, Emily Carlson, Alice Preyer and the Guardian ad Litem.

9. I further find that the Settlement Agreement does not bind this Court on the issue of incapacity and, if the Court finds that Emily Dockery is incapacitated, I find that the Settlement Agreement does not bind the Court as to the choice of a guardian or a conservator.

10. The Court initially scheduled a hearing in these matters for November 2, 2011, which hearing has since been continued until November 15, 2011. Petitioners, John Dockery, and the Guardian ad Litem shall not be allowed to make any argument or present any evidence at the hearing that is inconsistent with the terms of their Settlement Agreement. After hearing testimony and reviewing the evidence in this case, if the Court finds that Emily Dockery is incapacitated, the terms of the Settlement Agreement in regard to the choice of a guardian and a conservator will be enforced against the parties to the Settlement Agreement; provided,

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JCO
JWE

however, that the Court shall not be bound by the Settlement Agreement in regard to the choice of a guardian or a conservator.

11. In order to avoid future delay, I hereby find that the Petitioners and John Dockery shall provide the names and billing information for three proposed conservators as set forth in the Settlement Agreement on or before the date of the hearing in this matter.

12. The undersigned makes no finding at this time on Petitioners' request for attorneys' fees, but will allow Petitioners to make a motion supported by an affidavit of counsel regarding fees incurred in connection with the Motion to Enforce Settlement Agreement for my future consideration.

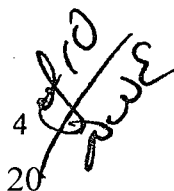
Based upon the foregoing findings and conclusions, it is, therefore,

ORDERED, ADJUDGED AND DECREED that Emily Dockery's Motion for Continuance is denied and Petitioners' Motion to Enforce Settlement Agreement is granted as follows:

1. The Settlement Agreement shall be binding on John Dockery, Emily Carlson, Alice Preyer and the Guardian ad Litem. Each of such parties shall comply with the terms of the Settlement Agreement and shall be prohibited from taking any position that is inconsistent with the terms and conditions of the Settlement Agreement.

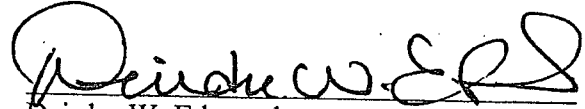
2. The Settlement Agreement shall not be binding on Emily Dockery in any way or this Court with regards to the issue of incapacity and with regards to the person to be appointed guardian and/or conservator for Ms. Dockery.

3. Petitioners and John Dockery shall comply with that portion of the Settlement Agreement which requires the parties to provide names and billing information for

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three (3) proposed conservators to the other parties on or before the hearing scheduled for November 15, 2011.

IT IS SO ORDERED.



Deirdre W. Edmonds
Horry County Probate Judge

October 31, 2011
Conway, South Carolina

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
 COUNTY OF HORRY) Case No. 2010-GC-26-68 and 69

Emily Carlson and Alice Preyer,)
)
 Petitioners,)

vs.)

John C. Dockery, III,)
)
 Respondent.)

In re Emily Cheshire Dockery)
)
)
)

**ORDER DENYING MOTION TO
 REMOVE V. LEE MOORE, ESQUIRE
 AS GUARDIAN AD LITEM**

PROBATE COURT
 HORRY COUNTY, SC
 APR 25 PM 1:28
 JUDGE W. EDMONDS

The above matters came before the Court for a hearing on March 20, 2012, on Emily Cheshire Dockery's Motion to Remove V. Lee Moore, Esquire as Guardian ad Litem (the "Motion") for Emily Cheshire Dockery, the alleged incapacitated person.

Present at the hearing were James F. McCrackin, Esq., appearing on behalf of the Petitioners; Thomas C. Brittain, Esq. and Mary Madison B. Langway, Esq., appearing on behalf of Respondent Emily Cheshire Dockery; William H. Monckton, Esq., appearing on behalf of Respondent John C. Dockery, III; and V. Lee Moore, Esq., the court-appointed Guardian ad Litem for Respondent Emily Cheshire Dockery, the alleged incapacitated person in these matters.

Upon consideration of the Motion, the record before me, and the arguments presented for and against said Motion, I make the following findings of fact and conclusions of law:

1. The petitions requesting appointment of a guardian and a conservator for Ms. Dockery were filed on November 29, 2010.

2. V. Lee Moore ("Ms. Moore") was appointed as counsel and Guardian ad Litem for Ms. Dockery on December 1, 2010.

3. On January 19, 2011, a Notice of Representation was filed by Thomas C. Brittain, Esq. indicating that he would be representing Ms. Dockery.

4. Ms. Moore was relieved as counsel for Ms. Dockery by this Court on February 7, 2011, but directed by this Court to continue to serve as Guardian ad Litem for Ms. Dockery.

5. No objection was raised in regard to Ms. Moore's service as Guardian ad Litem until the current motion was filed by Ms. Dockery's attorneys on or about February 29, 2012.

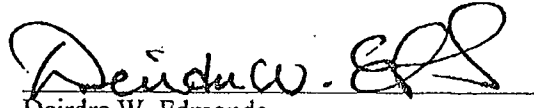
6. Ms. Moore has met with Ms. Dockery on numerous occasions, attended every deposition and hearing in this case as well as the Court ordered Mediation, and is bound by the Settlement Agreement pursuant to my Order Denying Motion for Continuance and Granting Motion to Enforce Settlement Agreement dated October 31, 2011.

7. No allegation has been made that Ms. Moore has done anything improper to merit her removal.

8. Counsel for Ms. Dockery has argued that Ms. Moore's services are unnecessary because Ms. Dockery has hired an elder care advocate and is represented by counsel. I find specifically, that unlike an elder care advocate or an attorney, who are advocates for Ms. Dockery, Ms. Moore is charged with acting as the eyes of the court to further the best interests of Ms. Dockery. While an elder care advocate or attorney subjectively represents Ms. Dockery's interest, Ms. Moore is obliged to objectively evaluate the best interests of Ms. Dockery even if Ms. Moore's conclusions differ from what Ms. Dockery may indicate is her desire. Ms. Moore's duties cannot be fulfilled by paid advocates. I, therefore, find that a Guardian ad Litem is necessary and appropriate to protect the best interests of Ms. Dockery.

Based upon the foregoing findings of fact and conclusions of law, it is
ORDERED that the Motion to Remove V. Lee Moore, Esquire as Guardian ad Litem in
these matters is hereby denied.

IT IS SO ORDERED.


Deirdre W. Edmonds
Horry County Probate Judge

April 25, 2012
Conway, South Carolina

STATE OF SOUTH CAROLINA)

IN THE PROBATE COURT

COUNTY OF HORRY)

CASE NO.: 2010-GC-26-0068 and 69

Emily Carlson and Alice Preyer,)

Petitioner,)

vs.)

John C. Dockery, III,)

Respondent.)

In re: Emily Cheshire Dockery)

DEIRDRE V. GOLD
PROBATE COURT
2012 APR 23 PM 1:28
HORRY COUNTY, SC

ORDER REQUIRING DR. GOLDSCHMIDT
TO PRODUCE ANY AND ALL DATA
AND/ OR DOCUMENTS GENERATED
DURING HIS EXAMINATIONS OF
EMILY C. DOCKERY

The above matters came before the Court for a hearing on March 20, 2012, on Emily Cheshire Dockery's Motion to require Dr. Goldshmidt, a court-appointed examiner in these matters, to produce to Mrs. Dockery's attorneys, any and all data or other documents generated during Dr. Goldschmidt's examination of Ms. Dockery.

Present at the hearing were James F. McCrackin, Esq., appearing on behalf of the Petitioners; Thomas C. Brittain, Esq. and Mary Madison B. Langway, Esq., appearing on behalf of Respondent Emily Cheshire Dockery; William H. Monckton, Esq., appearing on behalf of Respondent John C. Dockery, III; and V. Lee Moore, Esq., the court-appointed Guardian ad Litem for Respondent Emily Cheshire Dockery, the alleged incapacitated person in these matters.

Upon consideration of the Motion and the evidence and arguments presented for and against said Motion, I find and conclude that the alleged incapacitated person's legal counsel is entitled to the requested information from the examiner appointed by the court to examine the alleged incapacitated person. Therefore, the Motion should be granted. The Court also finds that Emily C. Dockery and/ or her attorneys have the right to share this information with any person

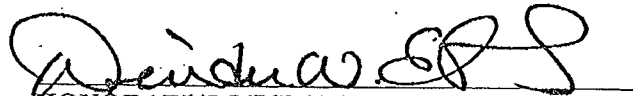
deemed necessary for purposes of the actions before this Court. However, any person viewing the information shall sign and execute a confidentiality agreement prior to counsel's release of said information to said persons.

Therefore, it is,

ORDERED that Mrs. Dockery's Motion is granted and Dr. Goldschmidt shall provide Mrs. Dockery and her counsel with copies of any and all data, testing, documents, etc. generated during Dr. Goldschmidt's examination of Mrs. Dockery.

IT IS FURTHER ORDERED that Mrs. Dockery's counsel is authorized to share the information provided by Dr. Goldschmidt with any person said counsel deems necessary for purposes of these actions provided that Mrs. Dockery's counsel first obtains a signed confidentiality agreement from the person or persons that counsel releases or discloses such information.

IT IS SO ORDERED.


HONORABLE DEIRDRE W. EDMONDS
Horry County Probate Judge

April 25, 2012
Conway, South Carolina.

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF HORRY) Case No. 2010-GC-26-0068 AND 69

Emily Carlson and Alice Preyer,)

Petitioner,)

vs.)

John C. Dockery, III,)

Respondent.)

In re Emily Cheshire Dockery)
_____)

CONSENT ORDER TO EXCLUDE
EXPERT TESTIMONY OF
DR. JEFF BENJAMIN
REGARDING RAW PSYCHOLOGICAL
DATA

DEBORAH W. COLE
PROBATE JUDGE

2012 JUL -2 AM 10:28

PROBATE COURT
HORRY CO.

THIS MATTER CAME BEFORE me upon the filing of a Motion to Exclude Expert Testimony of Dr. Jeff Benjamin Regarding Raw Psychological Data by Petitioner. It now appears that all interested parties have agreed to exclude the expert testimony of Dr. Jeff Benjamin as requested in the Motion.

Based on the consent of all the parties, I make the following findings of fact and conclusions of law:

1. All necessary parties, and all persons required by law, have been properly served with the pleadings filed in this matter, and all parties and/or interested persons have been given proper notice.
2. The parties agree Dr. Jeff Benjamin will not be allowed to testify regarding the Raw Psychological Data provided by Dr. Leonard Goldschmidt, Psy.D., J.D.

[Handwritten signature]
DWE

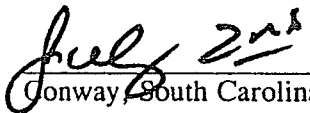
3. Dr. Benjamin is not properly qualified as an expert to review raw psychological data and his report and any testimony related to it will be excluded pursuant to Rule 702 of the South Carolina Rules of Evidence.

4. S.C. Code Title 40, Chapter 55 which defines the acts and qualifications of psychologists confirms that Dr. Benjamin is not a licensed psychologist and therefore is not qualified to testify regarding the interpretation of the raw psychological data.

AND IT IS SO ORDERED.

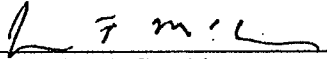


Honorable Deirdre W. Edmonds
Judge of Probate

 July 2nd, 2012
Conway, South Carolina

WE CONSENT:

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

James F. McCrackin

SC Bar No. 064140

E-Mail: jim.mccrackin@nelsonmullins.com

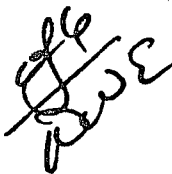
3751 Robert M. Grissom Parkway / Suite 300

Post Office Box 3939 (29578-3939)

Myrtle Beach, SC 29577-3165

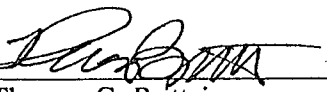
(843) 448-3500

Attorneys for Emily Carlson and Alice Preyer

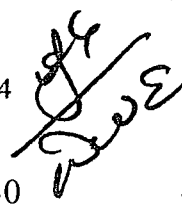
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WE CONSENT:

THE BRITTAIN LAW FIRM, P.A.

By: 
Thomas C. Brittain
Mary Madison Brittain Langway
The Brittain Law Firm
4614 Oleander Drive
Myrtle Beach, SC 29577

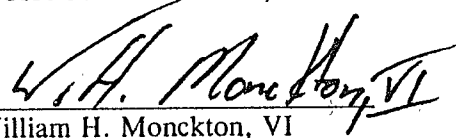
Attorneys for Emily Cheshire Dockery

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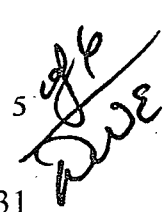
WE CONSENT:

MONCKTON LAW FIRM, PA

By:

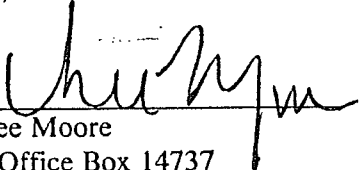

William H. Monckton, VI
1300 Professional Drive, Suite 102
Myrtle Beach, SC 29577

Attorney for John C. Dockery, III

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WE CONSENT:

MOORE, JOHNSON & SARANITI LAW FIRM, P.A.

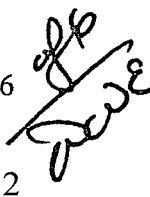
By: 

V. Lee Moore

Post Office Box 14737

Surfside Beach, SC 29587

Guardian for Emily Cheshire Dockery

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STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
 COUNTY OF HORRY) Case No. 2010-GC-26-68 and 69

Emily Carlson and Alice Preyer,)
)
) Petitioners,)
)

vs.)

John C. Dockery, III,)
)
) Respondent.)
)

--In re Emily Cheshire Dockery)
)
)
)

**ORDER DENYING MOTION TO
 VOID SETTLEMENT AGREEMENT**

PROBATE COURT
 HORRY COUNTY, SC
 2013 JAN 22 AM 10:14
 DEIRDRE W. EDMONDS
 PROBATE JUDGE

This matter came before me pursuant to a Motion to Void Settlement Agreement (the "Motion") filed by John C. Dockery, III ("Respondent"). A hearing was held on the Motion on May 4, 2012. Present at the hearing were Thomas C. Brittain, Esq. and Mary Madison Langway, Esq., attorneys for Emily Cheshire Dockery, William H. Monckton, VI, Esq., attorney for John C. Dockery, III, James F. McCrackin, Esq., attorney for the Petitioners, and V. Lee Moore, Esq., Guardian ad Litem for Emily Cheshire Dockery ("Ms. Dockery"). Based on the record before me, I make the following findings of fact and conclusions of law:

1. The Court issued an Order on October 31, 2011 granting Petitioners' Motion Enforcing Settlement Agreement, which Order was binding on Respondent John C. Dockery. Respondent John C. Dockery's Motion to Void Settlement Agreement was filed December 30, 2011.

2. I find that the Motion to Void Settlement Agreement is akin to a motion to reconsider the Court's earlier Order Enforcing Settlement Agreement and was not timely filed.

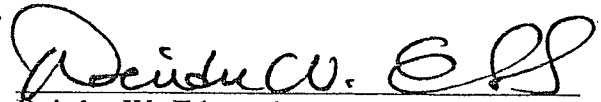
3. Assuming, however, that the Motion to Void Settlement Agreement is not akin to a motion to reconsider because, arguably, it is based upon Dr. Benjamin's testimony that was not available to Respondent John C. Dockery at the time the Order was entered on October 31, 2011, the Court should consider the merits of the Motion. Respondent John C. Dockery argues in his Motion that the Settlement Agreement is factually inaccurate with regards to the issue of capacity because of Dr. Benjamin's opinion that Ms. Dockery is not incapacitated. I find no merit to this argument because the Agreement bound the parties but did not bind Ms. Dockery or the Court with regard to the issue of capacity. Respondent John C. Dockery also argues in his Motion that he and Ms. Dockery would be prejudiced by the Court barring Respondent John C. Dockery from providing testimony consistent with Dr. Benjamin's opinion and such would be a violation of due process. Again, the Settlement Agreement bound Respondent John C. Dockery to the terms of his Agreement but did not bind Ms. Dockery. I find no prejudice to Ms. Dockery or violation of her due process rights by the Court's enforcement of the Settlement Agreement as to the parties to said Agreement.

4. I find that to the extent Respondent John C. Dockery's testimony in this case would be inconsistent with the terms of the Settlement Agreement entered into by and enforced against Respondent John C. Dockery by the Order dated October 31, 2011, it is inadmissible. To the extent his testimony is not inconsistent with the Settlement Agreement, it is admissible unless otherwise excludable by other proper objection.

Based on the above findings of fact and conclusions of law,

IT IS THEREFORE ORDERED, JUDGED AND DECREED that the Motion to Void Settlement Agreement is denied, and that to the extent Respondent's testimony is not consistent with the Settlement Agreement, it is inadmissible.

IT IS SO ORDERED.



Deirdre W. Edmonds
Horry County Probate Judge

January 22nd, 2012
Conway, South Carolina

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
 COUNTY OF HORRY) Case No. 2010-GC-26-68 and 69

Emily Carlson and Alice Preyer,)
)
 Petitioners,)
)
 vs.)
)
 John C. Dockery, III,)
)
 Respondent.)
)
 In re Emily Cheshire Dockery)
)
)
)
)
)

ORDER DENYING MOTION TO
PRESERVE RIGHT TO CONTEST
ASSIGNMENT OF FEES

PROBATE COURT
 HORRY COUNTY, SC
 2013 JAN 22 AM 10:14
 DEIRDRE W. EDMONDS
 CLERK OF COURT
 JUDGE

This matter came before me pursuant to a Motion to Preserve Right to Contest Assignment of Fees (the "Motion") filed by Thomas C. Brittain, Esq. on behalf of Emily Cheshire Dockery ("Ms. Dockery"). The Motion alleges that the attorney for Petitioners selected Te Anne Oehler as visitor in this case, and that Ms. Oehler had a conflict and should have been aware of such conflict. The Motion further alleges that Petitioners should be responsible for Ms. Oehler's fees because Petitioners brought this action through improper motive and for improper reasons. Prior to a hearing on the Motion, a conference call was convened in which Mr. Brittain advised the Court that he was conceding that his Motion was without merit. Based on Mr. Brittain's concession and the record before me, I make the following findings of fact and conclusions of law:

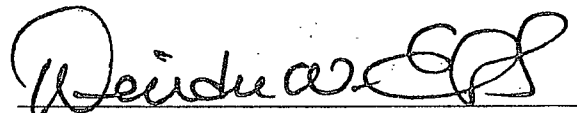
1. The Motion and all of its allegations are without merit.
2. I find specifically that the allegations that Ms. Oehler was selected by the attorney for Petitioners, that Ms. Oehler had a conflict which she should have been aware of,

and that Petitioners brought this action through improper motive and for improper reasons are without merit.

Based on the above findings of fact and conclusions of law,

IT IS THEREFORE ORDERED, JUDGED AND DECREED that the Motion to Reserve Right to Contest Assignment of Fees is denied.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Deirdre W. Edmonds", written over a horizontal line.

Deirdre W. Edmonds
Horry County Probate Judge

January 22nd, 2012
Conway, South Carolina

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
 COUNTY OF HORRY) Case No. 2010-GC-26-68 and 69

Emily Carlson and Alice Preyer,)
)
 Petitioners,)
)
 vs.)
)
 John C. Dockery, III,)
)
 Respondent.)
)
 In re Emily Cheshire Dockery)
)
)

ORDER DISMISSING MOTION TO
REQUIRE ALL COURT
EXAMINATIONS OF EMILY
CHESHIRE DOCKERY BE
ADMINISTERED IN WRITING

PROBATE COURT
 HORRY COUNTY, SC
 2013 JAN 22 AM 10:15
 JUDGE EDMONDS

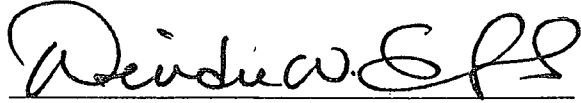
This matter is before the Court on Ms. Emily Cheshire Dockery's Motion to require that all of her court examinations be administered in writing due to her inability to hear well. Present at the hearing was James F. McCrackin, Esq., appearing on behalf of the Petitioners; Thomas C. Brittain, Esq., and Mary Madison B. Langway appearing on behalf of Respondent Emily Cheshire Dockery; William H. Monckton, Esq., appearing on behalf of Respondent John C. Dockery, III; and V. Lee Moore, Esq., the court-appointed Guardian ad Litem for Respondent, Emily Cheshire Dockery, the alleged incapacitated person in these matters.

At the beginning of the hearing on this matter, Ms. Dockery was questioned about her ability to hear, and informed the Court that she was able to hear the proceedings, as long as she was seated close to the witness stand. As such, arrangements were made to have Ms. Dockery seated as close to the witness stand as possible, without interfering with the court proceedings. As such, counsel for Ms. Dockery withdrew the motion to have her examinations administered in writing.

Based on the foregoing,

IT IS THEREFORE ORDERED, JUDGED AND DECREED that Mrs. Dockery's
Motion is dismissed..

IT IS SO ORDERED.



Deirdre W. Edmonds
Horry County Probate Judge

January , 2012
Conway, South Carolina

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
 COUNTY OF HORRY) Case No. 2010-GC-26-68 and 69

Emily Carlson and Alice Preyer,)
)
) Petitioners,)

vs.)

John C. Dockery, III,)
)
) Respondent.)

In re Emily Cheshire Dockery)
)
)

ORDER FINDING INCAPACITY

PROBATE COURT
 HORRY COUNTY, S.C.
 2013 JAN 22 AM 8:15
 DEIRORE W. EDMOND
 PROBATE JUDGE

This matter is before me pursuant to the Petition for Finding Incapacity and Appointment of Guardian and the Petition for Appointment of Conservator (collectively the "Petitions") for Emily Cheshire Dockery ("Ms. Dockery") filed by Emily Carlson and Alice Preyer (the "Petitioners") on December 1, 2010, requesting a finding of incapacity with regards to Ms. Dockery and the appointment of a guardian and a conservator for her.

Upon the filing of the Petitioner, the Court appointed V. Lee Moore ("Ms. Moore") as counsel and Guardian ad Litem for Ms. Dockery on December 1, 2010 and TeAnne Oehler ("Oehler") as visitor on December 3, 2010. On January 19, 2011, a Notice of Representation was filed by Thomas C. Brittain, Esq. indicating that he would be representing Ms. Dockery. Therefore, Ms. Moore was relieved as counsel for Ms. Dockery by Order dated February 7, 2011, but ordered to continue to serve as Guardian ad Litem for Ms. Dockery. Ms. Dockery filed an Answer and Counterclaim on February 4, 2011. John C. Dockery, III ("Respondent") filed an Answer on or about February 17, 2011. Petitioners filed a motion to strike Ms.

Dockery's counterclaim, which I granted by Order Granting Motion to Strike Counterclaim of Emily Cheshire Dockery dated April 25, 2011. Ms. Dockery filed a Motion to Remove TeAnne Oehler as the Visitor; Motion to Strike Her Report; and Motion to Appoint a New Visitor on or about March 3, 2011. I removed Ms. Oehler, struck her report and appointed Joan Clark ("Ms. Clark") as visitor by Order Granting Motions to Remove Visitor, Strike Visitor's Report and Appoint New Visitor dated October 27, 2011. Ms. Dockery filed a Motion to Appoint a Medical Examiner on or about March 3, 2011, which I granted by Order Granting Motion to Appoint Medical Examiner dated July 26, 2011. I appointed Jeffrey A. Benjamin, D.O. and Leonard Goldschmidt, Psy.D., J.D. as medical examiners.

I ordered the parties to participate in mediation by Order Granting Motion to Continue dated May 9, 2011. The parties participated in mediation on or about July 22, 2011, with John M. Leiter, Esq. as the mediator. The mediation concluded with the Petitioners, Respondent John C. Dockery and Ms. Moore reaching a settlement agreement, which was communicated to me by the mediator and/or the parties. Petitioners filed a Motion to Enforce Settlement Agreement on or about August 31, 2011. I granted the Petitioners' request to enforce the settlement agreement as to Petitioners, Respondent John C. Dockery and Ms. Moore, and specifically found that the agreement was not binding on the Court or Ms. Dockery by Order Denying Motion for Continuance and Granting Motion to Enforce Settlement Agreement dated October 31, 2011.

Respondent filed a Motion to Void Settlement Agreement on December 30, 2011. I denied that motion by Order Denying Motion to Void Settlement Agreement dated the same date as this order. Ms. Dockery filed a Motion to Require Petitioners to Pay for Fees and Costs and Motion to Remove V. Lee Moore, Esquire as Guardian ad Litem on or about

February 29, 2011. I denied the motion to remove the Guardian ad Litem by Order Denying Motion to Remove V. Lee Moore, Esquire as Guardian ad Litem dated April 25, 2012. I have addressed Ms. Dockery's Motion to Require Petitioners to Pay for Fees and Costs in an Order Denying Motion to Require Petitioners to Pay for Fees and Costs dated the same date as this order. Ms. Dockery filed a Motion to Require All Court Examinations of Emily C. Dockery Be Administered in Writing on or about March 19, 2012. Ms. Dockery did not pursue this motion, and the concerns regarding her hearing impairment were eliminated by her use of her hearing aids during the hearings. An Order Dismissing Motion to Require All Court Examinations of Emily Cheshire Dockery be Administered in Writing was entered by me the same date as this order.

A hearing was held on the Petitions on May 4, 2012, at which time Ms. Dockery and both Petitioners testified. On July 6, 2012, the hearing resumed at which time Leonard Goldschmidt, Psy.D., J.D., Debbie Costa, Pamela Moore, Rita Cauthen, Reagan J. Callaghan and V. Lee Moore, Esquire testified. Following the July hearing, I reviewed the videotaped depositions of Jeffrey A. Benjamin, D.O. and Leonard Goldschmidt, Psy.D., J.D., the exhibits of evidence admitted at trial and the applicable law submitted for my consideration.

Present at both hearings were Thomas C. Brittain, Esq. and Mary Madison Langway, Esq., attorneys for Ms. Dockery, William H. Monckton, VI, Esq., attorney for Respondent John C. Dockery, James F. McCrackin, Esq., attorney for the Petitioners, and V. Lee Moore, Esq., Guardian ad Litem for Ms. Dockery. Pursuant to the agreement of the parties, only Ms. Dockery's capacity was at issue during said hearings.

Based on the record before me, I make the following findings of fact and conclusions of law:

1. Ms. Dockery is a resident of Horry County, South Carolina; therefore, venue is proper in this Court.

2. The Petitions, together with Summonses, were properly served and proper notice of each of the hearings was given to all parties.

3. Ms. Dockery's testimony revealed her lack of understanding as to the status of her property and financial affairs. Based upon her own testimony and the testimony of many of the witnesses, Ms. Dockery needs assistance in performing most activities of daily living: bathing, dressing, meal preparation, etc. The Visitor reported that Ms. Dockery agrees that she needs help caring for herself and some of her activities of daily living.

4. I find that Dr. Goldschmidt is qualified to testify as an expert in the fields of neuropsychology, forensic psychology and clinical psychology. Petitioners submitted numerous South Carolina cases for the Court to review in which neuropsychologists had been qualified as experts. Therefore, there are precedents in this state for qualifying neuropsychologists as experts. Furthermore, I find that Dr. Goldschmidt's training, education, knowledge and skills meet the requirements of Rule 702 to testify as an expert in these fields. I note Dr. Goldschmidt's qualifications in these fields as outlined in his curriculum vitae, which was submitted into evidence. Based upon the foregoing ruling, I overrule the Respondents' objection to Dr. Goldschmidt's qualification as an expert in these fields and find that Dr. Goldschmidt is qualified to testify as an expert in these areas.

5. Dr. Goldschmidt testified and submitted his written reports regarding the extensive testing he conducted on and with Ms. Dockery. In his expert opinion, based upon the extensive testing, clinical interviews, and other matters, Dr. Goldschmidt opined that Ms. Dockery is incapacitated to the extent that she needs the appointment of a guardian and conservator. Dr.

Goldschmidt found that Ms. Dockery is suffering multiple neurocognitive/neurobehavioral deficits in many areas of adaptive functioning, including those set forth in his written reports. Dr. Goldschmidt diagnosed Ms. Dockery with numerous types of dementia as set forth in his written reports.

6. Dr. Benjamin, a neurologist who has treated Ms. Dockery for a couple of years, opined that Ms. Dockery is not incapacitated. Given the extensive testing conducted by Dr. Goldschmidt and the extensive time he spent conducting clinical interviews with Ms. Dockery, I find Dr. Goldschmidt's opinion and written reports persuasive as to Ms. Dockery's abilities, deficits and lack of capacity. Dr. Goldschmidt conducted an initial evaluation in December 2010 through early January 2011; a re-evaluation in August 2011 through early September 2011; and then a follow-up re-evaluation and interview in April 2012. Dr. Goldschmidt and his staff spent many hours testing and interviewing Ms. Dockery.

7. On the surface, Ms. Dockery appears to have sufficient capacity to make her own decisions and can articulate her wishes and desires to others in a straightforward, clear and concise manner. It is clear, however, that beyond the surface, Ms. Dockery lacks sufficient understanding and/or capacity to make responsible decisions concerning her person and property. The appointment of a guardian is necessary and desirable as a means of providing continuing care and supervision of Ms. Dockery.

8. Although I find that Ms. Dockery lacks sufficient capacity to make responsible decisions concerning her person, I do not conclude that Ms. Dockery's inability to perform numerous activities of daily living without assistance or her lack of capacity require a full guardianship. I find that Ms. Dockery has the ability to direct some of her care, make some of her personal decisions and, thus, should be allowed to participate in decisions and express her

personal wishes and preferences as to her personal affairs. Therefore, in order to encourage the development of maximum self-reliance and independence, I find that, initially, a limited guardianship should be established for Ms. Dockery rather than an unlimited or full guardianship. Ms. Dockery should be allowed to retain the authority to make some personal decisions on her own, and she should be able to express her desires and preferences as to other personal matters so that her opinion should be given some consideration by her guardian in decision-making on her behalf.

9. I find and conclude that Ms. Dockery lacks sufficient understanding and capacity based upon her mental deficits to manage her property and make responsible decisions concerning her property and financial affairs. It is clear from her testimony that she does not have sufficient understanding of the nature and extent of her property and finances. I further conclude that a full conservatorship is necessary to protect Ms. Dockery's property and provide full protection and management for her benefit; without proper protection and management, her property will be wasted or dissipated.

10. Based upon my finding that Ms. Dockery is an incapacitated person, I find and conclude that Ms. Dockery is responsible for paying Dr. Goldschmidt's bill for his professional services rendered in these matters.

11. V. Lee Moore, Esquire, as the Guardian ad Litem for Ms. Dockery, has ably, zealously, and competently served Ms. Dockery during all phases of this proceeding, and her professional services are anticipated to continue hereafter through conclusion of matters relating to this proceeding. Attorney Moore submitted an affidavit at the hearing marked as GAL Exhibit 1 reflecting fees and expenses incurred through July 5, 2012 of \$20,024.85 together with an itemization of such fees and expenses. The hourly rate charged by Attorney

Moore was \$175.00 per hour for time spent by her and \$75.00 per hour for time spent by her paralegal. I find that such fees are below the traditional fee system for such cases in Horry County considering Ms. Moore's background, experience and skills. I find that such fees and costs are reasonable and that Attorney Moore is entitled to be compensated and paid for the fees, costs and expenses incurred and devoted by her and her firm on behalf of Ms. Dockery.

Based on the above findings of fact and conclusions of law, IT IS THEREFORE ORDERED as follows:

1. Ms. Dockery is an incapacitated person as defined in section 62-5-101, and I therefore order that a hearing to determine who shall serve as her limited guardian and who shall serve as her full conservator shall be held as soon as possible, but no later than 45 days after the date of this Order.

2. Petitioners, Respondent John C. Dockery and the Guardian ad Litem shall continue to be bound by the provisions of the Mediation Agreement regarding the appointment of a limited guardian and a full conservator.

3. Ms. Dockery shall pay Dr. Goldschmidt's bill for his professional services rendered in this matter as soon as reasonably possible.

4. Ms. Dockery shall pay all sums and amounts as referred to in the Affidavit of Attorney's Fees for the fees and expenditures incurred by V. Lee Moore, Esquire, Guardian ad Litem for Ms. Dockery in the amount of \$20,024.85 as soon as reasonably possible.

IT IS SO ORDERED.



Deirdre W. Edmonds
Horry County Probate Judge

January , 2012
Conway, South Carolina

2. The same is true with regards to those certain portions of Dr. Benjamin's examiner's report outlined in the Motion.

3. Dr. Benjamin is not qualified as an expert in neuropsychology and, therefore, cannot testify as to the matters related to neuropsychology or neuropsychiatric testing.

Based on the above findings of fact and conclusions of law,

IT IS THEREFORE ORDERED, JUDGED AND DECREED that the Motion in Limine is granted, and Dr. Benjamin's deposition testimony and the statements in his examiner's report as set forth in the Motion shall be and have been excluded from any consideration in determining Ms. Dockery's capacity.

IT IS SO ORDERED.



Deirdre W. Edmonds
Horry County Probate Judge

January 24th, 2012
Conway, South Carolina

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
 COUNTY OF HORRY) Case No. 2010-GC-26-68 and 69

Emily Carlson and Alice Preyer,)
)
 Petitioners,)
)
 vs.)
)
 John C. Dockery, III,)
)
 Respondent.)
)
 In re Emily Cheshire Dockery)
)
)

ORDER DENYING MOTION TO
REQUIRE PETITIONERS TO PAY
FEES AND COSTS

2010 JAN 22 AM 10:15
 DEBORAH W. EDMONDS
 PROBATE JUDGE

PROBATE COURT
 HORRY COUNTY, SC

This matter came before me pursuant to a Motion to Require Petitioners to Pay for Fees and Costs (the "Motion") filed by Emily Cheshire Dockery ("Ms. Dockery"). The Motion requests that Petitioners be required to pay all of the costs associated with Dr. Goldschmidt's examinations, and alleges that this action was brought by Petitioners in bad faith, and that Ms. Dockery should therefore be awarded attorneys' fees and costs for the litigation. Based on the record before me, I make the following findings of fact and conclusions of law:

1. I issued an Order Finding Incapacity dated the same date as this order, in which I found that Ms. Dockery was an incapacitated person as defined in section 62-5-101 of the South Carolina Code of Laws. I also found in the Order Finding Incapacity that Ms. Dockery is responsible for Dr. Goldschmidt's bill for professional services rendered in this matter.

2. Based on my finding that Ms. Dockery is an incapacitated person, I find that the Motion to Require Petitioners to Pay Fees and Costs is without merit, and that Ms. Dockery shall be responsible for the costs and fees incurred by her in this matter.

Based on the above findings of fact and conclusions of law,

IT IS THEREFORE ORDERED, JUDGED AND DECREED that the Motion to Require Petitioners to Pay Fees and Costs is denied, and that Ms. Dockery shall be responsible for the costs and fees incurred by and/or on her behalf her in this matter.

IT IS SO ORDERED.



Deirdre W. Edmonds
Horry County Probate Judge

January 22, 2012
Conway, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY) IN THE PROBATE COURT
Case No. 2010-GC-26-68 and 69

Emily Carlson and Alice Preyer,

Petitioners,

vs.

John C. Dockery, III,

Respondent.

In re Emily Cheshire Dockery

**ORDER APPOINTING GUARDIAN
AND CONSERVATOR**

PROBATE COURT,
HORRY COUNTY, SC
2013 JUN 10 AM 10:29
DEIRDRE W. EDMONDS
PROBATE JUDGE

This matter came before me for a final hearing on May 30, 2013, pursuant to the Petition for Finding of Incapacity and Appointment of Guardian and the Petition for Appointment of Conservator (collectively the "Petitions") for Emily Cheshire Dockery ("Ms. Dockery") filed by Emily Carlson and Alice Preyer (the "Petitioners") on December 1, 2010, requesting the appointment of a guardian and a conservator for Ms. Dockery. I bifurcated the trial in this matter to focus first on the issue of capacity. Hearings on Ms. Dockery's capacity took place on May 4, 2012 and July 6, 2012. I issued an Order Finding Incapacity on January 22, 2013 ("Order of Incapacity").

The hearing before me on May 30, 2013 was for the purpose of appointing a guardian and a conservator for Ms. Dockery pursuant to my Order of Incapacity. Present at the hearing on May 30, 2013 were Ms. Dockery and her attorneys, Thomas C. Brittain, Esq. and Mary Madison Langway, Esq., John C. Dockery, III and his attorney, William H. Monckton, VI, Esq., Emily

Carlson and Alice Preyer and their attorney, James F. McCrackin, Esq., and V. Lee Moore, Esq., Guardian ad Litem for Ms. Dockery.

Pursuant to my previous rulings in this matter, I required the Petitioners as well as John C. Dockery, III ("Mr. Dockery") and V. Lee Moore, Esq. ("Ms. Moore") to comply with the terms of the Settlement Agreement dated July 22, 2011 (the "Settlement Agreement"), of which they were all parties. Ms. Dockery was not bound by the Settlement Agreement as she was not a party to the Settlement Agreement. The only conservator proposed by the parties to the Settlement Agreement was Walter Godbold, CPA ("Mr. Godbold"). While Mr. Dockery objected to the enforcement of the Settlement Agreement, he agreed that Mr. Godbold was qualified to serve as conservator for Ms. Dockery.

At the hearing, Clifford H. Tall, Esq. testified on behalf of Ms. Dockery. Mr. Godbold testified as to his qualifications and willingness to serve as conservator for Ms. Dockery. Ms. Moore testified regarding her reasons for recommending a third party conservator for Ms. Dockery. Based on the record before me, I make the following findings of fact and conclusions of law:

1. Ms. Dockery is a resident of Horry County, South Carolina; therefore, venue is proper in this Court.
2. The Petitions, together with Summonses, were properly served and proper notice of each of the hearings was given to all parties.
3. Mr. Dockery is qualified and willing to serve as limited Guardian for Ms. Dockery subject to the following terms and conditions:
 - (a) Mr. Dockery will keep Petitioners advised in a timely manner of any and all changes to Ms. Dockery's mental, emotional or medical condition including but not limited to

(i) providing a monthly email summary of Ms. Dockery's social activities and all routine doctor, dentist or other medical provider visits and the outcomes of such visits, and (ii) calling Petitioners in the event Ms. Dockery has any non-routine medical visit or treatment, emergency treatment, hospitalization or change of medical provider within twelve (12) hours of such event;

(b) Mr. Dockery will arrange for reasonable and necessary in-home care, including but not limited to, assistance with bathing and other personal hygiene care, for Ms. Dockery with the emphasis being on maintaining consistency and continuity so that Ms. Dockery can remain in her home as long as reasonably possible, and provide contact information on all caregivers to Petitioners;

(c) Mr. Dockery will provide reasonable phone access so all parties can communicate with Ms. Dockery on a regular basis;

(d) Mr. Dockery will provide reasonable access for visitation by all parties;
and

(e) Ms. Dockery should be allowed to retain the authority to make some personal decisions on her own, and she should be able to express her desires and preferences as to other personal matters so that her opinion should be given some consideration by Mr. Dockery as her guardian in decision-making on her behalf.

4. Despite Ms. Dockery's stated desire for Mr. Dockery to serve as her conservator and Mr. Dockery's priority to be appointed conservator based upon his status as Ms. Dockery's attorney-in-fact under her Power of Attorney, I find that there is good cause to pass over Mr. Dockery in appointing another as conservator for Ms. Dockery, and I further find that it is in Ms. Dockery's best interest to appoint a non-family member as her conservator. I also note that the Settlement Agreement, which is binding on Mr. Dockery, provides for a third party conservator.

Ms. Moore testified that there were multiple instances of questionable financial decisions by Mr. Dockery in matters affecting Ms. Dockery's assets, including commingling of funds, potential self-dealing and general confusion regarding Ms. Dockery's assets. Ms. Moore further stated that her investigation and Mr. Dockery's own deposition testimony were the basis for her findings.

5. I specifically note that even if I had not found that the Settlement Agreement was enforceable against the parties to the Settlement Agreement, I would have still found based on the record before me that Ms. Dockery is an incapacitated person and that the appointment of a third party conservator is appropriate and in her best interest. It is clear from the evidence in this case that Ms. Dockery's children cannot get along with each other and the Court's appointment of any one of her children as conservator of her property over her other children would only lead to continued fighting among the children, which ultimately would be detrimental to Ms. Dockery and her health and well-being. It is the Court's hope that by appointing an independent, non-family member as conservator for Ms. Dockery, her children can focus on making their mother comfortable, happy and content all the while knowing that an outside family member is properly handling their mother's assets and funds. It is further the Court's hope that by appointing a non-family member to manage her assets and property, Ms. Dockery may have peace of mind because her children will no longer fight over her property because none of her children will be in control of same to the chagrin of the others.

6. Mr. Godbold is qualified and willing to serve as Conservator for Ms. Dockery, and understands his duties and obligations as Conservator. Mr. Godbold's hourly rate of \$150 for his services as Conservator is fair and reasonable.

7. All previous powers of attorney executed by Ms. Dockery shall terminate upon the appointment of Mr. Godbold as Conservator.

8. Ms. Moore has submitted an affidavit to me reflecting all fees and expenses incurred through May 30, 2013. I find such fees and expenses fair and reasonable, and that Ms. Moore is entitled to be compensated and paid for the fees, costs and expenses incurred and devoted by her and her firm on behalf of Ms. Dockery.

9. Pursuant to the Settlement Agreement, Petitioners and Mr. Dockery shall pay for their own attorneys' fees incurred in connection with this matter. This finding shall not affect Petitioners' claim for attorneys' fees in regard to Petitioners' Motion to Enforce the Settlement Agreement.

Based on the above findings of fact and conclusions of law, IT IS THEREFORE ORDERED AS FOLLOWS:

1. I hereby appoint John C. Dockery, III as limited Guardian for Emily Cheshire Dockery with authority to assist with Ms. Dockery's healthcare, medical and personal decisions as provided for under South Carolina law and hereby direct the issuance of Letters of Guardianship subject to the following terms and conditions:

(a) Mr. Dockery will keep Petitioners advised on a timely basis of any and all changes to Ms. Dockery's mental, emotional or medical condition including but not limited to (i) providing a monthly email summary of Ms. Dockery's social activities and all routine doctor, dentist or other medical provider visits and the outcomes of such visits, and (ii) calling Petitioners in the event Ms. Dockery has any non-routine medical visit or treatment, emergency treatment, hospitalization or change of medical provider within twelve (12) hours of such event;

(b) Mr. Dockery will arrange for reasonable and necessary in-home care, including but not limited to, assistance with bathing and other personal hygiene care, for Ms. Dockery with the emphasis being on maintaining consistency and continuity so that she can

remain in her home as long as reasonably possible, and provide contact information on all caregivers to Petitioners;

(c) Mr. Dockery will provide reasonable phone access so all parties can communicate with Ms. Dockery on a regular basis;

(d) Mr. Dockery will provide reasonable access for visitation by all parties;
and

(e) Ms. Dockery shall retain the authority to make some personal decisions on her own, and she shall be able to express her desires and preferences as to other personal matters so that her opinion should be given some consideration by her guardian in decision-making on her behalf.

(f) An annual guardian's report of the guardianship shall be filed by Mr. Dockery on each anniversary of the date of this order.

2. I hereby appoint Walter Godbold, CPA as conservator for Emily Cheshire Dockery with full authority to manage Ms. Dockery's financial affairs and assets as provided for under South Carolina law, and I hereby direct the issuance of Letters Conservatorship to Mr. Godbold subject to the following terms and conditions:

(a) Bond will be set at the time the Inventory is filed.

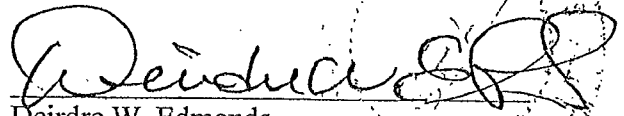
(b) The inventory is required to be filed within thirty (30) days of the date of this order.

(c) An annual accounting of the conservatorship shall be filed by Mr. Godbold on each anniversary of the date of this order.

3. All previous powers of attorney executed by Ms. Dockery are hereby terminated.

4. Ms. Dockery shall pay all sums and amounts as referred to in the Affidavit of Attorney's Fees for the fees and expenditures incurred by V. Lee Moore, Esquire, Guardian ad Litem for Ms. Dockery in the amount of \$26,382.63, as soon as reasonably possible.

AND IT IS SO ORDERED.


Deirdre W. Edmonds
Horry County Probate Judge

June 10, 2013
Conway, South Carolina

COUNTY OF HORRY

)
) IN THE PROBATE COURT
) Case No. 2010-GC-26-68 and 69

PROBATE COURT
HERRY COUNTY, SC
2013 JUN 10 AM 11:12
DEIRDRE W. EDMONDSON
PROBATE JUDGE

Petitioners,

VS.

Respondent.

In re Emily Cheshire Dockery

**ORDER GRANTING PETITIONERS'
MOTION FOR ATTORNEY'S FEES
AND COSTS IN CONNECTION WITH
MOTION TO ENFORCE
SETTLEMENT AGREEMENT**

This matter came before me pursuant to a Motion for Attorney's Fees and Costs in Connection with Motion to Enforce Settlement Agreement (the "Motion") filed by Emily Carlson and Alice Preyer ("Petitioners"). A hearing was held on the Motion on May 4, 2012. Present at the hearing were Thomas C. Brittain, Esq. and Mary Madison Langway, Esq., attorneys for Emily Cheshire Dockery, William H. Monckton, VI, Esq., attorney for John C. Dockery, III, James F. McCrackin, Esq., attorney for the Petitioners, and V. Lee Moore, Esq., Guardian ad Litem for Emily Cheshire Dockery ("Ms. Dockery"). Based on the record before me, I make the following findings of fact and conclusions of law:

1. The Court issued an Order on October 31, 2011 granting Petitioners' Motion to Enforce Settlement Agreement, which Order was binding on Respondent, and which has not been appealed. Respondent filed a Motion to Void Settlement Agreement on December 30, 2011.

2. I denied Respondent's Motion to Void Settlement Agreement finding that it was not timely filed, but even assuming that it was timely filed, there was no basis for voiding the Settlement Agreement because there was no prejudice to Ms. Dockery nor any violation of her due process rights by the Court's enforcement of the Settlement Agreement as to the parties to said Agreement.

4. Based on the facts in the record, and pursuant to Cheap-O's Truck Stop, Inc. v. Cloyd, 350 S.C. 596, 567 S.E.2d 514 (Ct. App. 2002), I find that Petitioners should be granted attorney's fees and costs incurred in connection with Petitioners' Motion to Enforce Settlement Agreement. This finding is based on (a) the Respondent's counsel's multiple representations to counsel for Petitioners that Respondent had no objection to the Settlement Agreement and would be signing the Settlement Agreement, (b) Respondent's counsel's failure to object to my written inquiry requesting that counsel inform me if counsel had any objection to the Settlement Agreement, and (c) my reliance upon counsel's silence to cancel the hearing date in this matter, which resulted in prejudice to Petitioners by causing a substantial delay of the hearing in this matter. Counsel has an obligation to be candid to this Court, and this Court has a right to rely on counsel's representations, whether affirmative or by silence.

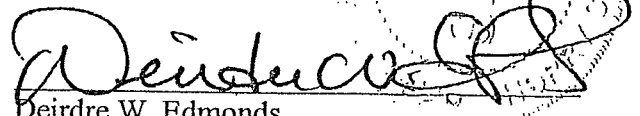
5. Counsel for Ms. Dockery has argued that Petitioners' counsel somehow violated the confidentiality of discussions that took place during the mediation of this matter. I find such arguments totally without merit. Petitioners' counsel communicated the settlement agreement to the Court with the consent of all of the parties. In fact, no objection was made by any party to the communications of Petitioners' counsel to the Court regarding the agreement at the time such communications were sent. Nor were there any objections to the Court's email to all counsel asking counsel to confirm that there was an agreement between John C. Dockery, III, Petitioners

and the Guardian ad Litem. I find that the series of communications between the counsels of all parties and the court, which is attached to Petitioners' motion to enforce the settlement agreement, leaves no doubt that Petitioners' counsel handled all communications in a reasonable and fair manner consistent with the Mediation Rules.

5. I find that Petitioners' counsel's fees and costs in connection with the Motion to Enforce Settlement Agreement and set forth in detail on Exhibit A to the Motion are fair and reasonable.

Based on the above findings of fact and conclusions of law, IT IS THEREFORE ORDERED, JUDGED AND DECREED that the Motion is granted and Respondent is hereby ordered to pay the attorney's fees and costs of Petitioners in connection with the Motion to Enforce Settlement Agreement in the amount of \$7,315.00.

AND IT IS SO ORDERED.



Deirdre W. Edmonds
Horry County Probate Judge

June 10, 2013
Conway, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY) IN THE PROBATE COURT
Case No. 2010-GC-26-68 and 69

Emily Carlson and Alice Preyer,
Petitioners,

vs.

John C. Dockery, III,
Respondent.

In re Emily Cheshire Dockery

**ORDER DENYING MOTION IN
LIMINE TO EXCLUDE ANY AND
ALL EVIDENCE RELATING TO THE
MANAGEMENT OF MS. DOCKERY'S
ASSETS AND FUNDS**

PROBATE COURT
HORRY COUNTY, SC
2013 JUN 10 PM 11:22
DEIRDRE W. EDMONDS
PROBATE JUDGE

This matter came before me upon the filing by counsel for Ms. Dockery of a Motion in Limine to Exclude Any and All Evidence Relating to the Management of Ms. Dockery's Assets and Funds (the "Motion"). A hearing was held the Motion on May 30, 2013. Present at the hearing were Thomas C. Brittain, Esq., attorney for Emily Cheshire Dockery, William H. Monckton, VI, Esq., attorney for John C. Dockery, III, James F. McCrackin, Esq., attorney for the Petitioners, and V. Lee Moore, Esq., Guardian ad Litem for Emily Cheshire Dockery ("Ms. Dockery").

In arguing the Motion, Counsel for Ms. Dockery urged this Court to exclude any and all testimony regarding the past or current management of Ms. Dockery's assets in determining who should be appointed as Conservator for Mrs. Dockery. Based on the record before me, I make the following findings of fact and conclusions of law:

1. I issued an Order Finding Incapacity on January 22, 2013, in which I found that Ms. Dockery is an incapacitated person as defined in S.C. Code Section 62-5-101, and I ordered

a hearing to determine who should be appointed as her limited guardian and who should be appointed as her full conservator.

2. Counsel's motion to exclude any and all evidence regarding the management of Ms. Dockery's assets by Respondent, John C. Dockery, III ("Mr. Dockery") in determining who should serve as conservator for Ms. Dockery, reveals a lack of understanding by counsel of the nature and purpose of these proceedings.

3. Guardianships and conservatorships are governed by the provisions of Article 5 of Title 62 of the South Carolina Code of Laws. Article 5 is titled "Protection of Persons Under Disability and Their Property." My role in these cases is to protect the incapacitated person, Mrs. Dockery, and to determine what is in the best interests of the incapacitated person.

4. Upon determining that a person is unable to manage her property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, or advanced age, and that such person has assets that may be dissipated or wasted without proper management, I am charged with determining who should be appointed as conservator for such incapacitated person.

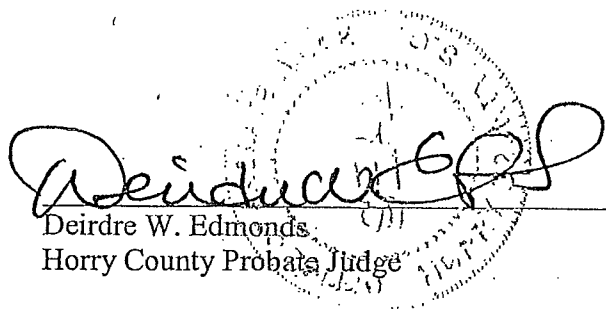
5. S.C. Code Section 62-5-410 provides a list of persons who the court should consider for appointment and the order in which such persons should be considered. However, Section 62-5-410 grants the Court discretion, for good cause, to pass over a person having priority and appoint a person having less or no priority. Furthermore, Patterson v. Cook, 288 S.C. 220, 341 S.E.2d 782 (S.C. 1986), makes it clear that the selection of a conservator is in the discretion of the Probate Court and should be based on the best interest of the incapacitated person.

6. Accordingly, I have a duty to consider any and all evidence that may reflect on a person's qualifications to serve as conservator. I could not possibly fulfill my duties in appointing a conservator for Ms. Dockery if I grant counsel's Motion to ignore all evidence of past and present management of Ms. Dockery's assets by Mr. Dockery.

7. I will consider Mr. Dockery as a possible conservator in accordance with Section 62-5-410, but in doing so I will consider any and all evidence that may reflect on his qualifications to serve and will make my decision based on what is in Ms. Dockery's best interest.

IT IS THEREFORE ORDERED, JUDGED AND DECREED that the Motion in Limine to Exclude Any and All Evidence Relating to the Management of Ms. Dockery's Assets and Funds is DENIED.

AND IT IS SO ORDERED.



