

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE PROBATE COURT
CASE NO.: 2019-GC-40-00037

IN THE MATTER OF)
THE CONSERVATORSHIP OF)
JOHN S. STRITZINGER III,)
An Alleged Incapacitated Individual.)

James R. Stritzinger, Jr.,)
Petitioner,)

vs.)

John S. Stritzinger III, Hannah M.)
Burdick-Stritzinger, Katherine Wright-)
Burdick on behalf of minor children J.)
Burdick-Stritzinger, L. Burdick-)
Stritzinger, and Gregory E. Parker, Jr.,)
as Guardian *ad Litem* for John S.)
Stritzinger III.)
Respondents.)

ORDER APPOINTING CONSERVATOR

FILED
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CLERK OF PROBATE COURT
RICHLAND COUNTY, S.C.

RECEIVED

JAN 31 2020

SC Court of Appeals

THIS MATTER COMES BEFORE THE COURT upon the filing of a Summons and verified Petition for Appointment of Conservator by James R. Stritzinger, Jr. (hereinafter also "Petitioner" or "Jim Stritzinger") on April 2, 2019. The Petitioner requested that this Court appoint him as the Conservator for John S. Stritzinger III (hereinafter also "John Stritzinger"), an alleged incapacitated individual (the A.I.I.). The Petitioner is John Stritzinger's brother. A companion guardianship action was also filed with the Richland County Probate Court as case number 2018-GC-40-00052 and a separate order has been entered appointing James R. Stritzinger, Jr. as Guardian for John S. Stritzinger III. With his consent, Gregory E. Parker, Jr. was appointed as attorney for John Stritzinger, and with his consent M.L. "Bart" Bartlett was appointed as attorney for John S. Stritzinger III. Both Mr. Parker and Mr. Bartlett served in the same roles in the companion guardianship action.

As required by statute, John Stritzinger was examined to determine his capacity to effectively manage his property and financial affairs. James G. Bouknight, M.D., Ph.D. submitted an Examiner Report and Affidavit Regarding Capacity (hereinafter "Examiner Report and Affidavit"). Dr. Bouknight reported that John Stritzinger lacks the ability to manage his property or financial affairs or provide for his support or for the support of his legal dependents, necessitating the need for a

protective order, due to Mr. Stritzinger's delusional disorder, "extremely limited insight," and poor judgment. Dr. Bouknight spent approximately two (2) hours examining Mr. Stritzinger and his attorney was present during the examination. Through counsel and by his own statements, John Stritzinger expressed that he does not agree with Dr. Bouknight's conclusion that he is need of a conservator, but no medical evidence was submitted to counter any of Dr. Bouknight's findings or conclusions. Mr. Parker submitted a Guardian *ad Litem* Report, which agreed with Dr. Bouknight's conclusions, found that it would be in Mr. Stritzinger's best interest for a conservator to be appointed, and recommended that Jim Stritzinger be appointed to serve as conservator for his brother. All reports were made a part of the record of this case.

A hearing regarding the petition for conservatorship was held on July 3, 2019. All statutorily required parties were served with the Summons and Petition, as evidenced by the Affidavits of Service and/or Acceptances of Service in the court file. All interested parties were sent the Notice of Hearing. The following were present at the hearing: The Petitioner, James R. Stritzinger, Jr.; John S. Stritzinger III and his attorney, Bart Bartlett; and Gregory E. Parker, Jr., GAL for John Stritzinger.

At the hearing, the Petitioner testified that he understood the duties and responsibilities of a conservator, and the Court discussed those duties with him. On behalf of his client, Mr. Bartlett informed the Court of John Stritzinger's objection to the appointment of anyone to serve as his conservator, as he does not believe he needs a conservator. Mr. Parker stated that he had the opportunity to read Dr. Bouknight's report, that John Stritzinger is in need of a conservator, and that it would be in his best interest for Jim Stritzinger to be appointed to serve in that role. The Guardian *ad Litem* recommended a conservator ship appointment in which no rights are retained by John Stritzinger.

