

residence.

The respondent Crystal Self was served by way of personal service on February 16, 2016 at her place of residence in Lexington County, South Carolina. The respondent B. Bryant was properly served by way of publication as she cannot be located in this state. The Order of Publication was issued by this Court on February 29, 2016 and the Summons was published in Lexington County, B. Bryant's last known county of residence, for three consecutive weeks. Furthermore, the pleadings were forwarded to B. Bryant's last known address at 264 Ashton Circle, Lexington, SC 29073. The Summons was published in the Lexington County Chronicle on April 7, 2016, April 14, 2016 and April 21, 2016. Notice of today's hearing was duly and properly provided to Respondent Self by mailing the same to her at her last known address via mailing and Notice of Hearing dated May 27, 2016. As to service of the Notice of Hearing regarding Respondent Bryant, the Notice of Hearing was published in the Lexington County Chronicle for three consecutive weeks, dates of publication being June 2, 2016, June 9, 2016 and June 16, 2016.

Neither Respondent Self or Respondent Bryant has filed any responsive pleadings or appeared in this case in any fashion. Neither Respondent appeared today and I find and conclude that they have voluntarily absented themselves from this proceeding after proper service of process and notice of this hearing.

John R. Kirven, Esq. was appointed as Guardian *ad Litem* for S. Windham on March 16, 2016 and Brooke C. Evans, Esq. was appointed as the Visitor in this matter on March 16, 2016 in accordance with the required statutory provisions. The Visitor filed the necessary and required Visitor's Report.

The parties were previously before the Court in Greenville County Probate Court on

September 23, 2013. From that hearing, an Order was issued and filed on November 5, 2013 entitled Order (Appointing Temporary Successor Guardian and Temporary Successor Conservator). In the Order, John D. Elliott, Esq. was appointed as Stephanie Windham's Guardian and Conservator on a temporary basis. Respondent Brenda Bryant was terminated in her capacity as Guardian and Conservator. Venue for this case was transferred from Greenville County to Florence County. Mr. Elliott's temporary appointment as Guardian and Conservator was terminated pursuant to statute on September 3, 2014, necessitating the institution of this *de novo* action.

The Court has carefully considered the pleadings, testimony and evidence presented. Based upon the foregoing and the entire file in this matter, I make the following findings of fact and conclusions of law:

JURISDICTION

- (3)
1. The petitioner is a citizen and resident of Richland County, South Carolina. He is a duly authorized attorney in good standing with the South Carolina Bar Association.
 2. The respondent C. Self is a citizen and resident of Lexington County, South Carolina. The respondent B. Bryant's last known address in South Carolina was in Lexington County. Stephanie M. Windham is a citizen and resident of Florence County and currently resides at a local home owned and operated by the Presbyterian Agency for Developmentally Disabled Adults (hereinafter PADD), located in Florence County, South Carolina.
 3. The Petitioner submits himself to the jurisdiction of this Court with the filing of his Petitions. This Court has jurisdiction of the subject matter and persons herein.
 4. All statutory waiting periods have expired, all required appointments have been satisfied and this matter is properly before the Court and ripe for disposition on a permanent basis.

AS TO APPOINTMENT OF GUARDIAN/APPOINTMENT OF CONSERVATOR

5. The evidence is clear and convincing that the parties were initially before the Greenville County Probate Court in 2005 and they have been involved in

significant and lengthy litigation since that time. It appears that Ms. Windham was initially declared as incapacitated by Order of the Lexington County Probate Court dated April 3, 1996. From the 2005 Greenville County action, Stephanie M. Windham was again adjudicated incapacitated and the Respondent Bryant was appointed as Stephanie M. Windham's Guardian and Conservator. It appears that Respondent Bryant was removed as Guardian in 2008 at Stephanie Windham's request, but was reinstated to this position by virtue of the Certificate of Appointment dated September 14, 2009. It further appears that the reinstatement was also at Stephanie Windham's request and also involved the removal of Certified Public Account Cheryl Borum as Trustee of Ms. Windham's Special Needs Trust and Substituted Respondent Bryant as Trustee of Ms. Windham's Special Needs Trust.

6. The evidence is also clear that Ms. Windham has been previously been adjudicated as an incapacitated person, and there has been no evidence presented that Ms. Windham is no longer incapacitated. Accordingly, the Court hereby waives the statutory physician examination requirement.