Deirdre W. Edmonds
Horry County Probate Judge

June 10, 2013
Conway, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE PROBATE COURT
Case No. 2010-GC-26-68 and 69

PROBATE COURT
HORRY COUNTY, SC
2014 MAR 10 AM 8:15
DEIRDRE W. EDWARDS
PROBATE JUDGE

Emily Carlson and Alice Preyer,)
Petitioners,)

vs.)

John C. Dockery, III,)
Respondent.)

In re: Matter of Emily Cheshire Dockery)

**ORDER GRANTING PARTIAL
RELIEF ON MOTION TO
RECONSIDER ORDER GRANTING
PETITIONERS' MOTION FOR
ATTORNEY'S FEES AND COSTS IN
CONNECTION WITH MOTION TO
ENFORCE SETTLEMENT
AGREEMENT**

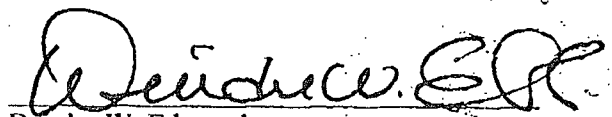
This matter came before me pursuant to two motions filed by counsel for Emily Cheshire Dockery and counsel for John C. Dockery, III. Each of the motions are virtually identical in content and each is titled Motion to Reconsider/Alter or Amend the Order Granting Petitioner's Motion for Attorney's Fees and Costs in Connection with Motion to Enforce Settlement Agreement (the "Motions"). After careful consideration, I make the following findings of fact and conclusions of law:

1. I hereby grant the Motions so as to clarify that John C. Dockery, III is ordered to pay Petitioners' attorney's fees and costs as set forth in the Order Granting Petitioners' Motion for Attorney's Fees and Costs in Connection with Motion to Enforce Settlement Agreement.

2. In all other respects, the Motions are hereby denied.

IT IS THEREFORE ORDERED, JUDGED AND DECREED that the Motions are granted as set forth in paragraph 1 above, and in all other respects the Motions are hereby denied.

IT IS SO ORDERED.

A handwritten signature in dark ink, appearing to read "Deirdre W. Edmonds". The signature is fluid and cursive, with a large initial "D".

Deirdre W. Edmonds
Horry County Probate Judge

March 10, 2014
Conway, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY) IN THE PROBATE COURT
Case No. 2010-GC-26-68 and 69

PROBATE COURT
HORRY COUNTY, SC
2014 MAR 10 AM 8:14
DEIRDRE W. EDWARDS
PROBATE JUDGE

Emily Carlson and Alice Preyer,)
) Petitioners,)

vs.)

John C. Dockery, III,)
) Respondent.)

In re: Matter of Emily Cheshire Dockery)

**ORDER GRANTING PARTIAL
RELIEF ON MOTION TO
RECONSIDER ORDER DENYING
MOTION IN LIMINE TO EXCLUDE
ANY AND ALL EVIDENCE
RELATING TO THE MANAGEMENT
OF MS. DOCKERY'S ASSETS AND
FUNDS**

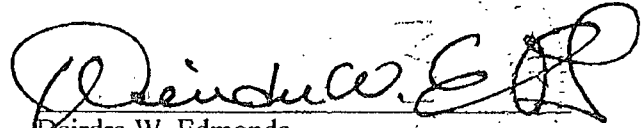
This matter came before me pursuant to two motions filed by counsel for Emily Cheshire Dockery and counsel for John C. Dockery, III. Each of the motions are virtually identical in content and each is titled Motion to Reconsider/Alter or Amend the Order Denying Motion in Limine to Exclude Any and all Evidence Relating to the Management of Ms. Dockery's Assets and Funds (the "Motions"). After careful consideration of the Motions and based on the record before me, I make the following findings of fact and conclusions of law:

1. I hereby grant the Motions so as to delete the objectionable provision in paragraph 2 of the Order Denying Motion in Limine to Exclude Any and All Evidence Relating to the Management of Ms. Dockery's Assets and Funds that reads "reveals a lack of understanding by counsel of the nature and purpose of these proceedings" and replace such phrase with "is misplaced in the proceedings before the court."

2. In all other respects, the Motions are hereby denied.

IT IS THEREFORE ORDERED, JUDGED AND DECREED that the Motions are granted as set forth in paragraph 1 above, and in all other respects the Motions are hereby denied.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Deirdre W. Edmonds", written over a horizontal line.

Deirdre W. Edmonds
Horry County Probate Judge

March 10, 2014
Conway, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY) IN THE PROBATE COURT
Case No. 2010-GC-26-68 and 69

PROBATE COURT
HORRY COUNTY, SC
2014 MAR 10 AM 8:14
DEBORAH W. EDWARDS
PROBATE JUDGE

Emily Carlson and Alice Preyer,)
) Petitioners,)

vs.)

John C. Dockery, III,)
) Respondent.)

In re: Matter of Emily Cheshire Dockery)
))
)

**ORDER GRANTING PARTIAL
RELIEF ON MOTION TO
RECONSIDER ORDER GRANTING
MOTION IN LIMINE TO EXCLUDE
PORTIONS OF DEPOSITION AND
LIVE TESTIMONY AND WRITTEN
MATERIALS OF DR. JEFFREY
BENJAMIN**

This matter came before me pursuant to two motions filed by counsel for Emily Cheshire Dockery and counsel for John C. Dockery, III. Each of the motions are virtually identical in content and each is titled Motion to Reconsider/Alter or Amend the Order Granting Motion in Limine to Exclude Portions of Deposition and Live Testimony and Written Materials of Dr. Jeffrey Benjamin (the "Motions"). After careful consideration of the Motions and based on the record before me, I make the following findings of fact and conclusions of law:

1. I hereby grant the Motions so as to amend the Order Granting Motion in Limine to Exclude Portions of Deposition and Live Testimony and Written Materials of Dr. Jeffrey Benjamin (the "Order") by attaching and incorporating therein by reference, a copy of Petitioners' Motion in Limine to Exclude Portions of Deposition and Live Testimony and Written Materials of Dr. Jeffrey Benjamin (the "Motion in Limine"), which Motion in Limine specifically references those portions of Dr. Benjamin's deposition testimony that were excluded by the Order and those portions of Dr. Benjamin's Expert Report that were excluded by the

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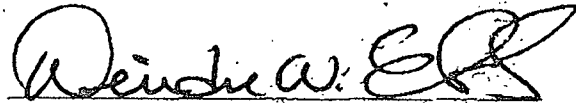
Order, and which Motion in Limine is attached hereto as Exhibit A and incorporated herein by reference.

2. In addition, although not requested by any of the parties, I hereby amend the Order to reflect the date of the hearing on the Motion in Limine to be July 6, 2012.

3. In all other respects, the Motions are hereby denied.

IT IS THEREFORE ORDERED, JUDGED AND DECREED that the Motions are granted as set forth in paragraph 1 above and the Order is further amended as set forth in paragraph 2 above, and in all other respects the Motions are hereby denied.

IT IS SO ORDERED.



Deirdre W. Edmonds
Horry County Probate Judge

March 10, 2014
Conway, South Carolina

2. ⁹⁵
DWE

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY) IN THE PROBATE COURT
Case No. 2010-GC-26-68 and 69

PROBATE COURT
HORRY COUNTY, SC
2014 MAR 10 AM 8:15
DEIRDRE W. JACOBS
PROBATE JUDGE

Emily Carlson and Alice Preyer,)
Petitioners,)

vs.)

John C. Dockery, III,)
Respondent.)

In re: Matter of Emily Cheshire Dockery)
_____)

**ORDER DENYING MOTIONS TO
RECONSIDER/ALTER OR AMEND
ORDER DENYING MOTION TO VOID
SETTLEMENT AGREEMENT**

This matter is before me pursuant to two motions filed by counsel for Emily Cheshire Dockery and counsel for John C. Dockery, III ("Movants"). Each of the motions are virtually identical in content and each is titled Motion to Reconsider/Alter or Amend the Order Denying Motion to Void Settlement Agreement (the "Motions"). After careful consideration of all of the Motions to Reconsider, I make the following findings of fact and conclusions of law:

1. All requests by Movants to reconsider the Court's enforcement of the Settlement Agreement based upon the application of Rule 43(k), SCRCP, are denied. "A party cannot use Rule 59(e), SCRCP, to present to the trial court an issue the party could have raised prior to judgment but did not." Patterson v. Reid, 456 SE2d 436 (Ct.App.1995). John C. Dockery, III did not raise Rule 43(k) in his written "Motion to Void Settlement Agreement". Furthermore, neither John C. Dockery, III, nor Emily Cheshire Dockery raised Rule 43(k) at the hearing held July 6, 2012 on the "Motion to Void Settlement Agreement" (incorrectly cited in the Order Denying Motion to Void Settlement Agreement as having been held on May 4, 2012). Therefore, I conclude that Movants

cannot now raise Rule 43(k) in their Motions to Reconsider/Alter the Order Denying Motion to Void Settlement Agreement having failed to raise Rule 43(k) at the specific times the Court entertained the Motion to Void Settlement Agreement. The Court acknowledges that at other times during other hearings before the Court both John C. Dockery III and Emily Cheshire Dockery raised the issue of Rule 43(k) as they continued to argue against the Court's enforcement of the Settlement Agreement. The matter, however, had already been ruled upon by the Court and orders issued on same. At no time during the hearings directly related to the Motion to enforce the Settlement Agreement and the Motion to void the Settlement Agreement did counsel for John C. Dockery, III or counsel for Emily Cheshire Dockery raise Rule 43(k). Thus, they cannot now raise in their 59(e) Motion to Reconsider an issue they could have raised when the matter was properly before the Court for a ruling but did not. Although not requested by the parties, I direct that the Order Denying Motion to Void Settlement Agreement be amended to reflect the correct date of the hearing on said Motion, the same being July 6, 2012.

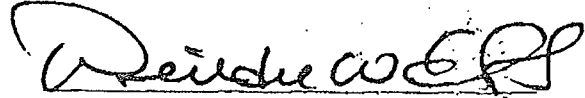
2. I deny the Motions based on an alleged violation of Rule 8 of the Mediation Rules. It is clear to the Court that John C. Dockery, III authorized counsel for the Petitioners to communicate the parties' settlement agreement to the Court and all counsel were notified simultaneously when the Court was notified of same via email communication. In addition, there was no objection at the time or allegation that Rule 8 had been violated. Therefore, the Court denies the Motions based upon an alleged violation of Rule 8.

3. Ms. Dockery agreed with Petitioner at the hearing on the Motion to Void Settlement Agreement that the motion was not timely made. Ms. Dockery cannot now in her Motion to Reconsider take a position inconsistent with her position at the hearing on the Motion to Void Settlement Agreement.

4. Counsel for John C. Dockery, III proffered his testimony at the trial in this matter and, therefore, I conclude that it was not error for the Court to otherwise limit his testimony at trial given the enforcement of the Settlement Agreement against John C. Dockery, III.

IT IS THEREFORE ORDERED that the Motions are hereby denied.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Deirdre W. Edmonds", written over a horizontal line.

Deirdre W. Edmonds
Horry County Probate Judge

March 10, 2014
Conway, South Carolina

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
 COUNTY OF HORRY) Case No. 2010-GC-26-68 and 69

Emily Carlson and Alice Preyer,)
)
) Petitioners,)

vs.)

John C. Dockery, III,)
)
) Respondent.)

In re: Matter of Emily Cheshire Dockery)
)
)

ORDER GRANTING PARTIAL
RELIEF ON MOTION TO
RECONSIDER ORDER DENYING
MOTION TO REQUIRE
PETITIONERS TO PAY FEES AND
COSTS

PROBATE COURT
 HORRY COUNTY, SC
 2014 MAR 10 AM 8:15
 DEBORAH W. EDWARDS
 PROBATE JUDGE

This matter came before me pursuant to two motions filed by counsel for Emily Cheshire Dockery and counsel for John C. Dockery, III. Each of the motions are virtually identical in content and each is titled Motion to Reconsider/Alter or Amend Order Denying Motion to Require Petitioners to Pay Fees and Costs (the "Motions"). After careful consideration, I make the following findings of fact and conclusions of law:

1. I hereby grant the Motions so as to amend the Order Denying Motion to Require Petitioners to Pay Fees and Costs (the "Order") to cite sections 62-5-303 and 62-5-414 for the statutory basis of concluding that Ms. Dockery is responsible for the fees/costs for the court-appointed physician and the court-appointed lawyer/guardian ad litem for Ms. Dockery in these proceedings.

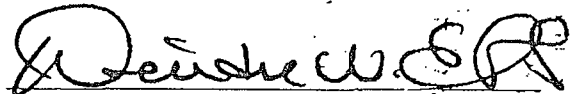
2. I hereby find that in her initial Motion to Require Petitioners to Pay for Fees and Costs filed on March 20, 2012, Ms. Dockery did not seek payment of the costs associated with Dr. Goldschmidt's videotape deposition or his fees associated with testifying at the trial. Ms.

Dockery cannot now seek such relief in her Motion to Reconsider/Alter or Amend the Order and, therefore, I deny such request.

3. In all other respects, the Motions are hereby denied.

IT IS THEREFORE ORDERED, JUDGED AND DECREED that the Motions are granted as set forth in paragraph 1 above, and in all other respects the Motions are hereby denied.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Deirdre W. Edmonds", written over a horizontal line.

Deirdre W. Edmonds
Horry County Probate Judge

March 10, 2014
Conway, South Carolina

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
 COUNTY OF HORRY) Case No. 2010-GC-26-68 and 69

Emily Carlson and Alice Preyer,)
)
 Petitioners,)
)
 vs.)
)
 John C. Dockery, III,)
)
 Respondent.)
)
 In re: Matter of Emily Cheshire Dockery)
)
)

**ORDER GRANTING PARTIAL
 RELIEF ON MOTIONS TO
 RECONSIDER/ALTER OR AMEND
 ORDER FINDING INCAPACITY**

PROBATE COURT
 HORRY COUNTY, SC
 2014 MAR 10 AM 8:15
 DEIRDRE M. ELLIOTT
 PROBATE JUDGE

This matter is before me pursuant to two motions filed by counsel for Emily Cheshire Dockery and counsel for John C. Dockery, III ("Movants"). Each of the motions are virtually identical in content and each is titled Motion to Reconsider/Alter or Amend the Order Finding Incapacity (the "Motions"). After careful consideration of the Motions, I make the following findings of fact and conclusions of law:

1. All requests by Movants to reconsider the Court's enforcement of the Settlement Agreement based upon the application of Rule 43(k), SCRPC, are denied. "A party cannot use Rule 59(e), SCRPC, to present to the trial court an issue the party could have raised prior to judgment but did not." Patterson v. Reid, 456 SE2d 436 (Ct.App.1995). Neither John C. Dockery, III, nor Emily Cheshire Dockery raised Rule 43(k) at the hearing held September 15, 2011 on the "Motion to Enforce Settlement Agreement." Also, in his written "Response to Motion to Enforce Settlement Agreement" John C. Dockery, III did not raise Rule 43(k). In addition, after the Court's issuance on October 31, 2011 of its Order granting the Motion to Enforce Settlement Agreement, John C.

Dockery III filed a "Motion to Void Settlement Agreement" on December 30, 2011. He did not, however, raise Rule 43(k) in said Motion as a basis for voiding the Settlement Agreement. Also, at the hearing held July 6, 2012 on the "Motion to Void Settlement Agreement" (incorrectly cited in the Order Denying Motion to Void Settlement Agreement as having been held on May 4, 2012), neither John C. Dockery, III, nor Emily Cheshire Dockery raised Rule 43(k). Therefore, I conclude that Movants cannot now raise Rule 43(k) in their Motions to Reconsider/Alter the Order Finding Incapacity having failed to raise Rule 43(k) at the specific times the Court entertained the Motion to enforce, and Motion to void, the Settlement Agreement. The Court acknowledges that at other times during other hearings before the Court both John C. Dockery III and Emily Cheshire Dockery raised the issue of Rule 43(k) as they continued to argue against the Court's enforcement of the Settlement Agreement. The matter, however, had already been ruled upon by the Court and orders issued on same. At no time during the hearings directly related to the Motion to enforce the Settlement Agreement and the Motion to Void the Settlement Agreement did counsel for John C. Dockery, III or counsel for Emily Cheshire Dockery raise Rule 43(k). Thus, they cannot now raise in their 59(e) Motion to Reconsider an issue they could have raised when the matter was properly before the Court for a ruling but did not.

2. The Court did not err in accepting the testimony of Dr. Goldschmidt over that of Dr. Benjamin. Such matters are within the discretion of the Court and I deny the Motions as they relate to same.

3. The Court did not err in finding that Ms. Dockery has the ability to make some decisions regarding her personal matters but not her finances and I deny the Motions as they relate to same.

4. John C. Dockery, III was given the opportunity to testify at the hearing in this matter but instead his attorney chose to simply proffer his testimony, which the Court accepted. Therefore, the Court did not err in failing to allow John C. Dockery, III to testify and denies the Motions as they relate to same.

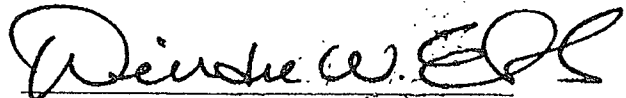
5. The Court did not err in failing to make a specific ruling on evidence that was submitted to the Court following the conclusion of the hearing in this matter. Ms. Dockery did not move the Court to reopen the record in the matter, and therefore, such evidence was not in the record for the Court's consideration. There was no error in this regard and the Motions are denied as to same.

6. I grant the Motions with regard to the payment of fees for Dr. Goldschmidt and Ms. Moore and amend the Order Finding Incapacity so as to cite sections 62-5-303 and 62-5-414 for the statutory basis for the Court's conclusion that Ms. Dockery is responsible for the fees/costs for the court-appointed examiners and the court-appointed lawyer/guardian ad litem in these proceedings.

7. In all other respects the Motions are denied.

IT IS THEREFORE ORDERED that the Motions are granted as set forth in paragraph 6 above, and in all other respects the Motions are hereby denied.

IT IS SO ORDERED.



Deirdre W. Edmonds
Horry County Probate Judge

March 10, 2014
Conway, South Carolina

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
 COUNTY OF HORRY) Case No. 2010-GC-26-68 and 69

PROBATE COURT
 HORRY COUNTY, SC
 2014 MAR 10 AM 8:16
 DEBORAH COLLINGS
 PROBATE JUDGE

Emily Carlson and Alice Preyer,)
)
 Petitioners,)

vs.)

John C. Dockery, III,)
)
 Respondent.)

In re: Matter of Emily Cheshire Dockery)
)
)

**ORDER DENYING MOTIONS TO
 RECONSIDER/ALTER OR AMEND
 ORDER APPOINTING GUARDIAN
 AND CONSERVATOR**

This matter is before me pursuant to two motions filed by counsel for Emily Cheshire Dockery and counsel for John C. Dockery, III. Each of the motions are virtually identical in content and each is titled Motion to Reconsider/Alter or Amend the Order Appointing Guardian and Conservator (the "Motions"). After careful consideration of all of the Motions to Reconsider, I make the following findings of fact and conclusions of law:

1. I note that counsel for Respondent John C. Dockery, III and counsel for Emily Cheshire Dockery (hereinafter referred to collectively as "Movants") request in their Motions to Reconsider/Alter or Amend Order Appointing Guardian and Conservator that the Court alter and amend the judgment/ruling that was issued against them "on January 10, 2013". Although I find no judgment or ruling issued against Movants on January 10, 2013, I will treat Movants' Motions as a request to alter or amend the judgment issued against them on June 10, 2013 in the Order Appointing Guardian and Conservator, which is the Order identified in the caption of Movants' Motions.

2. All requests by Movants to reconsider the Court's enforcement of the Settlement Agreement based upon the application of Rule 43(k), SCRCP, are denied. "A party cannot use Rule 59(e), SCRCP, to present to the trial court an issue the party could have raised prior to judgment but did not." Patterson v. Reid, 456 SE2d 436 (Ct.App.1995). Neither John C. Dockery, III, nor Emily Cheshire Dockery raised Rule 43(k) at the hearing held September 15, 2011 on the "Motion to Enforce Settlement Agreement." Also, in his written "Response to Motion to Enforce Settlement Agreement" John C. Dockery, III did not raise Rule 43(k). In addition, after the Court's issuance on October 31, 2011 of its Order granting the Motion to Enforce Settlement Agreement, John C. Dockery III filed a "Motion to Void Settlement Agreement" on December 30, 2011. He did not, however, raise Rule 43(k) in said Motion as a basis for voiding the Settlement Agreement. Also, at the hearing held July 6, 2012 on the "Motion to Void Settlement Agreement" (incorrectly cited in the Order Denying Motion to Void Settlement Agreement as having been held on May 4, 2012), neither John C. Dockery, III, nor Emily Cheshire Dockery raised Rule 43(k). Therefore, I conclude that Movants cannot now raise Rule 43(k) in their Motions to Reconsider/Alter the Order Appointing Guardian and Conservator having failed to raise Rule 43(k) at the specific times the Court entertained the Motion to Enforce Settlement Agreement, and Motion to Void Settlement Agreement. The Court acknowledges that at other times during other hearings before the Court both John C. Dockery III and Emily Cheshire Dockery raised the issue of Rule 43(k) as they continued to argue against the Court's enforcement of the Settlement Agreement. The matter, however, had already been ruled upon by the Court and orders issued on same. At no time during the hearings directly related to the Motion to enforce the Settlement Agreement and the Motion to void the Settlement Agreement did counsel for John C. Dockery, III or counsel for Emily Cheshire Dockery

raise Rule 43(k). Thus, they cannot now raise in their 59(e) Motion to Reconsider an issue they could have raised when the matter was properly before the Court for a ruling but did not.

3. I deny the request to reconsider qualifying Mr. Tall as an expert witness as I find no error in same. The qualification of a witness as an expert is left to the court's sound discretion. I find and conclude that a sufficient foundation was not presented as to Mr. Tall's qualifications to testify as an expert witness and, thus, I find no error in failing to qualify Mr. Tall as an expert witness.

4. Despite the allegations in Movants' Motions, the Court did not enforce the Settlement Agreement against Ms. Dockery as she was not a party to same and, therefore, was not bound by the Settlement Agreement. The Order Appointing Guardian and Conservator clearly states in the first full paragraph on page 2 of the Order that "Ms. Dockery was not bound by the Settlement Agreement as she was not a party to the Settlement Agreement". Therefore, I find no error by the Court as the Settlement Agreement was not enforced against Ms. Dockery.

5. The Court's finding of "good cause" to pass over John C. Dockery, III was based, in part, on the testimony of the guardian ad litem concerning the mismanagement of Ms. Dockery's assets by Mr. Dockery. Although Mr. Dockery had not been appointed by the Court, he had taken on an official role in managing his mother's affairs when he assumed the role as her attorney-in-fact and acted in that fiduciary capacity for his mother. Therefore, I deny the request to reconsider/alter the finding of good cause to pass over Mr. Dockery as there was sufficient evidence of Mr. Dockery's mishandling and/or mismanagement of his mother's property and financial affairs to pass over him as conservator for his mother.

6. There was sufficient evidence to find that it was in Ms. Dockery's best interest to appoint an independent person as her conservator and, therefore, I deny the request to alter or amend the Order Appointing Guardian and Conservator in such respect.

7. Ms. Moore took the stand and testified at the hearing as the court-appointed guardian ad litem for Ms. Dockery. She testified as to her investigation and findings. Ms. Moore was subject to cross examination by all parties. There was no objection at the hearing to Ms. Moore taking the stand and testifying as the guardian ad litem. Movants cannot raise an objection to Ms. Moore's testimony by way of their Motion to Reconsider/Alter having failed to object to her testimony at trial. Therefore, the request to alter/amend in this respect is denied.

8. The Court did not err in terminating Ms. Dockery's power of attorney upon the Court's appointment of a conservator for Ms. Dockery and, therefore, I deny the request to alter or amend the Order Appointing Guardian and Conservator in such respect.

9. The Court did not err in awarding Ms. Moore's fees. In addition, there was no objection at the final hearing as to Ms. Moore's fees, and Movants cannot raise an objection to same by way of their Motion to Reconsider/Alter having failed to object to her fees when she submitted her fee affidavit at the final hearing. Therefore, the request to alter/amend in this respect is denied.

10. The Court takes this opportunity to make clear again to the parties and their counsel that the Court was not bound by the Settlement Agreement that had been entered into by the Petitioners, John C. Dockery III and Ms. Moore. The Court made this position clear to all parties and their counsel at the initial hearing on the Motion to Enforce Settlement Agreement and numerous times thereafter. The Settlement Agreement merely bound the parties to same; it did not bind Ms. Dockery or the Court in any way. Thus, the Court's findings and conclusions in this case were based upon the evidence presented at trial and not the Settlement Agreement. After making its

own findings and conclusions without reliance on the Settlement Agreement as to Ms. Dockery's incapacity and the need for the appointment of a limited guardian and a full conservatorship, the Court did adopt the specific provisions in the Settlement Agreement that Ms. Dockery's children had earlier agreed upon related to the management of Ms. Dockery's personal affairs by the guardian and the guardian's communications with Ms. Dockery's other children, finding that such provisions were in the best interest of Ms. Dockery. Also, the evidence clearly supported the appointment of an independent person as conservator for Ms. Dockery as, over the course of the legal proceedings before this Court involving the appointment of a guardian and conservator for Ms. Dockery, it was abundantly clear to the Court that the appointment of any one of Ms. Dockery's children over the other children would lead to continued fighting and stress for Ms. Dockery, which the Court found was not in Ms. Dockery's best interest. These findings were based, not upon the Settlement Agreement, but upon the evidence before the Court.

IT IS THEREFORE ORDERED that the Motions are hereby denied.

IT IS SO ORDERED.


Deirdre W. Edmonds
Horry County Probate Judge

March 10, 2014
Conway, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Common Pleas
Fifteenth Judicial Circuit
County of Horry

APPEAL FROM HORRY COUNTY PROBATE COURT

Deirdre Edmonds, Probate Judge

Case No. 2010-GC-26-68 & 69
Circuit Court Case No: 2014-CP-26-1635

PROBATE COURT
HORRY COUNTY, SC
2014 OCT 20 AM 10:00
DEIRDRE M. EDMONDS
PROBATE JUDGE

In the Matter of Emily Cheshire Dockery

Emily Carlson and Alice Preyer, ... Respondents,

v.

John C. Dockery, III and Emily Cheshire Dockery Appellants.

ORDER AFFIRMING PROBATE COURT

INTRODUCTION

This matter began with the filing of a Petition for Finding Incapacity and Appointment of Guardian and a Petition for Appointment of Conservator (collectively the "Petition") for Emily Cheshire Dockery ("Ms. Dockery") filed by Respondents on December 1, 2010. The Probate Court ordered the parties to participate in mediation which was held on July 22, 2011. Emily Carlson, Alice Preyer, John C. Dockery, III and Lee Moore (the court appointed guardian ad litem) participated in the mediation. Ms. Dockery did not attend the mediation, but her counsel attended. The mediation

concluded with all of the parties to the mediation reaching an agreement which was communicated to the Probate Court by Respondent's counsel pursuant to the agreement of all counsel and without objection by any party. Respondent's counsel indicated in an email to the Probate Court that Ms. Dockery was not a party to the agreement and sought advice, on behalf of all counsel, from the Probate Court regarding how the court wished to proceed with the matter. Respondent's counsel suggested an abbreviated hearing to allow Ms. Dockery to testify regarding her position regarding her capacity and who she may want as her guardian and conservator if she were found to be incapacitated. The Probate Court requested by email whether any party had an objection to proceeding as suggested by Respondent's counsel. The Probate Court advised all counsel that pursuant to the stated agreement of the parties, the court date would be cancelled unless any of the parties objected. No objection was made to the Probate Court by any of the parties. Respondent's counsel subsequently circulated a written agreement (the "Settlement Agreement") with the terms agreed upon at the mediation. Respondent's counsel sent multiple emails to counsel for John Dockery requesting that counsel have John Dockery sign the Settlement Agreement. Counsel for John Dockery indicated in multiple emails that the Settlement Agreement was acceptable and that John Dockery would be signing soon. Notwithstanding counsel's assurances, John Dockery refused to sign the Settlement Agreement. Respondents filed a Motion to Enforce the Settlement Agreement which was granted by the Probate Court by Order Denying Motion for Continuance and Granting Motion to Enforce Settlement Agreement dated October 31, 2011.

The Probate Court bifurcated the case, tried the capacity issue first, and later tried the issue of who to appoint as guardian and conservator. The capacity hearings took

place on May 4, 2012 and July 6, 2012. As a result of those hearings the Probate Court found that Ms. Dockery was incapacitated based on all of the evidence presented. The Probate Court held hearings on who to appoint as guardian and conservator on May 30, 2013 and June 10, 2013. As a result of those hearings the Probate Court appointed John Dockery as a limited guardian and Walter Godbold as full conservator.

Appellants filed various motions for reconsideration which were denied by the Probate Court. Appellants appealed seven orders issued by the Probate Court on March 10, 2014 (1) Order Granting Partial Relief on Motion to Reconsider Order Granting Motion in Limine to Exclude Portions of Deposition and Live Testimony and Written Materials of Dr. Jeffrey Benjamin, (2) Order Granting Partial Relief on Motion to Reconsider Order Denying Motion to Require Petitioner's pay Fees and Costs, (3) Order Denying Motions to Reconsider/Alter or Amend Order Denying Motion to Void Settlement Agreement, (4) Order Granting Partial Relief on Motion to Reconsider/Alter or Amend Order Finding Incapacity, (5) Order Granting Partial Relief on Motion to Reconsider Order Denying Motion in Limine to Exclude Any and All Evidence Relating to the Management of Ms. Dockery's Assets and Funds, (6) Order Granting Partial Relief on Motion to Reconsider Order Granting Petitioners' Motion for Attorney's Fees and Costs in Connection with Motion to Enforce Settlement Agreement and (7) Order Denying Motions to Reconsider/Alter or Amend Order Appointing Guardian and Conservator. For the reasons set forth below, the March 10, 2014 Orders of the Probate Court are affirmed.

FACTS/PROCEDURAL BACKGROUND

Appellants set forth nine (9) Issues on Appeal, as follows:

1. Did the Probate Court err in enforcing a "settlement agreement" that was not signed by all parties, not entered into during mediation, and not read into the record?
2. Did the Probate Court err in refusing to allow and/or admit testimony from John C. Dockery, III?
3. Did the Probate Court err in excluding portions of Dr. Benjamin's testimony regarding his opinion of neuropsychiatric testing?
4. Did the Probate Court err in appointing a person other than John C. Dockery, III as conservator when John C. Dockery, III had priority pursuant to S.C. Code Section 62-5-410 as Ms. Dockery's attorney-in-fact?
5. Did the Court err in accepting the testimony of Petitioner's witness, Dr. Goldschmidt who is not a medical doctor but a psychologist, over that of a medically licensed Neurologist, Dr. Benjamin?
6. Did the Court err in failing to consider after acquired evidence that was presented to the Court showing other pending litigation by the Petitioners?
7. Did the Court err in finding that Ms. Dockery is responsible for all fees and costs of both the Guardian ad Litem, and Dr. Goldschmidt?
8. Did the Court err in terminating any and all previous power of attorneys executed by Ms. Dockery?
9. Did the Court err in failing to admit Mr. Clifford H. Tall, Esq. as an expert?

Appellants have not appealed any of the findings of fact made by the Probate Court (including the finding of incapacity), nor have appellants asked me to make my own findings of fact based on the record before me. Accordingly, this Court's review of

the case is limited to whether the Probate Court made any legal errors or abused its discretion in appointing Walter Godbold as conservator.

I.

Appellants argue that the Probate Court erred in enforcing a settlement agreement that was not signed by all parties, not entered into during mediation, and not read into the record. I disagree. Ms. Dockery lacks standing to challenge the enforcement of the Settlement Agreement as she was not a party to the agreement, and the Probate Court specifically noted that she was not bound by the agreement. John Dockery failed to appeal the Probate Court order enforcing the settlement agreement and failed to raise Rule 43(k) with the Probate Court. Furthermore, any error that may have been made by the Probate Court in enforcing the settlement agreement against John Dockery was harmless because the Probate Court was not bound by the Settlement Agreement and reached its findings and conclusions based on all of the evidence presented, not the Settlement Agreement.

John Dockery failed to appeal the Probate Court's Order Denying Motion for Continuance and Granting Motion to Enforce Settlement Agreement dated October 31, 2011 (the "Order Enforcing Settlement Agreement"). The Order Enforcing Settlement Agreement was appealable under South Carolina Code Ann. §14-3-330(2) as it affected a substantial right of John Dockery. Because it was not appealed, the Order Enforcing Settlement Agreement is now the law of the case. ML Lee Acquisition Fund, LP v. Deloitte & Touche, 327 S.C. 238, 489 S.E.2d 470 (1997).

John Dockery argues that Rule 43(k) SCRPC, prohibits enforcement of a settlement agreement that is not signed by all parties or read into the record. However,

the Probate Court found that John Dockery failed to raise the issue of Rule 43(k) at the time the Probate Court was hearing arguments and ruling on the enforcement of the Settlement Agreement. He failed to mention Rule 43(k) in his response to the Respondents' Motion to Enforce Settlement Agreement, at the hearing held on Motion to Enforce Settlement Agreement, in his Motion to Void Settlement Agreement, and at the hearing on the Motion to Void Settlement Agreement. A party cannot raise a matter on appeal that was not raised by the party at trial, and ruled on by the trial court. Elam v. South Carolina Department of Transportation, 361 S.C. 9, 602 S.E.2d 774 (2004) and Wilder Corporation v. Wilke, 330 S.C. 71, 497 S.E.2d 731 (1998). Accordingly, John Dockery's failure to raise Rule 43(k) at the time the Probate Court heard arguments on the enforcement of the Settlement Agreement precludes him from raising Rule 43(k) now on appeal.

Even if I found that the Probate Court erred in enforcing the Settlement Agreement against John Dockery, any error was clearly harmless. The Probate Court made it very clear in the Order Denying Motions to Reconsider/Alter or Amend Order Appointing Guardian and Conservator that neither Ms. Dockery nor the Probate Court itself were bound by the Settlement Agreement, and that the Probate Court's findings and conclusions in the case were based upon all of the evidence presented at trial and not the Settlement Agreement.

Appellants argue that Respondent's counsel violated Rule 8 of the Mediation Rules by communicating the Settlement Agreement to the Probate Court. I disagree. The facts as found by the Probate Court (which are undisputed in this appeal) do not support Appellants' assertion. The Probate Court found in the Order Enforcing the Settlement

Agreement and again in the Order Denying Motions to Reconsider/Alter or Amend Order Denying Motion to Void Settlement Agreement that based on the record it was clear to the Probate Court that John Dockery authorized counsel for the Respondents to communicate the parties' Settlement Agreement to the Probate Court and that all counsel were notified simultaneously when the Probate Court was notified. Furthermore, the Probate Court noted that there was no objection by any party at the time the Probate Court was notified, and no allegation made by any party that Rule 8 had been violated. I agree with the Probate Court that based on the undisputed factual record, Respondent's counsel did not violate the Mediation Rules, and that Respondent's counsel handled all communications in a reasonable and fair manner consistent with the Mediation Rules.

II.

Appellants argue that the Probate Court erred in refusing to allow and/or admit testimony from John Dockery. I disagree. It appears from the record before me that John Dockery was present at all hearings in this matter, and had the opportunity to testify at any of the hearings. While there is discussion in the record that John Dockery's attorney would proffer testimony as to the issue of capacity, John Dockery was never called as a witness and no testimony was ever proffered. "A proffer of testimony is required to preserve the issue of whether testimony was properly excluded by the trial judge, and an appellate court will not consider error alleged in the exclusion of testimony unless the record on appeal shows fairly what excluded testimony would have been." State v. Santiago, 370 S.C. 153, 163, 634 S.E. 2d 23 (S.C. App. 2006).

III.

Appellants argue that the Probate Court erred in excluding portions of Dr. Jeff Benjamin's testimony regarding his opinion of neuropsychiatric testing. I disagree. Dr. Benjamin was never qualified as an expert in neuropsychiatric testing, and is therefore not qualified to give an opinion as to raw psychological data, neuropsychology or neuropsychiatric testing. Dr. Benjamin admitted that neuropsychiatry and neuropsychiatric testing were outside of his expertise and the parties signed a Consent Order to Exclude Expert Testimony of Dr. Jeff Benjamin Regarding Raw Psychological Data. As part of that order, the parties specifically agreed that Dr. Benjamin "is not qualified to testify regarding the interpretation of the raw psychological data."

IV.

Appellants contend that the Probate Court erred in appointing an independent third party as a conservator for Ms. Dockery because she had previously appointed John Dockery as her attorney-in-fact. I find no error in the Probate Court's application of South Carolina Code §62-5-410, which governs the appointment of a conservator, nor do I find any abuse of discretion by the Probate Court in passing over John Dockery and appointing an independent third party.

"The matter of selecting of a conservator is within the discretion of the court and the appellate court ordinarily will not interfere unless a clear abuse of discretion is shown." 36 CJS Guardian and Ward §38 (2008). S.C. Code §62-5-410 states that "the court may appoint...as conservator," clearly giving the Probate Court discretion. Accordingly, the Probate Court's appointment should not be overturned unless I find an

- abuse of discretion. Patterson v. Cook, 288 S.C. 220, 341 S.E. 2d 782 (1986). I find no abuse of discretion by the Probate Court.

The Probate Court recognized that John Dockery had priority to serve as conservator pursuant to S.C. Code §62-5-410(a)(3), but found good cause for passing over John Dockery as permitted by §62-5-410(b). The Probate Court found good cause for passing over John Dockery based on the testimony of the Guardian ad Litem that there were multiple instances of questionable financial decisions made by John Dockery in matters affecting Ms. Dockery's assets, including commingling of funds, potential self-dealing and general confusion regarding Ms. Dockery's assets. Furthermore, the Probate Court found that it was clear from all of the evidence that Ms. Dockery's children cannot get along with each other, and the Probate Court's appointment of any one of her children as conservator would lead to continued fighting among the children, which would ultimately be detrimental to Ms. Dockery's health and well-being. Appellants have not challenged the Probate Court's findings or pointed to any evidence in the record to show an abuse of discretion by the Probate Court.

V.

Appellants argue that the Probate Court erred in accepting the testimony of Dr. Goldschmidt, a psychologist, over that of Dr. Benjamin, a medically licensed neurologist. To the extent Appellants are suggesting that an examiner who is a medical doctor must always be believed over a psychologist, I find that such argument is without merit. Appellants have cited no case, statute or rule to support such claim, and have failed to

show anywhere in the record where they have preserved such matter for appeal by raising the same with the trial court.

As a general proposition, the trial court is in the best position to hear testimony of witnesses and give proper weight to each person's testimony. While the appellate court may make its own findings of fact based on the record before it, generally appellate courts defer to the trial judge who was in the best position to review the evidence before him, evaluate the creditability of the witnesses and assign the proper weight. Greer v. Spartanburg Technical College, 338 S.C. 76, 524 S.E. 2d 856 (Ct. App. 1999). Appellants have not asked me to make my own findings of fact on appeal, but if asked, I would have deferred to the Probate Court's findings of fact based on the record before me which overwhelmingly supports the Probate Court's finding of incapacity.

The testimony and examiner's reports of Dr. Goldschmidt and Dr. Benjamin, clearly support a finding of incapacity. Dr. Goldschmidt's testimony was supported by raw data and was the result of several meetings with Ms. Dockery. Dr. Goldschmidt was originally consulted for neuropsychiatric testing by Ms. Dockery's own attorney, Cliff Tall. Dr. Goldschmidt indicated in his report that Ms. Dockery was unable to prepare meals and/or clean house, maintain bank accounts or funds, pay bills, live independently or take medications unsupervised. He further found that she did not have the mental or physical capacity or manage her property and financial affairs. Dr. Goldschmidt concluded that Ms. Dockery was an incapacitated person due to mental deficiency, physical illness or disability and advanced age.

Dr. Benjamin's testimony was conflicting and unsupported by any independent data. Although he claimed that Ms. Dockery was not incapacitated, Dr. Benjamin

admitted that she needed assistance with her care and the handling of financial matters. In the examiner's report filed with the Probate Court, Dr. Benjamin stated that Ms. Dockery could not prepare meals and/or clean house, maintain bank accounts or funds, or pay bills. He also stated in his report that Ms. Dockery would need assistance to effectively manage her property and financial affairs. On cross-examination, Dr. Benjamin agreed that due to her age and mental state, Ms. Dockery was clearly at risk of being taken advantage of and easily persuaded.

The Probate Court found that Ms. Dockery's own testimony indicated that she lacked capacity. The Guardian ad Litem testified that she found Ms. Dockery to lack capacity. Both of Ms. Dockery's daughters testified that she lacked capacity, and Emily Carlson testified that Ms. Dockery did not know the day or year at her deposition. All of this testimony was uncontested. Even Reagan Callaghan, Ms. Dockery's paid elder advocate admitted that Ms. Dockery needed assistance in managing her care. The evidence in the record overwhelmingly supports the Probate Court's finding of incapacity.

VI.

Appellants listed as an Issue on Appeal whether the Probate Court erred in failing to consider after-acquired evidence. Appellants failed to make any argument on this issue in their initial brief. Accordingly, pursuant to the South Carolina Appellate Court Rules and JW Hunt v. Forestry Commission, 358 S.C. 564, 595 S.E.2d 846 (Ct. App. 2004) and In re McCracken, 346 S.C. 87, 551 S.E.2d 235 (2001) such issue is deemed to have been abandoned by Appellants.

VII.

Appellants argue that the Probate Court erred in finding that Ms. Dockery is responsible for all fees and costs of both the Guardian ad Litem and Dr. Goldschmidt. I disagree. The Probate Court cited S.C. Code Sections 62-5-303 and 62-5-414 as the statutory basis for the Probate Court's conclusion that Ms. Dockery was responsible for the fees and costs for the court-appointed examiners and the court-appointed guardian ad litem. I find no error.

VIII.

Appellants listed as an Issue on Appeal whether the Probate Court erred in terminating all previous powers of attorney of Ms. Dockery. Appellants failed to make any argument on this issue in their initial brief. Accordingly, pursuant to the South Carolina Appellate Court Rules and JW Hunt v. Forestry Commission, 358 S.C. 564, 595 S.E.2d 846 (Ct. App. 2004) and In re McCracken, 346 S.C. 87, 551 S.E.2d 235 (2001) such issue is deemed to have been abandoned by Appellants.

IX.

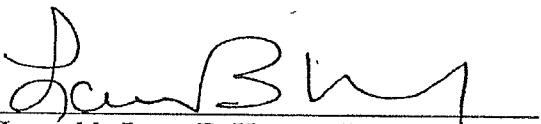
Finally, Appellants argue that the Probate Court erred in denying to certify Mr. Clifford H. Tall, Esq. ("Mr. Tall") as an expert. I disagree. Counsel for Ms. Dockery called Mr. Tall as a fact witness, during the phase of the trial that dealt solely with the issue of who to appoint as conservator, to testify regarding the power of attorney. Mr. Tall testified very briefly regarding his educational background and his law practice. Counsel for Ms. Dockery then moved to have him deemed an expert. Respondents'

counsel objected on the grounds that no notice was given that Ms. Dockery intended to call Mr. Tall as an expert, and there was no notice given of what he may offer an expert opinion on. The Probate Court properly refused to find Mr. Tall as an expert. Furthermore, Mr. Tall continued to testify and the Probate Court allowed all of his testimony into the record. Counsel for Ms. Dockery failed to proffer any additional "expert" testimony that could have been considered by the Probate Court. Accordingly, I find no error in the Probate Court denying to certify Mr. Tall as an expert.

CONCLUSION

For all of the foregoing reasons, all of the orders of the Probate Court which are the subject of this appeal are hereby AFFIRMED.

AND IT IS SO ORDERED.


Honorable Larry B. Hyman, Jr.
Judge, Fifteenth Judicial Circuit

Conway, South Carolina

10-13-, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Common Pleas
Fifteenth Judicial Circuit
County of Horry

APPEAL FROM HORRY COUNTY PROBATE COURT

Deirdre Edmonds, Probate Judge

Case No. 2010-GC-26-68 & 69
Circuit Court Case No: 2014-CP-26-1635

In the Matter of Emily Cheshire Dockery

Emily Carlson and Alice Preyer, ... Respondents,

v.

John C. Dockery, III and Emily Cheshire Dockery, ... Appellants

ORDER DENYING MOTION TO RECONSIDER/ALTER OR AMEND THE
ORDER AFFIRMING PROBATE COURT

This matter is before me pursuant to a Notice of Motion and Motion to Reconsider/Alter or Amend the Order Affirming Probate Court (the "Motion") filed by counsel for Emily Cheshire Dockery. The Motion is DENIED

After carefully considering the arguments of counsel for Appellant Ms. Dockery and the record properly before the Court, I find no error in the Order Affirming Probate Court. Appellants and Respondents fully briefed all issues and extensive oral arguments were made to me at the hearing on October 1, 2014. I find no error in my

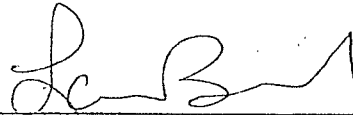
FILED
HORRY COUNTY
15 FEB 23 PM 4:08
CLERK OF COURT

PROBATE COURT
HORRY COUNTY, SC
2015 MAR -3 PM 2:41
KATHY S. WARD
PROBATE JUDGE

Order Affirming Probate Court and hereby deny the Motion to Reconsider/Alter or
Amend the Order Affirming Probate Court.

IT IS THEREFORE ORDERED that the Motion is hereby denied.

AND IT IS SO ORDERED.



Honorable Larry B. Hyman, Jr.
Judge, Fifteenth Judicial Circuit

Conway, South Carolina

2-4-, 2015

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF HORRY) Case No. 2010-GC-26- 68

EMILY CARLSON AND
ALICE PREYER

Petitioners,

vs.

JOHN C. DOCKERY, III

Respondent.

In re EMILY CHESHIRE DOCKERY

SUMMONS FOR RELIEF
(Petition Served)

TO: JOHN C. DOCKERY, III and EMILY CHESHIRE DOCKERY:

YOU ARE HEREBY SUMMONED and required to answer the Petition in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Petition upon the Petitioners at 3751 Robert Grissom Parkway, Suite 300, Myrtle Beach, South Carolina, and file the original with the Horry County Probate Court, P.O. Box 288, Conway, South Carolina, 29528, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to do so, the Petitioner in this action will apply to the court for relief demanded in the Petition.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: James F. McCrackin

James F. McCrackin

SC Bar No. 064140

E-Mail: jim.mccrackin@nelsonmullins.com

3751 Robert M. Grissom Parkway / Suite 300

Post Office Box 3939 (29578-3939)

Myrtle Beach, SC 29577-3165

(843) 448-3500

Attorneys for Petitioners

Myrtle Beach, South Carolina

November 29, 2010

DEBORAH W. EDWARDS
PROBATE JUDGE
2010 DEC -1 PM 2:14
PROBATE COURT
HORRY COUNTY, SC

STATE OF SOUTH CAROLINA

COUNTY OF: HORRY

IN THE MATTER OF:
EMILY CHESHIRE DOCKERY

IN THE PROBATE COURT

PETITION FOR FINDING

CASE NUMBER 2010-GC-26- 68

- ☐ INCAPACITY
☒ APPOINTMENT OF
☒ GUARDIAN
☐ SUCCESSOR GUARDIAN

Applicant/Petitioner: Emily Carlson and Alice Preyer
Address: 2011 Lafayette Avenue, Greensboro, NC 27408 and
510 Country Club Drive, Greensboro, NC 27408
Telephone: (336) 273-8673

PROBATE COURT
HORRY COUNTY, SC
2010 DEC - 1 PM 2:14
DEIRDRE W. EDMONDS
PROBATE JUDGE

I. ALL PETITIONERS MUST COMPLETE THIS SECTION.

1. Nature of interest of undersigned: Daughters

2. Information -- Allegedly Incapacitated Person

Name: Emily Cheshire Dockery Age: 86
Date of Birth: July 16, 1924
Address: 6300 N. Ocean Blvd.,
City/State/Zip: Myrtle Beach, SC 29572
Telephone: (843) 449-5206

To my knowledge, above named ☒ DOES ☐ DOES NOT have a health care power of attorney.

To my knowledge, above named ☒ HAS ☐ HAS
NOT have a living will (Declaration of a Desire for a
Natural Death.)

3. Venue for this proceeding in this county because the subject:

- ☒ resides in this county.
☐ is present in this county.
☐ is admitted to an institution pursuant to an order of a court of competent jurisdiction in this county.

4. Information—Family of allegedly incapacitated person, including dates of birth of minors. If there are no minors, so state.

Name	Date of Birth	Address	Relationship to Incapacitated Person
Emily Carlson	Adult	2011 Lafayette Avenue, Greensboro, NC 27408	Daughter
Alice Preyer	Adult	510 Country Club Drive, Greensboro, NC 27408	Daughter
John C. Dockery, III	Adult	6300 N. Ocean Blvd., Myrtle Beach, SC 29572	Son

(use additional sheet if necessary)

5. The nature and degree of incapacity is as follows:

Cognitive ability has deteriorated to the point that Emily Cheshire Dockery is unable to handle normal everyday activities or make any decisions regarding bills or finances.

II. COMPLETE THIS SECTION IF APPOINTMENT IS SOUGHT.

1. Is it your belief that the allegedly incapacitated person is in need of a guardian/successor guardian as a means of providing continuing care and supervision of the person of said incapacitated person?
☒ YES ☐ NO If no, please explain.
2. The extent to which the guardian should be permitted to give consents or approvals that may be necessary to enable the allegedly incapacitated person to receive medical or other professional care, counsel, treatment or services is as follows:
Full Extent
3. The nature and extent of the care, assistance, protection, or supervision which is necessary or desirable for the allegedly incapacitated person under the circumstances is as follows:
Full Extent
4. Has a guardian appointed by a Will accepted such appointment?
☒ NO ☐ YES If yes, please explain.
5. I request the appointment of:

Name: Emily Carlson and Alice Preyer
Address: 2011 Lafayette Avenue, Greensboro, NC 27408 and
510 Country Club Drive, Greensboro, NC 27408
Telephone (O): _____
(H): _____
E-mail: _____

whose priority for appointment as guardian for the subject is as follows:

- ☐ a person nominated to serve as guardian by the allegedly incapacitated person
- ☐ an attorney in fact appointed by the allegedly incapacitated person pursuant to Section 62-5-501
- ☐ spouse of the allegedly incapacitated person
- ☒ adult child of the allegedly incapacitated person
- ☐ parent of the allegedly incapacitated person
- ☐ other relative of the allegedly incapacitated person (Specify): _____
- ☐ nominated by the person who is caring for the allegedly incapacitated person or paying benefits to him/her
- ☐ Other (specify) _____

6. Is it necessary to appoint a temporary guardian for the subject until a hearing can be held on this Petition?
☒ NO ☐ YES If yes, must state reasons for temporary appointment pursuant to § 62-5-310, South Carolina Code of Laws, and submit proposed Order for Temporary Guardian to Court for consideration with this Petition.

III. ALL PETITIONERS MUST COMPLETE THIS SECTION.

1. ☐ I request that the Court set a time and place of hearing on this Petition and that the Court determine that the above person is incapacitated.
2. ☒ I request that the Court determine that the need for the appointment of a guardian is proper, and that the Court appoint Emily Carlson and Alice Preyer as the guardian for the above person: and that Letters of Guardianship be issued to the guardian.
3. The following persons are required by statute to be given notice of the time and place of hearing on this Petition: (SCPC 5-309)

Name	Address	Relationship
Emily Carlson	2011 Lafayette Avenue, Greensboro, NC 27408	Daughter
Alice Preyer	510 Country Club Drive, Greensboro, NC 27408	Daughter
John C. Dockery, III	6300 N. Ocean Blvd., Myrtle Beach, SC 29572	Son

VERIFICATION

The undersigned, being sworn states: That the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief.

SWORN to before me this 19th day of November, 2010

Jennifer A. Whisenant
Notary for North Carolina
My Commission Expires: 08/04/2012

Signature: Emily Carlson
Name: Emily Carlson
Address: 2011 Lafayette Avenue
Greensboro, NC 27408
Telephone: (336) 273-8673

SWORN to before me this 19th day of November, 2010

Jennifer A. Whisenant
Notary for North Carolina
My Commission Expires: 08/04/2012

Signature: Alice Preyer
Name: Alice Preyer
Address: 510 Country Club Drive
Greensboro, NC 27408
Telephone: _____

Attorney: James F. McCrackin
Address: P O Box 3939
Myrtle Beach, SC 29578
Email: jim.mccrackin@nelsonmullins.com
Telephone: (843) 448-3500

2010 DEC - 1 PM 2:14
 DEIRDRE M. EDWARDS
 PROBATE JUDGE
 PROBATE COURT
 Horry County, SC

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Guardian of the incapacitated person of Emily Cheshire Dockery.

SWORN to before me this 19th day of November, 2010

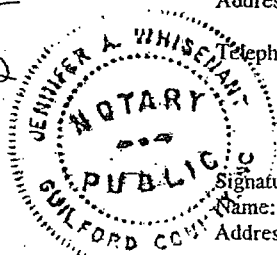
Jennifer A. Whisenant
Notary for North Carolina
My Commission Expires: 08/04/2012

Signature: Emily Carlson
Name: Emily Carlson
Address: 2011 Lafayette Avenue
Greensboro, NC 27408
Telephone: (336) 273-8673

SWORN to before me this 19th day of November, 2010

Jennifer A. Whisenant
Notary for North Carolina
My Commission Expires: 08/04/2012

Signature: Alice Preyer
Name: Alice Preyer
Address: 510 Country Club Drive
Greensboro, NC 27408
Telephone: _____



STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF HORRY) Case No. 2010-GC-26- 69

EMILY CARLSON AND
ALICE PREYER

Petitioners,

vs.