After reviewing all of the filed pleadings, reports, documents, and other evidence and hearing the testimony taken at the hearing, the Court makes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Probate Court has subject matter jurisdiction over this guardianship proceeding pursuant to S.C. Code Ann. § 62-1-302(a)(2)(i), 1976, as amended, and venue is proper in Richland County, pursuant to S.C. Code Ann. § 62-5-401, 1976, as amended.
2. Based on the Examiner Report and Affidavit submitted by James G. Bouknight, M.D., Ph.D., the Court concludes the evidence is clear and convincing that John S. Stritzinger III meets the definition of incapacity as defined in S.C. Code Ann. § 62-5-101(13), 1976, as amended.

3. The Court further concludes that John Stritzinger lacks the ability to effectively receive, evaluate, and respond to information or make or communicate decisions such that he, even with appropriate, reasonably available support and assistance, cannot manage his property or individual financial affairs, provide for his support, or for the support of his legal dependents, necessitating the need for a protective order. The Court also concludes that Jim Stritzinger is a fit and proper person to serve as conservator for John Stritzinger.
4. Pursuant to S.C. Code Ann. § 62-5-407(A) the Court should exercise its authority to encourage maximum self-reliance and independence of the A.I.I. and issue orders only to the extent necessitated by the incapacity of the individual. The proposed conservator has stated to the court his intention to operate in a manner that supports the independence and decision making of John Stritzinger, while also protecting and preserving Mr. Stritzinger's funds, other liquid assets, and/or real and personal property.
5. The funds and/or assets of the conservatorship must be protected by use of a fiduciary bond or by use of a restricted account, as required by S.C. Code Ann. § 62-5-409, 1976, as amended. If bond is obtained, the conservator must file the Affidavit of Conservator Regarding Bond with the court. If the conservator uses a restricted account, the original of the Restricted Account Agreement (RAA) must be returned to the court; the financial institution and the conservator will keep copies of the RAA.
6. Based on John Stritzinger's incapacity, there are certain rights he does not retain. S.C. Code Ann. § 62-5-407(B), 1976, as amended, states the rights not retained by an A.I.I. upon a finding of incapacity in a conservatorship matter, unless the Court rules otherwise. The specific rights to be retained, removed, suspended (if applicable), or otherwise exercised as a result of John Stritzinger's incapacity will be addressed in the section of this Order stating the directives of the Court.
7. Pursuant to S.C. Code Ann. § 62-5-105, 1976, as amended, if not otherwise compensated for services rendered, the court-appointed Guardian *ad Litem*, counsel for the alleged incapacitated individual, and the appointed examiner are entitled to reasonable compensation, as determined by the court. Unless the court issues an order stating otherwise, the Petitioner is responsible for his own attorney's fees and costs, as well as the other costs and expenses of the action. However, if the filing of the action results in the appointment of a conservator, the attorney's fees and costs of the Petitioner may be paid from the assets of the alleged incapacitated individual. See Dowaliby v. Chambless, 344 S.C. 558, 544 S.E.2d 646 (Ct. App. 2001). In this case, the fees and cost of the court-appointed Guardian *ad Litem* and counsel for the alleged

incapacitated individual should be paid from the funds of John S. Stritzinger III. The fee charged by Dr. Bouknight for his examination was already been paid on the date of examination.

8. Mr. Parker and Mr. Bartlett should each submit an Affidavit and itemized invoice outlining their fees and costs associated with serving as guardian *ad litem* and attorney for John Stritzinger, respectively. The Petitioner appeared *pro se*, therefore, he has not incurred any fees or costs for legal representation. The Court will review and approve the invoices and billing statements of the GAL and attorney for the A.I.I., and payment will be directed by way of a separate order.
9. Pursuant to S.C. Code Ann. §§ 23-31-1040(A) and 23-31-1020, 1976, as amended, respectively, John S. Stritzinger III is not allowed to purchase, possess, or have access to firearms and ammunition, and the Court is required to report his name to SLED for that purpose.