7. In 2009, Respondent Bryant, acting as Guardian for Stephanie Windham, placed Ms. Windham in the physical custody of the PADD home. Respondent Bryant visited Stephanie Windham on a fairly regular basis until approximately May of 2011. Brenda Bryant has had no physical contact with Stephanie Windham at the PADD home since May 2011 and PADD has been the sole care taker of Stephanie Windham and her needs. Ms. Windham Receives Medicaid and Social Security Disability benefits and those are being directed to the PADD home to pay for her care.

8. John D. Elliott, Esq., was appointed as the Guardian ad Litem for Stephanie M. Windham to protect her interests in a civil action filed in the Richland County Court of Common Pleas. The subject matter of this litigation was a lawsuit filed by Respondent Bryant against the Babcock Center (where S. Windham was residing at the time) and the South Carolina Department of Disability and Special Needs. Respondent Bryant alleged that the Babcock Center and the Department of Disability and Special Needs had a duty to protect Ms. Windham from an assault that occurred while Ms. Windham was in the care of the the Babcock Center and the Department of Disability and Special Needs. The lawsuit eventually settled against the Babcock Center for \$250,000.00, and B. Bryant, as Guardian, Conservator and Trustee for Stephanie M. Windham, was required to manage \$87,000.00 on Ms. Windham's behalf. The \$87,000.00 was the amount of monies remaining from the \$250,000.00 settlement after attorney's fees were paid and after Respondent Bryant was paid for services allegedly rendered as Ms. Windham's Guardian.

9. The parties were before the Court in Greenville County Probate Court on September 23, 2013. From that hearing, an Order was issued and filed on November 5, 2013 entitled Order (Appointing Temporary Successor Guardian and Temporary Successor Conservator). In the Order, John D. Elliott, Esq. was appointed as Stephanie Windham's Guardian and Conservator on a temporary basis. Respondent Brenda Bryant was terminated in her capacity as Guardian and Conservator. Venue for this

case was transferred from Greenville County to Florence County. Mr. Elliott's temporary appointment as Guardian and Conservator was terminated pursuant to statute on September 3, 2014, necessitating the institution of this *de novo* action.

10. The allegations of Mr. Elliott in Richland County Common Pleas and today are that the Respondent Bryant misappropriated Ms. Windham's funds that were received as a result of a lawsuit against the Babcock Center and that none of those monies are remaining. The record is clear that Mr. Elliott, pursuant to the Common Pleas Guardian *ad Litem* appointment, settled with the remaining defendant in the lawsuit, the South Carolina Department of Disability and Special Needs, in 2011 for \$50,000.00. After legal fees and costs, there is approximately \$46,000.00 in funds remaining for Ms. Windham's benefit. As Guardian *ad Litem*, Mr. Elliott has been responsible for holding the \$46,000.00 until the Court authorizes disbursement, which he has done.

11. The testimony of the PADD director, Kimberly Tumbleson, the Visitor and the Guardian *ad Litem* was that PADD continues to be responsible for the physical custody of Ms. Windham, but that her former Guardian, Brenda Bryant, is unable to come into the State and unable to receive mail. In the event significant decisions regarding Ms. Windham, such as medical care and the like, need to be made, PADD would legally need authority from a Court appointed Guardian to provide such care.

12. Ms. Tumbleson and the Guardian *ad Litem* also indicated that there were no other suitable individuals or entities, other than Mr. Elliott, that would be willing and able to serve as Guardian and Conservator for Ms. Windham.

13. Mr. Elliott's testimony was that he was seeking Guardianship in order to address PADD's concerns and to ensure that Ms. Windham stayed in the PADD home while unable to care for herself. His motive for being named Conservator was to manage the monies received from the lawsuit against the South Carolina Department of Disability and Special Needs, attempt to account for, and recoup, any missing funds from the prior lawsuit and to ensure any funds currently available or being received remained the property of Ms. Windham and used solely for her benefit.