JOHN C. DOCKERY, III

Respondent.

In re EMILY CHESHIRE DOCKERY.

SUMMONS FOR RELIEF
(Petition Served)

TO: JOHN C. DOCKERY, III and EMILY CHESHIRE DOCKERY:

YOU ARE HEREBY SUMMONED and required to answer the Petition in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Petition upon the Petitioners at 3751 Robert Grissom Parkway, Suite 300, Myrtle Beach, South Carolina, and file the original with the Horry County Probate Court, P.O. Box 288, Conway, South Carolina, 29528, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to do so, the Petitioner in this action will apply to the court for relief demanded in the Petition.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: James F. McCrackin

James F. McCrackin

SC Bar No. 064140

E-Mail: jim.mccrackin@nelsonmullins.com

3751 Robert M. Grissom Parkway / Suite

Post Office Box 3939 (29578-3939)

Myrtle Beach, SC 29577-3165

(843) 448-3500

Attorneys for Petitioners

Myrtle Beach, South Carolina

November 29, 2010

DEBORAH W. LUNDGREN
PROBATE JUDGE
2010 DEC -1 PM 2:14
HORRY COUNTY, SC
PROBATE COURT

STATE OF SOUTH CAROLINA

COUNTY OF: HORRY

IN THE MATTER OF:
EMILY CHESHIRE DOCKERY

IN THE PROBATE COURT

PETITION FOR

CASE NUMBER 2010-GC-26- 69

- ☐ PROTECTIVE ORDER
☒ APPOINTMENT OF CONSERVATOR

Applicant/Petitioner: Emily Carlson and Alice Preyer

Address: 2011 Lafayette Avenue, Greensboro, NC 27408 and 510 Country Club Drive, Greensboro, NC 27408

Telephone:

1. Nature of interest of undersigned: Daughters

2. Information -- Minor/Incapacitated Person

Name: Emily Cheshire Dockery Age: 86
Date of Birth: 7/16/1924
Social Security Number: xxx-xx-1157
Address: 6300 N. Ocean Blvd.
City/State/Zip: Myrtle Beach, SC 29572
Telephone (Home): (843) (Office/other):

To my knowledge, the above-named ☒ DOES ☐ DOES NOT have a will

To my knowledge, the above-named ☒ DOES ☐ DOES NOT have a power of attorney

3. Venue for this proceeding is proper in this county because the above minor/incapacitated person:

☒ resides in this county

☐ does not reside in this county but has property in this county

4. The name and address of the above person's guardian, if any is:

NONE

5. Information -- Family (list nearest relative first) of allegedly incapacitated person, including dates of birth of minors:

Name and Social Security Number	Date of Birth	Address	Relationship
Emily Carlson	Adult	2011 Lafayette Avenue, Greensboro, NC 27408	Daughter
Alice Preyer	Adult	510 Country Club Drive, Greensboro, NC 27408	Daughter
John C. Dockery, III	Adult	6300 N. Ocean Blvd., Myrtle Beach, SC 29572	Son

(use additional sheet if necessary)

6. The following is a general statement of the property, assets and income of the above person, together with an estimate of the value thereof: (A full inventory, Form #550PC, shall be completed and filed with the Court within thirty days of appointment.)

To be determined	Description	Value

7. The appointment of a conservator for the above person is necessary because (state reasons justifying appointment):

Cognitive ability has deteriorated to the point that Emily Cheshire Dockery is unable to handle normal everyday activities or make any decisions regarding bills or finances.

8. I request the appointment of:

Name: Emily Carlson
 Address: 2011 Lafayette Avenue
Greensboro, NC 27408
 Telephone (O): _____
 Telephone (H): _____

Name: Alice Preyer
 Address: 510 Country Club Drive
Greensboro, NC 27408
 Telephone (O): _____
 Telephone (H): _____

whose priority for appointment as conservator for the above person is as follows:

- ☐ fiduciary appointed or recognized by the appropriate court of any other jurisdiction in which the protected person resides
☐ individual or corporation nominated by the protected person (if fourteen or more years of age and deemed mentally capable of making such a choice)
☐ Attorney in fact appointed by protected person (Pursuant to S.C. Code Ann. Section 62-5-501)
☐ spouse of protected person
☒ adult child of protected person
☐ parent of protected person or person nominated by will of deceased parent
☐ other relative of protected person (specify): _____
☐ person nominated by the person who is caring for protected person or paying benefits to him/her
☐ nominated by one with priority to serve in his/her stead (specify): _____
☐ other (specify): _____

9. The following persons are required by statute to be given notice of the time and place of hearing on this Petition:

Name	Address	Relationship
Emily Carlson	2011 Lafayette Avenue, Greensboro, NC 27408	Daughter
Alice Preyer	510 Country Club Drive, Greensboro, NC 27408	Daughter
John C. Dockery, III	6300 N. Ocean Blvd., Myrtle Beach, SC 29572	Son

10. I request that the Court set a time and place of hearing on this Petition; that the Court determine that the above person is a person for whom appointment of a conservator is proper; that the Court appoint _____ as the conservator for the above minor/incapacitated person; and that Letters of Conservatorship be issued to the conservator. Alice Preyer and
Emily Carlson

Executed this 19 day of November 2010.

Signature: _____

Signature: _____

VERIFICATION

The undersigned, being sworn, states: That the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief.

SWORN to before me this 19th day of
November 20 10

Jennifer A Whisenant
Notary Public for North Carolina
My Commission Expires: 08/04/2012

Signature: Emily Carlson
Name: Emily Carlson

Address: 2011 Lafayette Avenue
Greensboro, NC 27408

E-mail: _____

Telephone (O): _____

(H): _____

SWORN to before me this 19th day of
November 2010

Jennifer A Whisenant
Notary Public for North Carolina
My Commission Expires: 08/04/2012

Signature: Alice Preyer
Name: Alice Preyer

Address: 510 Country Club Drive
Greensboro, NC 27408

Email: _____

Telephone: _____

QUALIFICATIONS AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Conservator of the conservatorship of Emily Cheshire Dockery.

Executed this 19th day of November 2010.

SWORN to before me this 19th day of
November 20 10

Jennifer A Whisenant
Notary Public for North Carolina
My Commission Expires: 08/04/2012

Signature: Emily Carlson
Name: Emily Carlson

Address: 2011 Lafayette Avenue
Greensboro, NC 27408

E-mail: _____

Telephone (O): _____

(H): _____

SWORN to before me this 19th day of
November 20 10

Jennifer A Whisenant
Notary Public for North Carolina
My Commission Expires: 08/04/2012

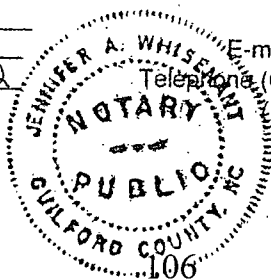
Signature: Alice Preyer
Name: Alice Preyer

Address: 510 Country Club Drive
Greensboro, NC 27408

E-mail: _____

Telephone (O): _____

(H): _____



STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE PROBATE COURT
FIFTEENTH JUDICIAL CIRCUIT
CASE NO: 2010-GC-26-0068

EMILY CARLSON AND,)
ALICE PREYER)

Petitioners,)

vs.)

JOHN C. DOCKERY, III)

Respondent.)

In re: EMILY CHESHIRE DOCKERY)

ANSWER AND COUNTERCLAIM
OF EMILY CHESHIRE DOCKERY

PROBATE COURT
HORRY COUNTY, SC
2011 FEB -4 PM 12:26
DEBBIE M. EDWARDS
PROBATE CLERK

TO: JAMES F. MCCRACKIN, ATTORNEY FOR PETITIONERS, and WILLIAM H. MONCKTON, VI, ATTORNEY FOR RESPONDENT.

Ms. Emily Cheshire Dockery, hereinafter referred to as "Ms. Dockery," fully competent and able to make decisions on her own behalf, hereby answers the Petition of Petitioners, Emily Carlson and Alice Preyer as follows:

FOR A FIRST DEFENSE TO ALL CAUSES OF ACTION

1. Any allegation of the Petition not specifically herein admitted, qualified, or explained is hereby denied, and strict proof demanded thereof.

2. Ms. Dockery reserves the right to plead by motion or by amended or supplemental pleading any other defenses that may be or may become available to it under the law, rules, or facts of this case.

3. That every allegation contained in the Petition is false. Ms. Dockery completely denies all of the allegations and demands strict proof thereof.

4. That Ms. Dockery would show she is well aware of what is happening with her medical circumstances, personal circumstances, physical circumstances and financial circumstances, and is more than satisfied with her son, John Dockery, assisting her in these matters.

5. That Petitioners have been unkind to her over the years. They have failed to care for her and only have their own interests at heart. Over the years, Petitioners have hired other lawyers to press claims against Ms. Dockery and her estate. This has been very painful to Ms. Dockery and she is very reluctant to be involved in this litigation.

6. That counselors involved by the Court or involved due to other circumstances have misrepresented her circumstances to the Court.

7. That Ms. Dockery is fully competent and able to make all decisions associated with financial, physical and social condition.

8. Mrs. Dockery fully asserts her right as a human being and a citizen of the United States of America to make decisions based upon her life. Ms. Dockery is fully capable at this time to make her own determination without intervention from Petitioners, the State of South Carolina, Horry County or this Court.

FOR A SECOND DEFENSE
AND BY WAY OF COUNTERCLAIM

Having fully answered the Petition, Mrs. Dockery would make the following allegations against Petitioners by way of counterclaim:

FRIVOLOUS ACTION

1. That this Petition is not made in the interest of Ms. Dockery, but is made in the interest of Petitioners, who have never cared about her or for her, and have had very little interest in her, and are only concerned about their own financial future.

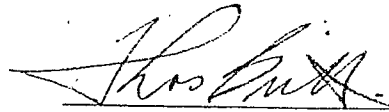
2. That Petitioners knew, or should have known, that Ms. Dockery is fully competent and capable of making her own decisions; that Petitioners are simply not happy that Ms. Dockery has chosen her son, John Dockery to assist her in making these decisions.

ATTORNEYS FEES AND COSTS

1. That by filing this Petition, Ms. Dockery has been forced to hire an attorney at a great expense to her. Ms. Dockery requests this Court issue an Order requiring Petitioners to pay any and all attorney fees and costs, paid by Ms. Dockery, throughout the pendency of this action.

WHEREFORE, having fully answered the Petition, Ms. Dockery prays for damages against Petitioners, for her attorney fees, and any and all other damages associated with the humiliation and emotional stress associated with the filing of this Petition.

THE BRITTAIN LAW FIRM, P.A.



Thomas C. Brittain
Mary Madison Brittain Langway
4614 Oleander Dr.
Myrtle Beach, SC 29577
ATTORNEYS FOR
MS. EMILY CHESHIRE DOCKERY

February 4th, 2011
Myrtle Beach, South Carolina.

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF HORRY) Case No. 2010-GC-26-0068 AND 69

Emily Carlson and Alice Preyer,)
)
Petitioner,)
)
vs.) PETITIONER'S REPLY TO
) RESPONDENT'S COUNTERCLAIM
John C. Dockery, III,)
)
Respondent.)
)
In re Emily Cheshire Dockery)
)

Petitioners, Emily Carlson and Alice Preyer, by and through their undersigned attorney, hereby replies to the Answer and Counterclaim of the Respondent, Emily Cheshire Dockery, and would show unto this Honorable Court as follows:

FOR A FIRST DEFENSE

1. Each and every allegation not herein specifically admitted, denied or explained, is denied.

FOR A SECOND DEFENSE AND
REPLY TO COUNTERCLAIM

2. The Answer and Counterclaim do not set forth allegations against Emily Carlson and Alice Preyer in Paragraphs 1 through 8 and, therefore, no response is required. In the event that allegations are set forth, they are denied.

FRIVOLOUS ACTION

3. Petitioners deny the allegations of Paragraphs 1 and 2.

PROBATE COURT
HORRY COUNTY, SC
2011 FEB 16 PM 2:16
DEBORAH W. HARRIS
PROBATE JUDGE

ATTORNEYS FEES AND COSTS

4. Petitioners deny the allegations of Paragraph 1.

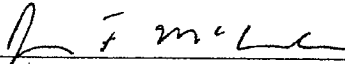
FOR A THIRD DEFENSE

5. The Counterclaim fails to state facts sufficient to constitute any cause of action and should therefore be dismissed as a matter of law.

WHEREFORE, having fully replied to the Answer and Counterclaim of Emily Cheshire Dockery, the Petitioners, Emily Carlson and Alice Preyer pray unto this Honorable Court as follows:

- (a) that Emily Cheshire Dockery's Counterclaim be dismissed with prejudice;
- (b) for the costs of this action; and
- (c) for any and other further relief this Honorable Court deems just and proper.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

James F. McCrackin

SC Bar No. 064140

E-Mail: jim.mccrackin@nelsonmullins.com

3751 Robert M. Grissom Parkway / Suite 300

Post Office Box 3939 (29578-3939)

Myrtle Beach, SC 29577-3165

(843) 448-3500

Attorneys for Emily Carlson and Alice Preyer

Myrtle Beach, South Carolina

February 16, 2011

STATE OF SOUTH CAROLINA
COUNTY OF HORRY,

Emily Carlson and Alice Preyer,

Petitioner,

Vs.

John C. Dockery, III,

Respondent,

In re Emily Cheshire Dockery

IN THE PROBATE COURT
FIFTEENTH JUDICIAL CIRCUIT
CASE NO: 2010-GC-26-68 AND 69

ANSWER TO PETITIONS

PROBATE COURT
HORRY COUNTY, SC
2011 FEB 21 AM 9:27
DEIRDRE W. EDMONDS
PROBATE JUDGE

TO: JAMES F. MCCRACKIN, ATTORNEY FOR PETITIONERS:

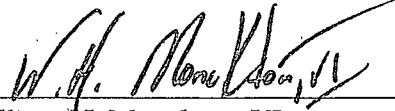
1. Each and every allegation of the Petitions that are not hereinafter specifically admitted, modified or explained is denied and the Respondent demands strict proof thereof.

2. That the Respondent has been assisting Emily Cheshire Dockery and that she seemed more than satisfied with his assistance in personal, medical, physical and financial matters.

3. That there appears to be no reason to change the circumstances of any assistance provided by John C. Dockery, III as there are no allegations named against him and therefore demands that the petitions for an Appointment of Conservator and Appointment of a Guardian be dismissed

WHEREFORE having fully answered the Petitions, John C. Dockery, III prays for damages against Petitioners, for his attorney's fees and for all other damages associated with the filing of these Petitions.

MONCKTON LAW FIRM, PA

A handwritten signature in black ink, appearing to read "W. H. Monckton, VI", written over a horizontal line.

William H. Monckton, VI
Attorney for the Plaintiff
1300 Professional Drive, Suite 102
Myrtle Beach, South Carolina 29577
(843) 946-6556

February 17, 2011

STATE OF SOUTH CAROLINA }

COUNTY OF HORRY, }

Emily Carlson and Alice Preyer, }

Petitioner, }

Vs. }

John C. Dockery, III, }

Respondent, }

In re Emily Cheshire Dockery }

IN THE PROBATE COURT

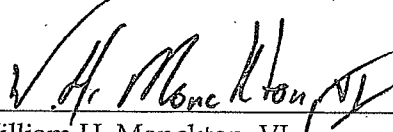
FIFTEENTH JUDICIAL CIRCUIT

CASE NO: 2010-GC-26-68 AND 69

NOTICE OF REPRESENTATION

Please be advised that the undersigned will serve as counsel in the representation of John C. Dockery, III in the foregoing actions.

MONCKTON LAW FIRM, PA



William H. Monckton, VI

Attorney for the Plaintiff

1300 Professional Drive, Suite 102

Myrtle Beach, South Carolina 29577

(843) 946-6556

February 17, 2011

PROBATE COURT
HORRY COUNTY, SC
2011 FEB 21 AM 9:27
DEIRDRE W. EDMONDS
PROBATE JUDGE

CERTIFIED TO BE A TRUE COPY
OF THE RECORDS OF THIS OFFICE.


DEIRDRE W. EDMONDS
PROBATE JUDGE, HORRY COUNTY, SC

STATE OF SOUTH CAROLINA

COUNTY OF: HORRY

IN THE MATTER OF:
EMILY CHESHIRE DOCKERY

IN THE PROBATE COURT

EXAMINER'S / DOCTOR'S AFFIDAVIT AND REPORT
REGARDING CAPACITY

CASE NUMBER 2010-GC-26-0068 & 0069

PERSONALLY APPEARED BEFORE ME

Leonard Goldschmidt, Psy.D., J.D.
Name of Physician/Examiner

who being duly sworn deposes and says:

I am (Please set forth your medical credentials):

a clinical neuropsychologist, clinical forensic psychologist, clinical psychologist,
lawyer,

Business address and phone:

11943 Grand Haven Drive, Ste B, Myrtle Beach, SC 29576

Date and Place of this examination:

8/16/2011, 8/22/2011, 8/29/2011, 8/31/2011 and 9/7/2011

I have had previous opportunities to evaluate the patient?

☒ Yes ☐ No

(If yes, indicate dates and circumstances within the last year and/or reference if you have been the patient's personal physician for a period of time and the time frame.) 12/20/2010, 12/21/2010, 12/27/2010, 1/4/2011 and 1/11/2011

Is the patient oriented to time and place?

☐ Yes ☒ No at times only

What is the physical condition and age of the patient? (Detail any other significant factors that may be relevant to the Court.)

Set forth the results of any tests which bear on the issue of incapacity and date of test:

see attached Report of Neuropsychological evaluation,

Please answer the following questions concerning the above person. Please provide details at end of this form or an attached sheet of paper.

1. Has this person ever been rated or found:

disabled
mentally ill or incompetent
chemically dependent

Yes ☐ No ☒ Unknown ☒
Yes ☐ No ☐ Unknown ☒
Yes ☐ No ☐ Unknown ☒

2. Can the above person:

care for self (personal hygiene)
prepare meals and/or clean house
maintain bank accounts or funds
pay bills
live independently
operate a car
take medications unsupervised

partially only
Yes ☒ No ☐ Unknown ☐
Yes ☐ No ☒ Unknown ☐
Yes ☐ No ☒ Unknown ☐
Yes ☐ No ☒ Unknown ☐
Yes ☐ No ☒ Unknown ☐
Yes ☐ No ☒ Unknown ☐
Yes ☐ No ☒ Unknown ☐

3. Would the above person benefit from:

further education
further training
therapy of some sort
medical aids or equipment
an operation or medical procedure(s)
structured living arrangements

Yes ☐	No ☒	Unknown ☐
Yes ☐	No ☒	Unknown ☐
Yes ☒	No ☐	Unknown ☐
Yes ☒	No ☐	Unknown ☐
Yes ☐	No ☒	Unknown ☐
Yes ☐	No ☒	Unknown ☐

4. Has the above person had in the last six months:

hospitalization(s)
therapy or treatment
inpatient or outpatient surgery
major medical test(s)
psychological or psychiatric testing

Yes ☐	No ☐	Unknown ☒
Yes ☐	No ☐	Unknown ☒
Yes ☐	No ☐	Unknown ☒
Yes ☐	No ☐	Unknown ☒
Yes ☒	No ☐	Unknown ☐

all due to lack of full medical record

5. In your opinion, does this person have the mental or physical capacity to effectively manage his/her property and financial affairs

Yes ☐ No ☒

and /or make necessary daily living and health care decisions

Yes ☐ No ☒

6. To your knowledge does this person have:

a power of attorney
a health care power of attorney or
a "living will"

Yes ☒	No ☐	Unknown ☐
Yes ☐	No ☐	Unknown ☒
Yes ☐	No ☐	Unknown ☒

7. Does the above person have any of the following coverages?

health insurance
medicare
medicaid
veteran's health care

Yes ☒	No ☐	Unknown ☐
Yes ☒	No ☐	Unknown ☐
Yes ☐	No ☒	Unknown ☐
Yes ☐	No ☒	Unknown ☐

8. Does this person have a primary caretaker?

Yes ☒ No ☐ Unknown ☐

If yes, please give available information on name, address, and relationship to above person.

*John Pickery (son)
living with Ms. Emily Pickery*

Use this space for explanations or additional comments.

BASED UPON MY EVALUATION OF THIS PATIENT:

☐ I DO NOT believe this patient is an "incapacitated person".¹ I do not find any impairment by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause to the extent that he/she lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his/her person, property, or finances.

☒ I DO BELIEVE THIS PATIENT IS AN "INCAPACITATED PERSON" and in need of a Guardian and/or Conservator as I find him/her to be impaired by reason of (CHECK ALL THAT APPLY AND SET OUT AND DESCRIBE THE LIMITATIONS RESULTING FROM EACH.)

- ☒ Mental Illness
- ☒ Mental Deficiency
- ☒ Physical Illness or Disability
- ☒ Advanced Age
- ☐ Chronic Use of Drugs
- ☐ Chronic Intoxication
- ☐ Other

¹"Incapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person or property. (Section 62-5-101 of the South Carolina Code of Laws)

Is this condition permanent or temporary?

☒ yes ☐ no

Can Patient perform activities of daily living?

☒ yes ☐ no

What other information do you believe would assist the Court in making a determination of capacity?

FURTHER AFFIANT SAYETH NOT.

Physician's Signature:

Print Name:

Leonard Goldschmidt

Examiner:

Psy.D., J.D.

Credentials (M.D., Ph.D., D.O., R.N.)

Address:

11943 Granhaven Drive, Suite B,

Murrells Inlet, SC

Telephone:

843-652-4600

SWORN to before me this

October

24

day of

20

11

Notary Public for

My Commission Expires:

3/31/21

COURTNEY MILLER

Notary Public - State of South Carolina

My Commission Expires March 31, 2021

FAILURE TO PROVIDE DETAILED RESPONSES TO THE QUESTIONS ON THIS AFFIDAVIT/REPORT MAY OBLIGATE YOU TO APPEAR AT THE PROBATE COURT HEARING.

All information MUST be typed or clearly printed.

STATE OF SOUTH CAROLINA

COUNTY OF: HARRY

IN THE MATTER OF:

IN THE PROBATE COURT

EXAMINER'S / DOCTOR'S AFFIDAVIT AND REPORT
REGARDING CAPACITY

CASE NUMBER

PERSONALLY APPEARED BEFORE ME

Name of Physician/Examiner

who being duly sworn deposes and says:

I am (Please set forth your medical credentials):

Business address and phone:

Date and Place of this examination:

I have had previous opportunities to evaluate the patient?

☒ Yes ☐ No

(If yes, indicate dates and circumstances within the last year and/or reference if you have been the patient's personal physician for a period of time and the time frame.)

Is the patient oriented to time and place?

☒ Yes ☐ No

What is the physical condition and age of the patient? (Detail any other significant factors that may be relevant to the Court.)

Set forth the results of any tests which bear on the issue of incapacity and date of test:

I have been treating the patient for a long time. Please do NOT put any weight into the 2 Prob. Evaluators that supposedly had been done.

DEIRDRE M. ELLISON
PROBATE JUDGE

2811 NOV -2 AM 11:38

PROBATE COURT
HARRY COUNTY, SC

Please answer the following questions concerning the above person. Please provide details at end of this form or on attached sheet of paper.

1. Has this person ever been rated or found:

disabled
mentally ill or incompetent
chemically dependent

Yes ☐ No ☒ Unknown ☐
Yes ☐ No ☒ Unknown ☐
Yes ☐ No ☒ Unknown ☐

2. Can the above person:

care for self (personal hygiene)
prepare meals and/or clean house
maintain bank accounts or funds
pay bills
live independently
operate a car
take medications unsupervised

Yes ☒ No ☐ Unknown ☐
Yes ☐ No ☒ Unknown ☐
Yes ☐ No ☒ Unknown ☐
Yes ☐ No ☒ Unknown ☐
Yes ☐ No ☒ Unknown ☐
Yes ☐ No ☒ Unknown ☐
Yes ☒ No ☐ Unknown ☐

3. Would the above person benefit from:

further education
further training
therapy of some sort
medical aids or equipment
an operation or medical procedure(s)
structured living arrangements

Yes ☐ No ☒ Unknown ☐
Yes ☐ No ☒ Unknown ☐
Yes ☐ No ☒ Unknown ☐
Yes ☒ No ☐ Unknown ☐
Yes ☐ No ☒ Unknown ☐
Yes ☐ No ☒ Unknown ☐

*Do Not put
any weight on
evaluation*

4. Has the above person had in the last six months:

hospitalization(s)
therapy or treatment
inpatient or outpatient surgery
major medical test(s)
psychological or psychiatric testing

Yes ☒ No ☐ Unknown ☐
Yes ☒ No ☐ Unknown ☐
Yes ☐ No ☐ Unknown ☐
Yes ☐ No ☒ Unknown ☐
Yes ☒ No ☐ Unknown ☒

5. In your opinion, does this person have the mental or physical capacity to effectively manage his/her property and financial affairs *Need assistance*

Yes ☐ No ☐

and/or make necessary daily living and health care decisions Yes ☐ No ☐

6. To your knowledge does this person have:

a power of attorney
a health care power of attorney or
a "living will"

Yes ☒ No ☐ Unknown ☐
Yes ☒ No ☐ Unknown ☐
Yes ☐ No ☐ Unknown ☒

7. Does the above person have any of the following coverages?

health insurance
medicare
medicaid
veteran's health care

Yes ☐ No ☐ Unknown ☐
Yes ☐ No ☐ Unknown ☐
Yes ☐ No ☐ Unknown ☐
Yes ☐ No ☐ Unknown ☐

8. Does this person have a primary caretaker?

Yes ☒ No ☐ Unknown ☐

If yes, please give available information on name, address, and relationship to above person:

Use this space for explanations or additional comments.

*I have dictated a Final letter
That will be analyzed & Filed & you
can check.*

[Signature]

BASED UPON MY EVALUATION OF THIS PATIENT:

☒ I DO NOT believe this patient is an "incapacitated person". I do not find any impairment by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause to the extent that he/she lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his/her person, property, or finances.

☐ I DO BELIEVE THIS PATIENT IS AN "INCAPACITATED PERSON" and in need of a Guardian and/or Conservator as I find him/her to be impaired by reason of (CHECK ALL THAT APPLY AND SET OUT AND DESCRIBE THE LIMITATIONS RESULTING FROM EACH.)

- ☐ Mental Illness
- ☐ Mental Deficiency
- ☐ Physical Illness or Disability
- ☐ Advanced Age
- ☐ Chronic Use of Drugs
- ☐ Chronic Intoxication
- ☐ Other

"Incapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person or property. (Section 62-5-101 of the South Carolina Code of Laws)

Is this condition permanent or temporary? ☒ yes ☐ no

Can Patient perform activities of daily living? ☐ yes ☒ no no

What other information do you believe would assist the Court in making a determination of capacity?

FURTHER AFFIANT SAYETH NOT.

Physician's Signature: _____

Print Name: _____

Examiner: _____

Credentials (M.D., Ph.D., D.O., R.N.) _____

Address: _____

Telephone: _____

SWORN to before me this 28 day of October 2011

Laurnel M. Sauter

Notary Public for

My Commission Expires: 10-21-2012

LAURNEL M. SAUTER
Notary Public
South Carolina

My Commission Expires October 21, 2019

FAILURE TO PROVIDE DETAILED RESPONSES TO THE QUESTIONS ON THIS AFFIDAVIT/REPORT MAY OBLIGATE YOU TO APPEAR AT THE PROBATE COURT HEARING.

All information MUST be typed or clearly printed.

STATE OF SOUTH CAROLINA

COUNTY OF: HORRY

IN THE MATTER OF: *Emily Christine Dockery*

IN THE PROBATE COURT

VISITOR'S REPORT

CASE NUMBER 2010-GC-26-0068+0069

The undersigned court-appointed visitor in this guardianship proceeding submits the following report concerning the investigation which I conducted pursuant to Section 62-5-303 of the South Carolina Probate Code. In my visit to the place where the allegedly incapacitated person resides, I observed the following.

REPORT ON THE INCAPACITATED PERSON

1. Date and place of interview: *November 1, 2011, 6300 N. Ocean Blvd. Myrtle Beach SC Her residence.*
2. Oriented as to the time and place? ☒ YES ☐ NO
3. Physical Appearance: *Neat, well-groomed, appropriate dress.*
4. Who are his/her closest family members? *John Dockery, son; Emily Carlson, Alice Pryor, daughters.*
5. Does he/she have a doctor? ☐ NO ☒ YES If yes, please list the doctor's name, address, and phone number.
Chad Huberly, MD 4611 Oleander Drive Myrtle Beach SC 29529. 843-497-5929.
6. Does he/she have an attorney? ☐ NO ☒ YES If yes, please list the attorney's name, address, and phone number.
Tammy Brittain & Mary Madison, Brittain Longway, Brittain Law Firm, 4614 Oleander Drive Myrtle Beach SC 29577 843-449-8562.
7. Does he/she, ting he/she needs help caring for himself/herself? ☐ NO ☒ YES If yes, in what areas?
Some daily living activities: cooking, showering & walking any dist. dressing.
8. Would he/she like help in caring for himself/herself? ☒ YES ☐ NO
9. Does he/she know the proposed Guardian? ☒ YES ☐ NO
10. How does he/she feel about having that person appointed as his/her guardian?
Wants son, John, who has Power of Attorney, to be named. Does NOT desire change.
11. Does he/she feel any of the guardian powers or duties should be limited or restricted in any way? If so, how?
Wants to be consulted on decisions. Wants her opinion to have weight & participate in financial decisions.
12. How does he/she feel about the proposed guardianship?
Wants the suit to end. Wants no change in present arrangement.
13. How does he/she feel about the proposed scope and duration of the proposed guardianship?
Desires permanent appointment of son, John.

REPORT ON THE PROPOSED GUARDIAN

1. Has an adult protective service case or family management case ever been opened on this person? ☒ NO ☐ YES
If yes, please explain.

If yes, does the DSS record reveal anything you believe the court should know? ☐ NO ☐ YES If yes, please explain.

N/A

2. Does your investigation of the proposed guardian reveal anything that you believe the court should know? ☒ NO ☐ YES If yes, please explain.

See attached report.

3. Does your investigation reveal any other person who should be considered to be appointed the guardian in this matter? ☐ NO ☒ YES If yes, please explain, including name, address, telephone, age, and relationship to allegedly incapacitated person.

Daughters want consideration, Lawsuits pending.

REPORT ON CONDITION OF PRESENT PLACE OF RESIDENCE

1. Date and time visited: *November 1, 2011 1:30pm*
2. Address (include street, city, county, state, zip):
6300 N. Ocean Blvd. Myrtle Beach SC 29577, Horry County
3. Type of abode:
Private residence, wood & stone.
4. Condition:
- exterior: *Excellent, well-tended & in repair.*
 - interior: *Spacious, clean, well-furnished.*
 - utilities working: *All demonstrated.*
 - cleanliness: *Excellent.*
 - fire hazards: *None observed - no clutter*
 - other (explain): *Large, family lived here since 1968, no plans to sell.*

CONCLUSIONS AND ADDITIONAL COMMENTS:

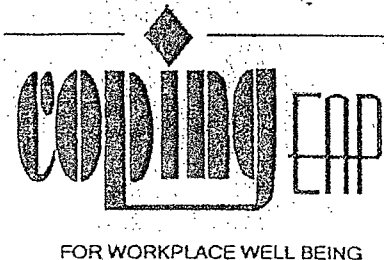
Prior to your visit, did you know the person who is alleged to be incapacitated? ☒ NO ☐ YES If yes, please explain.

Prior to your visit, did you know the person who is seeking appointment? ☒ NO ☐ YES If yes, please explain.

Prior to your visit, did you or do you now have a personal interest in these proceedings? ☒ NO ☐ YES If yes, please explain.

Executed this 4th day of November 2011

Signature: Ryan Clark, LISW, MAC, ACSW
Name: Juan Clark
Address: 223 Malson Drive Unit 28
Myrtle Beach SC 29572
Telephone (O): 843-449-8318
(H): 843-449-3045



Offices in Myrtle Beach and Conway
223 Maison Drive
Myrtle Beach, SC 29572
(843) 449-8318
(888) 525-2757 toll free
(843) 497-5441 Fax

Emily Chesire Dockery
November 1, 2011 Visit

INTRODUCTION

The undersigned conducted a visit to meet the cited alleged incapacitated person on the date noted. The visit consisted of private interviews with Mrs. Dockery; her son, John; her Caregiver, Debbie Cato; her Senior Advocate, Regan Callahan; and her Guardian Ad Litem, Lee Moore. The interviews were conducted at Mrs. Dockery's home, 6300 North Ocean Drive, Myrtle Beach.

Follow up telephone calls were conducted with Mrs. Dockery's two daughters, Emily Carlson and Alice Preyer, who live in North Carolina, on November 2 and 3, 2011. The following is a summary of findings.

FINDINGS

Mrs. Dockery presented as an 87 year old well-groomed Caucasian female, well-nourished and appropriately dressed. She remained seated throughout the proceedings, but a walker stood near her chair. Her mood was cheerful, her speech clear and except for some minor lapses of memory for long-ago events, appeared to be oriented in surroundings, time and space.

She understood the visitor's role and clearly stated her desire to remain in her home with her current financial and caregiving arrangement. She was emphatic that she did not desire any change, but wished the legalities were over as quickly as possible.

Her son, John, who has her power of attorney and handles the finances, described her mental status as improved in recent weeks, since she fell, hit her head, and had a shunt inserted in her brain. Others, when interviewed, agreed this was the case. John lives in the home weekdays, stays in own apartment next door on weekends when weekend Caregiver is present.

Debbie Cato, the Caregiver, is present at the home Monday through Friday 9 am to 5 pm, and assists Mrs. Dockery with activities of daily living as needed. She described outside activities such as movies, shopping and visiting friends, which apparently occur most afternoons. Son, John, cooks all meals.

continued on next page

Reagan Callahan, Elder Advocate, conducts case management services on a monthly basis or more often if needed. She appeared satisfied with the current arrangements and plans to continue oversight in the future. All interviewed at the home agreed that present circumstances will continue indefinitely pending resolution of the legal proceedings.

Telephone interviews with Mrs. Carlson and Mrs. Preyer, Mrs. Dockery's daughters, yielded a considerably disparate picture, which is to be expected. They offered their version of circumstances which have been set forth in earlier depositions. Inasmuch as their views are not verifiable for the purpose of this visit, there is no need to describe them here.

NOTE: This visit was conducted by the undersigned without access to any documents pertaining to the legal actions. Therefore, the conclusions presented here are based solely on the interviews described in this report.

CONCLUSIONS

It appears that Mrs. Dockery is adequately cared for and desires to continue with the present arrangements. She is capable of articulating her wishes and is competent enough to make that decision. However, a person of her age is likely to require a more intensive level of care in the future, and some other arrangements may have to be made. Some sort of objective, regular evaluations would be desirable.

Respectfully submitted,



Joan Clark, MA, LISW, MAC, CEAP, CSAP
Court Appointed Visitor

1 STATE OF SOUTH CAROLINA

PROBATE COURT

2 COUNTY OF HORRY

3
4 Emily Carlson and
5 Alice Preyer,

6 Petitioner(s),

7 vs.

CIVIL ACTION NOS.

2010-GC-26-0068 & 0069

8 John C. Dockery, III,

9 Respondent(s).

10 In re: Emily Cheshire Dockery

11
12 HEARING BEFORE: THE HONORABLE DEIRDRE W. EDMONDS

13 DATE: Friday, May 4, 2012

14 TIME: 8:50 a.m. through 11:47 a.m.

15 LOCATION: Horry County Courthouse
16 Probate Court, Second Floor
17 Conway, South Carolina

18 COURT REPORTER: Michele E. Starkey
19 Certified Shorthand Reporter
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1 going to remain in her home with her son, as
2 she desperately wants to, then there will be
3 a lot of questions that I won't even have to
4 even get into. There's not even an issue.
5 Mr. McCrackin and I would be focusing on her
6 capacity, of course, and then whether or
7 not, you know, she falls into that
8 definition so that we would move into the
9 next question based on our bifurcation,
10 which we've agreed to on that. But if part
11 of this is to determine that she needs
12 someone other than her son to be the health
13 care provider, then I think that's a
14 departure from what we had originally agreed
15 to. That's all I'm saying.

16 THE COURT: Okay. I understood that
17 the parties had agreed that the issue of
18 incapacity would be handled by the Court
19 first and that at this trial, we would only
20 deal with the issue of capacity or lack of
21 capacity. And then if, at the conclusion
22 of this trial, the Court determines that
23 Mrs. Dockery is incapacitated, then we would
24 go forth and schedule a hearing to determine
25 who would be appointed as her guardian and

1 conservator and we were not addressing the
2 issue of who would best serve in those
3 positions at this trial. That we were just
4 focusing on the issue of capacity.

5 MR. McCRACKIN: Your Honor, I agree
6 with that with just a slight difference. I
7 think if capacity is lacking, and Your Honor
8 determines that, that the rest of the
9 parties are bound by the agreement. And we
10 have already agreed that John Dockery could
11 be the guardian.

12 THE COURT: Okay.

13 MR. McCRACKIN: So I think everyone,
14 unless Your Honor has changed her ruling
15 since last fall --

16 THE COURT: No, I have not. I have
17 not.

18 MR. McCRACKIN: -- then I think we're
19 all bound by whatever the terms of the
20 agreement are.

21 THE COURT: Except Miss Dockery was not
22 a party, but of course you're saying, Mr.
23 Brittain, that she would want her son to be
24 the guardian and she's in agreement with
25 that part of the agreement.

1 MR. BRITTAIN: That's right. And I
2 think we really see it the same way. We see
3 it the same way. The one thing, though,
4 trying to look at this from Miss Dockery's
5 standpoint, is basically her three children
6 agree to something that involved a decision
7 that she lack capacity. Well, she's a
8 little bit of a spitfire and she's very much
9 against that when I discussed it with her.
10 And even though Mr. Dockery may have made
11 that agreement, he's been with her more than
12 anybody else. And so when we get into
13 issues of capacity, not to help him but to
14 help her, he is an important witness for
15 her. And the agreement that the three of
16 them made hurts my client, as far as I'm
17 concerned, on the issue of capacity.

18 I think everybody has been good about
19 the other issues but I think the Court ruled
20 he can't testify if she's found
21 incapacitated, and I would have a
22 problem with that for my own client's
23 reasoning, not for anything that happened
24 with John or Mr. Monckton or McCrackin and
25 his clients. But if I'm trying to

1 protect my client's right to make her own
2 decisions, you see why it's important for me
3 to be able to put a man up on the witness
4 stand that's been living with her for ten
5 years.

6 THE COURT: And I believe that when we
7 had a status conference back on February 7th
8 of this year, we had -- we discussed the
9 pending motions to void the settlement
10 agreement that had been filed by
11 Mr. Dockery. We agreed that that would --
12 that motion would be heard at a later time,
13 and the testimony of Mr. Dockery as to the
14 issue of capacity would be proffered at
15 trial, any objections heard at trial, and
16 either ruled on at the trial or when I make
17 a decision as to incapacity. And that
18 was my understanding.

19 MR. BRITTAIN: That's correct.

20 THE COURT: So I believe that
21 Mr. Monckton or you will proffer his
22 testimony. I will hear from Mr. McCrackin
23 as to any objections and then either rule on
24 it currently or rule on it when I make a
25 decision on the issue of capacity. Is that

1 correct?

2 MR. BRITTAIN: Yes, ma'am, that is
3 correct. Yes.

4 THE COURT: Okay. You ready to proceed
5 then?

6 MR. BRITTAIN: One thing, we probably
7 need to get Miss Dockery and her wheelchair
8 up here somewhere to make sure she can hear.
9 I don't know. We can ask her.

10 THE COURT: Okay.

11 MR. BRITTAIN: Miss Dockery, are you
12 able to hear everything that's going on?

13 MRS. DOCKERY: No.

14 MR. BRITTAIN: But now, she's doing
15 better. They redid her hearing aid and so
16 her hearing is better in the last several
17 days.

18 THE COURT: Okay.

19 MR. BRITTAIN: We gave you a report,
20 everybody a report from Dr. Cunningham's office
21 that does talk about completely deaf in the
22 left ear and some problems. So I'm asking the
23 Court to let's try and get her positioned where
24 she can hear what's going on.

25 THE COURT: I'm happy to do that and

1 to put her in the front? Am I going to be
2 asking questions to the side?

3 THE COURT: Oh, I'm sorry. You're
4 calling her as your first witness?

5 MR. McCrackin: Yes, Your Honor.

6 THE COURT: So let's move Miss Dockery
7 over here. I apologize, Mr. McCrackin. I
8 was thinking she was to observe to begin
9 with.

10 MR. McCrackin: Your Honor, for the
11 record, if the record could just reflect
12 that she required substantial assistance in
13 getting to the witness stand, I would
14 appreciate that.

15 THE COURT: Thank you. So noted.

16 Miss Dockery, please let us know if you
17 have difficulty hearing.

18 MRS. DOCKERY: Thank you. I will.

19 THE COURT: Thank you, ma'am.

20 All right. Would you like to swear the
21 witness, please?

22 EMILY CHESHIRE DOCKERY, being first
23 duly sworn, testified as follows:

24 THE COURT: Mr. McCrackin?

25 MR. McCrackin: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. McCRACKIN:

Q. Miss Dockery, will you state your full name for the record?

A. Emily Schill Cheshire Townsend Dockery.

Q. And Miss Dockery, can you hear me okay?

A. I can.

Q. Miss Dockery, can you tell the Court what this case is about?

A. Well, my daughters brought it, much to my sorrow, because they want some money, and they know we have property we could sell but this is not the time to sell property.

Q. Did you read somewhere in the petition that your daughters were asking you for money?

A. Yeah.

Q. Can you show me where in the petition it says that they are asking you for money?

A. Well --

Q. If I hand you the petition?

A. They are asking me for money.

MR. BRITTAIN: Your Honor, I'm going to object. There's a complaint that's been filed also in the property that they have got, and Mrs. Dockery, she's not going to

1 understand the difference between a petition
2 and complaint so I object.

3 THE COURT: Mr. McCrackin?

4 MR. McCrackin: Your Honor, I'm just
5 asking her what this case is about. And she
6 said it's about her daughters asking her for
7 money and I think it's a fair thing to let
8 her read the petition and show me where in
9 the petition it says her daughters are
10 asking for money.

11 THE COURT: Overruled.

12 THE WITNESS: Well, I don't know that I
13 had a copy of that.

14 MR. McCrackin: May I approach, Your
15 Honor?

16 THE COURT: Yes, sir.

17 BY MR. McCrackin:

18 Q. Miss Dockery, I'm handing you what's in the
19 Court's record. It's a summons and petition, and
20 this is what the petitioners, your daughters, filed
21 in this case.

22 MR. BRITTAIN: Let me see a copy of
23 that, please. Okay. Wanted to make sure it
24 wasn't that tiny one. That's fine. That's
25 regular size type there.

1 BY MR. MCCRACKIN:

2 Q. Miss Dockery, I've actually handed you two
3 items. They're both summons and petition. One is
4 a summons and petition requesting a guardian, and
5 the second is a summons and petition regarding a
6 conservator. And my question to you, if you'll
7 look at those and tell me where in those documents
8 your daughters are asking you for money.

9 A. I don't guess it says so but they sure been
10 doing it.

11 Q. So you admit this case is not about your
12 daughters asking you for money, is it?

13 A. What is it about?

14 Q. What do you think it's about?

15 A. That's what I thought it was about.

16 Q. Can you read those petitions for me and tell
17 me what it's about?

18 A. Yeah. (Witness reviewing document).

19 I don't understand Number 4 on this third
20 page.

21 Q. Miss Dockery, my question to you is can you
22 read those petitions and tell me what this case is
23 about?

24 A. Well, I can but there's one thing it says,
25 as the guardian appointed by and will accept such

1 appointment, and it's marked no, but my son was
2 appointed by our will to look after me and it
3 should have said yes there.

4 Q. Okay. Again, my question is not about a
5 misunderstanding.

6 MR. BRITTAIN: He's badgering the
7 witness. He's asked her that question five
8 times, Your Honor, and she has given the
9 best answer she can give.

10 THE COURT: Overruled. I'll let you go
11 forward, Mr. McCrackin.

12 THE WITNESS: It gets to appoint a
13 conservator.

14 BY MR. MCCRACKIN:

15 Q. Okay. Anything else?

16 A. That's all I can make out of this.

17 Q. Okay. And do you know what a conservator
18 is?

19 A. I do.

20 Q. What is a conservator?

21 A. He would look after my finances.

22 Q. Okay. And do you have a position in this
23 case as to what you would like to have happen?

24 A. I certainly do. I want my son to keep me
25 exactly where I am for the rest of my life.

1 Q. Okay. And are you aware that the parties
2 have entered an agreement that as the guardian ad
3 litem --

4 MR. MONCKTON: Objection, Your Honor.

5 THE COURT: Yes, sir.

6 MR. MONCKTON: I thought we were going
7 to hold the settlement agreement in abeyance
8 until a later date. He's asking to
9 introduce and discuss the settlement
10 agreement at this time.

11 THE COURT: Mr. McCrackin?

12 MR. MCCRACKIN: Your Honor, I'm just
13 asking her if she's aware of that agreement,
14 and I have a couple of follow-up questions
15 to that but I think it's a fair question.

16 THE COURT: I wasn't aware,
17 Mr. Monckton, that there was not going to be
18 any discussion about the settlement
19 agreement. I think what we're holding was,
20 at this time, your motion to set aside
21 the settlement, or void the settlement
22 agreement.

23 But I think all the parties acknowledge
24 that there is a settlement agreement and I
25 don't know why Mr. McCrackin can't ask her

1 about it.

2 MR. MONCKTON: Note my objection for
3 the record, Your Honor.

4 THE COURT: Thank you.

5 MR. BRITTAIN: And I will have to put
6 one on. Your Honor, I don't think any of it
7 should be admissible in any circumstances.

8 It's a mediation and the system is such that
9 unless there's an agreement by all parties,
10 it has absolutely no admissibility in court.

11 In fact, the Court should never even have
12 reviewed that document, as far as I'm
13 concerned, as a fact finder. I believe that
14 is built into the process of mediation and
15 so I object to it.

16 Now, Miss Dockery was not present, did
17 not agree to it, and certainly doesn't
18 understand the circumstances surrounding it
19 so I don't know what the relevance of this
20 question to her is.

21 MR. McCRACKIN: Your Honor, I'd like to
22 know if she's aware of it. She's given a
23 position in the case as to what she would
24 like to have happen. And ironically enough,
25 that settlement agreement question coincides

1 almost exactly with her position. So I just
2 want to know if she's aware of the agreement
3 and the terms of that agreement.

4 THE COURT: Anything from you, Ms.
5 Moore?

6 MS. MOORE: I don't have anything
7 further to add to that, Your Honor.

8 THE COURT: Thank you. I believe that
9 the Court has already entered an order
10 enforcing the settlement agreement among the
11 parties that entered into the settlement
12 agreement, and the Court acknowledged that
13 Miss Dockery is not a party to the
14 settlement agreement, she is not bound by
15 the settlement agreement, and the Court is
16 not bound by some of the findings that the
17 parties agreed to in the settlement
18 agreement. But I think the settlement
19 agreement has been submitted to the Court
20 and enforced by an order of the Court
21 against the three parties that entered into
22 that settlement agreement, so it is a matter
23 of the Court's record in this trial. And I
24 think Mr. McCrackin can ask her about her
25 understanding or knowledge of the settlement

1 agreement so I'm going to overrule the
2 objections.

3 BY MR. McCrackin:

4 Q. Miss Dockery, are you aware that your
5 children and the guardian ad litem entered into an
6 agreement in this matter?

7 A. No.

8 Q. No one has ever told you that?

9 A. No.

10 Q. Have you ever seen the agreement?

11 A. No.

12 MR. McCrackin: Your Honor, may I
13 approach the witness and just present to her
14 your order denying motion for continuance
15 and granting enforcement of the settlement
16 agreement together with the attached
17 settlement agreement?

18 THE COURT: Yes, sir.

19 BY MR. McCrackin:

20 Q. Miss Dockery, have you ever seen that
21 document?

22 A. I don't -- I'm not conscious of it.

23 Q. Would you read that document? Take a few
24 minutes and read it.

25 A. I'm reading it. (Witness reviewing

1 document).

2 Q. Miss Dockery, if you will just let me know
3 when you're done reading it.

4 A. I will.

5 Q. Mrs. Dockery, I know you haven't finished
6 reading that entire document but the part you have
7 read, do you recall ever hearing about any of that
8 in the past?

9 A. I don't.

10 Q. The part you have read, you've never heard
11 of before?

12 A. I don't think I read this before.

13 Q. Okay. You can continue reading it if you'd
14 like, or --

15 A. I finished.

16 Q. Okay. Let me just ask you some questions
17 about the settlement agreement itself.

18 A. Um-hum.

19 Q. You're telling this Court no one has ever
20 discussed the settlement agreement with you?

21 A. No.

22 Q. So you are not aware that your children and
23 the guardian ad litem agreed that John Dockery
24 could serve as your guardian?

25 A. Should serve as my guardian?

1 Q. Yes, ma'am.

2 A. Well, I hope they did because he's done a
3 good job of it.

4 Q. Okay. But no one has ever told you that the
5 children agreed to that?

6 A. No.

7 Q. Anyone ever tell you that the children
8 agreed that a third-party conservator would be best
9 for managing the finances?

10 A. I don't think they did.

11 Q. No one ever told you that?

12 A. Nobody could do any better than Johnny's
13 done.

14 Q. Okay. Anyone ever tell you the children
15 agreed that you didn't have capacity to handle your
16 own affairs at this point?

17 A. Nobody has told me that and I'm perfectly
18 capable of doing it. I ran a business for 30 some
19 years, I ran my household for many years, and I'm
20 perfectly able to manage my affairs.

21 Q. Okay. And you understand that pursuant to
22 that agreement, if you agree as well to -- that you
23 don't have capacity and that a third-party
24 conservator be appointed, that John will serve as
25 your guardian and this matter will be over?

1 A. I don't quite understand that question.

2 Q. Okay. Do you understand that if you agree
3 to the same terms as the agreement your children
4 and the guardian ad litem agreed to; that is, that
5 you lack capacity, that John will act as your
6 guardian, and that a third-party conservator, this
7 matter would be concluded today?

8 A. I think it would be wonderful if it could
9 be.

10 Q. Do you want to agree to that?

11 A. To agree to what?

12 Q. To what I just said, to get this matter over
13 with immediately.

14 MR. BRITTAIN: Your Honor, I'm going to
15 have to object to one point. What -- and I
16 got no problem with Jim if he wanted to keep
17 going. The issue we're fighting, and
18 discussed with Miss Dockery, that she had to
19 admit she was incapacitated under the
20 statute in order for that agreement to go
21 into effect. That's the conversation that
22 we had. We didn't get into a lot of other
23 details, I admit that. That's what she told
24 me she wanted me to propose, not necessarily
25 the terms, so I think in fairness, that

1 needs to be part of the question that's
2 being asked, was she -- does she want to
3 admit she's incapacitated.

4 MR. McCrackin: Your Honor, that was
5 part of my question. That was number one.

6 THE COURT: Overruled. I think it was
7 part of his question, Mr. Brittain.

8 Mr. McCrackin.

9 BY MR. McCrackin:

10 Q. Miss Dockery, my question to you again is,
11 do you understand that today, if you want to agree
12 to three things; one, that you lack capacity; two,
13 that John will be your guardian and take care of
14 you; and three, that a third party would be
15 appointed as conservator for your assets --

16 A. Sounds like a trick question. I don't want
17 anybody to look after me but my son.

18 Q. Okay. Listen to my question. I promise you
19 it's not a trick question. If it is, Your Honor
20 can tell me it's a trick question.

21 A. It sounds like one.

22 Q. Okay. It's not. It's a simple question.

23 MR. BRITTAIN: I disagree. I
24 characterize it as, one, that she's having
25 trouble understanding. She's answered it.

1 She said she could manage her own affairs
2 and has for years and wants to continue to
3 do so.

4 MR. McCRACKIN: And Your Honor, my
5 concern is she's indicated a lack of
6 knowledge that this agreement even exists.
7 She clearly has a lack of knowledge of what
8 this case is about, and so I'm simply asking
9 her for the benefit of everyone if she
10 understands what she could do today to make
11 all of this go away, and I don't see that as
12 a trick question. I said it as plainly and
13 as understandably as I can say it. If Your
14 Honor thinks it's a trick question and wants
15 me to rephrase it in some fashion, I will,
16 but I think we have a right to know what
17 Miss Dockery's position is and that she
18 understands all of the options that are
19 available to her.

20 MR. BRITTAIN: Well, maybe we can get
21 there with this one caveat and maybe Mr.
22 McCrackin will accept this: Explaining what
23 a fiscal conservator would be. In other
24 words, explaining how that part of the
25 agreement would affect what her present

1 circumstances are. If he would go beyond
2 just the two words, you know, conservator
3 for your finances, and let her understand
4 that and understand that she would have to
5 agree that she's incapacitated, then I think
6 if we can get those questions in a way that
7 she can understand them, she can answer
8 them.