THEREFORE, IT IS HEREBY ORDERED THAT:

- A. James R. Stritzinger, Jr. is appointed as Conservator for John S. Stritzinger III, with the rights and powers of a conservator, as set out in S.C. Code Ann. §§ 62-5-422 and 62-5-425, 1976, as amended.
- B. The Conservator shall file an Inventory and Appraisal with this Court regarding the assets of the protected person within thirty (30) days of the date of this Order, pursuant to S.C. Ann. §62-5-415, 1976, as amended.
- C. Pursuant to S.C. Code Ann. §62-5-414, 1976, as amended, unless directed otherwise by the Court, within thirty (30) days of the date of this Order the Conservator shall submit a Financial Plan detailing how he will manage the assets of John S. Stritzinger III, in his capacity as fiduciary of the conservatorship estate.
- D. If the Conservator elects chooses to obtain bond for protection of the liquid assets of the conservatorship, the original of the bond shall be filed with the court. Pursuant to S.C. Code Ann. §62-5-409, 1976, as amended, bond must be for an amount that covers the funds in the account, plus the interest or dividends expected to be generated on those funds for the next year, and an Affidavit of Conservator Regarding Bond shall be filed with the court. If the Conservator chooses to use a restricted account, the original of the Restricted Account Agreement (RAA) must be returned to the court; the financial institution and the conservator will keep copies of the RAA.
- E. Pursuant to the Court's finding by clear and convincing evidence that John S. Stritzinger III meets the definition of an incapacitated individual, the rights stated in S.C. Code Ann. § 62-5-

407(B) shall be retained, removed, suspended (if applicable), or otherwise exercised, as noted below:

<u>REMOVE</u>	<u>RETAIN</u>	<u>OTHER</u>	
<u>X</u>	_____	_____	1. Buy, sell, or transfer real or personal property or transact business of any type, including, but not limited to, those powers conferred upon the conservator under S.C. Code Ann. § 62-5-422
<u>X</u>	_____	_____	2. Make, modify, or terminate contracts
<u>X</u>	_____	_____	3. Bring or defend any action at law or equity*
<u>X</u>	_____	_____	4. Make significant purchases
<u>X</u>	_____	_____	5. Create a will
<u>X</u>	_____	_____	6. Create a trust
<u>X</u>	_____	_____	7. Pay his or her bills
<u>X</u>	_____	_____	8. Make gifts
_____	<u>X</u>	_____	9. Vote


OTHER: Please explain any restrictions, limitations, or exceptions to the aforementioned rights:

*John S. Stritzinger III is not permitted to initiate any litigation independently. Any ongoing or pending litigation filed by John S. Stritzinger III shall be assessed by the Conservator to determine whether such action(s) should continue. The Conservator has the authority to end any litigation that has been previously filed, after obtaining the necessary information to determine whether such a decision is in the best interests of John S. Stritzinger III. The Conservator also has the authority to request and direct of any courts in this state and in the federal court district of The District of South Carolina, that they refuse any future filings from John S. Stritzinger III, as John S. Stritzinger has already been determined to be a "vexatious litigant" in the State of Texas and has been prohibited from further filings in one of the federal court districts in the State of Virginia.

F. Pursuant to S.C. Code Ann. § 62-5-416, 1976, as amended, the Conservator shall make regular accountings to this Court. The initial accounting shall cover the period from the date of appointment through December 31, 2019, and is to be filed with the Court no later than January 31, 2020. The next accounting is to cover the period from January 1, 2020 through June 30, 2020, and is to be submitted no later than July 31, 2020. Thereafter, the annual accounting period runs from July 1st through June 30th of each year. Accountings are then to be submitted no later than July 31st of each year, for as long as this conservatorship is in effect. Documentation supporting each receipt or payment and any court-ordered disbursement shall be presented with each accounting.