14. Ms. Windham testified that it was her desire for Mr. Elliott serve as her Guardian and Conservator, and in her own words, described Mr. Elliott as "a good man." She further testified that, while she would like more personal freedom and the ability to foster romantic relationships (dating is not allowed at the PADD home), she understands that her continued residential placement at the PADD home is the only current viable option. She also understands that her desire to be closer to her family in Lexington County is not possible in that there are no available or suitable placement alternatives for her in Lexington County. It is clear to the Court that PADD has never prevented her family members from contacting or visiting with Ms. Windham at the PADD home, and in fact, PADD has offered reasonable compromises with Ms. Windham's family members in assisting with transportation matters so that visits between Ms. Windham and her family

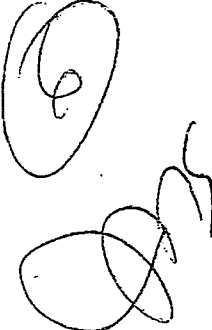
members are possible.

15. After careful consideration of all the evidence and testimony, I find and conclude that good cause, by clear and convincing evidence, has been shown to appoint John D. Elliott, Petitioner herein, as Guardian for Stephanie M. Windham and as Conservator of her assets. Accordingly, the appropriate certificates shall be issued. Furthermore, John D. Elliott shall be substituted as Trustee for the Special Needs Trust created on or about June 22, 2009.

16. Specifically, good cause shown in granting the Petitioner's request is as follows: Respondent Bryant has not been in South Carolina since approximately 2011 and she has not visited Ms. Windham or appeared at the PADD home since 2011. As set forth in SC Code Section 62-5-311, the incapacitated person's desire is that Mr. Elliott serve as Guardian and Conservator, and therefore this nomination receives priority over any other. Ms. Windham is in need of continued care as relating to her physical well being and she is in need of protection relating to her assets and Mr. Elliott is willing, suitable and able to provide such care, and protection. Furthermore, Mr. Elliott has provided such care and protections successfully in the past to Ms. Windham's satisfaction and PADD's satisfaction.

ACCORDINGLY, IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS

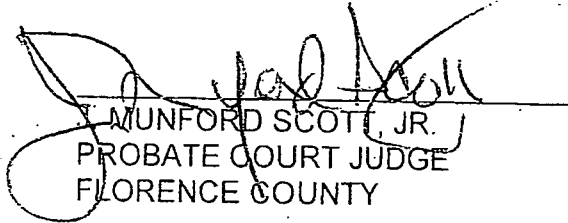
FOLLOWS:

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1. John D. Elliott is appointed the Guardian of Stephanie M. Windham, an incapacitated person, and is granted all rights and privileges associated with this appointment and subject to all duties and responsibilities associated with this appointment.
 2. John D. Elliott is appointed as the Conservator for Stephanie M. Windham's assets and is granted all rights and privileges associated with this appointment and subject to all duties and responsibilities associated with this appointment.
 3. Appropriate Certificates shall be issued reflecting Mr. Elliott's appointment as Guardian and Conservator.
 4. Mr. Elliott's authority shall include the right to bring suit on behalf of Ms. Windham in an effort to recoup any of her lawful and rightful funds or assets, or to take any action that Ms. Windham would be able to take in an effort to recoup funds or assets, but for her status as an incapacitated/protected person.
 5. The Court hereby requests that the Richland County Solicitor's Office reopen the prior investigation as to Respondent Brenda Bryant's alleged criminal activity as previously alleged by Petitioner Elliott.

6. Upon Mr. Elliott's receipt of the \$46,000.00 in settlement proceeds related to the lawsuit with the South Carolina Department of Disability and Special Needs, a bond shall be posted with the Florence County Probate Court by Mr. Elliott, as Conservator, in the amount of \$46,000.00.
7. Mr. Elliott is entitled to reasonable compensation for his services as Guardian, Conservator and Trustee and he shall submit itemized bills for the Court's consideration if he desires compensation for the same.
8. Any reasonable and necessary expenses associated with today's hearing (including those related to the Visitor, Guardian *ad Litem* or Court Reporter) shall be reimbursed to the individual, party or entity incurring such expense upon proper request of Mr. Elliott as Conservator.
9. The Court specifically retains jurisdiction to amend the 2009 Special Needs Trust referenced herein above as the Court deems necessary to effectuate the terms of this Order.

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AND IT IS SO ORDERED!


MUNFORD SCOTT, JR.
PROBATE COURT JUDGE
FLORENCE COUNTY

At Chambers: Florence, South Carolina

Dated: July 22, 2016