9 THE COURT: Mr. McCrackin, if you would
10 like to expand on your questions a little
11 bit.

12 MR. McCrackin: Your Honor, is the
13 directive to me to explain to her what a
14 conservator does? And perhaps Your Honor
15 would be --

16 THE COURT: I think if you're asking
17 her if she understands that if she agrees to
18 these three things, this matter could be
19 settled today, I think she needs a clear
20 understanding of what a conservator is, so
21 if you would.

22 MR. McCrackin: Okay, Your Honor.

23 THE COURT: Please.

24 BY MR. McCrackin:

25 Q. At the risk of testifying, let me see if I

1 can phrase this as a question. Do you understand,
2 Miss Dockery, what a conservator does?

3 A. I do.

4 Q. Okay. Do you have any questions at all
5 about what a conservator would do or how that would
6 affect you?

7 A. No, but I don't want one.

8 Q. You don't want a conservator?

9 A. No.

10 Q. Can you tell us why you don't want a
11 conservator?

12 A. Because I like to manage my own affairs. I
13 don't want somebody outside telling me what to do.

14 MR. McCrackin: Okay. And Your Honor,
15 I suppose that answers my previous question
16 as to whether or not she wants this to go
17 away immediately, so I appreciate the
18 Court's indulgence.

19 THE COURT: Okay.

20 BY MR. McCrackin:

21 Q. Miss Dockery, who is TeAnne Ohler?

22 A. Who?

23 Q. TeAnne Ohler?

24 A. TeAnne. Do I know him?

25 Q. Miss Dockery, who are you looking at right

1 now?

2 A. I am looking at my son hoping he can tell me
3 who Ken Ayley is because I don't know.

4 Q. You understand that you're the witness and
5 you can't get the answers from John.

6 A. Okay.

7 MS. MOORE: I'm sorry, Judge. I don't
8 believe she understood the name because she
9 repeated it incorrectly.

10 THE COURT: Okay.

11 BY MR. MCCRACKIN:

12 Q. Miss Dockery, my question is, who is TeAnne
13 Ohler?

14 A. Oh, TeAnne. I didn't understand the first
15 part of it. She is a neighbor of mine and she also
16 does work for the courthouse, I think. But she is
17 -- her uncle married me and my husband when we were
18 married. He was at St. Mary's and that's where we
19 had our wedding. So I feel like the families are
20 connected. I visited her grandfather up in
21 Hendersonville when I was a child and I just have
22 felt very close to that family for a long time.

23 Q. Who is her uncle?

24 A. Iharing Hughes. He's not living anymore.

25 Q. Okay. And who are TeAnne Ohler's parents?

1 A. They are -- I can't think of their name
2 right now. But they live on Highland Boulevard
3 right around the corner from me and that's where
4 she lived and she had a child around there.

5 Q. What is her child's name?

6 A. Don't know.

7 MR. BRITTAIN: Your Honor, I object. I
8 don't understand the relevance of these
9 questions. Why is he asking what some
10 lady's child's name is? I mean --

11 MR. McCRACKIN: Your Honor, I'm asking
12 about TeAnne Ohler. As Your Honor knows,
13 she was previously appointed visitor in this
14 case. Her affidavit was filed that there
15 was some sort of conflict. TeAnne Ohler's
16 parents are not Mr. and Mrs. Hughes, and her
17 uncle is not Mr. Hughes, so I was just
18 drilling down a little bit to see what else
19 she thought. We'll certainly have rebuttal
20 testimony that will show that none of that
21 is true, Your Honor.

22 THE COURT: I'm going to sustain --

23 MR. BRITTAIN: Your Honor, see, this is
24 what I object to. He's not a psychologist
25 and this is not a proceeding where he tries

1 to trick Miss Dockery into answering
2 questions she may not know. Listen, she's
3 87 years old, and I'm not trying to pretend
4 she's anything other than that. This
5 doesn't get to the germane question of her
6 capacity.

7 Is she able to exercise reasonable
8 communication of what affects her person and
9 her property. Now, I can't sit back and
10 watch a lawyer try to ask questions of an
11 87-year-old as to whose name is this and
12 whose name is that. It's not germane.

13 THE COURT: I'm going to sustain the
14 objection. If you could move on.

15 MR. McCrackin: Your Honor, here's the
16 reason that it's germane to this case. Miss
17 Ohler was appointed as visitor. They filed
18 a motion to have her removed claiming that
19 there was some sort of conflict with Miss
20 Ohler, and you have those affidavits in your
21 file. I have maintained since that motion
22 that none of that information was true. And
23 I think it's relevant to this case for me to
24 ask her --

25 THE WITNESS: Well, she's spreading --

1 MR. McCRACKIN: -- what her
2 understanding is.

3 THE WITNESS: She's spreading rumors
4 around --

5 THE COURT: Ma'am.

6 THE WITNESS: Around us --

7 THE COURT: Miss Dockery, if you can
8 wait and let me hear from the attorneys,
9 okay?

10 MR. McCRACKIN: And if indeed she has
11 no recollection of who Miss Ohler is, then
12 those affidavits were false and the removal
13 of the visitor was improper. And so that's
14 why it's relevant and germane to this case.
15 In addition, it clearly shows Miss Dockery's
16 ability to recall, which is part of the
17 capacity to manage your own affairs. So I
18 would submit to you, Your Honor, that it is
19 absolutely relevant to this case and that
20 they're fair questions, and I certainly
21 won't dwelling on them much longer but I
22 think I have a right to ask them.

23 MR. BRITTAIN: Well, the proper way to
24 handle that would be to file a motion to
25 reconsider the dismissal of the visitor.

1 And asking her who, what TeAnne Ohler's
2 child name is doesn't have anything to do
3 with the problems Miss Dockery had with
4 TeAnne Ohler at her house. And we're going
5 to object to any testimony from her
6 whatsoever based on the affidavit that she
7 filed. And --

8 THE COURT: I'm going to sustain the
9 objection, Mr. McCrackin. The Court has
10 already ruled that -- to remove TeAnne Ohler
11 and appoint another visitor in this case.
12 Miss Dockery has already testified that she
13 feels close to that family, TeAnne's uncle
14 married Mr. and Mrs. Dockery, they have been
15 friends, so --

16 MR. MCCRACKIN: Your Honor, that's not
17 true.

18 THE COURT: What is not true?

19 MR. MCCRACKIN: That testimony is not
20 true. That's what I'm telling you. And
21 we'll provide rebuttal testimony --

22 MR. BRITTAIN: Mr. McCrackin is
23 testifying on an irrelevant issue.

24 MR. MCCRACKIN: I am not testifying,
25 Your Honor. I'm telling you why I think

1 it's relevant to this case.

2 THE COURT: Okay. So tell me that
3 again, Mr. McCrackin.

4 MR. MCCRACKIN: And when Miss Ohler
5 testifies this afternoon, she will confirm
6 for Your Honor that her parents are not
7 Mr. and Mrs. Hughes and her uncle is not
8 Mr. Hughes. Maybe at that point it will all
9 come together, Your Honor, and I'll be glad
10 to move on to something else if you feel
11 like I'm asking inappropriate questions.

12 THE COURT: I'll give you a little bit
13 of leeway, Mr. McCrackin, if you think you
14 are developing some testimony here that is
15 necessary in this case to determine the
16 issue of capacity.

17 BY MR. MCCRACKIN:

18 Q. Miss Dockery, you objected to the
19 appointment of Miss Ohler as a visitor in this
20 case. Do you recall that?

21 A. I did, because she spread some bad rumors
22 about my house after she had been in it, and they
23 got back to me and I did not want her to come back
24 again.

25 Q. Okay. Did you tell the Court that when you

1 objected to her?

2 A. I think we did.

3 Q. And these rumors that you say she spread,
4 were those the items that she put in her visitor's
5 report?

6 A. I don't know what she put in her visitor's
7 report. I never did see it.

8 Q. Do you recall in your deposition, when I
9 asked you this question, you told me you knew
10 immediately upon meeting her that she was
11 inappropriate? Do you recall saying that?

12 A. I felt like, because the families had been
13 so close for so long, that she was not the best
14 one.

15 MR. McCrackin: Your Honor, I think
16 we'll probably be referring to a deposition
17 if Your Honor wants me to open the original
18 deposition.

19 THE COURT: Please.

20 BY MR. McCrackin:

21 Q. So you're telling this Court, Miss Dockery,
22 that your objection was not --

23 MR. BRITTAIN: I object to the form of
24 the question. He's called Miss Dockery.

25 He's leading her on every question.

1 MR. McCRACKIN: Your Honor, I think I
2 have a right to lead her.

3 MR. BRITTAIN: And restating her
4 testimony. Object to it.

5 THE COURT: I'm sorry. I didn't hear
6 that last objection, Mr. Brittain?

7 MR. BRITTAIN: He's restating her
8 testimony. That's improper examination
9 under any circumstances. I object to it.

10 MR. McCRACKIN: Wasn't really restating
11 her testimony, Your Honor. I was trying to
12 clarify what she just testified to and it
13 will conflict with what she testified to in
14 a deposition, but if Your Honor will indulge
15 me for a minute --

16 THE COURT: If you could,
17 Mr. McCrackin, not restate Mrs. Dockery's
18 testimony, allow the court reporter to take
19 that down, and you can certainly go forward
20 with your questioning.

21 BY MR. McCRACKIN:

22 Q. Miss Dockery, is it your position today that
23 the problem with Miss Ohler is that she's too close
24 to your family?

25 A. I think it was not appropriate for her to

1 have been there.

2 Q. Why was it not appropriate for her to be the
3 visitor?

4 A. Because --

5 MR. BRITTAIN: Objection, Your Honor.

6 This has been ruled on. I don't understand
7 the relevance of any of these questions. I
8 object to them. We're here today to talk
9 about Miss Dockery's capacity. And if she
10 made a mistake with the Ohlers and that sort
11 of thing, that's been resolved.

12 There's been no motion filed for
13 reconsideration on that issue and these
14 issues are irrelevant.

15 THE COURT: Mr. McCrackin?

16 MR. MCCRACKIN: Your Honor, they go to
17 her capacity and her ability to understand,
18 and so I think it's entirely relevant to
19 this matter. I understand Mr. Brittain
20 doesn't like it but it's relevant to whether
21 or not she has proper recall of who people
22 are.

23 THE WITNESS: Well, I do, but she --

24 THE COURT: Miss Dockery, let me rule
25 on the motion. I'm going to overrule the

1 motion.

2 Mr. McCrackin, you can proceed.

3 BY MR. McCrackin:

4 Q. Mrs. Dockery, is your testimony today that
5 you objected to Miss Ohler because she was too
6 close to your family?

7 A. That was one reason, but the main reason was
8 she spent her time giving false stories about my
9 house.

10 Q. Okay. What false stories did she give about
11 your house?

12 A. She said it smelled like cat.

13 Q. She said it smelled like --

14 A. Cat.

15 Q. Do you have cats at your house?

16 A. I had seven.

17 MR. BRITTAIN: Your Honor, object to
18 relevance of all this, Your Honor.

19 MR. McCrackin: Your Honor, I was
20 trying to respond to her response. It
21 probably does smell like seven cats if she
22 has seven cats.

23 THE WITNESS: It does not. I have a
24 men come all the time to clean it up and it
25 doesn't.

1 MR. McCrackin: Let me move on, Your
2 Honor, and when Miss Ohler testifies later,
3 you will understand why I'm asking these
4 questions.

5 BY MR. McCrackin:

6 Q. Miss Dockery, I want to talk just for a
7 minute about your physical condition.

8 A. Um-hum.

9 Q. Do you have any physical limitations that
10 affect your day-to-day activities?

11 A. Not really.

12 Q. You can't think of any physical limitation
13 that you have?

14 A. No.

15 Q. Take a minute now and remember. You're
16 under oath.

17 A. I know --

18 Q. Any physical limitations whatsoever?

19 A. No. I'm deaf in one ear, and that's the
20 most of it.

21 Q. Okay. Do you have any trouble walking?

22 A. I don't have any trouble walking. I can
23 walk but I don't. They don't let me walk very much
24 because they're afraid I'll fall.

25 Q. Do you take any medications?

1 A. Only for asthma.

2 Q. Are you able to dress yourself, go to the
3 bathroom by yourself?

4 A. Yes, I am.

5 Q. You don't receive any assistance?

6 A. No.

7 Q. In doing either of those activities?

8 A. (Witness shakes head.)

9 Q. How about eating?

10 A. I can eat. If it doesn't eat me first, I'll
11 eat it.

12 Q. Can you prepare meals?

13 A. Oh, yes, I can, but my son does it so well,
14 I don't even try to.

15 Q. Your son prepares all your meals?

16 A. He does.

17 Q. Can you dial the telephone without
18 assistance?

19 A. I can.

20 Q. Do you have any trouble with your eyesight?

21 A. No.

22 Q. Do you use reading glasses?

23 A. Dimestore kind.

24 Q. Are you able to clean your house?

25 A. I am but I don't have to because I have

1 help.

2 Q. Can you tell me who your physicians are,
3 Miss Dockery?

4 A. Well, I have Dr. Huberty, and I think that's
5 it.

6 Q. No other physicians that treat you
7 currently?

8 A. No, just Dr. Huberty.

9 Q. Have you had any medical treatment within
10 the last two years?

11 A. Yes. I fell and hit my head and I had to go
12 to the emergency room.

13 Q. Okay. What kind of treatment did you have
14 for that accident?

15 A. I don't think they did anything much.

16 Q. Do you recall having any trouble with your
17 memory as a result of that fall?

18 A. No.

19 Q. Do you recall having any medical procedures
20 to improve your memory?

21 A. (Witness shakes head.)

22 Q. Do you drive, Miss Dockery?

23 A. I don't think -- after I hit my head, they
24 told me not to drive anymore because I didn't know
25 why I had fallen.

1 Q. Tell me, if you will, what you do on a
2 normal day.

3 A. What I do? Well, I get up and I get bathed
4 and I get dressed and I watch television, and I
5 read, and I go to see friends and I go out to
6 lunch, and all those things that most people do.

7 Q. Okay. Let me talk to you a minute about
8 what assets you have.

9 A. I'm not going to answer.

10 Q. Would you please, Miss Dockery, tell the
11 Court what assets you own?

12 A. No, I will not.

13 Q. Why will you not tell the Court that?

14 A. Because it's nobody's business but mine.

15 THE COURT: Ma'am, I'm sorry but
16 because there is a lawsuit involving you,
17 part of that lawsuit is a determination
18 whether you have property that needs to be
19 protected, and I'm going to have to
20 instruct you to answer the question.

21 THE WITNESS: I do have property that
22 needs to be protected and that's what I'm
23 doing and that's why I won't tell him what I
24 have.

25 THE COURT: I understand, ma'am, but

1 I'm afraid you're going to have to answer
2 Mr. McCrackin's questions about it.

3 THE WITNESS: That's it.

4 BY MR. MCCRACKIN:

5 Q. Will you please tell the Court, Miss
6 Dockery, what assets you own?

7 A. I don't think that's revelant (sic).

8 THE COURT: Ma'am, you need to answer
9 that question.

10 THE WITNESS: I own some land and I own
11 some buildings and I own my home. That's
12 mostly it.

13 BY MR. MCCRACKIN:

14 Q. Some land. Do you have any idea where the
15 land is?

16 A. It's in Rockingham.

17 Q. The buildings, any idea where the buildings
18 are?

19 A. They're down here in Myrtle Beach.

20 Q. Okay. And you say you own your own home?

21 A. Yes.

22 Q. That home is in your name?

23 A. It's in my son's. I think we gave it to
24 him.

25 Q. When did you give it to your son?

1 A. I don't know. Some years ago before my
2 husband died.

3 Q. So other than those three assets, you own
4 any other assets?

5 A. Not really.

6 Q. Think for me a minute and let's just make
7 sure that you're recalling all of your assets.
8 Okay?

9 A. Um-hum. You know of any I didn't tell you
10 about?

11 Q. Well, it's not what I know, it's what you
12 know.

13 A. You must know. You keep asking.

14 Q. Well, I'm asking because I want to know what
15 you know. The question that we're here for today
16 is about what you know, not what I know.

17 MR. BRITTAIN: Your Honor, I don't --
18 he doesn't need to tell this witness how
19 this works.

20 THE COURT: I'm sorry?

21 MR. BRITTAIN: He -- I resent him keep
22 telling Miss Dockery how everything goes.
23 He just asks her questions. If she needs an
24 instruction, he can ask you to give it to
25 her, not him.

1 THE COURT: Thank you. Mr. McCrackin,
2 I'll be happy to instruct the witness if you
3 need me to. Thank you.

4 BY MR. MCCRACKIN:

5 Q. Do you own any other assets other than land,
6 buildings and your home?

7 A. Some stocks.

8 Q. And what stocks?

9 A. You don't want a list of them. You'd be
10 bored to death.

11 Q. No. I really would like to know what you
12 own.

13 A. I own some stocks.

14 Q. Can you identify the stocks?

15 A. Hm?

16 Q. What companies are these stocks in?

17 A. Different companies that I picked out along
18 the way.

19 Q. Okay. Can you tell the Court what companies
20 those are?

21 A. No, I can't. Could you tell companies, what
22 stocks you own?

23 THE COURT: Miss Dockery, Mr. McCrackin
24 is the one who's entitled to ask the
25 questions, okay?

1 THE WITNESS: I answered all I'm going
2 to.

3 THE COURT: All right. Thank you,
4 ma'am.

5 BY MR. McCRACKIN:

6 Q. Is that all you can recall?

7 MR. BRITTAIN: He's asked her that
8 question three or four times. I object to
9 it.

10 MR. McCRACKIN: Your Honor, I'm trying
11 to give her a fair chance --

12 MR. BRITTAIN: Well, move on, please.

13 MR. McCRACKIN: -- to identify the assets.

14 THE WITNESS: Why do you need to know?

15 THE COURT: Miss Dockery, I'm going to
16 have to ask you not to ask questions of the
17 attorneys.

18 THE WITNESS: Okay.

19 THE COURT: Let them ask you questions
20 and you can answer them. Okay?

21 THE WITNESS: All right.

22 THE COURT: Mr. McCrackin, if you'd
23 like to move on.

24 BY MR. McCRACKIN:

25 Q. Can you think of anything else?

1 A. No.

2 MR. BRITTAIN: Asked and answered for
3 the fifth time. I object to it again.

4 THE COURT: Move on, Mr. McCrackin.

5 MR. MCCRACKIN: Thank you, Your Honor.

6 BY MR. MCCRACKIN:

7 Q. Do you have a checking account?

8 A. Yes, I do.

9 Q. But you couldn't think of that a minute ago
10 when I asked the question?

11 A. Excuse me?

12 Q. When I asked the question a minute ago that
13 Mr. Brittain objected to --

14 MR. BRITTAIN: Your Honor, here again,

15 I object to this. I object to this whole

16 line of testimony, trying to expect an

17 87-year-old woman to count a checking

18 account as an asset.

19 THE WITNESS: I'm closer to 88.

20 MR. BRITTAIN: You keep saying that,

21 Miss Dockery, but you're still 87. I object

22 to the whole line. I want -- I know I'm

23 objecting a lot but here's what we're doing.

24 We're taking a lady of her years, asking her

25 -- she says land, stocks, buildings, my

1 home. And now he comes back and says, but
2 yeah, you got a checking account and that's
3 not an asset and you didn't list that.
4 That's no proper way to handle this hearing
5 and I object to that process. I object to
6 that approach.

7 MR. McCrackin: Your Honor, in
8 fairness, Mr. Brittain has indicated in the
9 past that she's sharp as a tack. His
10 position is saying she's sharper than 80
11 percent of the people in Horry County.
12 These are not difficult questions, Your
13 Honor, and I think they go precisely to the
14 lack of cognitive ability that Miss Dockery
15 has that is creating the incapacity. So I
16 don't think these are unfair questions. I
17 gave her every chance. He objected to it
18 three times, but I tried to give her every
19 chance to remember what assets she had and
20 tell them to. --

21 THE WITNESS: I know what assets I
22 have.

23 MR. McCrackin: -- us without being
24 prompted, and so I think it's entirely
25 proper for me, now that she's done her best

1 effort to identify them, to go through them
2 one at a time and see if she knows what they
3 are.

4 THE COURT: Overruled. I will allow
5 it.

6 BY MR. McCrackin:

7 Q. Miss Dockery, you have a checking account?

8 A. Yes, I do.

9 Q. Do you know where your checking account is?

10 A. At First Citizens Bank.

11 Q. Do you know how much money is in your
12 checking account?

13 A. I know approximately.

14 Q. Approximately how much is in your checking
15 account?

16 A. We keep about a thousand dollars in there.

17 Q. Okay. Do you own an interest in a company
18 called 29th Avenue?

19 A. Yes. That is mine and my son's.

20 Q. Okay. It belongs to just you and your son?

21 A. My daughters have a portion of it.

22 Q. Okay. And what does that company own?

23 A. A & P. Well, Rite Aid. It used to be A & P
24 but now it's Rite Aid.

25 Q. Any idea how much that property is worth?

1 A. No idea in the world.

2 Q. Do you get a tax bill on that property?

3 A. I do.

4 Q. Any idea what the tax assessed value of the
5 property is?

6 A. I didn't pay any attention this year. We
7 just paid the taxes.

8 Q. Do you get income off of that property?

9 A. No. We put it back in there because we've
10 got a big bay that has not been rented yet and when
11 it gets rented, we want to have enough money to fix
12 it the way whoever rents it wants it.

13 Q. Are you familiar with the Emily C. Dockery
14 Residence Trust?

15 A. The what?

16 Q. Emily C. Dockery Residence Trust?

17 A. Yes. I had it set up.

18 Q. Okay. And what's in that trust?

19 A. My stocks.

20 Q. Do you know if your residence is in the
21 residence trust?

22 A. No.

23 Q. It is not in the residence trust?

24 A. (Witness shakes head.)

25 Q. Has it ever been in the residence trust?

1 A. No.

2 Q. Do you own an interest in a company called
3 Whitlark Limited Partnership?

4 A. Yes.

5 Q. Can you tell me what Whitlark owns?

6 A. It owns some land and that's it.

7 Q. Are you familiar with the transaction where
8 Whitlark sold some land?

9 A. Oh, we didn't sell it.

10 Q. Whitlark never sold the land?

11 A. We wanted to but the girls wouldn't give us
12 an okay.

13 Q. Okay. You don't recall Whitlark selling a
14 piece of property for \$1.5 million in 2006?

15 A. No.

16 Q. Do you recall a transaction involving an
17 easement in which you received \$125,000 in 2010?

18 A. A what?

19 Q. A transaction involving the granting of an
20 easement?

21 A. Um-hum.

22 Q. In which you got \$125,000 in 2010?

23 A. Yes.

24 Q. Okay. Where is that money now?

25 A. We been living on it.

1 Q. Do you know where that money is?

2 A. At Food Lion and Rite Aid and doctors and
3 hospitals.

4 Q. Have you spent all of that money?

5 A. Just about.

6 Q. And but you have no recollection of the
7 \$1.5 million sale in 2006?

8 A. It didn't go through.

9 Q. Okay. So you wouldn't have any idea if
10 there was any money left from that sale?

11 A. It didn't go through.

12 Q. Okay. Miss Dockery, do you have any idea
13 what your net worth is?

14 A. Don't want to know.

15 Q. I understand you don't want to know. Can
16 you answer my question? Do you have any idea what
17 your net worth is?

18 A. No. I don't want to know.

19 Q. Do you handle your own bills, Miss Dockery?

20 A. I do.

21 Q. When the bills come in the mail, you open
22 them and read them?

23 A. That's right.

24 Q. You write the checks? How long have you
25 been doing that?

1 A. Ever since I married my husband.

2 Q. Was there ever a period of time where you
3 couldn't write the bills?

4 A. No.

5 Q. Do you have an accountant, Miss Dockery? Do
6 you have an accountant?

7 A. An accountant?

8 Q. Do you know what an accountant is? CPA?

9 A. Yeah, Terrance Kinsella.

10 Q. Does he do your income tax returns?

11 A. What?

12 Q. Does he do your income tax returns?

13 A. Yes, he does.

14 MR. MCCRACKIN: Your Honor, if you'll
15 indulge me one minute.

16 BY MR. MCCRACKIN:

17 Q. Miss Dockery, tell me about your
18 relationship with your children.

19 A. Well, we had a good relationship until they
20 decided to take me to court. Very close, very
21 close always.

22 Q. You love your daughters?

23 A. Huh?

24 Q. You love your daughters?

25 A. Of course I do.

1 Q. Have they ever done anything mean to you?

2 A. This is it.

3 Q. Okay. And why do you think this is mean?

4 A. Because it wasn't necessary, at my age, to
5 have to come over here and give up my time to study
6 about this. It's ridiculous.

7 Q. Have your daughters ever asked you for
8 money?

9 A. Oh, yes.

10 Q. Tell me about when they asked you for money.

11 A. Well, one, it hadn't been a year ago Emily
12 calling wanted some money. I said if you need
13 money, you do what I did when I needed money. I
14 went to work. I couldn't do that.

15 Q. Are you telling the Court that they asked
16 you for money a year ago?

17 A. Oh, less than that maybe. I can't tell you
18 how long ago it was.

19 Q. And how did they ask? They called you on
20 the phone?

21 A. That's right.

22 Q. And how much money did they ask you for?

23 A. She didn't tell me but I told her I didn't
24 have any money to give her. We gave them a good
25 education and a good name and they got good

1 husbands and they had a good life and that's all I
2 could give them.

3 Q. How many times have they asked you for
4 money?

5 A. I can't tell you. Didn't keep count of it.

6 Q. If they brought this action to protect you,
7 would that seem mean to you?

8 A. Would that seem what?

9 Q. To be mean to you.

10 MR. BRITTAIN: I object to that
11 question, Your Honor. He can't characterize
12 his own lawsuit, the filing of his own
13 lawsuit. That is leading the witness and
14 essentially just stating the proposition.
15 It hasn't been proven.

16 MR. McCrackin: Your Honor, there'll
17 certainly be testimony to that effect so I
18 think that it will bring it all together.
19 I'll be glad to recall her at the
20 appropriate time to ask the question, but
21 it's a hypothetical and it goes to her
22 understanding, Your Honor. She's claimed
23 she thought the lawsuit was about her
24 daughters asking for money and that this is
25 mean because the daughters filed this

1 action. And so I just want to ask her the
2 question, that if the daughters' motivation
3 is to protect her, does she view that being
4 mean? I think it's a fair question.

5 THE COURT: I'll allow it.

6 BY MR. McCrackin:

7 Q. Do you understand my question, Miss Dockery?

8 A. I couldn't hear it all.

9 Q. I'm sorry. My question is if your daughters
10 brought this action to protect you, do you think
11 that would be mean?

12 A. I don't think they brought it to protect me.
13 I think they brought it because they want some
14 money and they want me to give it to them.

15 Q. But Miss Dockery, didn't we already go
16 through the pleadings and confirm that they are not
17 asking you for any money in this action?

18 MR. BRITTAIN: Here again, Your Honor,
19 I object. We have documents we had to show
20 her, Mr. McCrackin sent us, where they're
21 asking for money. She knows they're asking
22 for money. They have been presented to us.
23 We haven't presented them to Miss Dockery
24 and so it's confusing now to try and tell
25 her that just because they're not in the

1 pleadings, that it hasn't been an issue here
2 where her daughters have sought to get
3 money. Mr. McCrackin --

4 MR. MCCRACKIN: Your Honor, that's just
5 not true.

6 MR. BRITTAIN: Well, hold on a minute.

7 MR. MCCRACKIN: There's no request for
8 money in anything.

9 MR. BRITTAIN: Hold on a minute. I
10 want you to see this, Your Honor, because
11 this is an important part of the case. This
12 is addressed to Billy and Mary Madison. And
13 it says, "Emily and Alice propose the
14 following terms to settle both the
15 conservatorship, guardianship matter and the
16 29th Avenue Corporation matter." And one of
17 those requests in here is that Mrs. Dockery
18 will change her will, revocable trust,
19 residence trust, Whitlark Dockery Family
20 Limited Partnership to be modified as
21 necessary to treat all children equally.

22 Now, I have had discussions with Miss
23 Dockery about that. She may not know the
24 difference between this and a pleading, but
25 it's disingenuous to stand up here and ask

1 her about the pleadings in this case when
2 she has been specifically proposed to change
3 her will and treat the plaintiffs equally
4 with her son, and I object to that without
5 it being complete. And this would make it
6 complete.

7 MR. McCRACKIN: Your Honor, what
8 Mr. Brittain is referring to is actually
9 instigated by Mr. Brittain, not me. I may
10 have followed up with an e-mail to him about
11 that proposal and what would be acceptable
12 but we have never sought any money. This is
13 a conservatorship and guardianship action.

14 MR. BRITTAIN: I'd like to move to
15 introduce this document.

16 MR. McCRACKIN: Your Honor, it's an
17 e-mail regarding settlement discussions.
18 It's clearly not admissible.

19 MR. BRITTAIN: You have brought it into
20 question here.

21 MR. McCRACKIN: No, I haven't.

22 MR. BRITTAIN: Yes, you have, with your
23 question. It's a crucial part of the case.
24 There's another lawsuit pending over 29th
25 Avenue that was filed almost contemporaneous

1 with this action seeking money. We want all
2 those documents and produced; it's all part
3 and parcel. Now listen. This specifically
4 says, and the Court, like a mediation, you
5 know, we're here talking about the mediation
6 terms. Why won't we talk about a settlement
7 proposal where they're seeking money? I had
8 to go talk to Miss Dockery and explain to
9 her that in order to get it over with, she
10 would have to change her will and give more
11 money to her daughters.

12 THE COURT: All right. I think,
13 Mr. Brittain, that you can ask Miss Dockery
14 about that when you examine her. Will that
15 not clarify the matter?

16 MR. BRITTAIN: Sure, that's fine.

17 THE COURT: And you can certainly get
18 it in at that point.

19 MR. McCrackin: Okay. Fine, Your
20 Honor.

21 THE COURT: Thank you. At this time,
22 I'm going to overrule the objection and let
23 you proceed, Mr. McCrackin, and then Mr.
24 Brittain can certainly question Miss Dockery
25 about that matter. Try to clarify any

1 misunderstandings.

2 MR. McCRACKIN: Okay.

3 BY MR. McCRACKIN:

4 Q. And Miss Dockery, I was asking you if your
5 daughters' motivation in this case was to protect
6 you, would you think that was mean. I believe you
7 responded that you thought they were asking you for
8 money.

9 A. I did.

10 Q. And my follow-up question is, didn't we
11 already determine reading the pleadings that this
12 case is not about money?

13 A. Oh, it's not.

14 Q. It's about a guardian and a conservator.
15 Didn't we agree to that earlier?

16 A. Well, that would be about money too, because
17 if they got both of those, they'd get their hands
18 in my bank account.

19 Q. But they're not asking to be in your bank
20 account --

21 MR. BRITTAIN: Objection, Your Honor.

22 He's arguing with the witness. He's asked
23 her; she's answered.

24 THE COURT: Overruled. I don't think
25 he was arguing with her, Mr. Brittain.

1 BY MR. MCCRACKIN:

2 Q. Miss Dockery, do you understand that your
3 daughters have already agreed that John could be
4 your guardian and that a third party would be your
5 conservator, not them? Do you understand that?

6 A. I think John's the only one that should be
7 it because I live with him. I see him every single
8 day. We talk about business; we talk about what we
9 own, and that he is absolutely the only one. I
10 have always lived in Myrtle Beach since 1968 and
11 that's where my roots are. It's where my friends
12 are. And I don't want to leave Myrtle Beach.

13 Q. Has someone asked you to leave Myrtle Beach
14 in this case?

15 A. Well, you were saying give them part of the
16 conservatorship.

17 Q. Do you understand that the guardian decides
18 where you live?

19 A. The who?

20 Q. The guardian. You understand that?

21 A. Well, I don't think they can. I think I
22 decide where I live.

23 Q. Let me rephrase.

24 A. Hm?

25 Q. If a guardian and conservator are appointed,

1 it is the guardian who decides where you live. Do
2 you understand that?

3 A. Well, I decide where I live and you better
4 not appoint anybody that's going to try and take
5 that away from me.

6 Q. Do you understand that the agreement is that
7 John would be your guardian and that a third party
8 would be your conservator? Do you understand that?

9 A. No, I don't understand that. Don't know why
10 you have to go to trouble to appoint them if I'm
11 already happy with what I've got.

12 Q. Okay. And if that were the case, if a third
13 party were appointed, would you agree with me that
14 your daughters would not be getting your money?

15 A. They won't be getting it anyhow.

16 MR. MCCRACKIN: Your Honor, if I could
17 have her respond to my question.

18 MR. BRITTAIN: She responded.

19 THE COURT: I think she responded,
20 Mr. McCrackin. I would accept her response.

21 MR. MCCRACKIN: Okay. One moment.
22 Thank you, Your Honor. I don't have any
23 further questions at this time.

24 THE COURT: Thank you.

25 MR. BRITTAIN: I just have a couple of

1 questions.

2 CROSS EXAMINATION

3 BY MR. BRITTAIN:

4 Q. Miss Dockery, are you good for another few
5 minutes or --

6 A. Yeah.

7 Q. Okay, all right.

8 MR. BRITTAIN: Mark this please, ma'am.

9 (Respondent's Exhibit No. 1 was marked.)

10 MR. BRITTAIN: Your Honor, this is the
11 e-mail we talked about.

12 MR. McCrackin: I would just object,
13 Your Honor. It's not admissible as
14 evidence. It's settlement negotiations; not
15 admissible in this case.

16 MR. BRITTAIN: All right. Your Honor,
17 if I could be heard on that?

18 THE COURT: Yes, sir.

19 MR. BRITTAIN: Mr. McCrackin made a big
20 deal out of the fact that his clients didn't
21 want anything, didn't want any money, never
22 was asking for any money, and was implying
23 that Miss Dockery didn't understand what was
24 going on and had no reason to believe that.
25 Therefore, I would like to introduce this

1 document which I went over with Miss Dockery
2 at Mr. McCrackin's request, and let Miss
3 Dockery read it and see if she's familiar
4 with the conversation we had concerning it.

5 THE COURT: I'll allow it.

6 MR. MCCRACKIN: Thank you, Your Honor.

7 THE COURT: Thank you.

8 BY MR. BRITTAIN:

9 Q. Miss Dockery, I'm going to hand you a
10 document here, Defendant's Exhibit No. 1, and ask
11 you to read this out loud if you can.

12 A. "Emily and Alice propose the following terms
13 to settle both the conservatorship, guardianship
14 matter and the 29th Avenue Corporation matter.
15 John to act as guardian with guidelines in place,
16 including limitation on Carlson expenditures
17 without conservator's consent. Britt Preyer and
18 Carl Carlson, III, to act as co-conservators.
19 Britt Preyer is an accredited investment fiduciary
20 and a registered investment advisor, a registered
21 principle, a branch manager at Raymond James and is
22 a member of Raymond James Retirement Plan Advisory
23 Council and is currently bonded. Carl Carlson is a
24 member of AICPA and a trustee for a 50 million
25 trust.

1 "Carl serves on the board of the Piedmont
2 Financial Trust Company. He is chairman of the
3 audit committee. This will eliminate the cost of a
4 third party. Quarterly reports to be made to
5 children.

6 John to make available all accounting
7 records for 29th Avenue Corp, including but not
8 limited to bank records, bank loans, construction
9 costs, leases and shareholder loans and
10 expenditures previously made by 29th Avenue Corp
11 not directly benefitting 29th Avenue to be
12 reimbursed with interest. Immediate distribution
13 available has to be made.

14 "John to provide county and to reimburse
15 29th Avenue Corp all rent taken by 30th Avenue with
16 interest. John to provide an accounting of
17 Whitlark with Mother to be entitled to 5/6 of the
18 total Whitlark funds. Mother's estate documents,
19 will, revocable trust, residence trust, Whitlark
20 documents, family limited plannership --
21 partnership to be modified as necessary to treat
22 all children equally. Full accounting of purchase
23 of Rockingham house transaction with the
24 opportunity for Alice and Emily to purchase it at
25 same price John paid."

1 Q. And then right there, there's another --
2 there's two more here. Eight and nine on the
3 second page.

4 A. Okay. "Though immediately cutting of timber
5 per Mother's request, full accounting of Doe,
6 period, distributions due to Alice and Emily from
7 2001 lawsuit made with interest. Agreement to
8 pursue cartway path and either replant trees or
9 pursue sale of property. John to pay all legal
10 fees; doctors fees, GAL fees and visitor's fees. I
11 look forward to hearing from you. Jim." I don't
12 know about that.

13 Q. All right. Okay. And you remember when I
14 asked you if you wanted to change your will and
15 make sure that at your death, John got everything
16 or if you wanted to change it around and give some
17 to your daughters, and you told me you wanted to
18 leave it the same?

19 A. (Witness nods head.)

20 Q. When we discussed this matter; is that
21 correct?

22 A. (Witness nods head.)

23 Q. Miss Dockery, I discussed with you how you
24 wanted your life to go for the rest of it as far as
25 managing your affairs. Do you remember me sitting

1 in your den and talking to you about that?

2 A. Um-hum.

3 Q. And who did you tell me you wanted to run --

4 A. John.

5 Q. -- your affairs?

6 A. John.

7 Q. But you told me somebody before John that
8 you wanted to run it and that was you.

9 A. Yeah. Me.

10 Q. I mean, when we discussed what was going on
11 in this hearing, I had a conversation with you that
12 indicated that there was --

13 MR. McCrackin: Your Honor, I just
14 object to him testifying and leading the
15 witness. He needs to ask questions of your
16 own witness.

17 MR. Brittain: She's not my witness.

18 You called her.

19 BY MR. Brittain:

20 Q. Isn't it a fact that we discussed --

21 MR. McCrackin: Your Honor, that's
22 leading. It's his witness.

23 MR. Brittain: It's not my witness.

24 MR. McCrackin: She's a party. He
25 represents her. That's his witness. She's

1 hostile to me.

2 MR. BRITTAIN: You called her.

3 MR. McCRACKIN: He can't ask her
4 leading questions.

5 MR. BRITTAIN: Your Honor, we're
6 dealing with an 87-year-old woman who's
7 under attack for her capacity, and let me
8 get the question out, then you can rule
9 whether it's objectionable or not..

10 THE COURT: Well, Mr. Brittain, let me
11 instruct you not to lead the witness. I'll
12 give you a little bit of leeway but I think
13 you're going way too far in leading her in
14 her testimony.

15 MR. BRITTAIN: Okay. All right.

16 MR. McCRACKIN: Thank you.

17 BY MR. BRITTAIN:

18 Q. Okay. Mrs. Dockery, given the choice for
19 who is going to make decisions about your financial
20 future, who would that person be?

21 A. It would be John.

22 Q. All right. Given a choice as to who is
23 going to make decisions about your health care
24 needs and your residential circumstances, who would
25 that person be?

1 A. Me.

2 Q. Okay. Are you reasonably able to
3 communicate to those you choose the decisions that
4 are necessary for your daily living?

5 A. Yes indeed.

6 Q. Involving your person and your property?

7 A. Um-hum.

8 Q. Do you want any change to your current
9 circumstance?

10 A. No.

11 Q. What interest do you have in this Court
12 determining that you're an incapacitated person?
13 What are your thoughts in that regard?

14 A. Say that again.

15 Q. Okay. Do you consider yourself to be able
16 to make your own decisions?

17 A. Yes.

18 MR. BRITTAIN: All right. Thank you.

19 No further questions.

20 THE COURT: Thank you. Mr. Monckton,
21 anything from you, sir?

22 MR. MONCKTON: No, ma'am, Your Honor.

23 THE COURT: Thank you. Miss Moore?

24 MS. MOORE: Just a couple of questions,
25 Your Honor.

CROSS EXAMINATION

BY MS. MOORE:

Q. Miss Dockery, are you okay right now?

A. (Witness nods head.)

Q. Miss Dockery, as far as -- can you hear me?

A. Um-hum.

Q. As far as decision making, does John handle most of the day-to-day decisions?

A. He does.

Q. Okay. Who made the decision to bring caregivers into the house?

A. I think I did. I was at Brightwater and they told me I had to have somebody before I could go home.

Q. Okay. And the caregivers that are there now, are they there 24/7?

A. They're here -- John at night but they're here ten hours a day.

Q. And as far as the caregivers are concerned, do they help you with your day-to-day needs?

A. Yes, they do. They even clean the house.

Q. Do they help you with your bathing?

A. Yep.

Q. Do they help you get in and out of bed or does John handle that?

1 A. He handles most everything but they do.
2 They help me with all the necessary things.

3 Q. Okay. But you need help in getting in and
4 out of bed; is that correct?

5 A. In and out of the bathroom?

6 Q. In and out of bed, your bed?

7 A. I don't have to have it but I can have it.
8 John likes to do it because he's afraid I'll fall.

9 Q. And you've fallen in the past.

10 A. I have. That's what got me in this shape
11 was falling.

12 Q. All right. And as far as bathing, you need
13 assistance to actually bathe as far as getting in
14 and out of --

15 A. Don't have to have. I can give myself a
16 sponge bath. I did at Brightwater often.

17 Q. Okay. But how about as far as getting in
18 and out of the shower?

19 A. I can do that.

20 Q. But do you receive assistance to do that?

21 A. They do it because that's what they're paid
22 to do.

23 Q. Now, Miss Dockery, in response to a question
24 earlier about what you thought your net worth was,
25 I believe you said I don't need to know. Is that

1 correct?

2 A. That's right.

3 Q. Or I don't want to know, I believe might
4 have been what you said.

5 A. Um-hum.

6 Q. Why don't you want to know?

7 A. I just don't want to publicize it.

8 Q. So do you know the answer?

9 A. I know the answer but I don't want to
10 broadcast it.

11 Q. Can you give us the answer today?

12 A. Huh?

13 Q. Would you give us the answer today?

14 A. No.

15 MS. MOORE: Your Honor, I'd ask the
16 Court to instruct her to answer that
17 question.

18 THE COURT: Miss Dockery, you need to
19 answer that question, ma'am.

20 THE WITNESS: What my net worth is?

21 THE COURT: Yes, ma'am.

22 THE WITNESS: I don't think I can
23 actually tell you.

24 THE COURT: Ma'am, I think you just
25 testified that you knew what your net worth

1 is.

2 THE WITNESS: Yeah, I know
3 approximately what it is.

4 THE COURT: Okay. If you could tell us
5 that, please.

6 THE WITNESS: I would say, you know,
7 most of what we have is land.

8 THE COURT: Yes, ma'am.

9 THE WITNESS: And it's not worth very
10 much right now. You couldn't sell it if you
11 had to.

12 THE COURT: Yes, ma'am.

13 THE WITNESS: So that's why I don't
14 want to commit myself at this time because
15 it's all been downgraded in the last year
16 since times got so bad. So that's the main
17 reason.

18 THE COURT: Yes, ma'am. I still need
19 you to --

20 MR. BRITTAIN: Your Honor, I object.
21 Now, that's a perfectly good question. Now
22 she's explaining why she can't give a
23 number, and so I think that's an appropriate
24 response.

25 THE COURT: Ma'am, I'm going to ask you

1 to answer the question that Ms. Moore asked.

2 THE WITNESS: Well, you want me to give
3 it on today's terms?

4 THE COURT: Yes, ma'am, I think that's
5 what she's asking.

6 BY MS. MOORE:

7 Q. Yes, ma'am, today. What your net worth is
8 today.

9 A. I'd say about two million.

10 Q. Miss Dockery, do you have communication with
11 your daughters?

12 A. Yes.

13 Q. Okay. How often do you see or speak to
14 them?

15 A. Don't see them very much anymore because
16 they're busy and I'm busy and we just -- they don't
17 come that much anymore but it used to be very often
18 when the children were little and needed a
19 babysitter.

20 Q. Well, that was quite some number of years
21 ago, right?

22 A. Not that many years ago.

23 Q. All right. What about as far as the last
24 couple of years, how often would you say you see or
25 speak to your daughters?

1 A. Not too much.

2 Q. All right. Do you actually speak to either
3 one of them?

4 A. Yeah, I speak to Emmie almost every week.

5 Q. So you actually do speak with Emmie on a
6 regular basis.

7 A. Yes. Alice doesn't call that much but she's
8 had a wedding; she's had lots of things going on.

9 Q. Have you ever had any concerns about the
10 content of the conversation between you and Emily?

11 A. No.

12 Q. She basically calls you to check on you to
13 see how things are going?

14 A. Yes.

15 Q. Now, do you recall us having conversations
16 about the agreement that your son and your
17 daughters had entered into? Do you recall that
18 conversation?

19 A. Um-hum.

20 Q. Do you recall concerns that you had
21 expressed to me about being forced out of your
22 house?

23 A. No.

24 Q. You don't recall those?

25 A. No.

1 Q. You've never expressed that to me?

2 A. No, no.

3 Q. Do you recall me telling you that as far as
4 I was concerned, at the present time, that you
5 would remain in your house?

6 A. That's right.

7 Q. You remember me telling you that?

8 A. Yeah, you did say that.

9 Q. And that has been a concern of yours, is
10 that not correct?

11 A. No, I don't worry about it. They're not
12 going to kick me out of my house.

13 Q. Okay. But no question but that your desire
14 is to stay in that house as long as you can?

15 A. Absolutely. Going to take it with me when I
16 go.

17 MS. MOORE: Your Honor, I believe
18 that's all the questions I have at this
19 point.

20 THE COURT: Thank you. Mr. McCrackin,
21 anything else, sir?

22 MR. MCCRACKIN: No, Your Honor.

23 THE COURT: Of this witness.

24 Mr. Brittain?

25 MR. BRITTAIN: No, ma'am.

1 THE COURT: I think they're finished
2 with you, Miss Dockery.

3 THE WITNESS: Thank you.

4 THE COURT: Thank you so much. I
5 believe Ms. Moore had asked earlier for a
6 brief recess to check on something.

7 MS. MOORE: It will take me just a
8 minute.

9 THE COURT: Is now a good minute?

10 MS. MOORE: Yes, it would be.

11 THE COURT: Why don't we take about 15
12 minutes.

13 MS. MOORE: Thank you, Your Honor. (A
14 short break was taken.)

15 THE COURT: All right, we are back on
16 the record. Mr. McCrackin, you ready to
17 proceed?

18 MR. MCCRACKIN: Yes, Your Honor. Call
19 Emily Carlson.

20 THE COURT: Ms. Carlson.

21 EMILY CARLSON, being first duly sworn,
22 testified as follows:

23 DIRECT EXAMINATION

24 BY MR. MCCRACKIN:

25 Q. Miss Carlson, would you please state your

1 full name?

2 A. Emily Cheshire Dockery Carlson.

3 Q. Can you tell the Court why you filed this
4 action?

5 A. Well, I filed it because for a very long
6 time, my only regret is that I probably should have
7 filed it sooner but I didn't want to because of the
8 stress in putting us all through this procedure,
9 but I've been very concerned about my mother's
10 care. I have a -- I have a lot of concerns about
11 her physical care. They're not up to my standard
12 but I think it's adequate. But I have a lot of
13 concerns about her financial care.

14 She keeps telling me all the time that
15 she's broke, that she has no money, and I know that
16 my father left her well off, and she should have
17 all that money that my father left her for her
18 needs, for whatever they are, for her wants, for
19 her desires at her age. And my sister and I, after
20 hearing that for years, and it just became apparent
21 that we needed to do something about it.

22 Q. Have you ever tried to talk with your
23 brother to find out what is going on with your
24 mother's financial affairs?

25 A. We have tried many times to communicate with

1 my brother but -- and I will recall one incident
2 that happened, and I believe it was in 2004,
3 because this incident just gives an example of how
4 we could communicate with him and how he would
5 share information with us.

6 But in 2004, my sister and I had gone down
7 for my father's birthday, and as it turned out, it
8 was his last birthday. And the next morning,
9 Saturday morning, we were all, my mother, my
10 sister, my dad and me were sitting having
11 breakfast, and Dad had an accident. It was
12 embarrassing and it was denigrating to him, so
13 Alice and I stepped into the kitchen to give him
14 some dignity. And Mother went back to the shower
15 with him to help clean him up, and John happened to
16 walk in.

17 And, you know, I had said, "John, Mother
18 needs more help with Dad," because at that point he
19 was not in good shape at all and it was, we
20 thought, very stressful on Mother. She had help
21 from 9:00 to 3:00 Monday through Friday but after
22 that she was on her own until Monday morning. And
23 I said, "We need -- Mother needs to have more
24 help." And he said, "We. We." It was always we.
25 "We don't have any money," and I knew that that was

1 ridiculous because, first of all, I knew there was
2 this vacant lot next door that they could have
3 sold. And we had just gone through a land
4 condemnation suit a few years before and, you know,
5 I think the settlement was like \$500,000 and I knew
6 that money shouldn't have been an object for them,
7 and I pressed him on that. I said, "Well, I don't
8 know understand that because we just had this
9 condemnation suit," and he just -- he had like an
10 implosion and he started shaking and screaming and
11 called us fucking bitches and stormed out of the
12 house.

13 And that's really how our communication
14 went, so from there on, it was really more through
15 e-mail, because we knew we couldn't get any
16 information out of him.

17 Q. Did you ever receive any information from
18 John on your mother's financial affairs?

19 A. No. My --

20 MR. BRITTAIN: Excuse me, Your Honor,
21 let me object, Miss Carlson. We're talking
22 here today about Miss Dockery's competence.
23 Doesn't have anything to do with
24 Mr. Dockery, whether he's the right kind of
25 financial manager. That comes at some other

1 point in time if we discover capacity, so
2 relevant questions would deal with Miss
3 Dockery's ability to understand, but not to
4 talk about John Dockery and quoting him
5 making comments like that. That's not
6 appropriate discovery for us today, not a
7 proper issue.

8 THE COURT: Mr. McCrackin?

9 MR. MCCRACKIN: My original question
10 was -- gets to the motivation for bringing
11 the action. I think there's been some
12 misunderstanding on Miss Dockery's part
13 about the girls trying to get money from
14 her, and so my question was really going to
15 their motivations in filing the lawsuit.
16 And I think maybe some -- her question was a
17 bit long-winded but I think it was
18 appropriate.

19 THE COURT: I'll overrule the
20 objection.

21 BY MR. MCCRACKIN:

22 Q. And did your mother complain to you that she
23 doesn't have any money?

24 A. Every time I call her she tells me she's
25 broke and she has no money. Every time. And the

1 thing is, I'd say within the last couple of weeks,
2 when I talk to her, I always ask her what she's
3 done, you know. Are you having fun, what are you
4 doing, and because there was a period there when --
5 during the -- I'm sorry. It's been so long, but I
6 believe it was through the mediation, she was going
7 out and having a ball and she was happier than I've
8 ever -- I've heard her in a long time.

9 But then it got to the point where she
10 said John cut her off and she couldn't do that
11 anymore, they couldn't go out and eat lunch, they
12 couldn't go to the movie, and I'd say within the
13 last couple of weeks she said yeah, she was broke
14 and she might have to let her -- Pam and Debbie go,
15 the help.

16 And every time I tell her, I said, "You
17 know, Mother, that's ridiculous. You have plenty
18 of money. Dad left you well off." And that's the
19 other reason I brought this complaint or case or
20 whatever you want to call it, is that I think it's
21 denigrating to my father's memory. He left her
22 well off. She has plenty of money and she should
23 know that, and she should have that money for
24 herself. I'm not benefitting from this.

25 Q. And have you entered an agreement now that

1 would resolve this case?

2 A. We have. The three children who are the
3 most important to her and closest to her, all three
4 agreed that she was incapacitated and that she
5 needed a guardian and that she needed a
6 conservator. We agreed that John could be the
7 guardian because even though it's not up to my
8 standards, I think she's happy. I don't want to
9 move her from where she is; and the third-party
10 conservator, we all agree to.

11 Q. And why do you think the third-party
12 conservator is important?

13 A. Because my brother has stolen her money.

14 Q. At the time you filed this action back in, I
15 guess it was 2010, in the fall of 2010, were you
16 worried about her care at that time?

17 A. I had -- I had a lot of concerns about her
18 care. There were episodes that my sister and I
19 have tried to deal with, and there have been
20 communications through e-mails with my brother on
21 different physical care.

22 Q. Can you describe for the Court some of these
23 issues?

24 A. Well, one of the issues is that she --

25 THE COURT: Excuse me, let me just

1 interrupt.

2 MR. McCrackin: Yes, Your Honor.

3 THE COURT: Mr. McCrackin, I do think
4 you're getting more into the issue of who
5 might be an appropriate fiduciary. I agree
6 with Mr. Brittain, at this point we need to
7 be concentrating on the issue of capacity.
8 She's explained why she brought the
9 petition, which I think is certainly
10 helpful, but I think she's getting more into
11 --

12 MR. McCrackin: Your Honor, I was
13 headed towards her care with the idea that
14 that would help explain to Your Honor some
15 of the origin of the incapacity.

16 THE COURT: All right. If --

17 MR. McCrackin: Stop me if you think
18 I'm --

19 THE COURT: Okay.

20 MR. McCrackin: But that was my idea,
21 Your Honor.

22 THE COURT: Okay. I just want to be
23 sure that we're not focusing on who would
24 be --

25 MR. McCrackin: I agree.

1 THE COURT: -- appointed in this matter
2 at this time.

3 MR. McCrackin: I agree.

4 BY MR. McCrackin:

5 Q. My question to you was could you share with
6 the Court some of your concerns about her care at
7 the time you filed the action?

8 MR. BRITTAIN: Objection.

9 THE COURT: Happy to hear from you,
10 Mr. Brittain.

11 MR. BRITTAIN: I don't understand why
12 we're talking about that. I still think we
13 agreed this hearing and on the 15th is to
14 determine whether or not Miss Dockery is
15 incapacitated. So Ms. Carlson's concerned
16 about her care. She already said they've
17 agreed to all that. They've all entered
18 into an agreement. She's happy there. It
19 should stay. She's also answered why she's
20 brought the action. So I'm just saying that
21 we ought to turn to the issue at hand, which
22 is Miss Dockery's capacity.

23 MR. McCrackin: And I am getting there.
24 I'm getting to her -- the care that Miss
25 Dockery's received and how that led to her

1 incapacity so I am getting there.

2 THE COURT: If you'll move on,
3 Mr. McCrackin.

4 MR. MCCRACKIN: Okay. Is that
5 particular question appropriate, Your Honor?

6 MS. MOORE: Your Honor, may I be heard?

7 THE COURT: Yes, ma'am.

8 MR. MCCRACKIN: I think what is
9 important about that potential testimony is
10 to get into what decisions may have been
11 being made about her care and who was making
12 those decisions, and as to whether or not
13 the decisions were appropriate under the
14 circumstances.

15 THE COURT: And would that go to the
16 issue of her capacity?

17 MS. MOORE: I believe it does. I
18 believe it deals with whether or not she was
19 able and was even making decisions at that
20 time as to her care, and whether the
21 decisions being made were appropriate and --
22 under the circumstances.

23 MR. BRITTAIN: The second part of that
24 certainly wouldn't be admissible or
25 appropriate or helpful, but whether she can

1 ... make decisions or not certainly is. That's
2 ... part of capacity.

3 THE COURT: I'll allow Mr. McCrackin to
4 ... go on.

5 BY MR. MCCRACKIN:

6 Q. Let me go specifically, Emily, to your
7 mother's fall in 2010, and tell the Court how that
8 has affected her.

9 A. How it has affected her mentally?
10 Physically?

11 Q. Yes, and what treatments she had as a result
12 of that fall.

13 A. Well, I have to say that prior to the fall,
14 I think that she had a lot of issues going on which
15 precipitated her fall, but she has not been able to
16 take care of herself physically. I mean, she has
17 to have help bathing, dressing, fixing her meals.
18 She has -- she can't walk on her own. She is, I
19 think, totally unaware of her finances. I don't
20 know exactly where --

21 Q. Did she have medical treatment from
22 Dr. Benjamin following the fall?

23 A. She did.

24 Q. Tell us your understanding of that treatment
25 and its effect on her capacity.

1 A. Well, I'm a little confused because I don't
2 know what treatment Dr. Benjamin gave her. I'm
3 aware of treatment that she had from Dr. Giddens.

4 Q. Okay. Well, talk about Dr. Giddens.

5 A. She had a shunt put in, and actually she had
6 it done twice, which we didn't understand why it
7 was being done a second time. It seemed to me to
8 be invasive and I thought it was a little bit
9 frightening to have it done on an elderly woman,
10 and I didn't know exactly what the procedure
11 involved but I didn't understand it being done
12 twice. Apparently she had a bladder infection so
13 the first time they, I think, assumed that it
14 wasn't working or didn't know whether it had worked
15 but she had the shunt put in, and we were all down
16 there for that.

17 Q. And how was her memory at that time?

18 A. After the shunt was put in?

19 Q. Correct.

20 A. John said it was better, but I didn't think
21 so.

22 Q. And you filed this petition about what time?
23 What date?

24 A. I believe it was early December 2010.

25 Q. Okay. Tell the Court, if you will, what

1 your mother's physical and mental limitations were
2 at that point, in your opinion.

3 A. She was very limited physically, mentally.
4 I didn't think -- well, for an example, my sister
5 and I had -- we went down there and I had to
6 address all her Christmas cards. We got all her
7 Christmas gifts together. She was very limited.

8 Q. To your knowledge, was she paying her own
9 bills?

10 A. No.

11 Q. During the time period after she had the
12 fall?

13 A. I think she wrote some checks but no, I
14 think at that point my brother took away the
15 checking account and her credit cards. And no, I
16 don't believe he was allowing her to do any of
17 that.

18 Q. As far as her day-to-day activities, is she
19 able to do those without assistance?

20 A. To do her finances?

21 Q. To do -- clothing herself?

22 A. No.

23 Q. Bathing?

24 A. No.

25 Q. Tell the Court if you will your

1 understanding of the level of support she gets for
2 those activities.

3 MR. BRITTAIN: Give me one second, Your
4 Honor. You need to lay a foundation. I
5 don't think Ms. Carlson is down there very
6 much so we need to lay a foundation about
7 how she knows these things.

8 MR. McCrackin: Obviously, it will be
9 limited to her personal knowledge, Your
10 Honor.

11 THE COURT: Thank you.

12 THE WITNESS: I've been down there as
13 much as possible. I haven't been down there
14 these past months because of the procedure
15 and I don't feel comfortable going down
16 there, but my knowledge is a lifetime of
17 knowledge of knowing my mother and going
18 through what I know she was able to do and
19 what she's able to do now. And she's not
20 able to dress herself; she's not able to
21 bathe by herself. She certainly couldn't
22 cook. She doesn't know her finances. She's
23 very limited.

24 BY MR. McCrackin:

25 Q. Tell me your understanding now about her

1 level of understanding with her finances. We've
2 heard her testify today. Was there anything today
3 in her testimony that would give you a question
4 about her ability to understand her finances?

5 A. Well, I don't think she understands them at
6 all. As she -- see, she certainly wasn't aware
7 that Whitlark has been sold and she didn't --
8 wasn't aware of the million five that was -- was
9 there. She didn't go into 29th, but I don't think
10 that she's aware that there's income that could be
11 paid out of that company. She told me in fact when
12 I -- I did ask her about money and I did ask her.
13 It was probably a year ago. I'm sorry, lost track
14 on it. I want to go back to that but I did call
15 her one day and ask her, we were talking about the
16 money and she said she didn't have any. And I
17 said, "You know, we need to sell Doe," which is --
18 I don't know whether you call it D-O-E or Doe but
19 it's the land we own in Rockingham, 327 acres of
20 timber, and I keep telling her, "You know, we need
21 to sell that," and that's where she got the idea I
22 wanted her money from her.

23 But she wasn't aware, I don't believe,
24 that there's money from 29th to be paid out to the
25 shareholders, and she is one, and that is another

1 reason that my sister and I brought this lawsuit,
2 was because she says she needed the money, and I
3 know there's money there to be paid out and if she
4 needs the money, she ought to have it.

5 Q. Is she aware that certain rent money was
6 being taken by John on 29th?

7 A. Not to my knowledge. I certainly never knew
8 it.

9 Q. And tell the Court what is going on there.

10 A. Well, we had been trying to get some
11 information from 29th Avenue, which is -- it's a
12 shopping area on Kings Highway that my father and
13 -- left to us, the three children and my mother.
14 He built it, and he gave each of us equal shares
15 when he was in his right mind. And we have been
16 trying -- John has taken over that, and he -- we've
17 been trying to get information, financial
18 information, from him from that for years. It has
19 been years, and in fact, my e-mails go back to
20 2007, please give us this information. We -- all
21 we get are K-1s stating that we have --

22 MR. MONCKTON: Your Honor, this is the
23 subject of a completely different lawsuit
24 that's been filed in circuit court.

25 MR. McCrackin: Your Honor, my original

11 question was did Emily think that her mother
12 understood what was going on in 29th, so I
13 think she was just explaining to the Court
14 what's going on with 29th.

15 THE COURT: Well, I guess she answered
16 your question, which was whether she thought
17 her mother knew what was going on.

18 MR. McCrackin: Right, and then I
19 followed up and just to give Your Honor some
20 flavor of what that was.

21 THE COURT: Well, I think I understand
22 it. Thank you.

23 MR. McCrackin: Very good.

24 BY MR. McCrackin:

25 Q. Is your mother capable of managing her
financial affairs at this point?

26 A. No.

27 MR. BRITTAIN: Your Honor, I don't
28 believe that question is properly phrased.
29 I don't know whether she's qualified to
30 answer that question but certainly not in
31 its form. It's calling for an opinion of
32 the witness.

33 THE COURT: Would you like to restate
34 it?

1 MR. McCrackin: Your Honor, I think
2 she's entitled to give her opinion. She's
3 her daughter and Your Honor can weigh it for
4 what it's worth.

5 THE COURT: I will allow it as an
6 opinion.

7 THE WITNESS: Well, we like to say that
8 there are three children in this family.
9 We're not isolated and estranged from my
10 mother, and I do know what's going on and
11 know she's not capable of doing her finances
12 at this point.

13 BY MR. McCrackin:

14 Q. Is she capable of bathing without
15 assistance?

16 A. No.

17 Q. Is she capable of going to the bathroom
18 without assistance?

19 A. No.

20 Q. Is she capable of preparing meals without
21 assistance?

22 A. No.

23 Q. Is she capable of clothing herself, putting
24 her clothes on in the morning without assistance?

25 A. No.

1 Q. Is she generally able to walk without
2 assistance?

3 A. No.

4 Q. Has your -- has your brother done anything
5 to isolate you from your mother?

6 MR. BRITTAIN: Object to the question.
7 Got nothing to do with capacity.

8 MR. McCrackin: Your Honor --

9 MR. BRITTAIN: Different hearing,
10 different time.

11 MR. McCrackin: Your Honor, here's what
12 it goes to. It goes to the vulnerability of
13 Miss Dockery and my next questions will
14 follow up on that. And that there has been
15 some level of not only isolation but
16 attempts to influence Miss Dockery in regard
17 to her affairs, and I think that does go to
18 her capacity. It certainly goes to the
19 danger in her current situation for being
20 influenced by those around her, which I
21 think is certainly a valid reason for the
22 Court to consider in connection with
23 capacity and the need for a guardian or
24 conservator, so that's where the question is
25 going.

1 THE COURT: I will allow it.

2 Overruled.

3 BY MR. MCCRACKIN:

4 Q. Has your brother done anything to isolate
5 you and your sister from your mother?

6 A. Absolutely.

7 Q. What has he done?

8 A. Well, I think it began when he moved back
9 into the house. He has tried for years to isolate
10 -- not just my sister and me but really the whole
11 family. She has -- she communicates with her
12 sister, but other than that, he's really pretty
13 much cut her off from everybody in the family.
14 He's tried to cut her off from the grandchildren,
15 from me, from Alice, and it's very, very sad.

16 Q. Has anyone there at the house attempted to
17 influence your mother's behavior at any time?

18 A. Maggie the maid did. Yes.

19 Q. What did Maggie the maid do?

20 A. I had -- let's see. My sister and I, and
21 I'm -- it was in December 2010 had sent my mother
22 -- have to go back a bit. We had gone down there
23 beginning of December and when we went -- she came
24 in and it was December and she had on July 4th
25 clothes, and which was inappropriate. She'd been

1 to the dentist, so we said we needed to get her
2 clothes together. So we went to her closet to get
3 her winter clothes out, and they were filthy. So
4 we took them, gathered them all up, took them to
5 the cleaners. And found some they didn't want to
6 clean that we took back to Greensboro and we
7 handwashed them, put them all in a box.

8 And in another box we also had, thought it
9 would be a nice thing for Mother to have a
10 Christmas gift to open each day like ten days
11 before Christmas, and so we mailed those on -- and
12 I was gone for the weekend but I had a message on
13 my answering machine from my mother saying that
14 they had received this complaint and that we
15 wouldn't be celebrating Christmas anymore, and in
16 the background I could hear somebody saying,
17 "You're being nice, you're not being mean, you're
18 being nice," and Mother saying, "Well, I'm trying
19 to be nice," and you know, it was Maggie telling
20 her that she shouldn't be nice to us, that we had
21 been mean, that we had rubbed our brother's salt in
22 the wound and whatever.

23 Q. And do you have a recording --

24 MR. BRITTAIN: Your Honor, I'm going to
25 strike all that testimony. Ain't got

1 nothing to do with capacity; it's all
2 designed to hurt John Dockery and we aren't
3 dealing with that today.

4 These questions should be dealing with
5 what Miss Dockery can understand and do, not
6 telling us about what John Dockery has done
7 to hurt the family relationship. We know
8 it's strained but that's not part of today's
9 proceeding.

10 MR. MONCKTON: I join the objection,
11 Your Honor.

12 THE COURT: Mr. McCrackin?

13 MR. MCCRACKIN: And Your Honor, it's
14 not to smear John Dockery. It's to get to
15 the fact that she's in a vulnerable position
16 and there are people in the house that are
17 attempting to influence her. I do have a
18 recording of that particular incident in
19 which you can hear people in the background
20 trying to influence Miss Dockery, so that's
21 why it's being introduced. And I think
22 Dr. Benjamin in his testimony has also
23 alluded to the fact that at her age, she is
24 subject to being influenced and that is one
25 reason, although he doesn't agree she's

10 incapacitated, that is certainly a reason
2 that the Court would be concerned about her
3 capacity, that vulnerability and possibility
4 of being influenced. So that's what it goes
5 to. I'll certainly abide by Your Honor's
6 ruling.

7 THE COURT: I will allow it, and let me
8 just say, I agree, Mr. Brittain, the purpose
9 of today's hearing is for the Court to
10 determine whether Miss Dockery is
11 incapacitated or not. And sometimes it's
12 necessary to hear testimony related to facts
13 and circumstances that may not appear to be
14 related to her incapacity but would give the
15 Court some insight as to what has been going
16 on with Mrs. Dockery and why she may be in
17 the condition she's in. And I'm here to try
18 to make the best decision I can based on the
19 evidence and testimony. I certainly want
20 what's in Miss Dockery's best interests. I
21 want to be able to make the right decision
22 for her, and I think some of this testimony
23 will assist me in doing that so I'm going to
24 allow it in.

25 MR. BRITTAIN: Don't be offended at me.

1 I'm objecting when I think there should be
2 an objection but I'm trying to protect Mrs.
3 Dockery's position --

4 THE COURT: Yes, sir.

5 MR. BRITTAIN: -- to maintain her own
6 independence, but I understand the Court's
7 ruling. I abide by it and I'm not trying to
8 be offensive.

9 THE COURT: No, sir.

10 MR. BRITTAIN: I want to state it for
11 the record when I disagree.

12 THE COURT: Thank you. Yes, sir.

13 THE WITNESS: Actually have another
14 recollection of that that I would like to
15 share with the Court. I don't have a
16 recording of it but right after that, that
17 Christmas --

18 MR. BRITTAIN: Your Honor, I haven't
19 heard a question so I certainly object
20 before having heard the question.

21 THE WITNESS: I'm still answering the
22 question that he asked.

23 THE COURT: Miss Carlson, if you will
24 let me respond to the objection and then
25 we'll proceed. Mr. McCrackin, if you would

1 like to ask the witness a question.

2 MR. McCRACKIN: Yes.

3 BY THE COURT:

4 Q. Were there any other incidents that you
5 wanted to share with the Court?

6 A. Yes, there is. So that same Christmas, I
7 called my mother Christmas Eve to wish her a merry
8 Christmas, and somehow the phone got knocked off
9 the hook and she -- I never got to talk to her but
10 Maggie the maid was there and she was getting ready
11 to leave for Christmas Eve and she was instructing
12 my mother not to have any communication with my
13 sister or me, that we had been mean to her, that --
14 and not to talk to Mother again until she got back
15 Monday -- I mean not to talk to us until she got
16 back Monday, and I mean, she went on and on and on
17 for like five minutes.

18 And Mother was in the background going
19 "uh-huh, uh-huh," so the next morning I really -- I
20 thought Mother wouldn't remember that incident so
21 we all were in the kitchen. Alice's family was
22 over there and all six grandchildren, so we called
23 Mother. She answered and she told us she couldn't
24 speak with us, and it was really a terrible
25 situation. My daughter cried all day.

1 (PETITIONER'S EXH. 8 marked for
2 identification.)

3 MR. McCRACKIN: Your Honor, I've handed
4 up to you an affidavit of Teresa Nelson with
5 a transcript of the tape, and I'd like to
6 have marked as an exhibit and admitted into
7 evidence. I do have the tape available if
8 Your Honor would like to listen now,
9 whatever Your Honor would like --

10 MR. BRITTAIN: Inadmissible, of course,
11 under Rule 803. We don't even know who the
12 other party was. I don't know who recorded
13 the conversation, but it's illegal to do so
14 and I object to its introduction. No proper
15 foundation has been laid. The Court may
16 want to inquire as to how the recording was
17 made, who did it and under what
18 circumstances, and who was aware of it, when
19 it was made. I don't know that -- do we
20 still have a Maggie? I don't think, whoever
21 this person is, is at the house. It doesn't
22 have anything to do with capacity. I'm
23 extremely concerned about this document and
24 I strenuously object to it.

25 MR. MONCKTON: Object as well, Your

1 Honor, based upon discovery grounds. We
2 have not been provided with the tape, Your
3 Honor.

4 MR. McCrackin: Your Honor, they can
5 certainly have the tape and perhaps at the
6 next conference we can raise the issue again
7 or address the issue. If you need
8 additional testimony, I can certainly ask a
9 few questions of Emily that will lay the
10 foundation for how this was acquired.

11 THE COURT: Anything from you, Miss
12 Moore?

13 MS. MOORE: Your Honor, I've heard the
14 audiotape. At the time, Maggie was an
15 employee on the audio tape. The individual
16 is actually identified by Miss Dockery, so
17 that's how we were able to identify who the
18 other person is on the other side of the
19 tape. To my understanding, the tape
20 recording was a tape recording of a
21 conversation between Emily and her mother,
22 and so that's my understanding of the
23 recording. It was a concern. It's also my
24 understanding that that was one of the
25 reasons, perhaps, that Maggie was no longer

1 employed with Miss Dockery, to address some
2 of the concerns as far as her conduct, not
3 necessarily about this matter but conduct
4 with Miss Dockery. But she is not an
5 employee of Miss Dockery at this point.

6 THE COURT: I will sustain the
7 objection. I'm not sure that the Court
8 needs to be provided with this recording or
9 with the affidavit of the recording.

10 MR. McCrackin: Thank you, Your Honor.

11 BY MR. McCrackin:

12 Q. Emily, is there anything else that you think
13 the Court needs to be aware of in connection with
14 your mother's capacity?

15 A. Well, I just know that she keeps telling me
16 all the time that she has no money and I know my
17 father left her well off, and I know John's taken
18 money from her and she's not aware of that and I
19 think that that's a huge concern.

20 Q. Okay. As far as her not understanding
21 what's happening, Whitlark clearly sold a piece of
22 property for \$1.5 million, did it not?

23 A. It did. And of course, nobody -- John's
24 never shared that information with me either.

25 Q. Have you ever gotten any sort of accounting

1 of where that money went?

2 A. I actually received some checks through a
3 subpoena, and I'm aware that there was quite a bit
4 of money in there and it's just totally been blown
5 through. I know that the last checks that I was
6 able to view, and it was very recent. I can't
7 remember exactly but I think there was like
8 \$450,000 that was left but it was moved somewhere
9 and I don't know where.

10 Q. Is there any reason that you know of that
11 your mother wouldn't be aware of that sale?

12 A. I think John didn't tell her.

13 MRS. DOCKERY: He did tell me.

14 BY MR. MCCRACKIN:

15 Q. And in regard to her home, do you know how
16 her home is titled at this point?

17 A. I believe, and I didn't know this until the
18 mediation, but it's in a residential trust.

19 Q. Okay. Any reason that you have to believe
20 or know why she didn't know it was in a residential
21 trust?

22 A. No. I can't imagine she -- she established
23 that with my father.

24 Q. All right. Anything else you want the Court
25 to be aware of?

1 A. Well, I mean, I'm not benefiting from this.
2 This has been very hard on my family. It's been
3 very stressful to me and I hate being here and I
4 hate going through this. I want the Court to know
5 that. Also want the Court to know that I've never
6 asked my mother for any money. She's really never
7 given me any. I've asked her for -- when the
8 partnership, the corporations Doe and 29th, I mean
9 -- in fact, the last time I talked to her, she
10 said, "You know, you've taken all my money," and I
11 said, "Well, when did I take your money?" And she
12 said, "When I put you through college." I mean,
13 that's -- that's a little -- I mean, it reflects to
14 me that she's not really cognitive of what's going
15 on right now.

16 I also -- and I don't know if this is an
17 appropriate time to address this or not but I have
18 another concern that I would like the Court to
19 hear.

20 Q. Okay.

21 A. I believe, and Mother was supposed to a year
22 ago, I believe it was April 18th, 2011, and we all
23 sat in that room and Mother didn't know her name,
24 she didn't know the year, she knew -- her whole
25 deposition, she was very confused. And Tommy

1 Brittain sat there with his hand practically in his
2 lap, and at that point everybody in that room, I
3 think, thought Mother was incapacitated. John had
4 agreed that date that yes, she was. And I believe
5 that Tommy Brittain -- well, I know he knew at that
6 point that Whitlark had been sold, and he also knew
7 that there was money being taken from 29th Avenue
8 and I believe that he should have looked after his
9 interests for his client. I believe that he had a
10 legal obligation, a moral obligation, to look after
11 the interests for her -- his client and for him to
12 go after and see where that money has gone.

13 Q. Okay. Have you asked your mother for any
14 money in this case or any related case?

15 A. No.

16 Q. And the settlement proposal that Mr.
17 Brittain talked about, did that ask for any money
18 from your mother?

19 A. No.

20 Q. And there was a division in there about
21 having wills that treated everyone fairly, but was
22 that asking money from your mother?

23 A. No. I would think most parents would want
24 to do that but I'm not her so I can't speak for
25 her, but no.

1 MR. MCCRACKIN: I don't have anything
2 further, Your Honor.

3 THE COURT: Thank you. Mr. Brittain?

4 MR. BRITTAIN: Yes.

5 CROSS EXAMINATION

6 BY MR. BRITTAIN:

7 Q. Miss Carlson, you do agree with this, that
8 your mother has a right to make as many decisions
9 as she possibly can. Don't you?

10 A. I do.

11 Q. And don't you think that it's a proper
12 discharge of my duties to trust and believe her
13 when she tells me something?

14 A. I believe that when we all sat in that room
15 and you heard her not even know her name, at that
16 point you had an obligation to her to look after
17 her interests.

18 Q. And I'm trying to do that. You may not
19 agree with that. Have you read Dr. Benjamin's
20 report about her capacity?

21 A. I have, and Dr. Benjamin did no testing on
22 her. He had a few conversations with her.

23 Q. So you're saying that Dr. Benjamin hasn't
24 discharged his duties properly either in determine
25 that she's -- has capacity?

1 MR. McCrackin: I object. She hasn't
2 testified to that at all.

3 BY MR. BRITTAIN:

4 Q. Has he? I mean --

5 A. I'm sorry, what was the question?

6 THE COURT: Let me rule first, please.

7 Okay?

8 MR. BRITTAIN: Sorry.

9 MR. McCrackin: And Your Honor, for the
10 record, her testimony was that Mr. Brittain
11 was in a deposition when Miss Dockery
12 couldn't name the proper date or even her
13 name at the beginning. I think that was
14 what she was testifying about. She hasn't
15 testified anything to whether the doctor,
16 who wasn't even there, would have any
17 obligation, so I think Mr. Brittain needs to
18 ask the proper questions on that and not put
19 words in her mouth.

20 MR. BRITTAIN: I'm trying to get to the
21 capacity issue. Nobody has been talking
22 about it but that's what we're supposed to
23 be hearing.

24 THE COURT: Go ahead, Mr. Brittain.

25 BY MR. BRITTAIN:

1 Q. Okay. Have you reviewed your mother's
2 medical records and any reports from Dr. Benjamin?

3 A. I have.

4 Q. Okay. And isn't it a fact that he has
5 determined that she has capacity?

6 A. He has.

7 Q. Okay. And he's a medical physician?

8 A. He says he is.

9 Q. And you don't think that's true?

10 A. I haven't seen his documentation. I assume
11 he is.

12 Q. So you assume he is a physician?

13 A. Yes.

14 Q. Do you know who appointed him to see her?

15 A. Who appointed her to see him?

16 Q. Him. He, Dr. Benjamin, to see your mother?

17 A. I believe that Dr. Giddens did.

18 Q. Okay. Do you think the Court had anything
19 to do with it?

20 A. I believe he was appointed as the medical --
21 one of the medical examiners.

22 Q. By the Court?

23 A. Yes.

24 Q. Okay. Now, let me show you what's been
25 marked Defendant's Exhibit Number 1. You may not

1 have seen that document. That's an e-mail from Jim
2 McCrackin to Billy and Mary Madison. Have you had
3 a conversation with Mr. McCrackin about that
4 document?

5 A. I've seen this document.

6 Q. You have seen it. All right. Okay, well,
7 how about go through it with me. Now, it's a fact
8 that this proceeding, of course, is going on. I
9 understand you talked about how you don't enjoy it
10 and wish it wasn't going on, and you hate it and
11 all that, but we have a proceeding in probate
12 court. And there's also a lawsuit pending in
13 circuit court over 29th Avenue property. Right?

14 A. There is.

15 Q. Okay. And Jim McCrackin represents you on
16 both of those cases.

17 A. He does.

18 Q. Okay. So, in the Defendant's Exhibit 1
19 there, the first paragraph says -- well, why don't
20 you read that, the first paragraph after Billy and
21 Mary Madison.

22 A. "Emily and Alice propose the following terms
23 to settle both the conservatorship, guardianship
24 matter and the 29th Avenue Corporation matter."

25 Q. Okay. Now, is that something that you did

1 authorize him to send?

2 A. I believe that -- my understanding was that
3 you and Billy Monckton and Jim met together and
4 y'all came up with some of these provisions but
5 these were things that we had discussed.

6 Q. Okay. And why don't I give you a chance to
7 read it first and --

8 A. I've read it and I've heard it read.

9 Q. Is it true, are those things that you did
10 agree and allow Jim McCrackin to propose to settle
11 both issues?

12 A. They are.

13 Q. Okay. And I believe the first one was for
14 John to act as guardian with guidelines in place
15 for expenditures, right?

16 A. As I had stated earlier, Alice and I weren't
17 thrilled with the care she was being given
18 physically but that he was the best one to take
19 care of her. He was living there and that it
20 wasn't up to our standards but they were adequate.

21 Q. And that's still your position?

22 A. Pardon?

23 Q. That is still the position you have today?

24 A. Yes.

25 Q. Okay. Now, who are Britt Preyer and Carl

1 Carlson?

2 A. Britt Preyer is my brother-in-law and Carl
3 Carlson is my husband.

4 Q. Okay. And you had put in your settlement
5 proposal that they would become co-conservators; is
6 that correct?

7 A. You know, that is correct because that was
8 our feeling in the beginning. It seemed ridiculous
9 to both of us that a third party was going to be
10 appointed and charge her money for things that my
11 husband and my brother-in-law do for a living. We
12 were trying to save her estate money.

13 Q. So you put in there that your husband and
14 brother-in-law would be co-conservators?

15 A. That's right. My husband does that for a
16 living for a trust that's around 50 million.

17 Q. All right. And number three, did you seek
18 immediate distribution of cash from 29th Avenue
19 Corporation?

20 A. 29th Avenue Corporation owes my sister and
21 me and my mother, that was the other point of going
22 into this, all of us a lot of money. There is
23 about \$400,000 sitting in an account at whatever
24 bank, and it probably gets about .4 percent
25 interest and there's a large loan on that, and yes,

1 we did think that there should be money coming out
2 of that corporation. I don't know what person in
3 this room wants to have an investment in a
4 corporation where they only get tax consequences
5 and get no income from it. I don't believe you
6 would want that either, Mr. Brittain.

7 Q. Did you ask for immediate distribution of
8 available cash to be made?

9 A. We did.

10 Q. In number six, I see mother's estate
11 documents. Will, revocable trust, residence trust,
12 Whitlark, Dockery Family Limited Partnership to be
13 modified as necessary to treat all children
14 equally. Did you authorize that proposal?

15 A. I did. You know, at that time I hadn't seen
16 my mother's will. I didn't know -- I hadn't seen
17 any of those documents and I think our assumption
18 would be that that would be how my mother and
19 father would have wanted that done. But my --
20 also, my understanding from Jim, my lawyer, was
21 that you put that in there.

22 Q. Well, why would -- if you didn't -- if you
23 thought it was already done that way, why would you
24 have the word "modified" in there?

25 A. I --

1 Q. What you say in this proposal, is it not, is
2 that all those documents would have to be modified
3 as necessary to treat all children equally.

4 A. As necessary.

5 Q. Modified.

6 A. Modified as necessary. They may not have
7 needed to be modified.

8 Q. But the fact of it is, years ago when your
9 mother filled out her will, she left everything
10 essentially to John Dockery, not you.

11 A. You know what? I didn't know that when this
12 settlement was proposed.

13 Q. Well, why would you ask for those
14 circumstances to be modified to give you equal
15 portions of that property? That's asking for
16 something for you, isn't it?

17 A. No. This -- like I said, normally that's
18 how parents do it. I hadn't seen those documents
19 when this was proposed. I assumed that that's how
20 it was done, and it was just put in there that it
21 should be done all equally to all three children.

22 Q. Well, you agree with me, if it wasn't equal
23 to start with and you were on the unequal part of
24 it, then a modification would be necessary to give
25 you your fair share; is that correct?

1 A. If I thought it needed to be modified but I
2 didn't know that.

3 Q. Well, why did you put modification in --
4 this is your proposal, right? Your lawyer proposed
5 this.

6 A. As necessary.

7 Q. Okay. How often have you been down to see
8 your mama in the last couple of years?

9 A. Well, I would say this past year we have
10 been very little, and one reason because of that,
11 Mr. Brittain, is because you have delayed this
12 hearing for a whole year. I thought -- it actually
13 should have been heard February the 3rd, if you can
14 imagine that, that this would have been extended
15 for so long and has been very painful. And I have
16 hated it but I have to blame you.

17 Q. Well, let me go back to my -- I'll take all
18 your blames and criticisms, believe me. It's no
19 problem. I want to go back to my question to you.
20 How often have you been to see your mother in the
21 last two years?

22 A. Two years ago I think we counted up that we
23 came down here ten times.

24 Q. In two years?

25 A. This past year I haven't been down at all

1 other than for hearings.

2 Q. Okay. You brought the lawsuit, didn't you,
3 Miss Carlson?

4 A. I did.

5 Q. You brought this action and had your mother,
6 if she wanted to defend herself and maintain her
7 capacity, get a lawyer, and defend her. You're the
8 one that brought the lawsuit, isn't that right?

9 A. You know, I had to. It was something I had
10 to do to live with myself, and my husband is paying
11 all of my legal bills and he told me that I needed
12 to do this. We all felt like we needed to do this
13 because my brother was stealing her money and she
14 wasn't even aware of it.

15 Q. Your mother is still capable of making and
16 communicating reasonable decisions, is she not?

17 A. She doesn't know her assets and in the
18 deposition a year ago, she didn't know her name.

19 Q. But Miss Carlson, if she's left it all years
20 ago, and she's getting plenty for her current
21 needs, where's the problem? He's the beneficiary
22 of all of her holdings, so if that is a valid will
23 where you get one-half interest in a Dunes Club
24 stock, and your sister gets one-half interest in a
25 Dunes Club Stock, and everything else goes to John

1 Dockery, and her needs are cared for, where is the
2 problem? Because it's not -- none of that money
3 is going to you.

4 A. Well, the problem is, Mr. Brittain, is that
5 she's not dead and those aren't his assets.

6 Q. Well, you heard her say that she wanted him
7 to manage them. Does she have a right to
8 participate in the process and tell the Court and
9 you as her daughter and me as her lawyer what she
10 wants? Doesn't she have that right?

11 A. And we are here about her capacity, are we
12 not?

13 Q. Yes, we are. But when it comes to the
14 ability to make big decisions, you heard her up
15 here testify. You heard her testify. She is very
16 capable of communicating her thoughts and her
17 wishes and her desires. Now, that's true, isn't
18 it?

19 A. Is that a question or are you making a
20 statement?

21 Q. Well, you're -- I'm going on
22 cross-examination with you so I put it to you.
23 Isn't she capable of communicating her wants, her
24 wishes and her desires?

25 A. She has no ability for her finances anymore.

1 They are long gone. They have been long gone.

2 Q. Okay. Well, you heard her mention that she
3 owns some buildings and some land and some stocks.

4 A. Yes, and she couldn't be more specific than
5 that and she certainly didn't know, and she's told
6 me numerous times that they have not sold Whitlark
7 and she did not receive a million five for that.

8 And I also have documents where John -- well, John
9 says in his deposition that he took half the money,
10 and I have documents that show that he wasn't
11 entitled to half of that money. He only owned one
12 percent of that property.

13 Q. You got them all sued over that, don't you?

14 A. Pardon?

15 Q. You got him sued over it. You got him sued
16 about how you're going to split up 29th Avenue and
17 everything.

18 A. No. I'm not suing over Whitlark.

19 Q. You're not?

20 A. And I'm also not suing my mother, which you
21 have stated in a letter three different times to
22 the judge.

23 Q. Well, your mother owns shares of 29th
24 Avenue, isn't that correct?

25 A. We are doing this on her behalf.

1. Q. She owns over -- she owns 380 shares. She
2 owns more shares in that company than any of y'all.

3 A. If you would bother to read the complaint,
4 the complaint is against my brother and 29th. It
5 is not -- we have -- specifically we're not suing
6 my mother. She hasn't managed 29th. John's
7 managing it.

8 Q. But don't she have a right to have a say-so
9 what happens to a company where she has that much
10 stock in it? In affects her. The decisions made
11 by the Court affect the majority shareholder more
12 than they affect anybody else.

13 A. Well, she, I think, would be very happy with
14 her getting her money. She keeps telling me that
15 she needs it.

16 Q. Well, what it boils down is you want to make
17 her decisions for her, don't you, Miss Carlson?

18 A. I haven't asked for that.

19 Q. You saw her sit up there today. She can
20 make plenty of decisions for herself, can she not?

21 A. No, she can not.

22 MR. BRITTAIN: Okay. No further
23 questions.

24 THE COURT: Thank you. Mr. Monckton?

25 MR. MONCKTON: No questions, Your

1 Honor.

2 THE COURT: Thank you. Ms. Moore?

3 MS. MOORE: A few questions, Your

4 Honor.

5 CROSS-EXAMINATION

6 BY MS. MOORE:

7 Q. Hi, how are you doing today? Do you need a
8 break?

9 A. I do.

10 Q. You need a cup?

11 A. A real one.

12 Q. All right now. Have you actually received
13 any money from your mother in, say, the last 20
14 years?

15 A. No.

16 Q. Has your mother provided you with any
17 financial assistance as far as helping you put your
18 children through college?

19 A. No.

20 Q. Has there ever been any discussion between
21 you and your mother in that regard relative to
22 helping you put your children through school?

23 A. No.

24 MRS. DOCKERY: That I have three.

25 A. No, she has not.

1 THE COURT: Miss Dockery, I'm going to
2 have to ask you to keep your comments to
3 yourself, okay?

4 MRS. DOCKERY: All right.

5 THE COURT: Okay. Thank you.

6 BY MS. MOORE:

7 Q. Do you have any idea as to where she may
8 have picked up that belief?

9 A. I believe my brother lies to her and tells
10 her those things.

11 Q. Have you ever overheard any conversations
12 between your brother and your mother to that
13 effect, however?

14 A. No, but my brother is a pathological liar so
15 he__--

16 MR. MONCKTON: Your Honor, I'm going to
17 have to object and ask the question and
18 answer be stricken from the record.

19 MR. BRITTAIN: And Your Honor, the
20 guardian ad litem, I still don't understand
21 how this works. I am not sure Miss Moore is
22 helping my case and Miss Dockery so I object
23 to this line of questioning.

24 THE COURT: Miss Moore?

25 MS. MOORE: Your Honor, my purpose is

1 try to discern what is actually in the best
2 interests of Miss Dockery without regard to
3 whether it's something that she necessarily
4 wants or doesn't want.

5 THE COURT: Thank you. I'm going to
6 overrule Mr. Brittain's objection; sustain
7 Mr. Monckton's objection and strike that
8 last statement.

9 BY MS. MOORE:

10 Q. Now, as far as conversations that you've had
11 with your mother, have you noticed any improvement
12 in her cognitive ability over the past year?

13 A. No.

14 Q. Is there anything about the conversations
15 that you've had with your mother that have led you
16 to believe that there might be diminishment of her
17 ability?

18 A. I believe so.

19 Q. And what would that be?

20 A. Just in general conversations when I talk to
21 her on the phone, she just keeps telling me she's
22 broke, and she -- actually, the other day, a couple
23 -- I think it was a couple of weeks ago, when she
24 said she didn't have any money and she said I had
25 taken it all. And I said, "When did I take your

1 money?" She said, "Well, it's when I put you
2 through college." I mean, that's just not, to me,
3 that she's knows and is aware of what's going on.

4 Q. And just out of curiosity, what year did you
5 complete college?

6 A. Do I have to say? Let's see, 1974.

7 Q. All right. Now, as far as her physical
8 living arrangements, you had made a statement
9 something to the effect it wasn't up to your
10 standards but you felt that it was adequate.

11 A. I do.

12 Q. Do you have any concerns about her current
13 living condition and arrangement?

14 A. Well, Maggie is no longer there, although
15 she was back for a few days because when I called
16 Mother, she told me Maggie was back, and I didn't
17 realize that John was in the living room with her
18 and he started yelling about, don't tell her that.
19 So --

20 Q. Can you give me a time frame for that?

21 A. Probably two weeks ago. He didn't want us
22 to know. So I think Miss Maggie being gone, it's
23 definitely better.

24 Q. And how has that helped?

25 A. Because I think, well, Maggie was just --

1 I'd say in the summer of 2010 she screamed and
2 yelled at Alice and me on one of our trips down
3 there was just, it was crazy, and I just think she
4 overstepped her boundaries and I just didn't think
5 it was good idea for her to be there.

6 Q. Okay. And on the occasion that you referred
7 to her screaming and yelling at you and Alice, was
8 your mother present?

9 A. Yes, she was, and Mother did not understand
10 what was going on. I certainly didn't, and Alice
11 didn't. We had just come back from lunch. We had
12 taken Mother out for lunch and we were bringing her
13 back and Alice and I are getting ready to head back
14 to Greensboro and just out of nowhere she started
15 yelling at us that we never came down to see our
16 father, that -- and we should have moved down to
17 Myrtle Beach with our families to take care of my
18 92-year-old father, and that John --

19 MR. BRITTAIN: I'm going to object to
20 relevance of this testimony.

21 THE COURT: Sustained.

22 BY MS. MOORE:

23 Q. Without going any further into that, getting
24 back to your mother's current living and
25 arrangements for her care, what concerns would you

1 have at this point as to those arrangements?

2 A. Well, I hate the fact that she keeps telling
3 me she's broke and she can't afford to do anything
4 and they may have to let the help go. I don't
5 think -- you know, my father didn't leave her like
6 that, and he wants her -- I am sure he would want
7 her to have whatever things that she wants. And I
8 don't think she's able to go out and do as much as
9 she would like.

10 Q. Okay. Do you believe she's capable of going
11 out and doing more?

12 A. I think she's capable of it.

13 Q. All right. Do you believe that she needs
14 full- time inhouse care?

15 A. No, probably not.

16 Q. Okay. As far as the care that's being
17 provided at this point, care during the week and
18 then care around the clock on the weekend, you
19 believe that's sufficient to address your mother's
20 needs at this point?

21 A. I do.

22 Q. Have you met her current caregivers?

23 A. I haven't met Pam but I have met Debbie.

24 Q. Debbie has been hired for quite some time;
25 is that correct?

1 A. Couple of years.

2 Q. Okay. Do you believe that Debbie is
3 providing adequate care as far as your mother is
4 concerned?

5 A. I do. I think Debbie would like to do more
6 with her but I think John cut off the purse strings
7 so I don't know that -- there were a couple of
8 weeks last summer that she was going and doing and
9 having a ball but I think John -- she told me John
10 said they couldn't afford to do that anymore.

11 Q. Now, as far as -- once again, I'm getting
12 back to your comment about you think it's adequate.
13 What is it about her standard of care as far as her
14 living arrangements that you don't believe are up
15 to what you would consider your standard?

16 A. Well, I mean, it's a beach house and it
17 probably wasn't originally meant for year-round
18 living and I don't believe her side of the house
19 has hot water but she showers on the other side so
20 I think it's adequate.

21 Q. Okay. And you understand your mother does
22 wish to stay in that house?

23 A. I understand that and nobody is wanting to
24 take her out of it.

25 Q. Do you believe it's in her best interests at

1 this point to remain living in the house?

2 A. I do.

3 Q. And at this point, do you believe it's in
4 her best interests for John to be responsible for
5 her day-to-day care and medical decisions?

6 A. I do but I really worry because he's made it
7 very difficult for us to want to be down there and
8 be able to visit with her. So I worry about moving
9 forward.

10 Q. Okay. In the past year, though, have you
11 actually tried to come visit your mother in person?

12 A. No. We haven't felt like that would be
13 something we could do.

14 Q. Okay. Have you actually discussed that with
15 your mother as far as --

16 A. No.

17 Q. -- potential plans?

18 A. No. I've -- my sister and I have discussed
19 it and, in fact, I wanted to just drive down here
20 one day not too long ago just to give her a hug but
21 I just couldn't do it.

22 MS. MOORE: That's all the questions I
23 have, Your Honor.

24 THE COURT: Okay.

25 MR. McCRACKIN: I just have one on --

1 redirect, Your Honor.

2 RE-DIRECT EXAMINATION

3 BY MR. McCRACKIN:

4 Q. Emily, what happens if Miss Dockery runs out
5 of money?

6 A. Well, that's a huge concern I have, is that
7 not knowing her finances, and knowing how the money
8 has being blown through, that I worry that my
9 husband and I and Alice and Britt will have to take
10 her of her. It will be something that we hadn't
11 planned for.

12 MR. McCRACKIN: Thank you. Nothing
13 further, Your Honor.

14 THE COURT: Anything else,
15 Mr. Brittain?

16 MR. BRITTAIN: No.

17 THE COURT: Thank you. You may step
18 down, ma'am.

19 Mr. McCrackin.

20 MR. McCRACKIN: May it please the Court
21 and I'll call Alice Preyer.

22 THE COURT: Miss Preyer?

23 ALICE PREYER, being first duly sworn,
24 testified as follows:

25 DIRECT EXAMINATION

1 BY MR. McCrackin:

2 Q. Miss Preyer, please state your full name for
3 the record.

4 A. I am Alice Halder Dockery Preyer. Thanks.

5 Q. Miss Preyer, if you will, and obviously this
6 is upsetting to you, but will you please tell the
7 Court why you brought this action?

8 A. Well, just like my sister said, every phone
9 call conversation we had with our mother was the
10 fact that she was broke, and that was extremely
11 upsetting, not having any idea of her finances.
12 And understanding what it would be like to be
13 elderly and where is your next dime coming from.
14 And this is very hard thing to do. But I know
15 right from wrong, and like Emily said, we pursued
16 this. It's been very difficult but I was trying to
17 protect my mother.

18 Q. And can you describe for the Court your
19 mother's physical and mental limitations as you've
20 observed them?

21 A. Well, I think on the surface when you talk
22 to her, if you don't go any deeper, you think that
23 she may know what she's talking about. But if
24 you've learned the facts, just like she said she
25 paid for Emily's daughter to go to St. Mary's and

1 she paid for that, when Emily's daughter didn't go
2 to St. Mary's and she didn't pay for her to go to
3 college. I mean, on the surface, if you just talk
4 to her, you may think she knows what she's talking
5 about, but when you delve further, if you try to
6 match up what she says with the fact, you would
7 find that it's just not true.

8 Q. Okay. Has it been your experience and over
9 time that she says things that don't make sense?

10 A. Yes.

11 Q. And as far as her physical situation, does
12 she have physical limitations as well?

13 A. Oh, yes. I mean, she does. It's hard to
14 get around. As you can see, it takes several
15 people to move her and she definitely needs someone
16 with her.

17 Q. Do you think your mother is capable of
18 managing her financial affairs?

19 A. No, absolutely not.

20 Q. Okay. Do you think she's capable of living
21 without assistance?

22 A. No.

23 Q. And what level of assistance does she need
24 for her daily activities? For example, bathing,
25 does she --

1 A. Well, I think she needs someone to help her.
2 I don't see how in the world she could get in the
3 shower by herself.

4 Q. She need help dressing?

5 A. Yes.

6 Q. Does she need help preparing meals?

7 A. Yes.

8 Q. Does she need help walking?

9 A. Yes.

10 Q. And at this time, is she receiving care in
11 her home?

12 A. Yes.

13 Q. For all of those things?

14 A. Yes.

15 Q. I asked your sister a minute ago what
16 happens if your mother runs out of money. What do
17 you think happens if Mom runs out of money? Who's
18 going to take care of her?

19 A. Well, I mean, the children would. We would.
20 We would do what we had to do.

21 Q. And is that the reason you brought this
22 action?

23 A. The reason I brought this action is because
24 I wanted my mother to enjoy her money and to do
25 what she wanted to do and knew that my father would

1 want that, and that would want her to do. If she
2 wanted to go to Talbot's or T.J. Maxx or SteinMart
3 to buy something or take ladies to the Dunes Club,
4 that she could do it, but she told me in the phone
5 conversation within the last couple of years that
6 she saw a steak at Food Lion and it was \$5 and that
7 she didn't have the money to buy it.
8 And that was like a knife in my heart being
9 twisted.

10 Q. I asked your sister whether or not you tried
11 to obtain any financial information from your
12 brother.

13 A. Oh, yes, repeatedly.

14 Q. And were you able to--

15 A. Never.

16 Q. -- get any?

17 A. Can't get it in a company that we even own
18 20 percent each in without a lawsuit.

19 Q. Has he ever expressed a reason why he
20 wouldn't share that information with you?

21 A. No, I don't read bulging things --

22 MR. BRITTAIN: Here again, Your Honor,
23 move -- let me object. This doesn't have
24 anything to do with capacity issue. She's
25 talking about Ms. Preyer and Mr. Dockery's

1 problems..

2 MR. McCrackin: I will move on, Your
3 Honor..

4 THE COURT: Thank you, Mr. McCrackin.

5 BY MR. McCrackin:

6 Q. Is there anything else that you want the
7 Court to be aware of in regard to your mother's
8 capacity?

9 A. Well, just like Emily said, this was all
10 done to protect my mother, to find out where her
11 assets were, to let her have what she wanted. If
12 she wanted to do something, that she could do it
13 and buy it. I know how fun it is to be able to do
14 something, to not think -- if you think you don't
15 have any money, it certainly is a very, very
16 difficult situation.. And life is hard and I knew
17 that she did have assets, and I also hated that my
18 father was being disparaged by saying he hadn't
19 left her anything when he had left her very well
20 off.

21 MR. McCrackin: I don't have any
22 further questions for you. Please answer
23 any questions Mr. Brittain or any of the
24 other counsel may have.

25 THE WITNESS: Thank you.

1 CROSS EXAMINATION

2 BY MR. BRITTAIN:

3 Q. If, if -- This would be a hypothetical
4 question -- If your mother was getting the money
5 that she wanted and needed, then would you have any
6 problem with her current arrangement?

7 A. No. If she had someone that would sit there
8 and say Mom, now, you've got \$5,000 sitting here,
9 what would you like to do? Would you like to go to
10 SteinMart today? No, I think that'd be fantastic.

11 Q. So we're down to that issue really being the
12 one thing that bothers you is whether or not she's
13 -- has adequate access to her own money and gets
14 to do what she wants to with it and if there's
15 enough of it there.

16 A. Well, yes. I mean, if -- you may tell me
17 this isn't the time to say it but it goes back to
18 when we had the problem with her teeth. I know
19 that she didn't -- she knew she didn't have the
20 money. And then she was desperate and so we got
21 her to Greensboro and got all that worked out, but
22 unfortunately, they were all lost so the end of
23 that and we had to start over again.

24 Q. But if, if it was such that she had access
25 to her funds, and had plenty of funds and could use

1 them like she wanted to, then you wouldn't be
2 bringing this action.

3 **A.** Not if she had been told what she had and
4 had someone that was taking care of it and it
5 wasn't doing their interests, that it was her
6 interests, but that's not the situation.

7 **Q.** Do you have -- did they show you -- I may
8 have left it up there. Here. Let me show you. I
9 won't take you through this. Look at this. That's
10 Exhibit Number 1. And were you involved in
11 creating that document and having Mr. McCrackin
12 send it?

13 **A.** Well, again, I'm going to say I thought you
14 were the one that had that about the children all
15 being treated equally. That was my thing. This
16 was, I think, done in a hurry but no, I definitely
17 think my husband had had, until you asked him to
18 send the stocks to another broker, those were 30
19 plus years. No, he's qualified.

20 **Q.** Well, I'm not suggesting that.

21 **A.** And as Emily said, it would save her money.
22 We don't want Mother to have to spend a dime on
23 something like that.

24 **Q.** There seems to be some family problems with
25 your family.

1 A. Well, what do you mean?

2 Q. Well --

3 A. Other than this?

4 Q. Well, we've got a lawsuit in here where the
5 two daughters are on one side and a son and a
6 mother on the other.

7 A. Well, now, one thing I want to say about
8 that too. I want the Court to know we are two
9 separate people. Emily and I don't agree on
10 politics; we don't agree on how you make a chicken
11 pot pie.

12 Q. Well, that's fine.

13 A. But we have two brains and we are two
14 separate people who do two separate things, and we
15 are two of three children and we did this. We are
16 not banded together as one with one brain.

17 Q. Okay. Well, were you -- did you participate
18 in that document, the creation of that document?

19 A. Yes. I said I did. Yes.

20 Q. You were aware of what its terms were, and
21 authorized it to be proposed as a --

22 A. We did. We were to get a settlement. We're
23 trying to move forward on this. We don't want to
24 spend our life doing this.

25 Q. All right. Have you had an opportunity to

1 do any of the caring for your mother, the bathing
2 her and all that sort of thing on any kind of
3 consistent basis? Have you been down here more
4 than your sister?

5 A. No. We started coming together but Mother
6 was coming to Greensboro for actually a good year
7 and a half. We had a ball, and partly when she was
8 doing her teeth with her dentist in Greensboro, and
9 yes, I got her in the shower in the morning and
10 breakfast, lunch, dinner. Yes, we had a delightful
11 time, but unfortunately, once she had her fall, she
12 wasn't allowed to come anymore.

13 Q. Wouldn't you agree with me that she still is
14 very capable of making many decisions and engaging
15 in delightful conversation?

16 A. Yes, um-hum, she enjoys that.

17 Q. On many occasions, she is known to tell you
18 exactly what she thinks, is she not?

19 A. Well, of course. I'm her daughter.

20 Q. Well, it's -- I will just let you know she
21 does the same thing with her lawyer.

22 A. Um-hum.

23 Q. So it's not a question that she's not
24 capable of making some decision and having
25 conversations on her own, right?

1 A.: Well, I mean, we had a hard time getting her
2 to make a decision on her food at the K&W, but you
3 know, so, you know, she's going to say what she
4 thinks but I just feel like that at some point when
5 you become vulnerable, and to me she's been
6 exploited.

7 Q.: But she can communicate.

8 A.: She can -- yeah.. We have delightful
9 conversations.

10 MR. BRITTAIN: Okay. Thank you. No.
11 further questions.

12 MR. MONCKTON: No questions, Your
13 Honor.

14 THE COURT: Thank you. Ms Moore.

15 MS. MOORE: Just a few questions, Your
16 Honor.

17 CROSS EXAMINATION

18 BY MS. MOORE:

19 Q. To make sure I understand, when you said
20 you'd been traveling down here with your sister
21 Emily --

22 A. Um-hum.

23 Q. -- were those the only times that you would
24 come visit your mother?

25 A. Well, gosh, I mean, we're talking about --

1 I've been married 35 years so we've been --

2 Q. I mean over the last two, three years.

3 A. Yeah, well, our kids are older. I mean, I
4 have one that was 30 and he just got married. And
5 so, you know, yes, the kids weren't able to come
6 down here anymore. They -- it's hard, you know,
7 jobs, school, da, da, da, so Emily and I came
8 together. Frankly, we felt -- we were, frankly,
9 just uncomfortable by ourselves being around John.
10 I'm scared of John and we were uncomfortable and so
11 we came together. We shared gas. You know, we're
12 best friends.

13 Q. Okay. And as Emily indicated, she's not
14 been down in the past year, is that also true for
15 you?

16 A. No. Once we did this. You know, we blew
17 the family up so we didn't have any choice. We
18 were not able to come down and stay in our home
19 anymore with our mother.

20 Q. Have you been able to maintain contact with
21 her by telephone?

22 A. Oh, yes, all the time. I was greatly
23 disappointed that she wasn't allowed to come to my
24 son's wedding. That was really stressful and
25 disappointing, and I know she wanted to be here.

1 They were married in St. Mary's chapel where my
2 mother and father were married in 1948, so it was a
3 very special moment. And I knew Mother wanted to
4 be there but it would have taken a lot to
5 orchestrate it. She would have needed some
6 clothes and Emily and I are unable to do that
7 anymore. We are not in charge.

8 Q. As far as communication with her, do you
9 speak to her on a regular basis?

10 A. I do, but like she said, I have another son
11 getting married in about three weeks so I've had a
12 lot going on, but we talk a lot. We do. She's
13 told me to drop this ridiculous lawsuit because she
14 didn't understand what it was about, and I tried to
15 explain that and it's been very difficult. But she
16 says, I just don't believe you, so, you know.

17 Q. In your communications with her over the
18 past year, do you -- have you noticed anything as
19 far as her capacity?

20 A. Well, my son had an unsettling conversation
21 with her, my 23-year-old.

22 Q. I'm asking for any conversation you've had.

23 A. Yeah, me. No, he was just telling me she --
24 well, you know, just when you try to explain things
25 to her, she just doesn't understand. And trying to

1 explain what -- trying to explain what this was all
2 about, trying to explain to her things that Dad had
3 done, you know, that Dad had left her well off.

4 Q. Has her capacity improved or stayed the same
5 since this action started?

6 A. Well, I think it goes back to the fact that
7 if you don't know that something is factual when
8 someone says something like oh, yeah, I wrote those
9 bills or I wrote those letters. Well, if you don't
10 physically see them, you don't put one and one
11 together to get the outcome that you don't really
12 know, you know, that what she says is not backed up
13 by fact. In her mind she'd love to be doing that.

14 Q. And she certainly is very good at
15 conversation. Would you agree with that?

16 A. Oh, yeah, yeah. She adores to be around
17 people. Everyone loves her.

18 Q. As far as any financial matters, has your
19 mom provided you with any financial assistance in,
20 say, the last 20 years?

21 A. Never. Birthday check.

22 Q. And has she provided you with any financial
23 assistance to help you put your children through
24 school?

25 A. Absolutely not.

1 Q. As far as the guardianship is concerned, are
2 you satisfied with John's serving as guardian? Do
3 you see any problem with --

4 A. You know, Lee, I do, but you know, we got a
5 whole lot of things to figure out, and Mother,
6 would never want to take her out of her room. She
7 adores her cats, her home, you know. She loves all
8 that, and absolutely not, but just trying to find
9 the best solution, just trying to move forward and
10 what would be the best.

11 Q. Do you believe as long as she has the
12 caregivers as she has now, one that comes during
13 the week, week time, day, and on the weekend around
14 the clock, you feel that's sufficient to meet her
15 needs at this point?

16 A. I do. I think she's all right at night. I
17 know when she spent the night at my house, I didn't
18 have any problems. She slept through the night and
19 it wasn't a problem. And as long as John's in the
20 house, but you know, in the middle of the night,
21 so, you know, as long as he's there. I definitely
22 don't think she should be by herself.

23 Q. Have you been privy to any decision-making
24 that she may have had to make relative to medical
25 care?

1 A. No. That's hard too. I think you have
2 three children, I certainly -- my family's that
3 way.

4 Q. And so have you ever had any conversations
5 with your mom over the last couple of years as far
6 as her medical care is concerned?

7 A. Well, I think we were very worried about the
8 second shunt being put in and very worried was that
9 the right thing to do. I did speak to Dr. Giddens
10 in the hallway one day, you know --

11 Q. Well, what I'm looking for is conversations
12 with your mother.

13 A. No. We weren't allowed to make any
14 decisions. I know she was worried about that
15 operation too, very, very worried.

16 Q. But as far as her current medical care is
17 concerned, do you have any reason to believe that
18 she's not receiving the level of care that she
19 needs right now?

20 A. Yeah, I don't know how much she has but I --
21 you know, I hope she's receiving what she needs. I
22 hope they're still going back to the dentist
23 because I know that's incredibly important for your
24 overall health.

25 Q. I understand but what I'm asking is do you

1 have anything --

2 A. I do not.

3 MS. MOORE: Okay. That's all the
4 questions I have.

5 THE COURT: Okay. Anything else,
6 Mr. McCrackin?

7 MR. MCCRACKIN: No, Your Honor.

8 THE COURT: Thank you. Mr. McCrackin?

9 MR. MCCRACKIN: Your Honor, we have
10 TeAnne Ohler coming this afternoon. She's
11 subpoenaed at 2:00. I don't have any other
12 witnesses at this time, although I would ask
13 Your Honor for a little indulgence to recall
14 Miss Dockery for just one further question.

15 MR. BRITTAIN: I object. I object to
16 any further recall. He had a chance. Miss
17 Dockery's 87 years old. No reason to put
18 her back on the witness stand.

19 MR. MCCRACKIN: It's directly related
20 to part of Mr. Brittain's cross-examination
21 of Miss Carlson related to her not getting
22 anything under the will, so it's really
23 giving a response to his cross-examination
24 of Miss Carlson. Just one question, I
25 promise, Your Honor. I don't need to move

In The Matter Of:
In Re
Emily Cheshire Dockery

Hearing
July 6, 2012

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1 LEONARD GOLDSCHMIDT, JD, PSY.D.,
2 being first duly sworn, testified as follows:

3 THE COURT: I'm sorry. You have to be
4 careful with that microphone. Thank you.

5 EXAMINATION

6 BY MR. MCCRACKIN:

7 Q. Thank you. Good morning, Dr.
8 Goldschmidt. You have previously testified in this
9 matter?

10 A. Yes, I have.

11 Q. In a deposition?

12 A. Yes, I have.

13 Q. I will not be going back into your
14 initial reports that are part of the deposition
15 record with you. I do want to go into any reports
16 that you've given.

17 Before we do that, can you please give
18 the Court the benefit of your educational
19 background, certifications, and work experience?

20 A. Yes. I am a doctor of clinical
21 psychology with specializations in clinical
22 neuropsychology and forensic psychology, as well as
23 I have JD. I have a law degree.

24 I work primarily at my office privately
25 seeing patients who have dementia and brain injuries

6

1 and other types of cerebral neuropathologies that
2 impact functional status for appropriate diagnosis
3 of disease processes as well as treatment planning.

4 In addition to that, I'm highly
5 involved in medical preclearance of surgical
6 implantations and I do lot of forensic evaluations
7 for the medical examinations for workers'
8 compensation cases, probate cases, and general
9 medical/legal consultation.

10 Q. And, Doctor, what does neuropsychology
11 and clinical psychology refer to?

12 A. Neuropsychology is the science that
13 studies brain behavior relationships. Clinical
14 psychology is related to clinical healthcare.

15 Q. And are both of those fields accepted
16 sciences?

17 A. Yes, they are.

18 Q. Are they're standards that govern those
19 practices?

20 A. Yes, there are.

21 Q. Can you tell the Court what standards
22 govern that practice?

23 A. I would love to, unfortunately, that
24 would take quite a while.

25 Q. Can you give us a flavor?

1 A. The practice of clinical
2 neuropsychology involves the utilization of clinical
3 skills and experience and interviews to gather
4 information about a patient, to put that together
5 with convergent data from objective testing that has
6 been scientifically validated to make decisions
7 regarding different types of questions depending on
8 what's being asked, whether that be differential at
9 a diagnosis capacity in terms of a person's capacity
10 to do certain behaviors, and ability to function and
11 do certain things in the real world.

12 Q. The testing that you all use in the
13 practice, is that testing that you all come up with,
14 or is there some governing body that provides the
15 testing?

16 A. No governing body. When you say, you
17 all, I suspect you mean me personally?

18 Q. Yes.

19 A. The answer is no. I don't come up with
20 any of the techniques that I use. I don't have any
21 of the techniques I've used that I can claim fame
22 to.

23 These are all techniques that have been
24 utilized over the years in clinical practice as an
25 accepted part of clinical neuropsychological

8

1 evaluation.

2 The tests themselves are made up by a
3 group of scientists that come together that create a
4 test to norm them through research and to validate
5 them through research so that they have appropriate
6 validity and reliability regarding real-world
7 functionality.

8 Q. These tests are peer reviewed and --

9 A. They are peer reviewed and are subject
10 to research on a regular basis for update.

11 Q. Have you testified previously as a
12 neuropsychologist or clinical psychologist?

13 A. I've testified as a neuropsychologist,
14 clinical psychologist, and as a forensic
15 psychologist.

16 Q. Were you qualified as an expert in
17 those cases?

18 A. I've been qualified in each of those
19 areas to testify as an expert witness, yes.

20 Q. Approximately, how many times have you
21 been qualified to testify as an expert in
22 neuropsychology or clinical psychology or forensic
23 psychology?

24 A. There's different answers to that
25 question. Regarding probate cases, I've done

1 probably 30 to 40 cases where I've either been
2 involved in some form, whether it be through
3 deposition, or through actual courtroom testimony.

4 However, I've also been involved in a
5 number of others cases, both in civil litigation,
6 workmen's compensation issues, testified before the
7 Workmen's Compensation Commission, as well as
8 criminal court. I don't have an exact number, but
9 over 150 cases.

10 Q. Plaintiff's Exhibits 9 and 10. 9, I
11 believe, is your CV; is that correct?

12 A. My curriculum vitae, yes.

13 Q. And 10 is a report that you issued
14 based on the recent evaluation of Ms. Dockery?

15 A. Yes, that is.

16 MR. MCCRACKIN: Your Honor, I move both
17 of those exhibits be entered into evidence.

18 THE COURT: I understand there's no
19 objection?

20 MR. BRITTAIN: You know, the general
21 issue about whether this is valid approach or not.
22 No objection to the document.

23 THE COURT: Thank you. The Court will
24 admit Number 9 and 10 into evidence.

25 MR. MCCRACKIN: Your Honor, I move at

10

1 this time to have Dr. Goldschmidt qualified as an
2 expert in neuropsychology and to have him testify as
3 an expert in that area.

4 MR. BRITTAIN: We object. The proper
5 foundation has not been made to him testifying
6 concerning this matter. We object to that
7 qualification.

8 THE COURT: Mr. McCrackin?

9 MR. MCCRACKIN: We've certainly shown
10 sufficient background training and history of
11 practicing in this particular area. He's described
12 the science that he's involved with and how that
13 science is developed. I think he's clearly an
14 expert in this area.

15 THE COURT: Mr. Brittain?

16 MR. BRITTAIN: Your Honor, there's no
17 governing body here. We are dealing with a very
18 complicated issue. He admitted himself that if you
19 look at the Jones case and Dockery case, there are
20 certain areas -- he's a clinical psychologist and
21 one of the best. No question about that. We're not
22 talking about clinical psychology here.

23 This application of what he's
24 testifying to, for this circumstance, as far as I'm
25 concerned, has not been peer reviewed. He's the

1 only person who testified about it. No peer review
2 showings here for this type of an application for a
3 lady of her age.

4 We don't believe the proper foundation
5 has been laid. This is for the Court to determine.
6 Everybody's got a duty to their job to prove it.

7 I think you should reserve the
8 decision. We have the tests that he gave that he
9 required a court order to give us for you to review.
10 So you can make a determination about it.

11 Keep in mind, his own testimony said
12 there's no governing body here. We have the
13 American Medical Association for our witness. And
14 these are longstanding regulatory agencies and
15 institutions that don't apply here. And so we
16 object.

17 THE COURT: Mr. McCrackin?

18 MR. MCCRACKIN: Your Honor, there are
19 several cases, there's no question that
20 neuropsychology is a recognized science.

21 Here are numerous cases from South
22 Carolina in which neuropsychologists have testified.

23 THE COURT: Did you provide these to --

24 MR. MCCRACKIN: I will, Your Honor.

25 All of these cases, Your Honor, deal with the

12

1 qualifications of neuropsychologists and the
2 testimony of neuropsychologists and experts in cases
3 in South Carolina.

4 I don't think there's any question that
5 neuropsychology is a valid science. And Dr.
6 Goldschmidt has laid the proper foundation to be
7 qualified as an expert in that area.

8 MR. BRITTAIN: Your Honor, the first
9 one deals with an automotive consultant that
10 qualified as an expert witness and testified as to
11 the concept of retail value of a used pickup truck,
12 bears action. That's the first case. I don't think
13 it's applicable.

14 THE COURT: Is that Austin?

15 MR. BRITTAIN: Austin. The second one,
16 just from a first glance, requires -- applies
17 strictly to criminal law. I also do not believe
18 it's applicable to the circumstances we're facing.
19 So does the third, which would be Vasquez. So does
20 the fourth, which would be Counsel versus the State.

21 The next one appears to be an appeal of
22 the Austin case. And let me look at that briefly.
23 That involves an automobile collision. Eagle Motor
24 Lines. Involves an impairment based on a workers'
25 compensation claim and an injury.

1 We're talking about assault and battery
2 in the Malin Lane case.

3 It's going to take me a minute to read
4 through the Jane Doe versus Northwestern Mutual Life
5 Insurance Company.

6 MR. MCCRACKIN: I would draw your
7 attention to the Means case, which really deals with
8 the importance of neuropsychology as a science and
9 how members of the scientific community rely on
10 neuropsychologists.

11 It's interesting, in this particular
12 case that we're in, Your Honor, that neurologists
13 routinely have admitted in deposition, refers folks
14 to the neuropsychologist and has referred patients
15 to Dr. Goldschmidt in the past.

16 Again, I don't think, based on the
17 Means case alone, that there's any question that
18 neuropsychology is a valid science. And Dr.
19 Goldschmidt has laid the proper foundation to be
20 qualified as an expert in that area.

21 MR. BRITTAIN: What you're going to
22 find in the Means case is that there are -- first
23 start off talking about how you, the Court, in your
24 fact finding to really examine what's being
25 accomplished and what's being applied.

14

1 There was a real battle here with Randy
2 Waid, Dr. Waid and his application of his science to
3 the facts and circumstances..

4 It's not a simple matter, in my
5 opinion, to say Means comes down in one place or the
6 other. In fact, the underlying court, as I
7 understand it, has excluded.

8 This is an issue, this is not some
9 obscure objection. You know, they talk about the
10 evaluative process. How long it took.

11 I've just been handed something from
12 Mr. McCrackin. They've had Ms. Dockery in there for
13 13 days.

14 These are -- when a science is under
15 some sort of -- they are questioned about it, and
16 legitimate legal questions about it in all of the
17 cases that we're reviewing, then the court has to
18 look at all the circumstances around the testing,
19 the manner of the testing, the age of the person,
20 any consideration he did or didn't give, or did they
21 leave her alone, do it himself, or did he have his
22 people do it?

23 All of these are -- that's in the
24 deposition. We don't need to go through that today.

25 THE COURT: Mr. Brittain, doesn't that

1 go to the weight I give his testimony?

2 MR. BRITTAIN: It would. I wouldn't
3 concede that he's an expert for purposes of the
4 testimony that he is going to render under these
5 circumstances and in which capacity.

6 I don't believe these cases in any way
7 establish this as a proper procedure for determining
8 the incapacity of an elderly person. I don't think
9 you'll find that in any of these cases.

10 Where we see these cases, these
11 applications are in when there is significant brain
12 injury and resulting diminution of function.

13 I haven't seen one yet. I'll ask the
14 Court to review it. This is something you can
15 reserve and decide. I'm not conceding, based on any
16 of the cases I've been handed or any application of
17 what Dr. Goldschmidt did here, to Ms. Dockery's
18 situation.

19 THE COURT: Mr. McCrackin?

20 MR. MCCRACKIN: There is evidence of
21 brain injury in this case.

22 THE COURT: I'll be happy to take this
23 issue under consideration and allow Mr. McCrackin to
24 proffer his testimony, and the Court will decide
25 whether he's qualified as an expert.

16

1 Without looking at these cases, I'd
2 like to have an opportunity to do that. But I'll
3 reserve any rulings on that and allow the testimony
4 to come in at this time.

5 MR. MCCRACKIN: Thank you, Your Honor.

6 BY MR. MCCRACKIN:

7 - Q. Dr. Goldschmidt, I want to ask you
8 about some of the tests that you administered as
9 part of your evaluation.

10 Can you give me a sampling of some of
11 those tests that you gave to Ms. Dockery?

12 A. I can give a sampling of that. The
13 evaluation I do is a little bit more extensive than
14 average because I'm doing more than one issue here.

15 I was dealing with the issue of
16 neuropsychological evaluations due to the initial
17 evaluation being for purposes of diagnostics and
18 treatment planning, but also as a clinical
19 psychologist, also as forensic psychologist.

20 Each of those have specific processes
21 that we go by in terms of making decisions, because
22 I'm a little bit of an unusual individual here
23 because I've got specialties in more than one area.
24 I'm utilizing all three of these areas and putting
25 them together and making my decisions.

1 The evaluation is essentially -- the
2 initial part of the evaluation is a history taken,
3 by which information is gleaned from asking
4 questions of either the individual, who is the
5 patient, and anyone who is present in the room with
6 appropriate consent or legal reason.

7 So family members, for example, are
8 often included in the room for evaluation in terms
9 of the interview.

10 In addition to that, the medical
11 history gathering, there's also a history gathering
12 of social history, family history, emotional
13 history, mental health history as well.

14 During that evaluation, I also do a
15 brief neuro-behavioral examination, which includes
16 examination of reflexes. That gives me an idea of
17 whether or not a person does or not does not have
18 specific types of brain injury, and how severe.

19 In addition to the process, there's the
20 review of medical records that have been supplied in
21 the cases. Where they are not supplied, we make
22 requests for those medicals records.

23 The next part of the evaluation is
24 actually an application of standardized test
25 procedures that are procedures that are used on a

18

1 regular basis to evaluate patients, which can
2 include things such as IQ testing,
3 neuropsychological evaluation, as well as clinical
4 forensic psychological evaluations.

5 There are things like the Wechsler
6 Intelligence Scale that ask a number of questions
7 ranging from a person's capacity for verbal capacity
8 and verbal skill, comprehension, digit span,
9 attentional questions, or tasks that require
10 attention and visual spacial functioning as well.

11 Things such as being able to design
12 things by putting them together in terms of putting
13 blocks together. Red and white blocks that people
14 talk about in the IQ testing. Complete a whole
15 picture that they are showing.

16 Comprehension questions involving what
17 would be appropriate under certain circumstance, why
18 are certain things necessary? For example, why are
19 income taxes required? I can't go through each and
20 every test. They have multiple items to them.

21 In addition to the Wechsler Intelligent
22 Scale, we also use measures of executive
23 functioning. They are involved in planning,
24 organization, and general problem solving.

25 We're looking the attentional

1 functioning, memory functions. An example of a
2 memory test, one of many, which is called the
3 Supraspan Memory Learning Test, in which an
4 individual is given a list of 16 words to remember
5 and asked to repeat them back.

6 And then we measure the words a person
7 is able to read back. Then given that same list
8 again and again. Read it back again and again for
9 five times to see what their ability to learn is, in
10 fact.

11 We're looking at recognition as well as
12 recall. Each of those effected separately in
13 different types of cerebral pathologies or
14 dementias.

15 We look at visual spacial functions by
16 having people draw or copy a design and then also to
17 recall them to some extent from memory testing as
18 well.

19 We look at their ability for
20 understanding -- for putting together an entire
21 picture of what they are seeing. Turn that into a
22 manual output and putting it on the paper.

23 I can keep going for quite a while.

24 Q. Those are standardized tests?

25 A. These are standardized norm tests that

20

1 have been peer reviewed and are frequently used in
2 forensic and clinical and neuropsychological cases.

3 Q. And the results of these tests, how do
4 you interpret them?

5 A. Well, there's several steps. First, of
6 course, is the scoring of the specific tests.

7 Q. How does the scoring work?

8 A. The scoring is a standard scoring. For
9 example, on the verbal learning test, I use an
10 example, 16 words that are given. We simply know
11 how many words a person was able to repeat back.

12 Those are plugged into a formula that
13 tells us what percentile of people at a certain age
14 bracket and certain level of education will perform
15 within that level.

16 Q. Let me stop you there for a second.

17 Does that mean that you would compare
18 Ms. Dockery's results with other 87 year olds?

19 A. Depending on the test, we would be
20 comparing Ms. Dockery's functional results with the
21 functional results of other people in an age bracket
22 and within the educational bracket.

23 So it may not be specifically 87 year
24 olds. It may be 85 through 89 year olds. The
25 normal procedures found that there's a limit to how

1 much standard error of measurement there is with any
2 age bracket.

3 That's how the age brackets are
4 determined... They don't allow certain measurements
5 before they will create a new bracket.

6 Q. That is an attempt to take into account
7 the fact that perhaps an 87 year old would not do as
8 well as someone who's 67 years old?

9 A. Absolutely. It takes into account the
10 age-related changes that occur as people move on
11 through life.

12 Q. Can you tell the Court why it is
13 important that we go through such an extensive
14 battery of tests as opposed to just having a
15 conversation with somebody?

16 A. Well, there's several reasons for that.
17 Ms. Dockery's case is especially poignant.

18 In general, when we're dealing with an
19 evaluation of this situation, when we're looking at
20 issues -- initial evaluation was done for diagnostic
21 purposes.

22 When looking at diagnostic purposes, we
23 apply a standard set of tests to get a strong varied
24 background of what a person's functional status is.

25 The brain is a very complex organ. It

22

1 impacts our emotions, it impacts our decision
2 making, it impacts everything that we actually do.

3 And because of that we try to get a
4 relatively -- requires us to get a relatively large
5 sampling of behaviors. Even then we're only getting
6 the limitations of that time that we're spending
7 with the patient.

8 It seems like a lot. In actuality,
9 we're talking relatively small samples of people's
10 behavior. When we're dealing with things that are
11 important like diagnostic procedures, there's a
12 certain amount of validity that is required to be
13 able to make those decisions because there's some
14 different types of pathology and they present in
15 varied ways in terms of how memory loss occurs, in
16 terms of how behavioral dyscontrol occurs, in terms
17 of how executive functioning, planning and
18 organization occur. It requires that many areas of
19 sampling.

20 But in Ms. Dockery's case, after the
21 diagnostics, I had an idea of what was going on.
22 Then I was asked to do a forensic evaluation.

23 Not only asked to do a forensic
24 evaluation, I was also asked to -- told there was a
25 change in circumstance. So I had to take into

1 consideration the change in circumstance.

2 Normally I don't repeat evaluations so
3 quickly. However, I was told that she had a urinary
4 tract infection and that her functional status has
5 dramatically improved. Because of the importance of
6 the question at hand, being this legal issue, and
7 also the diagnostic issues, it was decided to
8 reevaluate.

9 And then finally, the final evaluation
10 was done because there as a complaint regarding
11 whether or not it was valid based on issues of her
12 being able to hear and the extensive length of time
13 that occurred.

14 Actually, in Ms. Dockery's case we gave
15 her more time than the average patient because of
16 her advanced age and because of her -- the
17 possibility that she would be fatigued.

18 We shortened her sessions rather than
19 making them lengthier sessions. The average goal of
20 a neuropsychological evaluation in our office is
21 approximately two and a half days.

22 In Ms. Dockery's case we shortened the
23 evaluations so that it occurred over several days.
24 We can see that on one of the evaluations where it
25 took her one, two, three, four, five days to

1 complete.

2 These tests normally people complete in
3 two days in our office. Sometimes we go to three
4 days. Very rarely do we give people as much time as
5 Ms. Dockery. Because she -- whenever she would show
6 up -- and there's evidence that she was being
7 fatigued or uncomfortable, we discontinued
8 evaluation, rest, and come back another day.

9 Q. Dr. Goldschmidt, did Ms. Dockery's
10 attorney originally refer her to you?

11 A. I believe it was Cliff Tall who had
12 contacted me at some point. I feel it was Cliff
13 Tall, JD. He had some concerns from the family
14 regarding possible cognitive difficulties and he
15 asked me to evaluate her.

16 Q. Do other physicians routinely refer
17 patients to you?

18 A. Yes.

19 Q. Has Dr. Benjamin ever referred a
20 patient to you?

21 A. Yes. Several.

22 Q. Approximately how many has Dr. Benjamin
23 referred to you?

24 A. I'd have to refer to my records.
25 Certainly, over a dozen in the 10 years I've been

1 here. I think it's more than that. I don't want to
2 overestimate.

3 Q. Did he ever express any concern about
4 the science of neuropsychology when he was referring
5 patients to you?

6 A. No. Dr. Benjamin routinely used
7 neuropsychologists. As a matter of fact, he had --
8 Dr. Randy Waid in Mount Pleasant was frequently
9 seeing patients out of their office. He had
10 actually had an office within Dr. Benjamin's office.

11 And then when I came into the area,
12 Dr. Waid moved back to Mount Pleasant primarily and
13 I remained here. Dr. Benjamin continued to utilize
14 both myself and Dr. Waid. And I know that simply
15 because I've seen works by Dr. Waid of patients that
16 Dr. Benjamin has sent him as well.

17 Q. Based on your testing of Ms. Dockery,
18 can you tell us to a reasonable degree of
19 neuropsychological certainty whether or not she has
20 capacity?

21 A. Well, my answer is from a
22 neuropsychological standpoint, and a clinical and
23 psychological standpoint, and forensic psychological
24 standpoint. From each of those areas, I do not feel
25 that she has capacity.

1 Q. You have recently re-evaluated her; is
2 that correct?

3 A. Yes, I have.

4 Q. And I think you testified that the
5 reason for the reevaluation was in part due to an
6 allegation that she can't hear?

7 A. There was some concerns regarding her
8 hearing and then other concerns regarding the
9 difficulty of the evaluations that were done prior.

10 Q. Did you take some specific course of
11 action to account for alleged lack of ability to
12 hear?

13 A. Yes, I did. I required several things.
14 One, I required that for her to be evaluated that
15 she have her hearing aids in. Even though she
16 objected to that.

17 On several occasions she actually did
18 not bring them or have them in both ears for testing
19 and for actual evaluation in my office, whether they
20 were eventually brought in. As a matter of fact, we
21 had to reschedule a day partially because of the
22 issue that came up with the hearing aid.

23 In addition to that, I specifically
24 asked her if she could hear me. In this last
25 evaluation it was evident she could hear us fine

1 during the other evaluations. We take precautions
2 for that with every evaluation, because when you're
3 dealing with a geriatric population, you're
4 frequently dealing with people with hearing loss.
5 And not only people with head injuries and
6 dementias, but you never know when someone is having
7 a difficulty that you may not be aware of.

8 That's part of the evaluation in and of
9 itself is to the gross screening for hearing. We're
10 making sure that a person is responding
11 appropriately to questions in a rough gross sense
12 that they could not possibly do if they weren't
13 hearing what we were saying.

14 If a person is evidencing difficulty
15 with that what we do, we try to make every effort to
16 do things such as increase voice volume, make sure
17 hearing aids are in, and ask to repeat.

18 Actually, I asked her to repeat after
19 me what I was saying to her for much of this initial
20 part of the session and this last evaluation.

21 Q. Did you find any evidence that she has
22 difficulty hearing you?

23 A. She has difficulty hearing. That's why
24 she requires a hearing aid. She was very clear in
25 showing that she was able to hear what I was saying

28

1 to her both with and without the hearing aid.

2 Q. This latest evaluation, did you create
3 an audio recording portion of that evaluation?

4 A. I did create an audio recording of a
5 portion of that evaluation.

6 Unfortunately, we attempted to create a
7 total audio transcript of the entire last evaluation
8 in terms of my actual portion of the
9 neuro-behavioral evaluation.

10 Unfortunately, the recorder didn't work
11 initially, so we had to send one of my staff to find
12 another recording device and brought it in right
13 away, as soon as they could find something.

14 MR. BRITTAIN: Object, to the
15 completeness rule. It can only be admissible if all
16 of the examination could be included on the disk.
17 And so any portion of it without including the
18 entirety would be inadmissible under the law.

19 MR. MCCRACKIN: I thought we were in
20 agreement --

21 MR. BRITTAIN: I didn't realize it was
22 only a partial recording of the examination. And
23 only for that reason would I object to it. No other
24 reason.

25 MR. MCCRACKIN: And, Your Honor, I

30

1 first it didn't work, and then there were parts on
2 there.

3 In an abundance of caution, I continue
4 to maintain my objection. I don't want to hide
5 anything from the Court. If the Court wants to
6 listen, that's fine. I'm registering my objection
7 on the record.

8 THE COURT: I'll sustain the objection.
9 You can ask Dr. Goldschmidt to testify.

10 MR. MCCRACKIN: Thank you, Your Honor.

11 BY MR. MCCRACKIN:

12 Q. Your most recent evaluation of Ms.
13 Dockery, did you find any changes from your prior
14 evaluations in regard to her capacity?

15 A. This evaluation was a little different
16 than some of the others.

17 First of all, we try to limit the
18 evaluation as much as possible because we -- I
19 didn't feel it was necessary to put her through
20 several of the tasks that she had already gone
21 through.

22 Instead, what we did is applied a
23 different type of test that is used for people that
24 have problems in either hearing or communicating the
25 CTONI Nonverbal Intelligence, of which results are

1 consistent with previous evaluations, which were
2 consistent more so with the current evaluation of
3 the Wechsler Scales, which is the one which would
4 have the most carryover validity in terms of the
5 criteria in which it's measured.

6 Specifically, the performance area of
7 IQ. And her comprehensive test of nonverbal
8 intelligence was consistent with the Wechsler
9 scores.

10 This is the test -- required test
11 reliance on hearing and verbalization. It's a test
12 that is frequently used for individuals who have
13 these deficits and difficulties.

14 The reason, of course, why we
15 reevaluated with the Wechsler, under the
16 circumstances, was because there was a question as
17 to hearing.

18 This time with hearing aids in,
19 actually what's shown is that over time she has
20 three numbers regarding her Wechsler scores. The
21 Wechsler scores -- I have to review my report for
22 the exact numbers to refresh my memory.

23 But, specifically, in her evaluation of
24 12/20/10 through 1/20/11, her full scale was 84,
25 verbal is 94, and the performance IQ of 73.

32

1 And 8/9/2011, full scale score of 89.
2 Verbal scale of 93. And performance IQ of 85.

3 So we see that there was some degree of
4 performance improvement with verbal IQ relatively
5 the same. And full scale went up just a little bit
6 due to the performance IQ increase.

7 During this last evaluation her full
8 scale IQ was 80. So it showed some decrease over
9 time. And they also see that her verbal
10 comprehension score was an 89, and perceptual
11 reasoning, which was more of the performance IQ, is
12 79.

13 So the 79 was consistent with -- all of
14 these scores are relatively consistent and showed
15 some degree of decrement, at best.

16 The CTONI nonverbal intellectual
17 portion was a 76. What we're seeing here is
18 essentially no significant or substantial
19 improvement with the possibility of some decline
20 over time, which is consistent with a progressive
21 dementia and part of the aging process, even more so
22 than if it was just the aging process.

23 Q. Doctor, in your opinion, is there any
24 possibility that she's going to improve from where
25 she is now?

1 A. Is there any probability versus is it a
2 reasonable possibility? I don't like to say
3 anything is impossible.

4 From a scientific standpoint, it's
5 unlikely that we're going to see traumatic or
6 substantial improvement in any form here. Very high
7 standard of likely in --

8 Q. When she came to you she had a history
9 of brain injury, did she not?

10 A. Yes, she did. She had a history of
11 several things. She had a history of brain injury.
12 She had a history of normal pressure hydrocephalus,
13 which caused ischemia itself. And severe brain
14 injury actually requiring a craniotomy for the
15 hydrocephalus.

16 She had hemorrhaging of the brain on
17 multiple areas of the brain. And then in addition
18 to that, there was evidence that she already had
19 some aging over time.

20 This is not -- was not a new process of
21 the time of her head injury. She had evidently --
22 as all people age -- at 87 years old, there's a high
23 percentage of people with dementia. And her
24 CT-scans did show some minimization degrading the
25 neural tissue.

1 Q. Doctor, was there a history of shunt
2 placement to treat the hydrocephalus?

3 A. As I recall, I believe there was
4 some -- a craniotomy. I have to go back.

5 Q. For the Court's benefit, placement of a
6 shunt is designed to do what?

7 A. To relieve the pressure on the brain of
8 cerebral spinal fluid.

9 Q. You did review her medicals prior to
10 meeting with her the first time?

11 A. Yes. There's a substantial amount of
12 evidence. And I want to be confident in not just my
13 memory, but to refresh my memory.

14 Q. I understand. I'm going a little -- I
15 said I wasn't going to go into things you already
16 testified to in your deposition. We'll leave that
17 area.

18 During the testing that was performed
19 in your office, were you always in the room?

20 A. Well, let me clarify. It wasn't just
21 testing. This evaluation actually was much more
22 loaded on the forensic questions because I knew this
23 was a major issue.

24 And the questions that are involved are
25 consistent in forensic psychological evaluations and

1 psychiatric evaluations of people who are being
2 evaluated for the purposes of competency and
3 capacity.

4 Q. I understand that. Can you, for the
5 benefit of the Court, tell us how much time you
6 spent with the patient versus someone in your
7 office?

8 A. During this last evaluation?

9 Q. Let's go through all of them and give
10 us an overall.

11 A. During the first evaluation, roughly
12 two and a half hours was spent with her in my office
13 individually. And then there was roughly eight to
14 nine hours of testing that was performed over
15 several sessions.

16 During that time I'm in and out of the
17 testing to check on what's going on. I'm not with
18 her during that entire period of time because it's
19 unnecessary. It's unnecessary. It's a technical
20 type of issue. Psychometrician, as an expert, can
21 be done. Just as a radiological technician.

22 Q. Is there a qualified person in your
23 office that performs those functions?

24 A. Yes.

25 Q. Who is that?

36

1 A. Becky Owens.

2 Q. If Becky runs into a problem during the
3 administration of any of these procedures or tests,
4 what happens?

5 A. Anything out of the normal -- not just
6 a normal. Anything out of the norm, I'm called.

7 Q. Were you called from time to time?

8 A. I was, on several occasions.

9 Q. Can you tell the Court for what types
10 of things you might be called?

11 A. I was called for issues of -- there
12 were times -- Becky is trained to evaluate whether a
13 person is starting to become fatigued.

14 When she starts to see any level of
15 fatigue, she calls me because it's my decision to
16 determine whether or not a person can or cannot
17 continue.

18 Because of the importance of this
19 evaluation, whenever there was evidence of any
20 significant fatigue, I simply rescheduled her for
21 another day.

22 That happened on several occasions.
23 There was an issue regarding cooperation at certain
24 points, but that was during primarily the very first
25 evaluation.

1 The one that was requested by Mr. Tall
2 where she said, I don't want to do this. Then there
3 was another one that happened on the second
4 evaluation.

5 Look, you don't have to continue with
6 this. Feel free to contact your attorneys. And we
7 don't have to go any further. She chose to go
8 further with that.

9 Primarily, there was a lot of --
10 initially a lot of resistance. Ms. Dockery's a very
11 pleasant lady. She -- when she's not forced to do
12 things, she seems to be rather cooperative. And I
13 think when her and I sat down and discussed the
14 importance of this, we kind of need to get the
15 information down so that we can get an appropriate
16 understanding of how she's doing, and her best
17 interests, she became much more cooperative.

18 Q. Doctor, let me ask you this: If
19 someone just has a conversation with Ms. Dockery,
20 but doesn't drill down to some level where she would
21 have to make some sort of cognitive analysis of
22 information, is it possible that she would appear to
23 have capacity to people who just have the most basic
24 conversation with her?

25 MR. BRITTAIN: Object to form of the

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1 question.

2 MR. MCCRACKIN: Would you like me to
3 rephrase, Your Honor?

4 THE COURT: Please.

5 BY MR. MCCRACKIN:

6 Q. Is it possible that she could present
7 well while still having all of these underlying
8 problems?

9 MR. BRITTAIN: Same objection.

10 MR. MCCRACKIN: Your Honor, I think the
11 question is appropriate in that form.

12 THE COURT: I think I will allow it. I
13 think it's appropriate.

14 THE WITNESS: Repeat the question,
15 please.

16 BY MR. MCCRACKIN:

17 Q. Is it possible that she could present
18 well to a person while still having all these
19 underlying problems and, in your opinion, render
20 incapacitated?

21 A. Not only possible, but in Ms. Dockery's
22 case, it's evident that it's probable. And it's
23 clear in the evidence that I've seen that this is
24 the case.

25 We're talking about a woman who's

1 relatively -- prior to her illness was a relatively
2 high-functioning lady. Evidently, an intelligent
3 lady at some point. Very well groomed lady. Very
4 sociable individual who is capable of maintaining
5 conversations at high levels. A nice sense of
6 humor. She was not a blunted unintelligent
7 individual.

8 She's an individual who was at one
9 point very high functioning. People that are high
10 functioning, they preserve a level of their
11 functionality enough, many times, to be able to --
12 on the outside perspective, more of what would be
13 called technological validity, what it looks like on
14 the outside to be normal when functional status is
15 not normal underneath.

16 And so what happens is people in the
17 dementia, what they could -- don't want to be
18 demented. They are very clear to do everything they
19 can to cover that up.

20 One of the things we see people do are
21 called circumlocution. People try to find their way
22 around words. They can't find a word, or instead of
23 answering a question they'll go on to something
24 else. Instead of stating that they don't know, they
25 try to give an answer that is not really clear.

1 In her case, it's pretty obvious that
2 she was intelligent. So when she was talking to me
3 at first, just in looking at her on a subjective
4 standpoint, it's, hum, she seems like she's doing
5 fairly well.

6 Unfortunately, when you start delving
7 into two things, one, the neuropsychological
8 objective testing, the objective testing says
9 something very different.

10 And then in addition to the objective
11 testing, to actually ask questions that are
12 consistent with the actual requirements of capacity,
13 which is that in doing forensic evaluations of
14 capacity, we're not looking toward a person's
15 functional deficit.

16 Functional deficit is important because
17 it goes to the weight and it's the basis to where
18 the person's deficits are emanating out of.

19 Can they actually do certain things?
20 Can they answer questions or do problem solving in a
21 way that's going to be appropriate to the needs that
22 are placed upon them in terms of what the legal
23 question is?

24 In terms of the issues of capacity,
25 whether or not they can care for themselves and care

1 for their property appropriately.

2 So the questions have to go
3 specifically to those types of issues as much as
4 possible. And also to any issues involved in that
5 type of problem solving.

6 It's very -- an easier way to
7 understand it is to take a look at children. We
8 have children who are ten years old, or eight years
9 old, or nine years old who can carry on a
10 conversation fluently. They are able to explain
11 what their wants and wishes and desires are quite
12 well.

13 We don't allow them to make legal
14 decisions, because their capacity to be able to
15 understand the ramifications of those decisions, how
16 to have the ability to look at and attend to and
17 plan and organize the thought process appropriately
18 are not considered valid to make decisions.

19 And so those are the types of questions
20 that I'm asking and looking at in determining if
21 she's in capacity.

22 MR. MCCRACKIN: Dr. Goldschmidt, I
23 appreciate you answering my questions. I don't have
24 anything further. Answer any questions other
25 counsel may have.

1 THE COURT: Mr. Brittain?

2 MR. BRITTAIN: Thank you, Your Honor.

3 I'd like to make an evidentiary point
4 before I start with Dr. Goldschmidt.

5 You know we had a motion earlier
6 concerning comments that Dr. Benjamin made. I
7 believe, in asking Dr. Goldschmidt questions about
8 his relation with Dr. Benjamin, implying that
9 Dr. Benjamin had confidence in him and endorsed his
10 approach, that we now have another basis for the
11 introduction for this comment by Dr. Benjamin.

12 This would be to repeat that we want to
13 add to our urging of the Court to consider those
14 statements to be proper impeachment testimony as to
15 the relationship and confidence Dr. Benjamin has in
16 this approach based on what Dr. Goldschmidt has
17 said.

18 So that's something for you to
19 consider. I want to make that point.

20 THE COURT: Mr. McCrackin, anything on
21 that?

22 MR. MCCRACKIN: No, Your Honor.
23 Obviously, I disagree. I don't think that adds any
24 value to Dr. Benjamin's trying to testify in an area
25 he's not qualified to testify in it.

1 see that?

2 A. I have.

3 Q. I've never seen that. You never saw
4 fatigue in terms of conversation?

5 A. At some point in time.

6 Q. I did, too.

7 A. I didn't see fatigue during the first
8 hour and a half to two hours.

9 Q. It's so hard for me to believe that a
10 lady her age being asked all these unusual and
11 difficult questions, that fatigue is not an issue.

12 MR. MCCRACKIN: He's testifying.

13 THE COURT: Thank you.

14 MR. BRITTAIN: I'll withdraw it.

15 BY MR. BRITTAIN:

16 Q. One specific -- do you recall asking
17 her what Social Security was?

18 A. We do ask what Social Security is, yes.

19 Q. Do you recall asking her that?

20 A. Yes.

21 Q. Did you ask her or you think it was
22 Becky Owens?

23 A. Probably Becky Owens.

24 Q. You would have reviewed the test?

25 A. Yes.

1 Q. And if her answer was, they take your
2 money and then they give it back to you, wouldn't
3 that have been a correct answer?

4 A. Yes. Of course, she can give correct
5 answers.

6 Q. Would that have been a correct answer?

7 A. Would it have been a correct answer?
8 They take some money and give it back to you? It
9 would not be a fully correct answer, no.

10 Q. So you would not -- what I want to
11 make -- when you asked Ms. Dockery, at her age, what
12 is Social Security -- talking about capacity and
13 ability of people to make decisions and communicate
14 them to you.

15 You asked her what Social Security is
16 and she wrote or said, it's when they take your
17 money and then later they give it back to you.

18 That would not be, in your world, a
19 fully correct answer; isn't that true?

20 A. That would not be, according to the
21 test, where that question is, a fully correct
22 answer.

23 MR. BRITTAIN: Thank you. No further
24 questions.

25 THE COURT: Mr. Monckton?

1 A. By Becky Owens.

2 Q. Doctor, I would assume that in looking
3 at the scoring system -- and I am under memory and
4 orientation.

5 A. Yes.

6 Q. That has a zero as a bad score and a
7 two is a good score?

8 A. Are you talking about the specific
9 questions?

10 Q. Yes, sir.

11 A. What page are you talking of?

12 Q. I am on Page 3.

13 A. Depending on the task. Zero, one, or
14 two, depending on the question.

15 Q. And let's go to -- under managing
16 money.

17 A. Uh-huh.

18 Q. The question was, how are you supported
19 financially? And her response was?

20 A. Retirement, Social Security.

21 Q. So that was a two, which was a high
22 score, correct?

23 A. Yes, it is.

24 Q. And then the next question is, please
25 explain to me what Social Security benefits are.

1 A. Yes.

2 Q. And her response was?

3 A. A one.

4 Q. Her actual response was, they pay me.

5 They take your money, and then they give it back to
6 you.

7 A. Correct.

8 Q. Why is that a one?

9 A. Because it's a concrete response. It
10 doesn't have an understanding of the entire
11 situation of what Social Security is.

12 Q. What would have been a correct answer?

13 A. There are several answers that can be
14 considered. This is a -- specifically, there are
15 answers that fit the validation process.

16 One that is a concrete answer
17 specifically is, they pay me. That doesn't tell you
18 what Social Security is specifically. Take money
19 and give it back to you doesn't say overall what the
20 Social Security system is.

21 She was queried on this situation. She
22 was given a question. Meaning, her first response
23 only was, they pay me. That's why it's underlined,
24 as you see.

25 Then what we do is queried beyond that

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1 they take your money and give it back to you.
2 Either of those would have only counted as a one
3 score. So we pushed her to go further on, but she
4 didn't go any further on that.

5 Q. Would you agree with me that that's a
6 fairly correct answer?

7 A. Yes. I would agree it's a fairly
8 correct answer. That's why she got a one. It's not
9 an incorrect answer.

10 As a relatively intelligent person,
11 Social Security benefits are more than, they take
12 money from you and give it back. There's an
13 explanation.

14 Q. What would your answer be?

15 A. What would my answer be? Several
16 answers. Mine would be that it is a process by the
17 government by which through taxation money is taken
18 from and put into an account by the government to
19 protect you in the long term when you're out of
20 ability to either care for yourself or you're in
21 your retirement.

22 I can sit here and give you a long
23 explanation of this. My explanation and the
24 explanation of a lot of people would fit a two.

25 The reality is quite forthright. This

1 is a one. This is according to the score system.
2 This in and of itself is not -- you can pick apart
3 each and every question you like.

4 What you are going to get is this: You'll
5 find questions where it's difficult, questions where
6 it's not difficult.

7 There are simple questions I asked Ms.
8 Dockery that picking apart this individually one by
9 one is not science. That is not the basis of the
10 science.

11 Q. We won't go through each question. The
12 next question: By what date every year do you file
13 personal taxes?

14 A. April 15th.

15 Q. She got a two?

16 A. Uh-huh.

17 Q. Count out a \$1.39 from these coins.

18 She was able to do that, wasn't she?

19 A. Yes, she was.

20 Q. How much does a loaf of bread cost at
21 the store?

22 A. Yup.

23 Q. She got that one right too, didn't she?

24 A. Yup.

25 Q. Suppose you bought a dozen eggs for

80

1 \$1.19 and you gave the clerk \$5, how much change
2 should you get back? She missed that by a dime,
3 didn't she?

4 A. Yes.

5 Q. Where do you get checks and money
6 orders from? The bank. She got that one right?

7 A. She did.

8 Q. Make out a check or money order payable
9 to the telephone company. I assume y'all gave Ms.
10 Dockery a bill and a check and asked her to fill it
11 out?

12 A. Yes.

13 Q. And according to this, she did it
14 correctly.

15 A. She did it roughly correctly, yes.

16 Q. You gave her a full score.

17 A. She met all the criteria.

18 Q. Make out a check and money order
19 payable to the gas and electric company. She did
20 that correct as well?

21 A. She did.

22 Q. Now, I think you had her deduct
23 because -- I don't have the numbers in front of me.
24 She got most of that right from the first two bills.
25 You gave her a one?

1 A. Gave her one. She made a mistake.

2 Q. Tell me two reasons why it's important
3 to pay your bills. Her answer was, to have a good
4 credit rating and to keep getting the service?

5 A. Yes.

6 Q. She got that all correct, right?

7 A. Yes.

8 Q. Name one thing you can do to keep from
9 being cheated out of your money. What did she say?
10 Keep your receipts when you put it in the bank?

11 A. Yes.

12 Q. Got that correct.

13 A. Yes.

14 Q. What is health insurance? What you buy
15 when you're sick. It pays your bills. She got all
16 that right, didn't she?

17 A. Yes.

18 Q. The next question was a math question.
19 She got that wrong, correct?

20 A. Right.

21 Q. Why is it important to carefully and
22 fully understand any document before signing it?
23 Her response was, because you're responsible for
24 what it says when you sign it.

25 A. Correct.

1 Q. That's correct. What is the purpose of
2 a will? So that you can leave your belongings to
3 the person you want; is that correct?

4 A. Correct.

5 Q. What is home insurance? You take on
6 your home for fire, flood, and hurricane. She got
7 that correct, didn't she?

8 A. After query, yes.

9 Q. How would you go about getting repairs
10 made to your home? She said, call a carpenter.
11 That's correct?

12 A. Yes.

13 Q. What might you do if both your lights
14 and TV went off? She said, call up Time Warner.
15 And y'all gave her a one?

16 A. Yes.

17 Q. What would you do if your home was
18 always very hot or cold? What did she say?

19 A. Call the heat or AC people.

20 Q. She got that correct?

21 A. She did.

22 Q. What are two routine tasks that you do
23 at home less often than every day?

24 A. Sweep the sidewalk and the porch.

25 Q. She got that correct?

1 A. She did.

2 Q. Why do we need keys? Her response?

3 A. To keep our property safe.

4 Q. She got that correct?

5 A. She did.

6 Q. What information can you get from a bus
7 schedule?

8 A. What time it comes and goes.

9 Q. She got that correct?

10 A. She did.

11 Q. How would you find out how much it
12 costs to ride a bus?

13 A. Ask the bus driver.

14 Q. She got that correct?

15 A. She did.

16 Q. This is kind of a trick question y'all
17 tried to ask her. Suppose a person got into a cab
18 and said, take me to my daughter-in-law's. What is
19 the problem with that request? What did she say?

20 A. Tell them where she lives.

21 Q. She got that correct?

22 A. She did.

23 Q. Suppose you called a cab to take you
24 someplace, what would you do if the cab didn't come
25 and it was getting late?

1 A. Call them back.

2 Q. That was correct?

3 A. Yes.

4 Q. I think you asked her to address
5 envelopes in Question 11 and 12; is that correct?

6 A. Yes.

7 Q. She got that right?

8 A. She did.

9 Q. You asked her to dial a phone number.
10 She did that correct?

11 A. She did.

12 Q. Without a telephone book, how would you
13 find the telephone number? What was her answer?

14 A. Call 411.

15 Q. That was correct?

16 A. Correct.

17 Q. Show me how you dial the operator.
18 What did she do?

19 A. Dialed a zero.

20 Q. That was correct?

21 A. Correct.

22 Q. Show me how you call the police. What
23 was her answer?

24 A. Dial zero.

25 Q. You gave her a one for that --

1 A. We queried her and her response was,
2 tell the operator I need the police.

3 Q. Not correct to your standards, but the
4 police would come if she did that, wouldn't they?

5 A. Possibly. I don't know how -- I think
6 they changed it a bit recently.

7 Q. Number 2. If you didn't have a regular
8 doctor and you needed medical help quickly, how
9 could you get it?

10 A. Emergency room.

11 Q. That was correct?

12 A. Correct.

13 Q. Suppose you were outside in your yard
14 and you saw smoke coming out of your kitchen window,
15 what would you do?

16 A. Poke my head in and see what was the
17 matter.

18 Q. Y'all gave her a one?

19 A. Correct.

20 Q. What's the right answer?

21 A. Several right answers. There's smoke
22 coming out of the kitchen windows, then go in the
23 front door, check to see if there's heat on the
24 door, see how thick the smoke is. There's a number
25 of right answers.

1 Q. Poke my head in and see what's going on
2 is not a right answer?

3 A. Doesn't have all the qualifications for
4 what the answer is, no.

5 It's not up to me what a right answer
6 is. These are very clear -- part of testing
7 protocol.

8 Q. I'm going through your testing.
9 Suppose you're at home alone and not expecting
10 someone, and there's a knock at your door at 10:00
11 at night, what would you do?

12 A. Say, who is it?

13 Q. That was correct?

14 A. It was.

15 Q. What are two precautions you can take
16 to protect yourself when going out at night? What
17 was her response?

18 A. I wouldn't go if I had to have
19 protection.

20 Q. Y'all gave her a zero on that?

21 A. There was no precaution given.

22 Q. Not going is not a precaution?

23 A. Not a precaution. If you're going out
24 at night, what is the precaution? That's not a
25 precaution. That's just not going.

1 Q. Tell me two ways you know it's safe to
2 cross the street. What was her response?

3 A. The stoplight. And we queried to look
4 to see if any cars are coming.

5 Q. If you had pain in your chest on your
6 left side and you were having trouble breathing,
7 what would you do? What was her response?

8 A. I'd go to the emergency room.

9 Q. That was correct as well?

10 A. It was.

11 Q. Suppose you smelled a gas odor in the
12 house, what would you?

13 A. Call the gas company.

14 Q. You only gave her a one for that?

15 A. Yup.

16 Q. What's wrong with that response?

17 A. Well, because it has to be more than
18 call the gas company. There's a danger necessarily
19 being right in the house and doing -- we'd expect
20 someone to evaluate the house first.

21 Q. If you accidentally cut your hand and it
22 was bleeding badly, what would you do?

23 A. Run water on it, bandage it, and go to
24 the doctor.

25 Q. That was correct?

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1 A. It was.

2 Q. Tell me three things that are important
3 to do to take care of your body?

4 A. Clean yourself, eat properly, and go to
5 bed at the right time.

6 Q. And that was correct?

7 A. Yup.

8 Q. Number 11. Tell me two things about
9 the condition of your health during the past five
10 years.

11 A. Been good. Fallen two or three times.

12 Q. That was correct?

13 A. Yup.

14 Q. If you unintentionally lost 10 pounds
15 in four weeks, what would you do?

16 A. I'd be happy.

17 Q. Y'all gave her a zero on that?

18 A. Yes.

19 Q. The test obviously does not take into
20 account humor?

21 A. Does not. That was the answer. She
22 gets queried on it.

23 Q. I don't see where you queried on it.

24 A. There was no more answer.

25 Q. I don't see where you marked a Q on

1 here.

2 A. Something that would be queried.

3 Q. Suppose you had to take medication
4 three times a day, how would you remember when to
5 take it?

6 A. Put it in front of my plate and take it
7 when I sat down to eat.

8 Q. That was correct?

9 A. It was.

10 Q. Why is it important to know the side
11 effects of medicine you're taking?

12 A. It makes you more sick than you are
13 already.

14 Q. You said that is a zero?

15 A. It is a zero.

16 Q. If you took the wrong amount of
17 medication, that wouldn't make you more sick?

18 A. It could.

19 Q. Shouldn't she get a one for that?

20 A. No. It's not included as one of the
21 ones. It's included as one of the zeros.

22 Q. Tell me a reason why bathing is
23 important. Her response?

24 A. Keep yourself clean and smelling good.

25 Q. That was correct?

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1 A. It was.

2 Q. Tell me two safety precautions you can
3 take when bathing or showering. And her response?

4 A. Hold rails and not get the water too
5 hot.

6 Q. That was correct?

7 A. It was.

8 Q. What would you do if you couldn't hear
9 most conversations? And her response was?

10 A. I'd just pretended like I did.

11 Q. That was zero?

12 A. It was.

13 Q. What would you do if you could not read
14 small print like print on the phone book or on the
15 labels on a medicine bottle? Her response?

16 A. Get a magnifying glass.

17 Q. Was that correct?

18 A. It was.

19 Q. Suppose you injured your hip and the
20 doctor told you it would take much effort and months
21 of physical therapy to walk again, what would you
22 do?

23 A. I would do what he said.

24 Q. That was correct?

25 A. It is.

1 Q. What are two dangers of staying in bed
2 all the time? Her response?

3 A. Bedsores.

4 Q. You gave her a one for that?

5 A. Yes. She didn't know another one.

6 Q. And then it looks like under social
7 adjustment scale, the questions are self-evident.
8 It looks like she got twos on every one of those
9 except one. Is that correct?

10 A. It is.

11 Q. When you go back --

12 A. Social adjustment is primarily more
13 than emotional adjustment.

14 Q. When you go -- it would actually be the
15 second page of the exhibit. It appears that on
16 managing her money, Ms. Dockery, according to your
17 score system, I would say that it should be higher,
18 she scores right on the borderline between moderate
19 and high?

20 A. Yes. For her age.

21 Q. And on managing home and transportation
22 she scores in the high level?

23 A. Yes.

24 Q. On health and safety, you got her
25 scoring in the low level. I would submit it would

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1 be higher based upon some of the answers that were
2 given.

3 And I think your honoring those
4 questions, but she scores in the low area; is that
5 correct?

6 A. Yes.

7 Q. Social adjustment level, she scores
8 high?

9 A. Yes.

10 Q. This is your test?

11 A. Yes.

12 Q. Is it your testimony that these answers
13 she gave are irresponsible decisions concerning her
14 person and property?

15 A. These in and of themselves? No.

16 MR. MONCKTON: Thank you, Doctor. No
17 further questions.

18 THE COURT: Ms. Moore?

19 EXAMINATION

20 BY MS. MOORE:

21 Q. What relative importance do you place
22 on the particular tests that Mr. Monckton went
23 through in comparison to the other tests you may
24 have performed?

25 A. Independent living skills is the one I

1 gave her. That's generally the one that I don't put
2 much importance on. Primarily for placement is what
3 I use it for.

4 Q. In this particular case, why would you
5 have utilized that test?

6 A. I use it on a regular basis when doing
7 dementia evaluations. It's sometimes helpful in
8 placement issues when there's more severe issues.

9 Q. As far as all of the test data that's
10 part of the exhibit, would any of us, including
11 Judge Edmonds, have an ability to understand or be
12 able to interpret the data to reach a conclusion as
13 to the outcome?

14 A. I'm sure people could take certain
15 parts of the data and make assumptions regarding
16 them when picked apart in specific areas.
17 Unfortunately, that's a very poor way to attempt or
18 to understand a person's functionality.

19 Number one, this specific test is one
20 of the ones that is -- fortunately, you can see in
21 some responses there's some degree in this area of a
22 little more subjectivity and a lot of leeway into
23 levels of functionality. It's really about
24 placement. That's what it's used for.

25 The other testing, neuropsychological

1 testing, overall we're looking for what convergent
2 efforts -- what we'd like to get done under the law,
3 which is really an issue of totality of
4 circumstances and the weight of the entire evidence.

5 And what we have is a series of tests
6 together with facts that show severe deficits, and
7 moderate deficits, and mild deficits in some area
8 with some strengths that are consistent over time
9 over three different testings.

10 In addition, we also have questions
11 that are asked in a much more in-depth matter that
12 life requires when making reasonable decisions and
13 communicating reasonable decisions regarding our
14 property and ourself.

15 For example, I can go into some
16 examples of some of the things I asked her during
17 the actual evaluation in my office where she was
18 unable to frequently come up with the right answers.

19 There were some of them that she had
20 been asked two or three times. And the first couple
21 times she got them wrong. And the third time she
22 got them right. She had already discussed those at
23 home. Then there was some questions that were made
24 completely new --

25 Q. Let me stop you there. Was that one of

1 the concerns you expressed to me where you had
2 indicated you wanted to do another evaluation?

3 A. Which was?

4 Q. As far as having to actually give her a
5 test that had already been done before.

6 A. Yeah. Each time you do the test,
7 especially in terms of closing in time, there's some
8 degree of loss of validity and reliability of test.

9 Fortunately, a lot of good --
10 test-retest reliability. The thing is, they are
11 usually done over a period of time. They don't
12 have -- the data doesn't show when you go in shorter
13 times as much of a test-retest reliability.

14 So I had to continually change things
15 up on her. At the same time use old data to make a
16 determination of whether or not there had been any
17 learning there. Where there's no learning, the
18 question is asked over and over again. It makes it
19 easy to say, she's not getting the ones she's given
20 the right answers to several times. She gets the
21 answers afterwards.

22 When I'm asking her some of these
23 things, what about this, what about this, we can
24 move through some of the things. She had just --
25 you know, there's not an answer to that. Not an

1 answer to that. Or where she would start to get --
2 that's ridiculous.

3 Starting to go into the questions and
4 more in-depth data, she was willing to answer, but
5 her answers are really not on target.

6 For example, there was questions
7 regarding what she would do if she was stranded
8 alone in an airport in Denver. If there was a child
9 who was on a dock, two-year-old child who was alone,
10 no one around. The questions regarding what she
11 would do if she was getting bills from collection
12 agencies saying she was going to have her insurance
13 canceled and she repeatedly said, keep sending them
14 money.

15 Q. Let me stop you. The questions that
16 you're referring to are not part of this raw data
17 that's been submitted?

18 A. They are not.

19 Q. The questions that you're referring to,
20 these are questions that you had posed to her during
21 an independent evaluation between you and she?

22 A. Yes. correct.

23 Q. Now, those types of questions, would
24 those have been asked of her at each one of your
25 evaluations?

1 A. It would have been asked of her in the
2 last two.

3 Q. And was there any difference in her
4 ability to respond appropriately between the last
5 evaluation and the one preceding?

6 A. Normally not. She was essentially
7 unable to answer many of the questions
8 appropriately.

9 Q. Why was the fact that she was unable to
10 answer those questions -- why was that of great
11 concern to you?

12 A. Because in doing a forensic evaluation,
13 specifically evaluations with capacity, a lot of
14 these questions, especially the one for independent
15 living skills, the one that's here, these are much
16 simpler questions.

17 Questions that, for example, most
18 people should be able to answer them fairly well.
19 Even people who've got deficits and significant
20 deficits can answer questions fairly well.
21 Especially, if they have had a lifetime of dealing
22 with these types of issues. Issues of problem
23 solving and appropriate response.

24 When it comes to making legal decisions
25 and decisions regarding one's self-care, it's a very

1 fluid process and requires a fluid thinking and
2 responding in a way that can meet the demands of an
3 evolving situation, emergent situations.

4 That's why we have problems with
5 allowing children who generally answer fairly easy
6 questions like we see in the ILS, but can't go
7 in-depth into the more complex decision making that
8 requires communicating reasonable decisions
9 regarding the areas of personal well-being as well
10 as care of property.

11 Q. As far as some of Ms. Dockery's
12 day-to-day decisions, what she's going to have for a
13 meal or going to do that day, is there any problem
14 with her being able to make those types of
15 decisions?

16 A. No.

17 Q. As far as her making an evaluation --
18 I'll give you a hypothetical. If someone were
19 wanting to take advantage of her, wanting to come up
20 with a manner of getting money out of her, for
21 example, putting a roof on her house, would she be
22 easily taken advantage of?

23 A. I believe she would. There was a very
24 good example of one of those situations that I
25 actually placed to her as a question. I don't know

1 if I can go into --

2 Q. What type of question was that?

3 A. A question regarding her health
4 insurance and appropriate payment of her health
5 insurance.

6 What had happened is I had asked her a
7 question. I said, you got a letter in the mail
8 essentially saying they were going to cancel it.
9 ABC Collection Agency was going to cancel your
10 health insurance. And she needed to send them a
11 check immediately for the amount written, \$250.

12 Q. Did she tell you that wouldn't happen
13 because it's an automatic draft?

14 A. At first she did, yes.

15 Q. Was that not appropriate response?

16 A. At first that is an appropriate
17 response in terms of that level of problem solving.
18 Her problem solving is fluid, as I said.

19 So when the answer was, it's on
20 automatic draft, I said, then there's evidently a
21 problem. What are you going to do? Her response
22 was, I'm going to call up the company that sent me
23 the bill and tell them, look, it's on automatic
24 draft.

25 The response I gave her was, then they

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1 tell you they are having a problem with the computer
2 system, because they have having a problem with the
3 computer system, they are requiring you to actually
4 send the check. So she said, okay, I'll send the
5 check.

6 So I said, where are you going to send
7 it? Her response was, to where they tell her. So
8 you go to the post office -- go to the post office.
9 I said, okay. Get to the post office, the postal
10 clerk says, you're having -- this is going to
11 Cameroon Village. Where's Cameroon Village? She
12 said, I don't know.

13 So I said, Cameroon Village is in
14 Africa. I said, what are you going to do? She
15 goes, well, I'll send it to Africa.

16 I said, now what are you going to do?
17 She said, send the check to 123 Market Street,
18 Cameroon Village, Africa.

19 A month goes by and you get another
20 letter in the mail stating that once again your
21 payment is behind on your health insurance. You're
22 not going to be paid -- it's going to be canceled
23 unless you send another \$250 back to Cameroon. She
24 said, I have no choice. I'll have to send them a
25 check to Cameroon.

1 I said, okay. What if this continues
2 to occur on a regular basis? I really don't have a
3 choice. I'm going to have to keep paying it as long
4 as it happens.

5 And so this is the type of -- and there
6 were many of these situations. That wasn't the only
7 one.

8 If I relied simply on that line of
9 questioning to make my decisions regarding her
10 well-being and life, that would be completely
11 unethical and inappropriate.

12 This is a line of questioning, there's
13 several of them. Sometimes she had been seen for
14 these lines of questions as well as for the
15 neuropsychological component.

16 Q. I actually called you because I had
17 questions about her seemingly high ability to be
18 able to communicate and verbalize.

19 A. Yes. We discussed that.

20 Q. And the difficulty of having
21 conversations with her and reaching whatever the
22 conclusion might be as to her capacity.

23 A. What is your question?

24 Q. When I called you, did I inquire of you
25 as to why that was a difficult situation?

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1 A. Yes, you did.

2 Q. And as far as Ms. Dockery is concerned,
3 she's capable of verbalizing quite well?

4 A. She's got an IQ within the low-average
5 range. And she's a lady who's got a verbal capacity
6 that is from her whole life, most likely. And
7 verbal capacity is one of last things to go along
8 with the process of dementia.

9 Q. Specifically, what you had told me.
10 Why is that?

11 A. Because of the areas of the brain --
12 several reasons. One is because the verbal capacity
13 is well repeated over a lifetime. So there's a
14 consistent pattern of practice of using vocabulary
15 to practice.

16 Secondly, it's the area that is
17 specifically relevant to one specific portion of the
18 brain. What ends up happening is that portion of
19 the brain tends to be one of the last ones,
20 especially with Alzheimer's-type patients. It
21 starts to get touched.

22 As it moves along, it starts to
23 increasingly become aware. And we see that in many
24 dysphonia, aphonia. And in more moderate and severe
25 cases of Alzheimer's, it generally starts to work

1 it's way out to the periphery of the brain.

2 Q. Have you submitted a bill to any of the
3 attorneys for payment?

4 A. I believe my office submitted several
5 bills. I know we've had some issues with it.

6 Q. Do you know whether or not you've been
7 paid anything?

8 A. I believe there's some stuff paid,
9 still pretty significant outstanding bills.

10 MS. MOORE: That's all the questions I
11 have, Your Honor.

12 THE COURT: Mr. McCrackin, anything
13 else?

14 MR. BRITTAIN: No, thank you.

15 THE COURT: Mr. Monckton?

16 MR. MONCKTON: No.

17 THE COURT: Any objection to releasing
18 the witness?

19 MR. BRITTAIN: Please.

20 THE COURT: Thank you for coming today,
21 Dr. Goldschmidt. You're excused.

22 THE WITNESS: Thank you, Judge.

23 MR. MCCRACKIN: That concludes the
24 petitioner's case with the exception that we'd like
25 to have the opportunity to question Ms. Moore when

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1 she presents her report.

2 One matter not related to us, Dr.
3 Goldschmidt stated he has not been paid for a
4 significant portion of his bill. He has requested
5 that the Court make some determination for his
6 bills. So I would ask Your Honor to rule on that as
7 well.

8 THE COURT: Thank you. Mr. McCrackin,
9 you have now concluded your petitioner's case other
10 than questions of Ms. Moore?

11 MR. MCCRACKIN: Yes.

12 THE COURT: Mr. Brittain?

13 MR. BRITTAIN: I believe I have four
14 witnesses. And, you know, Mr. Dockery, I'm not sure
15 if you'll rule that he cannot testify. If not, then
16 if I can, he'll be five. If he cannot, that will be
17 four.

18 I'm prepared on Ms. Dockery's behalf,
19 and we talked about this settlement agreement. She
20 did not sign it. And so I think we have a very
21 strong position. We are in agreement about what
22 would be affecting her, what this is all about, her.
23 Not so much about whether John Dockery gets to do
24 anything for her, but would Ms. Dockery benefit from
25 it.

1 But if the Court is going to accept
2 that John Dockery would talk about the length of
3 time he's been with his mother, and that he
4 considers her to be in capacity under the statute,
5 then on her behalf I would accept that as a summary
6 of his testimony, and we wouldn't have to put him
7 up.

8 And then I would strongly argue to
9 consider that, not agreeing with Mr. McCrackin's
10 position, he agreed to something earlier, that it's
11 held against Ms. Dockery.

12 THE COURT: Certainly. Mr. McCrackin,
13 anything on that? I think you agreed to that.

14 MR. MCCRACKIN: Been through this. The
15 fact is you don't have a right to someone else's
16 testimony as to a specific point.

17 Mr. Dockery was free to agree or not
18 agree. Ms. Dockery doesn't have a right for him to
19 testify a certain way. He made a decision to agree
20 that she is incapacitated. That was his decision.
21 But she doesn't have a right to undo his decision
22 for purposes of this hearing.

23 She can certainly testify. She has
24 capacity. Bring other witnesses. John Dockery did
25 that on his own free will. And it does affect her.

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1 She has no right to make him behave in any way.

2 He thought she lacked capacity. He's
3 free to do that. It does affect her. She doesn't
4 have a right to change that. He agreed.

5 THE COURT: I thought I understood
6 earlier that would be his proper testimony, that
7 would be the extent of it. That was it. We won't
8 call him as a witness.

9 MR. BRITTAIN: I don't -- I want to
10 make sure I'm not waiving any arguments about the
11 fact that any agreement he made, you know, would bar
12 his testimony today.

13 I would like for the Court to have that
14 testimony. You'll have to decide whether you
15 consider it or not.

16 But in interest of time, there's no
17 reason to put him up and have him say that. Jim can
18 argue like he has. He bound himself by whatever the
19 documents say.

20 We would argue he's not bound by those
21 documents. He would testify accordingly. Leave
22 that there. Debbie Costa, please.

23 THE COURT: Let me ask -- I didn't know
24 if the parties wanted to break for lunch or if you
25 would like to continue. We certainly want to finish

1 go in, she's either just finishing up or having
2 breakfast. Reads the newspaper. I assist her with
3 a shower, getting dressed.

4 And then she'll sit and watch a little
5 Fox News and plan the afternoon to do some type of
6 activity, depending on the weather. If it's over
7 90 degrees, we usually stay in or do something cool.

8 Q. And originally that was for three days
9 a week?

10 A. Then I went to five days.

11 Q. Okay.

12 A. Then four days. Now I'm there two days
13 a week with her.

14 Q. Over the course of the last several
15 years, you've had hundreds, maybe thousands of
16 opportunities to observe her actions and have
17 conversations with her?

18 A. Yes.

19 Q. You've had an opportunity to discuss
20 meaningful decisions and listen to her talk about
21 her decisions and that type of thing?

22 A. Yes.

23 Q. And what type of conversations have you
24 had and how normal has her responses and interest
25 level been in terms of what you observed?

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1 A. Well, I have to say that, you know,
2 just like with anybody, what interests her, she
3 absolutely loves. And what doesn't interest her,
4 she doesn't want to have anything to do with or be
5 bothered with.

6 As far as interaction, how I see her,
7 she's right there. You know, we go out -- I'll give
8 you some examples.

9 She has a lunch group. Every other
10 Monday we go to Applebee's. I sit with her and have
11 lunch with them. She engages in conversation. They
12 talk about things. These are women that have known
13 each other for many years. She's right on the ball.
14 Right on the conversation. She's not drifting.

15 You know, she speaks her mind and she
16 is very good at that. She can be very demanding at
17 times. You know, telling me exactly what she wants
18 and how she wants it.

19 Q. What about independent decision making.
20 How is she in that regard?

21 A. Independent as far as what she wants to
22 eat, she will tell me, you know, 2:00 in the
23 afternoon, we're going up to Food Lion to get some
24 steaks to barbecue tonight.

25 She isn't physically barbecuing it.

1 We'll go up to Food Lion and tomatoes might be \$2.99
2 a pound and she'll tell me, we're going to go to the
3 truck to get them because they are cheaper. I mean,
4 she is aware of all that.

5 Q. Is she able to communicate to you on a
6 regular basis what she wants done about her person
7 and her property?

8 A. She does. I mean, personally, not
9 my -- I feel it's none of my business to a point.
10 She has expressed to me, she does love her daughters
11 very much. She misses them. But she is very upset
12 about what's going on.

13 And quite honestly, the past six
14 months, I really feel that had led her downhill more
15 than uphill because it weighs view heavy on her
16 mind, what's going on.

17 Q. During this period is she able to
18 continue to tell you what she wants to do and it
19 makes sense or has that suffered?

20 A. No. It hasn't suffered.

21 Q. Has she ever remembered something
22 significant that you might have forgotten?

23 A. Oh, yes. Actually, it's funny because
24 she has a friend who is going to be 100 next year.
25 But it was last year, the friend's birthday. I

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1 wasn't aware that it was the friend's birthday. We
2 were sitting watching Fox News and it was about
3 11:00 in the morning. She told me, this afternoon
4 for the party I want to wear my green outfit, which
5 is actually -- this sweater she has on now comes
6 with a skirt.

7 I said, why do you want to wear that?
8 She turns to me and says, we're going to Aubrey's
9 birthday party this afternoon. I said, we are? She
10 said, it's up at the fish place in North Myrtle
11 Beach.

12 I secretly went into the kitchen and
13 called Rita, who is Aubrey's caregiver and said, are
14 you having a party today? She's like, of course.
15 You guys are coming, right? It's at 3:00. I said,
16 yeah. We'll be there. And we went.

17 Q. Any delusional comments, any comments
18 that come off the wall where she doesn't know where
19 she is or any of those kinds of things? Ever
20 experienced that?

21 A. Never that she didn't know where she
22 was or who anybody was or anything like that, no.

23 In the beginning she did have UTIs.
24 When we came home, within the first six months she
25 did battle a little bit with UTIs.

1 It didn't make her that she didn't know
2 where she was or what she was doing, but she was
3 just quiet. You know, once she got better from
4 that, much better.

5 Q. Based on what you've observed and seen
6 overall in the many days and several years, does she
7 have the capacity to make decisions about her person
8 and property?

9 A. Yes.

10 MR. BRITTAIN: Thank you. No further
11 questions.

12 THE COURT: Mr. Monckton?

13 MR. MONCKTON: No questions.

14 THE COURT: Mr. McCrackin?

15 EXAMINATION

16 BY MR. MCCRACKIN:

17 Q. Thank you. Ms. Costa, you don't have
18 the discussions with her about her finances, do you?

19 A. No.

20 Q. How would you have an opinion as to
21 whether she has capacity to deal with finances if
22 you've never had a discussion about it?

23 A. When she looks in her wallet and sees
24 that her money is low, she'll write a check and ask
25 me to take her to the bank.

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1 Q. You're not aware, are you, that she
2 testified that the Whitlark property that had been
3 sold had never been sold?

4 MR. BRITTAIN: Object to that. She
5 wasn't there.

6 MR. MCCRACKIN: I have a right to ask
7 if she knows about it. That would lead to her
8 opinion.

9 THE COURT: I will allow it.

10 MR. BRITTAIN: Object.

11 BY MR. MCCRACKIN:

12 Q. Were you aware that in her deposition
13 that Ms. Dockery could not name the day, month, or
14 year?

15 A. No.

16 Q. Were you aware that all three children
17 have agreed that she's an incapacitated person?

18 MR. BRITTAIN: Object again, based on
19 previous discussions we had about that motion.

20 MR. MCCRACKIN: Settlement agreement.
21 Enforced it with an order. It's fair for me to ask
22 about it.

23 THE COURT: I will allow.

24 THE WITNESS: I was not at the
25 deposition, so I don't know.

1 BY MR. MCCRACKIN:

2 Q. You're not aware that all three
3 children have agreed she's incapacitated?

4 A. I'm aware from what I hear in the
5 court, but I wasn't present when they made that
6 agreement.

7 Q. Your opinion is based on your routine
8 discussions with her during the day?

9 A. My opinion is based on being with this
10 woman for hours on end week after week and seeing
11 what she's able to do.

12 Q. No discussion with her about her
13 finances?

14 A. No. That's none of my business.

15 MR. MCCRACKIN: No further questions.

16 MR. BRITTAIN: Thank you.

17 MS. MOORE: I have a couple questions.

18 EXAMINATION

19 BY MS. MOORE:

20 Q. Are there certain things done in the
21 house to help her with memory and --

22 A. Yes. I actually gave her a whiteout
23 board in a picture frame with a dry erase marker,
24 because I've worked with many people with dementia
25 and with Alzheimer's. We just write, today is

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1 part of that endeavor to work with Ms. Dockery
2 sitting in front of you today?

3 A. I do.

4 Q. About how long have you been a
5 caregiver for Ms. Dockery?

6 A. About a year and a half.

7 Q. What regular basis during that year and
8 a half would you be with Ms. Dockery?

9 A. When I first started I worked only on
10 Saturdays, the 24-hour shift. I did that for quite
11 a while. Then I picked up a Wednesday.

12 I picked up different shifts here and
13 there for other caregivers who needed the day off.
14 Now I'm working Wednesday, Thursday, and Friday.
15 And I do a 48-hour shift on Saturday and Sunday.

16 Q. All of that changed over time. You've
17 been working with her over about what period of
18 months or years?

19 A. I started in February of 2011.

20 Q. During that time you've had many
21 conversations with her?

22 A. I have.

23 Q. You've had an opportunity to observe
24 her in her decision making and that sort of thing?

25 A. I have.

1 Q. And have you found her, based on what
2 you observed, to be capable of making decisions that
3 affect her person and her property?

4 A. I believe so, yes.

5 Q. Have you ever had occasion to watch her
6 write a check or make a decision about how much
7 she's going to pay for something, that sort of
8 thing?

9 A. Many times.

10 Q. She's a little on the thrifty side,
11 isn't she?

12 A. Yes, she is.

13 Q. You've had conversations with her where
14 she wanted to go a farther distance to maybe get
15 something that wasn't as expensive?

16 A. Or looking in the sale papers and find
17 what's on sale. That's what we buy.

18 Q. These are things that she generates
19 based on her own personality?

20 A. Absolutely.

21 Q. In your opinion, she's capable of
22 making these decisions for herself?

23 A. Yes.

24 Q. You haven't gotten any knowledge about
25 any major holdings or assets that she's had in her

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1 life, properties and those sort of things?

2 A. We don't discuss that.

3 MR. BRITTAIN: I understand. No
4 further questions.

5 THE COURT: Mr. Monckton, anything?

6 MR. MONCKTON: No, ma'am.

7 MR. MCCRACKIN: Just a couple, Your
8 Honor.

9 EXAMINATION

10 BY MR. MCCRACKIN:

11 Q. I think the previous witness testified
12 Ms. Dockery has care 24 hours a day?

13 A. I believe that is what she said, yes.

14 Q. You stay on a 48 hours over the
15 weekend?

16 A. That's correct.

17 Q. What would happen if you guys weren't
18 there?

19 A. What do you mean by that?

20 Q. Does she require your assistance around
21 the clock?

22 A. If I was not there or Debbie was not
23 there, John is always there.

24 Q. She requires somebody's assistance 24
25 hours a day?

1 A. Yes.

2 Q. You're not aware, are you, that in her
3 deposition she couldn't name the day, month, or
4 year?

5 A. I don't know anything about that.

6 Q. You're not aware that she testified
7 earlier in case that the Whitlark property had not
8 been sold even though it has been?

9 A. I don't even know what that property
10 is.

11 Q. If you were aware of that, would that
12 change your opinion as to whether she had capacity,
13 if she doesn't even know if this property has been
14 sold?

15 A. I wouldn't have an opinion on that.

16 Q. What do you base your opinion on?

17 A. I base my opinion on my relationship
18 with Ms. Dockery, which is very good. I care about
19 her about a lot. She's a great lady.

20 Q. Never had any significant discussions
21 with her about her assets?

22 A. I have no interest in what her assets
23 are.

24 Q. Are you aware that all three children
25 have agreed that she does not have capacity?

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1 A. I wasn't aware of that, no.

2 Q. Being aware of it now, would that
3 change your opinion?

4 A. I cannot put myself in their position.

5 Q. But the three people that know her best
6 agree that she lacks capacity --

7 MR. BRITTAIN: Object to the question.
8 Hasn't established a lot of -- she's hasn't been
9 with her daughters very much the last few -- the
10 first part of the question is inaccurate.

11 MR. MCCRACKIN: Her children have been
12 with her her entire life.

13 THE COURT: I will allow it.

14 BY MR. MCCRACKIN:

15 Q. You can answer my question.

16 A. Actually, I don't think it would, no.

17 Q. Wouldn't change your opinion?

18 A. No.

19 MR. MCCRACKIN: Nothing further.

20 THE COURT: Ms. Moore?

21 MS. MOORE: I don't have any questions
22 of this witness.

23 THE COURT: Thank you, ma'am.

24 MS. LANGWAY: Call Rita Cauthen to the
25 stand, please.

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1 of her best friends. Aubrey and Ms. Dockery's
2 husbands had the same birthday. And so they are
3 very close. And we would go out to dinner with each
4 other and to plays and different things of that
5 nature.

6 Q. How often would you say on a weekly
7 basis you see Ms. Dockery?

8 A. At least twice, three times a week.

9 Q. What are you generally doing with your
10 client, Aubrey, and Ms. Dockery during those times?

11 A. We're either going out to dinner, or
12 we're talking on the telephone. We'll be passing by
13 and see her and her caregiver in the yard. Drive in
14 and see her. And I'll take the dog over to see her.
15 She loves our little dog.

16 Q. Have you had an opportunity to observe
17 Ms. Dockery?

18 A. Yes.

19 Q. Have you had an opportunity to have
20 conversations with Ms. Dockery?

21 A. Yes.

22 Q. In your opinion, does Ms. Dockery have
23 the capacity to communicate her wishes and desires?

24 A. Very much so.

25 Q. Do you have any concerns that she's not

1 capable of telling a person what she wants or what
2 she wants to do?

3 A. No.

4 Q. And can you give us any specific
5 examples of a situation where you have seen Ms.
6 Dockery telling a person what she wants to do?

7 A. Yes. She'll tell -- she told Pam, I
8 want to go over to Aubrey's house for the cookout.
9 We had a birthday party and cookout. She wanted to
10 come over there.

11 She said, okay, but it may not be the
12 best thing for us to stay all the time. Well, if we
13 can park close by, that's where we're going to go
14 and what we're going to do. And that's what she
15 did.

16 Q. And with respect to her assets, are you
17 aware of any of her assets?

18 A. I know she owns some property. I don't
19 dwell on her finances. That's none of my business.
20 She's very -- when we've gone out to dinner, she'll
21 go in her pocketbook and she'll pay her bill and the
22 bill for her caregiver.

23 She knows how to leave a good tip. Not
24 too much, not too little, 20 percent, 15 percent.
25 She also knows how to enjoy a conversation with

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1 whoever she's with.

2 MS. LANGWAY: I have no further
3 questions for you. Thank you.

4 THE COURT: Anything, Mr. Monckton?

5 MR. MONCKTON: No.

6 MR. MCCRACKIN: No.

7 MS. MOORE: Nothing for this witness.

8 THE COURT: Thank you, ma'am. You may
9 step down.

10 REAGAN J. CALLAGHAN,
11 being first duly sworn, testified as follows:

12 EXAMINATION

13 BY MS. LANGWAY:

14 Q. Tell us your name again and current
15 occupation.

16 A. Reagan Jean Callaghan. I am a
17 geriatric case manager.

18 Q. Tell us what a geriatric case manager
19 does.

20 A. A geriatric case manager performs a
21 multitude of tasks. The scope of practice is
22 managing medical care and coordination of that care,
23 as well as assisting people in aging and placing in
24 their homes.

25 Q. Are you self-employed?

1 A. This is my company. I started this
2 company in 2004.

3 Q. And if you could, give us a little
4 background on your training.

5 A. I have my BSN in nursing. I've been a
6 nurse for over 30 years. I've been a certified case
7 manager for over 10 years. Now I'm a geriatric care
8 manager and have been since 2004.

9 Q. Have you ever been appointed or
10 assisted in any type of conservatorship or petition
11 for guardianship action?

12 A. Several times.

13 Q. In this court?

14 A. That's correct.

15 Q. Were you appointed in this case?

16 A. No. I was not appointed. Ms. Dockery
17 called me herself in August of last year and had
18 heard about me through a friend of her son's and
19 asked me to come and talk to her. She thought she
20 might need help.

21 Q. Were you hired by Ms. Dockery?

22 A. Yes, I was.

23 Q. If you could, please tell us what you
24 were hired to do for Ms. Dockery?

25 A. I was hired to be her advocate and to

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1 help her coordinate her medical appointments. As
2 Ms. Costa alluded to, we have some issues with UTIs
3 and things. There's still a couple things. To be
4 her advocate and assist her with her medical care.

5 Q. Can you tell us, please, why is it you
6 understand that Ms. Dockery felt that she needed
7 your services in this matter?

8 A. Ms. Dockery told me about the
9 litigation that was going on at the time that I
10 initially met with her and she told me that she
11 wanted me to be able to help represent her and her
12 wishes.

13 Q. Approximately, about when were you
14 hired?

15 A. She called the last week of August in
16 2011. And I believe we met in the beginning of
17 September.

18 Q. Since that time, about how often have
19 you met with Ms. Dockery or interacted with Ms.
20 Dockery?

21 A. It's varied. At least once a month.
22 But sometimes -- several times I've been with her
23 when we've gone to see Dr. Goldschmidt, Dr. Goh, I
24 went to a visit with that -- Dr. Huberty I think
25 I've been to, at least once or twice a month.

1 Q. Have some of your times that you have
2 observed Ms. Dockery, have they always been in the
3 setting of her home?

4 A. No. No. Purposely as part of my scope
5 of practice, especially given that you were so
6 willing and wanting to know what the situation was
7 going on, we went out to lunch. I wanted to be able
8 to take her out and talk to her by myself
9 independently.

10 She has continued across the board to
11 reiterate the same things regarding her wishes
12 regarding her healthcare, and her estate.

13 Q. In your opinion, is Ms. Dockery capable
14 of making decisions and communicating the decision
15 that she once made regarding her person and
16 property?

17 A. Yes. She has the capacity to direct
18 her care and direct her estate, in my opinion.

19 Q. Based on your experience with her, do
20 you have any concerns about her current situation,
21 whether or not she's capable of expressing those
22 desires?

23 A. Her current situation, her living
24 situation, I think is a very good environment. I
25 have absolutely no problems with the way the home is

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1 set up, the care is set up.

2 I've met with the caregivers on
3 numerous occasions. They know what they are doing.
4 They get me involved if there's issue -- medical
5 issues that need to be addressed. I think that all
6 of her needs are being met at home quite well.

7 Q. Did you, in fact, throughout your
8 experience or investigation with Ms. Dockery, do you
9 typically do what I think is called a mini-mental
10 examination initially?

11 A. Yes, I did.

12 MS. LANGWAY: I'd like this to be
13 Exhibit 3.

14 (DFT. EXH. 3, Mini-mental Examination,
15 was marked for identification.)

16 MR. MCCRACKIN: No objection.

17 BY MS. LANGWAY:

18 Q. I'll show you what's already been
19 marked as Defense Exhibit 3. Identify the document
20 for the record.

21 A. The test was completed on 9/21/11. And
22 this a mini-mental exam.

23 Q. Tell us what a mini-mental exam is.

24 A. This particular exam was obtained
25 through Dr. Benjamin's office, actually, Dr.

1 McCaffrey who works with Dr. Benjamin, because it
2 gives me an established baseline as to general sense
3 of cognition.

4 When I first start to work with
5 somebody -- it also is a good tool to use as we age
6 and place as a marker for me to be able to identify
7 things that -- different functions or different
8 things that might be diminishing.

9 Q. Tell us your opinion. Tell us what her
10 score is first.

11 A. 26 out of 30.

12 Q. Is that a good score?

13 A. That's a very good score.

14 Q. Anything about that test that you would
15 like to direct the Court's attention to?

16 A. Well, I heard Mr. McCrackin say that
17 she was not oriented to date and time in a
18 deposition at some point.

19 I did not experience that at all at
20 this time that this test was done. So I'd like to
21 share that she was capable of telling me what day it
22 was and what was going on when I did this test.

23 Q. Throughout your experience and your
24 time with her, have you ever had a situation where
25 Ms. Dockery was not aware of where she was or what

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1 time and place it was?

2 A. Never. Never.

3 MS. LANGWAY: Thank you. I have no
4 further questions for you.

5 THE COURT: Mr. Monckton?

6 MR. MONCKTON: No questions, Your
7 Honor.

8 THE COURT: Mr. McCrackin?

9 EXAMINATION

10 BY MR. MCCRACKIN:

11 Q. Just a couple. You're a paid advocate?

12 A. That's correct.

13 Q. What are you paid?

14 A. Paid \$75 an hour and half time for
15 travel.

16 Q. You are paid to advocate what?

17 A. For the patient.

18 Q. For?

19 A. Whoever I'm contracting with.

20 Q. Healthcare?

21 A. Healthcare and in general their rights.

22 Q. What rights?

23 A. Well, I guess it would depend.

24 You'd have to be more specific than
25 that. There's lots of things that I help people

1 with.

2 Q. Tell me what you advocate on their
3 behalf.

4 A. Her medical care.

5 Q. How would you advocate for her medical
6 care? You go to the doctor and say, she really
7 needs to have this procedure or her hearing's bad?

8 I don't understand what you're
9 advocating.

10 Maybe I should ask you, is she unable
11 to communicate with the doctor?

12 A. No. She can communicate.

13 Q. Why does she need you to advocate on
14 her behalf?

15 A. With her medical situation, more
16 coordination of care. It's not advocating. When
17 she brought me under contract, she told me she
18 wanted me to be aware of what was going on legally
19 in her life with her estate.

20 Q. Is she unable to manage her own
21 healthcare?

22 A. I think she has the capacity to direct
23 it. She needs assistance in managing her care, yes.

24 Q. She couldn't do it by herself?

25 A. No. No.

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1 Q. What else do you advocate?

2 A. Right now I'm advocating that she is
3 given the right to have capacity to direct her
4 financial and medical care.

5 Q. Okay. And did you talk to her
6 daughters at all in the course of your advocacy?

7 A. Never. Never spoken with them.

8 Q. Why would you not speak with her
9 daughters?

10 A. They have never contacted me. Ms.
11 Dockery did not ask me to contact them.

12 Q. Have you ever tried to contact them?

13 A. No, I haven't.

14 Q. Do you think their opinion might be
15 important in advocating for their mother?

16 A. I was brought into this as Ms.
17 Dockery's advocate. She was in an adversarial
18 position with regards to what her daughters wanted
19 for her and what she was telling me she wanted.

20 Q. It's not your job, is it, to make
21 decisions that are in her best interest?

22 A. Repeat that.

23 Q. It's not your job to make decisions
24 that are in her best interest?

25 A. I beg to differ with you.

1 Q. You think that is your primary job?

2 A. I don't think it's my primary job. I
3 didn't say that.

4 Q. You think it's part of your job?

5 A. To be an advocate for her, yes.

6 Q. If she didn't know that certain
7 property had been sold and you became aware of it,
8 would you then advocate on her behalf to find out
9 what happened to that property that she's not aware
10 of?

11 A. If nobody else was addressing that,
12 nobody else was involved in her life, yes.

13 Q. If someone was taking rents from a
14 corporation that she owned an interest in and you
15 found out about it, would you advocate on her behalf
16 to get her fair share of that rent?

17 A. Once again, if I thought that nobody
18 was paying attention or there wasn't somebody that
19 was assigned to take care of her finances, yes, I
20 would.

21 Q. Are you aware that both of those
22 situations took place?

23 MR. BRITTAIN: Objection. That has not
24 been established. He states those as facts. We
25 will dispute the evidence.

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1 MR. MCCRACKIN: Admitted to it in
2 deposition. No question about it. It's a fair
3 question. If you want it as a hypothetical -- my
4 point is this: It's very selective advocacy and I
5 think it's important that the Court know that in
6 order to weigh her testimony.

7 THE COURT: I will allow it.

8 BY MR. MCCRACKIN:

9 Q. Are you aware that John Dockery is
10 taking rents from 29th Avenue that belonged to the
11 corporation?

12 A. No.

13 Q. If were you aware of it, would you
14 advocate on Ms. Dockery's behalf to recover those
15 rents?

16 MR. MONCKTON: I'm going to have to
17 object. Purely a hypothetical. That has not been
18 proven whatsoever.

19 MR. MCCRACKIN: Your Honor, the
20 testimony is uncontested. Emily Dockery testified
21 that John was taking rents.

22 MR. MONCKTON: Emily?

23 MR. MCCRACKIN: No one controverted
24 that he's taking those rents. Not to mention, Your
25 Honor, in his deposition he admits to taking the

1 rents.

2 MS. DOCKERY: He puts it in the bank.

3 MR. MONCKTON: The rent he is talking
4 about is subject to a civil lawsuit. Pleadings have
5 been filed on behalf of my client, John Dockery,
6 stating he was the only person entitled to those
7 rents. Mr. McCrackin's well aware of that.

8 THE COURT: Mr. McCrackin?

9 MR. MCCRACKIN: No written document
10 that entitles him to rents. Admitted statute of
11 fraud.

12 MS. DOCKERY: He had to get it.

13 THE COURT: Ma'am, let me hear from the
14 attorneys.

15 MS. DOCKERY: Could not let them live
16 there without paying rent. John is saving it. If
17 we ever rent that building we will have to remodel
18 it for someone. And the girls won't come up with
19 the money. They never have any.

20 THE COURT: Thank you. I will allow
21 it.

22 MR. MONCKTON: Note my objection for
23 the record, Your Honor.

24 BY MR. MCCRACKIN:

25 Q. My question is, if you were aware that

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1 John Dockery was taking rent from 29th Avenue that
2 belonged to the corporation that owns that property,
3 would you advocate on Ms. Dockery's behalf?

4 MS. DOCKERY: I know where it's going.

5 THE WITNESS: Hypothetically, yes.

6 BY MR. MCCRACKIN:

7 Q. Have you done that?

8 A. No, I have not.

9 Q. Are you aware that Ms. Dockery is not
10 aware that the Whitlark property has been sold?

11 A. No. I was not made aware of that.

12 Q. Are you aware of it?

13 A. No.

14 Q. Do you feel an obligation to advocate
15 on her behalf to make sure she understands --

16 MR. BRITTAIN: Objection. Same reason.
17 This is a totally improper cross-examination.

18 THE COURT: Got it for the record.

19 THE WITNESS: Would you repeat the
20 question?

21 BY MR. MCCRACKIN:

22 Q. In regard to the Whitlark property --

23 A. I don't even know what property that
24 is. The corporation, is that something that Ms.
25 Dockery is part of or is that something the family

1 is part of?

2 I need to know some more information
3 about it if I'm going to answer.

4 Q. If she is unaware that the property
5 that she owns has been sold, would you then advocate
6 on her behalf to find out what happened to that
7 property and why she's not aware of it?

8 A. Yes.

9 Q. Have you done that?

10 A. No, I haven't.

11 Q. Who writes your check?

12 A. I believe that John does.

13 Q. Who sets the schedule?

14 A. That's pretty much per diem, when
15 needed. With regards to visits with Dr.
16 Goldschmidt, those have been something that I had
17 coordinated, but otherwise it's pretty much on an
18 as-needed basis.

19 Q. Let me ask you this: If you discovered
20 that something is not in Ms. Dockery's best interest
21 but she still wants to pursue it, are you an
22 advocate or looking out for her best interest?

23 A. I'd be looking out for her best
24 interest.

25 Q. You would, in those cases, step up and

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1 say, this is not what you should be doing, this is
2 not in your best interest?

3 A. Yes. I would hope I would.

4 Q. All the information that you've gotten
5 in your advocacy is from Ms. Dockery?

6 A. Yes.

7 Q. Has it all come from John Dockery or
8 Ms. Dockery?

9 A. Comes from both of them.

10 Q. Does it come from their attorneys?

11 A. Related to what?

12 Q. To this case. Any --

13 A. I've had information from the Brittain
14 Law Firm. They have contacted me and I've spoken
15 with them several times.

16 Q. What have you spoken to them about?

17 A. This trial.

18 Q. What are the conversations you had with
19 them about this trial?

20 A. What we're discussing right now with
21 regards to her wishes and the consistency that she's
22 always said what she wanted and was very, very
23 concise, and repeats the same things about her
24 wishes and desires as far as directing her care and
25 her estate..

1 Q. If she knows so well what she wants,
2 why does she need you as an advocate?

3 A. I think that Ms. Dockery wanted me as
4 being moral support as well as also being there for
5 her psychologically. We've talked a great deal
6 about her anxiety associated with everything that's
7 going on.

8 Q. Do you have some sort of --

9 MR. BRITTAIN: Let the witness answer
10 the question. He's interrupting the question.

11 MR. MCCRACKIN: I apologize. It wasn't
12 responsive to my question. I wanted to ask her
13 about her psychology background.

14 THE COURT: I think she was answering
15 the question.

16 MR. MCCRACKIN: I'll let her answer the
17 question. Please continue.

18 THE WITNESS: You want to know about my
19 psychology background other than my formal education
20 in nursing?

21 BY MR. MCCRACKIN:

22 Q. You said that you talked to her
23 psychologically. I haven't heard that before in
24 your direct examination.

25 A. I'm talking about her anxiety that's

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1 associated with having to go through this whole
2 process.

3 Q. You're not a psychologist?

4 A. No. Not in any form or shape.

5 Q. No psychology degree?

6 A. No, I don't.

7 Q. Am I correct then you're there for
8 moral support?

9 A. You can say that.

10 Q. Other than the moral support, she
11 doesn't need you at all?

12 A. I don't think that's a correct
13 statement.

14 Q. Let me go back to my original question
15 then. If she can manage her healthcare and knows
16 exactly what she wants, why does she need you?

17 A. Manage or direct it?

18 Q. If she knows exactly what she wants and
19 can make all those decisions for herself, why does
20 she need you as an advocate?

21 MS. DOCKERY: For backup... I can't help
22 it.

23 THE WITNESS: I'm going to answer the
24 question. I want to choose my words.

25 I believe she has the capacity to help

1 direct her care. I do not think that she can manage
2 her care by herself.

3 I believe that has the capacity to
4 direct her estate, but I don't think she has the
5 capacity to manage it.

6 And it's been my opinion that her son
7 has been assisting with the estate. That has not
8 been the primary focus of why I've been involved.

9 BY MR. MCCRACKIN:

10 Q. You and I, I think, agree, that she
11 needs assistance managing her assets?

12 A. Yes.

13 MR. MCCRACKIN: Okay. All right. No
14 further questions.

15 THE COURT: Ms. Moore?

16 EXAMINATION

17 BY MS. MOORE:

18 Q. Do you believe that Ms. Dockery can be
19 easily persuaded?

20 A. No, I don't.

21 Q. Do you believe that she could be
22 potentially subject to being taken advantage of?

23 A. Without the help of her son, yes.

24 Q. And if it happened to be the son that's
25 taking advantage of her, who would be looking out

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1 for her?

2 A. I don't know.

3 MS. MOORE: That's all I have.

4 THE COURT: Mr. Brittain, anything
5 else?

6 MR. BRITTAIN: No.

7 THE COURT: Ms. Langway?

8 MS. LANGWAY: No further questions for
9 the witness.

10 THE COURT: Thank you. Mr. Brittain?

11 MR. BRITTAIN: Bookkeeping, we have
12 Joan Clark to come and testify. You know, Ms.
13 Clark, she gave a report. We'd like to introduce
14 that into evidence. Everybody has a copy.

15 (DFT. EXH. 4, Report of Joan Clark, was
16 marked for identification.)

17 MR. MONCKTON: No objection.

18 THE COURT: The test was part of the
19 raw data that's being submitted.

20 MR. MONCKTON: I marked it
21 independently. That was for your copy as we went
22 through it, but it is marked independently. I
23 think, maybe 2.

24 MR. BRITTAIN: This would be the rest
25 of the raw data.

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1 presentation.

2 THE COURT: Thank you. Mr. Monckton?

3 MR. MONCKTON: Nothing, Your Honor.

4 THE COURT: Ms. Moore?

5 MS. MOORE: You want me to take the
6 stand?

7 THE COURT: I think that might be
8 appropriate.

9 VIRGINIA LEE MOORE,
10 being first duly sworn, testified as follows:

11 THE COURT: Ms. Moore, I'm happy to
12 hear from you at this time.

13 MS. MOORE: Yes, Your Honor.

14 Obviously, I've been involved in this case since I
15 was appointed as guardian ad litem.

16 This was not an easy case to conduct an
17 investigation and make a determination.

18 One of the concerns I had from meeting
19 with Ms. Dockery is she is very verbal, very able to
20 communicate, very direct in what she wants. And
21 there's never been a question about the fact that
22 she expressed certain desires, and she's maintained
23 them from day one.

24 When I got to a point where I could not
25 make a determination for myself as to whether or not

1 (DFT. EXH. 5, Raw Data, was marked for
2 identification.)

3 THE COURT: Defendant's Number 1 at the
4 last hearing. Today started with 2.

5 MR. BRITTAIN: I believe Dr. Benjamin's
6 report and his deposition have already been
7 introduced into evidence.

8 MR. MCCRACKIN: I think we agreed at
9 his deposition they would be admitted.

10 THE COURT: Without objection. We have
11 both examiners' reports and, I think, depositions.
12 I have Ms. Dockery's, I have Dr. Goldschmidt, but
13 I'm not sure if I have Dr. Benjamin's.

14 MS. LANGWAY: I believe we called --
15 you want the transcript as well? I have that.

16 THE COURT: Let me say this: I have
17 the copy. I don't have the original, but I have a
18 photocopy.

19 MS. LANGWAY: I have the original in my
20 car. I can bring it right to you.

21 THE COURT: I think it might be helpful
22 since I have the original transcribed deposition for
23 Dr. Goldschmidt, but the original would be helpful.

24 MR. BRITTAIN: I believe that's all we
25 have to introduce. That would conclude our

1 I felt that she was clearly at a point of being
2 incapacitated or not, I followed up.

3 I tried to communicate with
4 Dr. Benjamin. Unfortunately, Dr. Benjamin was not
5 as good about returning phone calls. I had to wait
6 until to his deposition to ask questions to him.

7 Dr. Goldschmidt did return my phone
8 calls. I was able to follow-up with about him what
9 my concerns were. Specifically having to do with a
10 clear ability on her part to be very verbal and
11 vocal and to assist me with then discerning whether
12 or not she lacked a level of capacity that would be
13 needed in order for her to manage her personal
14 affairs.

15 Unfortunately, as I communicated with
16 Ms. Dockery, there would be times where she would
17 simply refuse to respond to my questions. I could
18 not determine whether or not her refusal to respond
19 was because she did not know the answer or whether
20 she simply thought it was none of my business.

21 On some occasions she would simply tell
22 me it was none of my business. Or on other
23 occasions she would be aggravated with the fact that
24 I was inquiring of her and she would basically not
25 want to participate any further.

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1 But there were times where I could go
2 through various questions and I felt like she would
3 get to a point where because she did not know the
4 answer, she would redirect or divert my attention.

5 Her favorite thing to do was if she did
6 not know an answer, she would to ask me, what would
7 you do, what would you say, what would your answer
8 be?

9 That's why I followed up with
10 Dr. Goldschmidt, to ask, is that a typical situation
11 of someone who is hitting a certain level with
12 dementia for that to be their routine in order for
13 them to compensate, so to speak, as to any deficits
14 she might be having in that regard?

15 When we went to mediation we were able
16 to reach what I believe to be an agreement. I was
17 aware that Ms. Dockery, through her attorneys, we're
18 not in a position to be able to consent to
19 agreement.

20 That was probably one of the times I
21 was very glad that I held the role of guardian ad
22 litem as opposed to being the attorney, because of
23 distinct roles.

24 I was very thankful we were able to
25 reach an agreement. I did feel that it was in her

1 best interest for John to be her guardian. I think
2 that there were problems in the beginning that were
3 expressed by the daughters as to her care. I did
4 look into those concerns.

5 I think that is like most adult
6 children, as their parents grow older, sometimes
7 it's hard to determine, are they at a point where
8 certain steps or interventions need to be taken.

9 And I did not find anything about his
10 actions that I felt were negligent on his part as
11 far as providing the appropriate care for his
12 mother.

13 Ms. Dockery has always expressed a
14 clear desire to stay in her house. She loves her
15 house, enjoys her pets. But, quite frankly, none of
16 the parties ever took a position that she should not
17 be able to stay in the house.

18 I felt like the agreement, as far as
19 John Dockery being responsible -- continuing to be
20 responsible for her was in her best interest.

21 I also felt that after the deposition
22 of Mr. Dockery, when we were looking at finances,
23 there were some problems with the finances. And
24 that agreement relative to selecting a third party
25 to serve as her conservator to handle that aspect of

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1 her estate was certainly in her best interest.

2 Ms. Dockery refused to discuss with me
3 any possibility that the management by John might
4 not have been correct or handled appropriately.

5 I was never able to discuss that with
6 her because she simply refused to even accept the
7 possibility that that was a problem. That in and of
8 itself gave me concern.

9 Furthermore, in looking at Dr. Benjamin
10 and looking at his deposition, when he was asked
11 whether or not she could be persuaded or whether she
12 might be subject to being taken advantage of, he
13 clearly stated that, yes, she was at a point where
14 that was something that would be of concern.

15 So from my standpoint, she certainly
16 has the ability to make some decisions as far as
17 what she may wish to have happen.

18 Unfortunately, I don't believe she's at
19 a point in her life and with her condition that
20 she's able to make reasonable decisions concerning
21 her personal care and/or her finances.

22 So I feel it is necessary for
23 appointment of a guardian and conservator. I still
24 feel that I'm in agreement that it's possible to go
25 forward, I still believe the agreement is in her

1 best interest.

2 THE COURT: Mr. McCrackin?

3 MR. MCCRACKIN: I don't have any
4 questions, Your Honor.

5 EXAMINATION

6 BY MR. BRITTAIN:

7 Q. Lee, have you looked into that before
8 Ms. Dockery -- before there was any documents that
9 she completed, estate documents where she chose a
10 guardian and a conservator with Cliff Tall that
11 named John Dockery, have you looked into that?

12 A. I had had a communication with Cliff
13 Tall. That's how Dr. Goldschmidt got involved in
14 the first place.

15 So I knew through the communications
16 with Mr. Tall that that's what her estate plan was
17 at that point.

18 What he obviously did not feel
19 comfortable discussing with me was what changes that
20 might have been contemplated, which was what was the
21 basis for sending Ms. Dockery to Dr. Goldschmidt in
22 the first place.

23 I wasn't aware of what changes might
24 have been considered at that point. I knew what the
25 estate plan was.

1 STATE OF SOUTH CAROLINA

2 COUNTY OF HORRY

PROBATE COURT

3
4 Emily Carlson and
5 Alice Preyer,

6 Petitioners,

7 vs.

CIVIL ACTION NOS.
2010-GC-26-0068 &

0069

8 John C. Dockery, III,

9 Respondent.

10 In re: Emily Cheshire Dockery

11
12 HEARING BEFORE: THE HONORABLE DEIRDRE W. EDMONDS

13 DATE: Thursday, May 30, 2013

14 TIME: 8:50 a.m. through 1:04 p.m.

15 LOCATION: Horry County Courthouse
16 Probate Court, Second Floor
17 Conway, South Carolina

18 COURT REPORTER: Rita Rodriguez

19
20
21
22
23
24
25
COPY

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392 Oak Moss Court, Murrells Inlet, SC 29576

(843) 685-0075

1 what Miss Dockery told him. That's
2 inadmissible hearsay at this point. Miss
3 Dockery is here and would be the best
4 witness for it and she can testify for
5 herself.

09:22A

6 MR. BRITTAIN: The Court has made some
7 rulings about Miss Dockery which we
8 strenuously object to that involve her
9 capacity. Let's deal with it if it comes
10 up. I don't intend to ask him any hearsay
11 questions.

09:22A

12 THE COURT: All right. Thank you.

13 MR. BRITTAIN: Your Honor, you have a
14 copy of the Power of Attorney?

15 THE COURT: I do.

09:23A

16 MR. BRITTAIN: I have had that marked
17 as Exhibit No. 1 for the Respondent.

18 *CLIFFORD H. TALL, being first duly sworn, testified*
19 *as follows:*

20 DIRECT EXAMINATION

21 BY MR. BRITTAIN:

22 Q. Mr. Tall, would you briefly give us a
23 history of your educational background and your
24 employment history.

25 A. Sure. After a bachelor's degree in 1975, I

09:23A

1 got a Juris Doctorate degree in 1979. Then in 1983
2 a Master of Taxation from Georgetown focusing on
3 tax law. And a lot of that was also estate
4 planning as it related to tax law.

5 I was in military service until 1983 as a
6 Navy Judge Advocate. I went into private practice
7 in 1984 and have had a practice involving business
8 transactions, estate planning, taxation, since that
9 time. Since 1992, I have been a solo practitioner
10 in the same location in Myrtle Beach on Oleander
11 Drive.

12 Q. During that time, have you had occasion to
13 draft power of attorney on a regular basis?

14 A. Yes, sir.

15 MR. BRITTAIN: Your Honor, I would
16 submit that Mr. Tall is an expert in the
17 field of estate planning and a lawyer in
18 good standing and allowed to render an
19 opinion in this court.

20 MR. McCRACKIN: Your Honor, I don't
21 know why we need expert testimony. My
22 understanding was that Mr. Tall was going to
23 be a fact witness and testify as to what
24 happened. I don't know what issue he's
25 intending to testify as an expert on.

1 THE COURT: Mr. Brittain.

2 MR. BRITTAIN: I don't know what's
3 going to come up. But he is an expert, so
4 while I have got him on the stand. You
5 could say he is or he isn't, but I'm asking
6 that he be qualified as an expert to render
7 opinion in legal matters in the court.

09:25A

8 MR. McCRACKIN: I object, your Honor.
9 What is he going to render an opinion on?

10 MR. BRITTAIN: Let's wait and see.

09:25A

11 MR. McCRACKIN: There is one issue in
12 this case: Who is to be appointed as
13 conservator. Does he have some legal
14 opinion about --

15 MR. BRITTAIN: I won't ask him that
16 question.

09:25A

17 MR. McCRACKIN: We don't need an expert
18 in this case, your Honor. I object to it.

19 THE COURT: I'm not going to certify
20 Mr. Tall in this case, in this matter as an
21 expert.

09:25A

22 MR. BRITTAIN: Let me ask him a few
23 more questions then.

24 BY MR. BRITTAIN:

25 Q. Have you had any kind of seminars or

09:25A

1 additional training with respect to estate planning
2 over the years?

3 A. Sure. Most of the CLEs I attend have
4 something to do with those areas that I have spoken
5 about, business law, tax law, estate planning,
6 estate administration.

09:25AM

7 Q. Have you made it a practice of yours
8 throughout your career as a lawyer to maintain
9 continuing legal education requirements?

10 A. Yes, sir.

09:26AM

11 Q. Let me hand you what's been marked as
12 Exhibit No. 1 for the Respondent, and give you a
13 chance to look over that document and see if you
14 recognize it.

15 A. It looks familiar to me as a document I
16 prepared in my office.

09:26AM

17 Q. I take you back to Page 6 of the document
18 and ask you to look at that. Do you recognize any
19 of the signatures on that page?

20 A. There is my signature and the signature of
21 Miss Dahlke, who was an assistant in my office at
22 the time.

09:27AM

23 Q. Do you recognize her signature too?

24 A. I do.

25 Q. Let me direct you to Page 5.

09:27AM

1 A. Yes, sir.

2 Q. And ask you if you recognize any of the
3 signatures on that page?

4 A. The same two witnesses as on Page 6 and
5 twice Miss Dockery has signed.

09:27A

6 Q. Who prepared this Power of Attorney?

7 A. Well, my assistant technically prepared it
8 but I directed that it be prepared, the terms of it
9 are what I directed.

10 Q. Is this Power of Attorney different in any
11 way significantly from many others that you have
12 drafted and proposed to a client?

09:27A

13 A. If I could use the term typical, I would use
14 it here to describe a client wanting to appoint
15 someone to be their Attorney In Fact and to have
16 alternates appointed in case the one person they
17 have appointed is not able to serve.

09:28A

18 Q. Did you have any conversations with Miss
19 Dockery in connection with the drafting of this
20 document?

09:28A

21 A. I did.

22 Q. How about in connection in the signing of
23 this document?

24 A. Yes.

25 Q. Did she ask you questions?

09:28A

1 A. Yes.

2 Q. As a part of this process and as a
3 practitioner, are you paying attention and trying
4 to determine whether or not the person you are
5 serving is up to speed on what's happening, asking
6 good questions, and understanding the process?

09:28AM

7 A. I consider that my obligation.

8 Q. Did you exercise that judgment in this case?

9 A. I believe I did.

10 Q. And based on that, were you comfortable with
11 the fact that Miss Dockery understood what was in
12 this document and signed it?

09:28AM

13 A. Yes, sir.

14 Q. In other words, in your opinion, she had
15 capacity to make these decisions at the time she
16 signed this document?

09:28AM

17 A. I believe she did.

18 Q. I want to direct you to Page 4 and to
19 paragraph three. Would you read that, please, for
20 all that are present here. This is from Exhibit 1
21 for the Respondent.

09:29AM

22 A. "It is my further intention that my said
23 Attorney In Fact or alternate shall serve as such
24 and shall continue to exercise the authority
25 granted herein in spite of any attempt to appoint a

09:29AM

1 guardian or conservator on my behalf. It being my
2 specific intent that my said Attorney In Fact or
3 alternate shall fulfill the obligations ordinarily
4 reserved for a guardian and conservator and that no
5 application to court for the appointment of any
6 other persons in either capacity shall be effective
7 while my said Attorney In Fact or alternate is
8 willing and able to so serve."

09:30

9 Q. Did you record this document in the
10 courthouse?

09:30

11 A. Yes, at the ROD.

12 Q. What is the significance, from a
13 practitioner's standpoint, of having Respondent's
14 Exhibit No. 1 executed by someone Miss Dockery's
15 age? What are we doing here? Why are we doing
16 this? What's going on?

09:30

17 A. I often share with a client that the
18 alternative to documents like this involve
19 typically three lawyers, two doctors, a judge and
20 hearings, and probably thousands of dollars to have
21 someone appointed so that if someone is
22 incapacitated there is someone who can handling
23 their affairs.

09:31

24 There is another part of it too. This Power
25 of Attorney allows decisions to be made even if

09:31

1 someone is not mentally incapable. You could have
2 someone while you're mentally fine conduct business
3 for you because you're physically absent. So it
4 has those two possibilities.

5 Q. So part of the process here is to avoid
6 litigation and appointment by others and to give
7 the person, in this case Miss Dockery, the decision
8 making process, let her make the decision?

09:31AM

9 A. A lot of clients find that attractive to
10 take into account. I speak about a client of mine
11 at 83 who passed on two days after his last round
12 of golf. We don't know if during our lifetime we
13 are going to suffer an incapacity. That gentleman
14 did not.

09:31AM

15 And then you could look at President Regan,
16 who was years of having mental incapacity and
17 someone was handling his affairs. So people try
18 and take that into account.

09:32AM

19 Q. Was there anything unusual about this
20 process or was this process, the signature, the
21 drafting, all done in the normal course of
22 business?

09:32AM

23 A. I would say it was.

24 Q. Thank you.

25 MR. BRITTAIN: No further questions. I

09:32AM

1 move to introduce Respondent's Exhibit 1.

2 MR. McCrackin: No objection.

3 MS. MOORE: No objection.

4 (Respondent's Exhibit No. 1 previously
5 marked for identification, was admitted into
6 evidence.)

7 THE COURT: Any questions, Mr.
8 McCrackin?

9 MR. McCrackin: Just a couple, your
10 Honor.

09:32A

11 CROSS EXAMINATION

12 BY MR. McCrackin:

13 Q. Mr. Tall, Mr. Brittain referred to this
14 language on Page 4 about further intent and not
15 having a conservator appointed and so forth. You
16 didn't advise Miss Dockery that this language was
17 effective to prevent the probate court from
18 appointing a conservator, did you?

09:32A

19 A. I don't believe I did.

20 Q. Would you agree that this language is not
21 effective to prevent the probate court from
22 appointing the conservator?

09:33A

23 A. I think one of the last words in that
24 paragraph, the word "able," I think holds open the
25 recognition that the Court can review what's going

09:33A

1 on and make determinations.

2 Q. Let me ask you this. If the person that
3 someone appointed, be it Miss Dockery or somebody
4 else, totally mismanages, steals from them,
5 commingles money, and you have language in here
6 that says you can't appoint a conservator, you
7 can't have the Court review it, this is who I want,
8 that doesn't make any sense, does it?

09:33AM

9 A. I don't think I said that it says you can't
10 appoint a conservator.

09:33AM

11 Q. So a review of the person's performance and
12 the actions they have taken in the past would all
13 be appropriate to take into consideration, would
14 they not?

15 A. I would agree.

09:33AM

16 Q. And you would advise the client of that,
17 would you not?

18 A. I would.

19 MR. McCRACKIN: No further questions,
20 your Honor.

09:33AM

21 THE COURT: Mr. Monckton.

22 MR. MONCKTON: No questions, your
23 Honor.

24 THE COURT: Ms. Moore.

25 MS. MOORE: I have no questions, your

09:34AM

1 THE COURT: Be seated, please.

2 We're back on the record with respect
3 to the Dockery matter. I believe when we
4 adjourned this morning Mr. McCrackin had
5 made arrangements for the person that the
6 petitioners are proposing to be conservator
7 for Mrs. Dockery to be here.

12:10F

8 MR. McCrackin: Your Honor, Mr. Godbold
9 is here and ready to testify.

10 THE COURT: Happy to hear from him.

11 *WALTER GODBOLD, being first duly sworn, testified*
12 *as follows:*

13 MR. McCrackin: If your Honor please.

14 THE COURT: Yes, sir.

15 DIRECT EXAMINATION

16 BY MR. McCrackin:

17 Q. Mr. Godbold, if you would give the Court the
18 benefit of your experience and background.

19 A. I have been a CPA for 25 years here in
20 Myrtle Beach. I have done various sundry fiduciary
21 roles, executor of estates, trustee. Currently I'm
22 doing a receivership for a restaurant operation.
23 And that's, you know --

12:11F

24 THE COURT: Do you mind pulling the
25 microphone a little bit closer.

12:11F

1 A. It's sort of been that way over the years.
2 My practice is a normal CPA practice but that stuff
3 comes into play, you know, on occasion.

4 Q. So you have served as a fiduciary through a
5 receiver?

6 A. Uh-huh.

7 Q. Have you served as a conservator or guardian
8 in the past?

9 A. No.

10 Q. But you have served as a receiver in various
11 cases?

12 A. Yes, uh-huh.

13 Q. And you understand in this case you're being
14 asked to serve as a conservator for Miss Dockery?

15 A. Correct.

16 Q. And you are willing to serve in that
17 capacity?

18 A. Yes.

19 Q. Walter, any bankruptcies or financial issues
20 that would prevent you from being bonded?

21 A. Not that I know of, no.

22 Q. You do have malpractice insurance through
23 your practice?

24 A. Yes.

25 Q. Do you know what the coverage on your

12:12PM

12:12PM

12:12PM

12:12PM

1 malpractice insurance is?

2 A. I know we have changed it in the last couple
3 years but I can't remember if it's one million or
4 \$500,000. I'm not quite sure. I'd have to check
5 on that.

12:12F

6 Q. Any reason that the Court should be aware of
7 that you would not be able to serve as a
8 conservator in this case?

9 A. Not that I know of.

10 Q. What is your fee structure for serving as a
11 conservator?

12:13F

12 A. \$150 an hour.

13 Q. Do you understand that as a conservator you
14 will have fiduciary duties to Miss Dockery, you
15 will have responsibilities to the Court to provide
16 an annual report, an accounting essentially to the
17 Court, you understand that you will have to file an
18 inventory of the assets that are under your
19 management?

12:13F

20 A. Correct.

12:13F

21 Q. And you understand that you will, if your
22 insurance isn't enough to cover liability, we may
23 have to get you bonded in order to serve?

24 A. I guess we can increase the insurance.

25 Q. And you understand that you would be looking

12:13F

1 out for the best interests of Miss Dockery in
2 regard to her finances?

3 A. Correct.

4 Q. Do you have any problem in doing that?

5 A. None.

12:13PM

6 Q. Anything else that you think the Court
7 should be aware of in regard to your professional
8 qualifications or do you have questions of the
9 Court about what your duties might be?

10 A. No. I'm a registered rep for the SEC in
11 addition to a CPA. That kind of helps in
12 securities and things of that nature.

12:14PM

13 Q. If the Court will find that you're qualified
14 to serve as a conservator, you are willing to serve
15 in this case?

12:14PM

16 A. Yes.

17 MR. McCRACKIN: I don't have anything
18 further, your Honor.

19 THE COURT: Ms. Langway.

20 MS. LANGWAY: I have no questions, your
21 Honor.

12:14PM

22 THE COURT: Thank you. Just let the
23 record reflect that Miss Langway is here
24 this afternoon for Mr. Brittain.

25 MS. LANGWAY: Yes, that's correct.

12:14PM

1 THE COURT: Thank you. It's good to
2 have you.
3 Mr. Monckton.

4 MR. MONCKTON: No questions, as much as
5 I would love to ask Mr. Godbold some
6 questions.

12:14f

7 THE COURT: Miss Moore.

8 MS. MOORE: I just have a couple of
9 questions, your Honor.

10 CROSS EXAMINATION

11 BY MS. MOORE:

12 Q. Mr. Godbold, have you served as a personal
13 representative in Horry County?

14 A. Yes.

15 Q. Are you currently serving in the capacity as
16 a personal representative?

12:14f

17 A. Not now, no. I'm a trustee of a trust and a
18 receivership.

19 Q. And serving as the trustee for a trust, is
20 that in an action that's actually pending in Horry
21 County?

12:15f

22 A. Yes, I believe so.

23 Q. And then the action involving the
24 receivership, is that an action that's pending here
25 in Horry County?

12:15f

1 A. Not anymore. It's been appointed.

2 Q. Have you ever been sued relative to any role
3 that you have served as a fiduciary?

4 A. No.

5 Q. So there is nothing active in terms of any
6 claim against you or any action as a fiduciary?

7 A. None.

8 Q. Have you ever been denied a bond or
9 insurance policy to cover your duties as a
10 fiduciary?

11 A. No.

12 Q. In the other capacities that you referred
13 to, did you actually have to secure a separate
14 policy of insurance?

15 A. I don't really recall, to be honest.

16 Q. It's okay.

17 A. I don't recall. It may have been but I
18 don't recall.

19 Q. But, at this point, you're not aware of
20 anything that would inhibit your ability to secure
21 either additional coverage or, if need be, to
22 secure an independent bond?

23 A. Not that I know of.

24 Q. In any action that had been pending before
25 the Horry County probate court, have you ever been

1 required to appear in court to explain any actions
2 that you have taken in your fiduciary capacity?

3 A. No.

4 Q. Ever receive any type of citations or
5 delinquencies?

12:16F

6 A. No.

7 Q. So as far as those particular roles,
8 whatever the requirements were in terms of filings
9 or appearances, you fully complied?

10 A. Correct.

12:16F

11 Q. As far as serving as fiduciary for Miss
12 Dockery, at this point, do you have any information
13 as far as what her assets may be comprised of?

14 A. We have discussed it, yes, but I haven't
15 seen it like on paper. We have discussed it. It's
16 mainly real estate, as I understand.

12:16F

17 Q. Do you understand that it's probably going
18 to take some investigation on your part in order to
19 correctly identify and then actually collect those
20 assets?

12:17F

21 A. Yes.

22 Q. Do you have any concerns in that regard?

23 A. No.

24 MS. MOORE: That's all the questions I
25 have, your Honor.

12:17F

1 THE COURT: Thank you.

2 Just a few questions, sir.

3 THE WITNESS: Okay.

4 THE COURT: Have you ever been
5 convicted of a felony?

12:17PM

6 THE WITNESS: No.

7 THE COURT: Have you ever been
8 suspended from practicing as a certified
9 public accountant?

10 THE WITNESS: No.

12:17PM

11 THE COURT: Ever been sanctioned?

12 THE WITNESS: No.

13 THE COURT: Or reprimanded by whatever
14 governing board there is for CPAs in this
15 state?

12:17PM

16 THE WITNESS: No.

17 THE COURT: I believe Mr. McCrackin
18 asked you if you have ever filed for
19 bankruptcy?

20 THE WITNESS: No, ma'am.

12:18PM

21 THE COURT: Any judgments against you,
22 sir?

23 THE WITNESS: No.

24 THE COURT: Miss Langway, there is an
25 estate matter, a different estate in trust

12:18PM

1 THE COURT: Sure.

2 MS. MOORE: Your Honor, I know that
3 Miss Dockery has always wanted her son to be
4 serving in the capacity of guardian and
5 conservator. And I feel like there needs to
6 be something placed on the record as to why
7 I felt that it was so important for it to be
8 an independent conservator. I don't want to
9 go into it ad nauseam but I just wanted to
10 kind of outline for the Court some of my
11 concerns that have arisen during this
12 litigation, primarily had arisen during the
13 deposition of Mr. Dockery.

14 THE COURT: Would you like to do that
15 there or would you like to -- I don't know,
16 maybe it would be better for you to take the
17 stand and be sworn in and provide your
18 testimony under oath and then that way if
19 any of the parties or attorneys wanted to
20 question you they could certainly do that.

21 MS. MOORE: I'd be happy to.

22 LEE MOORE, being first duly sworn, testified as
23 follows:

24 THE COURT: Happy to hear from you,
25 Miss Moore.

1 THE WITNESS: Yes, ma'am, your Honor.
2 Like I said, I didn't want to go through
3 each and everything ad nauseam but I just
4 wanted to cover some of the highlights as
5 far as the investigation and, most
6 importantly, information that had been
7 gleaned in the deposition of Mr. Dockery.

12:24PM

8 So, basically, your Honor, the reason I
9 believe that John Dockery would not be the
10 best choice to serve as conservator is,
11 quite frankly, a myriad of reasons, but
12 primarily things that came up were the fact
13 that there was a continual commingling of
14 funds and there was no clear accounting of
15 funds spent on behalf of his mother verses
16 on his own behalf.

12:24PM

17 In this litigation he had been taking
18 positions as to the title or division of
19 assets not supported by the records or for
20 which there was no documentary evidence.

12:24PM

21 For an example of that situation, John
22 Dockery takes the position that 30th Avenue
23 Corporation owns the building that is
24 situated upon land that is actually titled
25 in the name of 29th Avenue Corporation. He

12:24PM

1 also takes the position that 30th Avenue
2 Corporation holds a 100 year ground lease
3 for which he pays a dollar per year without
4 being able to produce a written lease.

5 Mr. Dockery was initially receiving and
6 depositing into his own personal account
7 rent that was received from one of the
8 buildings that's referred to as Drifters,
9 it's a restaurant. But since January
10 of 2011, he has been depositing these funds
11 into the 29th Avenue account. He didn't
12 really give a good explanation as to why.

13 However, he does take the position that even
14 though he's depositing these funds into the
15 29th Avenue Corporation, that those funds in
16 fact belong to him. And, once again, that
17 has to do with rents that were being
18 received from a restaurant called Drifters
19 that is situated in a building that is
20 located on the property owned by the 29th
21 Avenue Corporation.

22 Other things that were a concern is Mr.
23 Dockery had described in his deposition that
24 he had been utilizing monies from his mother
25 to pay for taxes and insurance on the house

1 in which both he and his mother currently
2 reside. Of concern with that is the fact
3 that this house is part of a residential
4 trust. This trust terminated in around
5 2004. The terms of the trust required that
6 Mr. Dockery, as the life tenant, would be
7 responsible for paying of the taxes and
8 insurance. Whereas in his deposition, he
9 had indicated that the taxes and insurance
10 were being paid from monies that belonged to
11 his mother.

12:26PM

12:26PM

12 So a problem that we have is Mr.
13 Dockery serves in a fiduciary capacity in
14 multiple levels. He had been serving as
15 Power of Attorney for his mother, had been
16 serving as fiduciary for various
17 corporations, and it was very clear in
18 listening to Mr. Dockery in his deposition
19 that he cannot distinguish and delineate or
20 maintain clear and accurate records to
21 account for his activities in these various
22 fiduciary roles.

12:26PM

12:27PM

23 What was probably of greatest concern
24 is there were a couple of deals, and I'll
25 refer to them as a Whitlark deal and as a

12:27PM

1 Rockingham house transaction. But basically
2 there was a deal where Mr. Dockery, with no
3 funds out of his pocket, acquired a piece of
4 property that he, together with property
5 owned by his parents, sold it in a single
6 transaction. Sold it with a net proceeds in
7 the range of in excess of \$1 million. Sold
8 it and then stated in his deposition that
9 the proceeds were to be divided 50/50.

12:27i

10 There was no documentation that would verify
11 the fact that even though the title was not
12 50/50, that the proceeds from the sale of
13 this property would be 50/50 between he and
14 his mother.

12:27i

15 And then to compound that, he testified
16 that whatever proceeds are left over from
17 the sale of this property, the Whitlark
18 property, those proceeds are still being
19 held in various Whitlark accounts. Those
20 proceeds, according to Mr. Dockery, belong
21 to both he and his mother, but there is no
22 delineation as to how much is his and how
23 much is hers.

12:28i

24 Those are also the proceeds that there
25 are transfers from that account to her

12:28i

12:28i

1 account from which taxes and insurance on
2 the residence are being paid.

3 Once again going back, taxes and
4 insurance on the residence at this point
5 should be paid by him and not his mother.

12:28PM

6 And then last but probably in the big
7 scheme of things is a relatively small
8 transaction, there was a house in
9 Rockingham, which is up in North Carolina.
10 That house was transferred with no stated
11 consideration from his mother to him. He
12 then stated in his deposition that the
13 consideration was actually 50,000. However,
14 there had been no actual money that
15 exchanged hands. The explanation for that
16 being that he had loaned his mother some
17 money at the time or close to the time of
18 his father's death and that part of the
19 consideration was basically a payoff of that
20 loan. Initially he said the loan was 30 and
21 then later in his deposition he was unsure
22 of what the loan was, 25, 26, 27. Once
23 again, there is no documentation as to the
24 loan.

12:28PM

12:29PM

12:29PM

25 And then he also indicated that he had

12:29PM

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1 yet to pay his mother the balance, whatever
2 that balance may be, whether that be 20,000
3 or 20,000 and some change.

4 So I just thought it was very clear in
5 this litigation and certainly in his
6 deposition, that there was a lot of
7 confusion on his part, a lack of
8 understanding on his part certainly with
9 regard to the residential trust. He was
10 unfamiliar with the trust, certainly didn't
11 know the terms of the trust. And I just
12 felt like with all of those factors taken
13 into consideration, it was very important to
14 have someone who would be more independent,
15 fresh set of eyes, to come in and basically,
16 I don't envy Mr. Godbold because it's going
17 to require a lot of investigation on his
18 part to put together an accurate picture of
19 what actually comprises Mrs. Dockery's
20 assets.

21 But, your Honor, I just felt like I
22 wanted to at least put on the record that
23 even though I understand that Miss Dockery
24 wanted to have her son appointed as
25 conservator, I felt I needed to give some

12:29P

12:29P

12:30P

12:30P

12:30P

1 explanation as to why I didn't feel that it
2 was in her best interests for him to serve
3 in that capacity.

4 THE COURT: Thank you. Mr. McCrackin,
5 anything for Miss Moore.

12:30PM

6 MR. McCRACKIN: No, your Honor.

7 THE COURT: Miss Langway, any questions
8 for Miss Moore?

9 MS. LANGWAY: Yes, your Honor. Thank
10 you.

12:30PM

11 DIRECT EXAMINATION

12 BY MS. LANGWAY:

13 Q. Miss Moore, you mentioned that John Dockery,
14 you thought there was evidence of commingling of
15 funds. Would you specify what that evidence was?

12:31PM

16 A. His testimony that the funds from the
17 Whitlark transaction were still being held in three
18 separate accounts under Whitlark but that he,
19 himself, had indicated that those funds belonged to
20 both he and his mother.

12:31PM

21 Q. Do you realize that Whitlark was formed and
22 happened years before Miss Dockery ever had any
23 issues and when her husband was still living?

24 A. Correct, I do.

25 Q. And that the corporation was set up when her

12:31PM

1 husband was still living that gave them both
2 50 percent ownership?

3 A. Now that I can't testify to.

4 Q. That was his testimony.

5 A. I understand. But he also testified that
6 the funds were to be divided on a 50/50 basis but
7 the deed of transfer was not from simply Whitlark
8 to Martin Marietta, the transfer was from three
9 entities.

10 Q. But didn't he testify that the corporation
11 was held 50 percent to his mother and his father
12 and he had 50 percent?

13 A. I believe that was what his testimony was.
14 But I don't know that for a fact.

15 Q. But that was his testimony?

16 A. Correct.

17 Q. And was his testimony also that that is why
18 the funds were split 50/50?

19 A. I don't believe that that was what his
20 testimony was. As a matter of fact, I think he
21 said he didn't have any paperwork to substantiate
22 why it was to be 50/50.

23 Q. Okay, we disagree on what his testimony was
24 but that's fine.

25 With respect to the corporations, various

1 corporations, 30th Avenue, isn't that still in
2 litigation in civil court?

3 A. I'm sorry, I couldn't hear you.

4 Q. 30th Avenue, you talked about 30th Avenue.

5 A. Yes, ma'am.

6 Q. And you believe that Mr. Dockery is
7 improperly claiming that he owns that. Isn't that
8 still in litigation?

9 A. To be quite frank, I have not been involved
10 in any of that litigation. I'm only going based on
11 what his deposition testimony was and the
12 information that was obtained in this litigation.

12:32PM

13 Q. Are you aware that the sisters and the
14 daughters have all been sued over that particular
15 entity?

12:32PM

16 A. I'm aware that there is litigation I believe
17 involving 29th Avenue and also some litigation
18 involving the residential trust, but I don't know
19 any of the details.

20 Q. If you will agree with me, I'm telling you
21 it involves 30th Avenue. Is it not hypothetically
22 possible that that will be resolved in his favor,
23 that he does in fact own that?

12:33PM

24 A. I have no idea.

25 Q. But there is litigation over that?

12:33PM

1 A. I'll take that as a given.

2 Q. Do you have any evidence, did you ever see
3 any documentation that he couldn't have owned 30th
4 Avenue?

5 A. I was looking for the reverse. I was
6 looking for evidence that would have supported his
7 contention.

8 Q. But did you ever find any evidence that he
9 didn't own it?

10 A. No, I didn't.

11 Q. The residential trust -- at this point in
12 time, has Mr. Dockery ever been appointed as the
13 conservator of her estate?

14 A. He's the trustee under the trust.

15 Q. Has he ever been appointed as the
16 conservator of her estate?

17 A. I'm not sure what that has to do with being
18 a trustee of --

19 Q. I asked you a question, Miss Moore. Can you
20 answer it, please.

21 A. Of course he's never been appointed as
22 conservator.

23 Q. As far as you know, how often has he
24 exercised his Power of Attorney?

25 A. I would imagine he does it on an ongoing

1 basis. But to actually execute in the name of, I
2 don't know.

3 Q. So, therefore, is it possible that he
4 wouldn't know at what point in time the residential
5 trust was to collapse?

12:34PM

6 A. I don't disagree that he might not know.
7 The issue is whether he should have taken steps to
8 learn that information.

9 Q. Again, having not been appointed by a court
10 to have that responsibility?

12:34PM

11 A. I don't see where the responsibility that a
12 conservator would have would have anything to do
13 with the responsibility that he would have under
14 that trust. I don't see the two going together.

15 Q. Mr. Godbold is going to have to look into
16 all of that, is he not?

12:34PM

17 A. I don't disagree with that.

18 Q. So a conservator would have to look into all
19 of that.

20 In the last couple years, Mr. Dockery has
21 not been appointed nor been told by any individual
22 that he is in charge of his mother's finances. Do
23 you agree with me on that?

12:34PM

24 A. No matter how many times you tell me that,
25 that doesn't take away what responsibilities he

12:34PM

1 would have to understand the terms of a residential
2 trust. And he was a integral part of the
3 residential trust in terms of when it terminated he
4 would hold a life estate interest and would have
5 certain responsibilities.

12:35P

6 Q. Do you know for a fact that he hasn't paid
7 the taxes and the insurance since a certain time?

8 A. He specifically said in his deposition that
9 they were paid from his mother's funds.

10 Q. Do you know exactly what date he said he
11 started paying them from his mother's funds?

12:35P

12 A. No, I do not.

13 Q. And do you know that, for instance, with
14 respect to the corporation, there are several
15 corporations? Are you aware of that?

12:35P

16 A. Yes.

17 Q. 30th Avenue being one, DOE being another
18 one, Whitlark being one. Do you realize those were
19 set up way before Miss Dockery had any capacity
20 issue and actually when her husband was still
21 living?

12:35P

22 A. Correct.

23 Q. And that they are statutory closed
24 corporations, they are family corporations, you
25 understand that?

12:35P

1 A. Correct.

2 Q. And a lot of times family corporations don't
3 have extremely good bookkeeping and accounting?

4 A. Whether that's the case or whether that
5 should be the case are two different things.

12:35PM

6 Q. In your experience, have you found other
7 corporations that are family oriented that don't
8 necessarily have excellent bookkeeping?

9 A. I have.

10 Q. And is it your understanding that Mr.
11 Dockery, for good or for evil, has been running
12 those family businesses for years?

12:36PM

13 A. He has.

14 Q. And, as far as you know, has any issue ever
15 been raised other than when this capacity issue
16 came up as to those particular entities being run
17 by him?

12:36PM

18 A. I don't remember the timing of it. I do
19 know that there had been an issue raised about
20 distributions being made from one of the
21 corporations. I don't recall whether the timing of
22 that was before or after the issue of incapacity.

12:36PM

23 Q. Do you agree though that a civil court can
24 handle all of the corporate issues with respect to
25 who owns what ownership, how it should be handled,

12:36PM

1 who should be running those companies, and that
2 that could be completely separate from what is in
3 her estate?

4 A. It will be handled by circuit court but it's
5 not necessarily separate from what's in her estate
6 because she has an ownership interest. 12:37E

7 Q. Right. But a court will determine her
8 ownership interest?

9 A. Correct.

10 Q. As well as every person in this room, Mr.
11 Dockery and her two daughters? 12:37E

12 A. That's correct.

13 Q. And with respect to that, if a Court were to
14 find that he was not improperly handling that,
15 would it change your opinion as to whether or not
16 he could continue to be a conservator? 12:37E

17 A. It's not just one factor though.

18 Q. If the Court were to find that he had not
19 handled any of the corporate entities improperly,
20 would that change your opinion on his ability to
21 handle Miss Dockery's estate? 12:37P

22 A. It could.

23 Q. And you agree with me, I guess, that those
24 are still pending?

25 A. I agree. 12:37P

1 Q. We don't have a resolution as of this date
2 on that.

3 With respect to the, you mentioned that you
4 did not think he maintained clear and accurate
5 records. I couldn't understand if you were saying
6 as a fiduciary for the corporation or as a
7 fiduciary for Miss Dockery?

12:37PM

8 A. For Miss Dockery.

9 Q. Again, where do you get that he has a
10 responsibility to maintain records as fiduciary for
11 Miss Dockery, having never been appointed by the
12 Court to do so?

12:38PM

13 A. I think acting as a Power of Attorney he has
14 certain fiduciary responsibilities. And I think
15 one of those responsibilities is to be able to be
16 very clear in your recordkeeping and be able to
17 provide information that would substantiate the
18 manner in which you handled the funds on behalf of
19 Miss Dockery.

12:38PM

20 Q. Again, do you understand that Mr. Dockery
21 may not necessarily see himself as operating as her
22 Power of Attorney on all issues at all times?

12:38PM

23 A. I fully understand that he may think that.

24 Q. And do you know for a fact that he signed
25 every check for Miss Dockery and has for the last

12:38PM

1 two or three years?

2 A. I'm sorry, I couldn't hear you.

3 Q. Do you know that he signed every check on
4 behalf of Miss Dockery as her Power of Attorney for
5 the last two or three years?

12:38i

6 A. I think that when you hold the position of
7 Power of Attorney and you undertake any type of
8 financial responsibility for someone, you can't
9 distinguish between am I acting in my fiduciary
10 responsibility versus am I simply acting as a son.

12:39i

11 Q. Are there people who hold a Power of
12 Attorney and don't exercise it because they still
13 believe that their parent or relative has the
14 mental capacity to sign the checks themselves?

15 A. They do. That's true.

12:39i

16 Q. Is it your understanding from your
17 investigation that there have been many times that
18 Miss Dockery has chosen to sign checks herself and
19 Mr. Dockery has not consistently exercised his
20 Power of Attorney over her?

12:39i

21 A. I think in the beginning of the litigation
22 but not in the recent time.

23 Q. Your testimony is recently. Would you say
24 within the last six months?

25 A. When I say "recent," I'm talking about in

12:39i

1 terms of before litigation, after litigation.

2 Q. So before the litigation, your understanding
3 is that he did or did not exercise his Power of
4 Attorney?

5 A. I think that he was not executing as many
6 checks as he was after the litigation. Now,
7 whether or not he was acting as a Power of Attorney
8 is a different issue. Just simply the fact of
9 signing the check does not give an indication
10 whether or not he's acting as her representative.

12:39PM

12:40PM

11 Q. In what other ways, in your opinion, was he
12 acting as her representative before the litigation?

13 A. Day-to-day dealings, hiring of nurses,
14 setting up appointments with doctors, whatever
15 types of -- anything.

12:40PM

16 Q. What about a fiduciary level, because that's
17 kind of guardian like, would you agree, setting up
18 appointments?

19 A. Paying for them. Making the arrangements.

20 Q. Any indication that her doctors'
21 appointments weren't paid for or she didn't make it
22 to a doctor's appointment?

12:40PM

23 A. There were issues in the beginning about
24 whether or not she was receiving the proper care
25 for her teeth and whether or not arrangements had

12:40PM

1 been made to get a replacement set. That was the
2 only issue that I recall.

3 Q. Are her teeth okay right now?

4 A. They look fine.

5 Q. With respect to fiduciary though, any
6 evidence that you ever saw that he has taken money
7 from his mother?

12:40P

8 A. There is no way for me to be able to say
9 that because I have never seen a complete
10 accounting of money that belonged to his mother.
11 The only thing that I could say, in his deposition
12 he made it very clear that he was utilizing her
13 funds to pay for taxes and insurance. And I
14 thought it was very clear in the residential trust
15 that it would have been his responsibility to pay
16 for those taxes and insurance.

12:41P

17 Q. If the Court disagrees with you on that,
18 because you've recognized there is litigation over
19 that, if the Court disagrees with you that it is
20 clear that he should not be paying that and finds
21 there is no fault in the way he did that, would it
22 change your opinion on whether or not he could be
23 appointed her conservator?

12:41P

24 A. It could.

25 Q. With respect to the house in Rockingham, I

12:41P

12:41P

12:41P

1 believe you mentioned your issue with that was that
2 he was not certain, he mentioned a loan and he
3 wasn't certain how much that loan was. Am I
4 correct in restating what you stated?

5 A. Correct. He said that there was a loan that 12:42PM
6 he had given to his mother. He initially said 30.
7 And later in his deposition he was uncertain of
8 what the amount was and he said 25, 26, 27.

9 Q. With respect to that property, is that the
10 DOE Corporation that you're referring to? 12:42PM

11 A. I'm sorry.

12 Q. Is that DOE that you're referring to?

13 A. No, it's the Rockingham house.

14 Q. I think maybe we're confused. I thought
15 that all of the Rockingham property was in the DOE 12:42PM
16 Corporation?

17 A. It could be. I don't recall that being the
18 case.

19 Q. There is a percentage listed on the DOE
20 Corporation. Are you familiar with that? 12:42PM

21 A. Yes, I am.

22 Q. With respect to that, are you aware that she
23 also was given money from 29th Avenue, Miss Dockery
24 has a loan from 29th Avenue?

25 A. I'm sorry, I'm having a hard time hearing 12:42PM

1 you.

2 Q. Are you aware that Miss Dockery also has a
3 loan through 29th Avenue?

4 A. That's on the books as a loan, yes, I am.

5 Q. And what you're saying is there is no loan
6 on the books with DOE, is that your understanding?

12:42F

7 A. That is my understanding.

8 Q. Your problem with that is that Mr. Dockery
9 was not aware, you don't have proof and that he was
10 not aware of the amount?

12:43F

11 A. No, no. My problem is he specifically said
12 that the consideration was 50,000; that he said
13 that it was a loan that he had given his mother,
14 which was an explanation of why he didn't give her
15 50,000. But he, himself, said it was 30 or less
16 and that he never gave her the balance, that he
17 never finished the consideration, never paid the
18 rest.

12:43F

19 Q. Because he viewed it as a loan, she owed him
20 that money?

12:43F

21 A. No. The only amount he viewed as a loan was
22 30,000, which was the 25, 26, 27. That's the
23 amount he says was a loan. He never said that the
24 balance of 20 was a loan.

25 Q. I think that in all fairness to Mr. Dockery,

12:43F

1 he is not here to testify, I think that seems to be
2 confusing. I view his testimony to be different
3 than what you view his testimony to be on that.
4 So, certainly, like I said, he is not here today
5 testify, so I'll just move on from that because
6 we're not going to be able to clear that up from
7 your testimony.

12:43PM

8 With respect to the facts that you
9 originally said, if you had to speak at all to what
10 you would claim Mr. Dockery's mismanagement of Miss
11 Dockery's funds is, is it just the items that you
12 pointed out or is there anything else that you
13 would claim as mismanagement of her funds?

12:44PM

14 A. I think that what I have given is a review.
15 I didn't go through every specific detail. And
16 most of the information came from his deposition.

12:44PM

17 Q. Meaning, do you have any other supporting
18 evidence other than Mr. Dockery's deposition for
19 what you're contending is his inability to manage
20 her estate?

12:44PM

21 A. No.

22 Q. Thank you. I have no further questions for
23 you.

24 THE COURT: Mr. Monckton.

25 MR. MONCKTON: Just a couple questions.

12:44PM

1 CROSS EXAMINATION

2 BY MR. MONCKTON:

3 Q. In formulating your opinion for the Court,
4 were there any foreclosure actions sought against
5 Miss Dockery's properties that you're aware of?

12:441

6 A. Not that I'm aware of.

7 Q. Did you uncover any evidence where there has
8 been any judgements entered against Miss Dockery
9 for the management of her properties?

10 A. I did look at that when the case first start
11 but, to be quite frank, I have not looked since.
12 So when the action was initiated, I always do a
13 judgment and creditor check, and at that time there
14 was not.

12:451

15 Q. So other than what you say is the
16 commingling of funds and the lack of paperwork with
17 regard to a loan with the Rockingham house, that is
18 the basis for your opinion today?

12:451

19 A. The positions that he takes with regard to
20 the corporations, the ownership interest.

12:451

21 Q. But you haven't been -- you're saying the
22 corporations, but you're not following that
23 litigation with regards to 29th Avenue?

24 A. That's correct.

25 Q. So what's occurred in the last six to nine

12:451

1 months, you're unaware of that; correct?

2 A. That's correct.

3 Q. I have heard opposing counsel use this. Do
4 you have any evidence whatsoever that Mr. Dockery
5 has stolen any money from Miss Dockery?

12:46PM

6 A. No, I don't.

7 Q. Thank you.

8 MR. MONCKTON: No further questions.

9 THE COURT: Thank you. Anything else
10 from you, Miss Moore?

12:46PM

11 MS. MOORE: The only other thing I
12 have, your Honor, I didn't know how you
13 wanted to handle it. I had prepared an
14 updated Affidavit of Fees. I had prepared
15 it anticipating that we were going to be
16 here all day tomorrow, so I had not
17 anticipated adding it up until tomorrow.
18 I'd be happy to give it to the Court. It
19 reflects estimated times for both today and
20 tomorrow. Or if the Court would prefer, I'd
21 be happy to amend it to make it accurate as
22 to the exact amount of time.

12:46PM

23 THE COURT: I'm happy for you to amend
24 your Affidavit and submit it to the Court.

25 MR. MCCRACKIN: Your Honor, if I might

12:46PM

1 offer a couple of things in reply.

2 THE COURT: For Miss Moore?

3 MR. McCrackin: Yes, that I think need
4 to be cleared up.

5 THE COURT: Yes, sir.

12:46P

6 MR. McCrackin: This is the deed to
7 29th.

8 MS. LANGWAY: He can hand that up but
9 I'm going to object because she's already
10 said she doesn't know anything about 29th
11 Avenue Corporation and that's one of the
12 documents he would like her to talk about is
13 29th Avenue.

12:47P

14 MR. McCrackin: She asked a question
15 about did Miss Moore know certain things.
16 This is documentation to support exactly
17 what Miss Moore said so I think it's
18 admissible. They are publicly filed
19 records in South Carolina.

20 MS. LANGWAY: I was trying to figure
21 out what her opinion was. I want to know
22 what she looked at. If she's never seen
23 that document before or she didn't address
24 it in her testimony, for him to show it to
25 her, of course she's going to know once he

12:47P

12:47P

1 shows it to her. So I don't believe that's
2 based on her opinion, that's based on Mr.
3 McCrackin showing her.

4 MR. MCCRACKIN: It's in direct reply to
5 her question.

12:47PM

6 THE COURT: I think he can show her
7 documents so she can look at them. I
8 certainly will allow that.

9 MR. MCCRACKIN: Mark this Petitioners'
10 1 and 2, please.

11 *(Petitioners' Exhibit 1, Deed recorded*
12 *12/15/72 transferring property from S&H*
13 *Investments, Inc. Into 29th Avenue*
14 *Corporation, was marked for identification.)*

15 *(Petitioners' Exhibit 2, Whitlark*
16 *Limited Partnership agreement, was marked*
17 *for identification.)*

18 MR. MCCRACKIN: Your Honor, I would
19 move that both of these documents, which are
20 publicly filed records in South Carolina, be
21 admitted into evidence.

12:48PM

22 MR. MONCKTON: Your honor, can I see
23 them?

24 MS. LANGWAY: Yes, I didn't really see
25 them.

1 MR. McCrackin: (Handing)

2 THE COURT: Any objection?

3 MS. LANGWAY: No, your Honor.

4 THE COURT: Thank you. The Court will

5 admit -- I'm assuming they're marked. 12:50P

6 MR. McCrackin: Petitioners' 1 and 2.

7 THE COURT: Petitioners' 1 and 2.

8 Thank you.

9 (Petitioners' Exhibit Nos. 1 and 2

10 previously marked for identification,

11 admitted into evidence.)

12 CROSS EXAMINATION

13 BY MR. McCrackin:

14 Q. Miss Moore, I'm handing you Petitioners' No.

15 1. Do you recognize that document? 12:50P

16 A. Yes, I do.

17 Q. What is that?

18 A. That is a deed that was recorded

19 December 15, 1972, showing a transfer of property

20 from S&H Investments, Inc. into 29th Avenue 12:50P

21 Corporation. And that was specifically for Lots 1,

22 2, 3, 4, Lots 21 and 22, Block 3-K.

23 Q. Is that a document that you would have

24 relied upon in your conclusion that 29th Avenue

25 Corporation owned all of the block at 29th Avenue 12:50P

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1 North?

2 A. Correct.

3 Q. Including Drifters restaurant?

4 A. Correct.

5 Q. And I think it's your testimony that the
6 rent from Drifters restaurant, John testified that
7 he was putting that rent in his own pocket even
8 though Drifters was owned by 29th Avenue North?

12:50PM

9 A. Correct. But then he later stated that he's
10 now putting it into 29th as of January 2011.

12:51PM

11 Q. I'm also going to hand you Petitioners' No
12 2.

13 A. That's the Whitlark Limited Partnership.

14 Q. And that is a document that's filed with the
15 Secretary of State of South Carolina including a
16 partnership agreement for Whitlark?

12:51PM

17 A. That's correct. Both of them have a
18 Certificate of Limited Partnership with a
19 partnership agreement filed with the Secretary of
20 State, August 30, 1999.

12:51PM

21 Q. Can you flip to the end of that agreement
22 and read for the Court what the ownership interest
23 in Whitlark are?

24 A. Your Honor, I was indicating to him that
25 there is some handwriting on the back of this

12:52PM

1 document.

2 Anyway, Schedule A has general partners, one
3 percent, which is John C. Dockery, III. And
4 limited partners, John C. Dockery, Junior at
5 98 percent, and Emily C. Dockery at one percent. 12:52f

6 Q. And John C. Dockery, Junior is John's father
7 and Emily is his mother?

8 A. Correct.

9 Q. So John, himself, actually owned only one
10 percent of Whitlark? 12:52f

11 A. According to this document.

12 Q. Is that consistent with his testimony?

13 A. As far as the division of the proceeds, no.
14 And I'm not aware of any other documentation other
15 than that partnership document. 12:52f

16 MR. McCrackin: Nothing further, your
17 Honor.

18 REDIRECT EXAMINATION

19 BY MS. LANGWAY:

20 Q. I guess I'll just try to clarify that a
21 little bit further. With respect to 29th Avenue,
22 again, let me just put on the record that you do
23 realize that regardless of what may or may not be
24 written on that deed there has been litigation
25 about that? 12:53f

1 A. I agree.

2 Q. And that Mr. Dockery believes that he will
3 prevail on the 30th Avenue portion of that?

4 A. I agree. But that type of litigation is
5 actually one of the main reasons why I thought it
6 was so important to have an independent
7 conservator. At one point even the daughters
8 questioned why they couldn't be appointed as
9 conservator. And because of this ongoing
10 litigation between the siblings and the
11 corporations, that was all the more reason as to
12 why I felt that it was important to have an
13 independent conservator.

14 Q. Again, if he were to prevail on that and you
15 were to find out that he was not incorrect in
16 thinking that he owned 30th Avenue, would it change
17 your opinion as to whether or not he's capable of
18 being a conservator?

19 A. It would impact my decision. I wouldn't say
20 it would change my opinion.

21 Q. You would agree with me that eventually this
22 litigation since, as I understand it, I think every
23 piece of property in the estate is involved in
24 litigation right now, is going to end at some
25 point, and we will have a distinct Court Order

1 saying who owns what and what percentage and how
2 it's supposed to be done at that point. And once
3 the litigation is over, if Mr. Dockery is found to
4 have done nothing wrong in any of those, would your
5 opinion change as to whether or not he should be
6 appointed as conservator of her estate?

12:54F

7 A. That fact in and of itself would not be the
8 reason that it would change my opinion. I think
9 any time you have an individual who is involved in
10 the dealings with the incapacitated person to the
11 extent that he is and to the extent that it causes
12 contention in the family, that in and of itself
13 leads me to believe that the benefit of having an
14 independent conservator is outweighed by the
15 benefit of having Mrs. Dockery's desire that her
16 son serve in the capacity of conservator.

12:54F

12:54F

17 Q. So, in your opinion, the fact that it's
18 messy --

19 A. It's contentious.

20 Q. Is more important than Miss Dockery's wishes
21 and desires which were done clearly before she was
22 deemed to have any incapacity issues?

12:55P

23 A. I think that it can override her --

24 Q. In your opinion it does though?

25 A. Correct.

12:55P

1 Q. I have no further questions for you. Thank
2 you.

3 MR. MONCKTON: No questions, your
4 Honor.

5 THE COURT: Mr. McCrackin. 12:55PM

6 MR. MCCRACKIN: Nothing, your Honor.

7 THE COURT: Anything else from you,
8 Miss Moore?

9 MS. MOORE: Nothing.

10 THE COURT: Thank you very much. 12:55PM

11 MR. MCCRACKIN: Your Honor, would it be
12 possible for me to get copies of those two
13 exhibits?

14 THE COURT: Certainly, yes, sir. We'll
15 clock these and if you would like to maybe
16 wait, Miss Julia could make a couple copies
17 real quick. 12:55PM

18 MR. MCCRACKIN: Thank you.

19 THE COURT: At this time, I'm happy to
20 hear a closing statement. If you would like
21 to provide a brief closing statement. 12:56PM

22 MR. MCCRACKIN: Only briefly, your
23 Honor. Obviously this case is about the
24 protection of Miss Dockery, of her person
25 and her assets. We have been through a 12:56PM

1 believe that it is proper to overturn her
2 wishes and desires. We don't believe any
3 evidence has been given to substantiate
4 doing so.

5 But certainly with respect to Walter 12:58f
6 Godbold, if the Court is inclined to appoint
7 a third-party conservator, based on his
8 testimony, we would submit that he's
9 qualified.

10 THE COURT: Thank you. Mr. Monckton. 12:58f

11 MR. MONCKTON: Nothing at this time,
12 your Honor. Thank you.

13 THE COURT: Anything else from you,
14 Miss Moore?

15 MS. MOORE: I don't have anything else, 12:58f
16 your Honor.

17 THE COURT: Thank you.

18 Just very briefly, the Court will
19 accept and uphold the parties' earlier
20 agreement that John Dockery be appointed as 12:59f
21 Mrs. Dockery's guardian, I believe I already
22 stated that this morning, except that it
23 would be a limited guardianship. And
24 sometimes those have to be structured and
25 crafted carefully.

1 I think in my prior Order I set forth
2 the need for Mrs. Dockery to be able to have
3 her voice heard with respect to her personal
4 affairs, some of the decisions regarding her
5 person, where she's going to live, who her
6 doctors might be, some of her medical care,
7 but with the guardian having the ultimate
8 decision to make those decisions, but taking
9 into consideration her wishes and expressed
10 desires. So I would appoint John Dockery as
11 Miss Dockery's guardian and establish a
12 limited guardianship with those limitations.

12:59PM

12:59PM

13 With respect to the appointment of a
14 conservator for Mrs. Dockery, the Court has
15 previously found that Mrs. Dockery is
16 incapacitated to the extent that she needs a
17 conservator appointed to manage her
18 financial affairs.

01:00PM

19 6254.10 sets forth the priority of
20 persons for the Court to consider in
21 appointing a guardian. In this particular
22 case, I believe that the Attorney In Fact
23 who has been appointed by Mrs. Dockery under
24 her Power of Attorney would have priority
25 for the Court to consider that person first

01:00PM

01:00PM

1 ahead of other persons.

2 But 6254-10(B) states that "the Court,
3 for good cause, may pass over a person
4 having priority and appoint a person having
5 less priority or no priority."

01:00E

6 So the legislature has made it clear
7 that the probate court is not bound by the
8 incapacitated person's appointment of an
9 Attorney In Fact under a Power of Attorney
10 if the Court finds good cause not to appoint
11 that person as her guardian. So, despite
12 the fact that Miss Dockery set forth her
13 wishes that her son be her guardian, excuse
14 me, her conservator if the Court had to
15 appoint a conservator, and expressed her
16 wishes today that Mr. Dockery be appointed
17 as her conservator, the Court is not bound
18 by that. And, of course, the Court has the
19 ultimate responsibility to make a decision
20 as to what would be in her best interests.
21 Based on the evidence and testimony, I
22 find good cause to pass over Mr. Dockery,
23 who would have priority as the agent under
24 the Power of Attorney to be the conservator,
25 and appoint an independent third person.

01:01E

01:01E

01:01E

01:01E

1 Miss Moore also expressed some concern I
2 think the daughters would have priority
3 after Mr. Dockery as her children, and she
4 certainly expressed concerns, and they have
5 agreed that they are not seeking to be
6 appointed as her conservator in this matter,
7 so the Court would not appoint them as a
8 conservator. The Court will go forward and
9 appoint the person that has been nominated
10 by the daughters as well as the guardian ad
11 litem, and noting the objection of Mr.
12 Dockery, also the person that he is asking
13 the Court to appoint even though he still
14 maintains his objection to that, and the
15 Court will appoint Walter Godbold as the
16 conservator for Mrs. Dockery.

01:02PM

01:02PM

17 Mr. McCrackin, if you could prepare an
18 Order for the Court's consideration. Miss
19 Moore, if you could give me your Affidavit
20 with respect to your attorney's fees, I'll
21 be happy to award those fees in the Order.
22 And I will soon rule on the pending motion
23 of the Petitioners with respect to the
24 attorneys fees for the portion of the
25 Settlement Agreement which I understand that

01:02PM

01:02PM

1 I still have, and will render that decision
2 very soon.

3 Anything else from counsel of the
4 parties today?

5 MR. MCCRACKIN: Nothing, your Honor.

01:02

6 THE COURT: Miss Langway.

7 MS. LANGWAY: Your Honor, I just have a
8 question. I apologize, I wasn't here this
9 morning, you may have dealt with this this
10 morning. The attorney's fees issue, was
11 that something that was argued or you're
12 going to award them attorney's fees
13 because --

01:03

14 THE COURT: No, ma'am. There is
15 pending the motion for the Petitioners that
16 we heard in January. That was a motion for
17 an award of attorney's fees that they
18 incurred to enforce the Settlement
19 Agreement. That's still pending. And
20 that's something I'll rule on shortly.

01:03

21 MS. LANGWAY: But you're asking for him
22 to prepare an Affidavit on that?

23 THE COURT: No, Miss Moore.

24 MS. LANGWAY: Her Affidavit. Okay.

25 Thank you.

01:03