- G.** The Conservator shall not pay any compensation to himself from the assets of the protected person, without seeking prior court approval.
- H.** The occurrence of any of the following events requires that the Conservator shall notify the Court in writing within thirty (30) days of the occurrence:
1. Any change in the Conservator's address.
 2. Any change in the incapacitated individual's custodial dwelling or address.
 3. Any change in the incapacitated individual's condition such that the incapacitated individual is capable/incapable of exercising rights previously removed or retained.
- I.** Pursuant to S.C. Code Ann. §§ 23-31-1040(A) and 23-31-1020, 1976, as amended, respectively, John S. Stritzinger III shall be prohibited from purchasing, possessing, and/or having access to firearms and ammunition, unless the reason for this guardianship is for a reason **other than solely a physical impairment or disability**. If this guardianship is based on incapacity because of a mental impairment that requires that his name be reported to SLED, the name of John S. Stritzinger III shall be reported to SLED for that purpose.
- J.** Payment of outstanding fees for the attorney for the alleged incapacitated individual and the court-appointed Guardian *ad Litem* shall be paid by the James R. Stritzinger, Jr., as Conservator for John S, Stritzinger III, with approval from this Court, after submission and review by the Court of the invoices supporting the requested fees and costs. A separate order will be issued by the Court authorizing such payments.
- K.** M.L. "Bart" Bartlett, Jr. and Gregory E. Parker, Jr. are hereby relieved of their appointments as attorney and Guardian *ad Litem*, respectively, for John Stritzinger. Therefore, both attorneys are hereby relieved of any further responsibility for representation of Mr. Stritzinger in any other matters, unless they agree to be retained by way of a Letter of Engagement or Retainer Agreement if requested by Jim Stritzinger, in his role as Conservator for John Stritzinger.

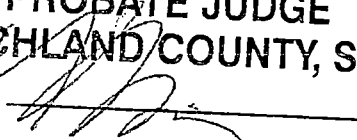
IT IS SO ORDERED.



 Jacqueline D. Belton, Associate Judge
 Richland County Probate Court

July 8, 2019
 Columbia, South Carolina

**A TRUE COPY
 ATTEST:
 AMY W. McCULLOCH
 PROBATE JUDGE
 RICHLAND COUNTY, SC**

by: 

PURSUANT TO S.C. CODE ANN. § 23-31-1040(D), you are hereby notified that it is unlawful and a felony under state and federal law for a person found to be incapacitated, when due to anything other than solely a physical impairment or disability, to ship, transport, possess, or receive a firearm or ammunition.

(A) It is unlawful for a person who has been adjudicated as a mental defective or who has been committed to a mental institution to ship, transport, possess, or receive a firearm or ammunition.

(B) A person who violates this section is guilty of a felony, and, upon conviction, must be fined not more than two thousand dollars or imprisoned not more than five years, or both.

(C) In addition to the penalty provided in this section, the firearm or ammunition involved in the violation of this section must be confiscated. The firearm or ammunition must be delivered to the chief of police of the municipality or to the sheriff of the county if the violation occurred outside the corporate limits of a municipality. The law enforcement agency that receives the confiscated firearm or ammunition may use the firearm or ammunition within the agency, transfer the firearm or ammunition to another law enforcement agency for the lawful use of that agency, trade the firearm or ammunition with a retail dealer licensed to sell firearms or ammunition in this State for a firearm, ammunition, or any other equipment approved by the agency, or destroy the firearm or ammunition. A firearm or ammunition must not be disposed of in any manner until the results of any legal proceeding in which the firearm or ammunition may be involved are finally determined. If SLED seized the firearm or ammunition, SLED may keep the firearm or ammunition for use by SLED's forensic laboratory. Records must be kept of all confiscated firearms or ammunition received by the law enforcement agencies pursuant to this section. A law enforcement agency that receives a firearm or ammunition pursuant to this subsection may administratively release the firearm or ammunition to an innocent owner. If possession of the firearm or ammunition is necessary for legal proceedings, the firearm or ammunition must not be released to the innocent owner until the results of any legal proceedings in which the firearm or ammunition may be involved are finally concluded. Before the firearm or ammunition may be released, the innocent owner shall provide the law enforcement agency with proof of ownership and shall certify that the innocent owner will not release the firearm or ammunition to the person who has been charged with a violation of this subsection which resulted in the firearm's or ammunition's confiscation. The law enforcement agency shall notify the innocent owner when the firearm or ammunition is available for release. If the innocent owner fails to recover the firearm or ammunition within thirty days after notification of the release, the law enforcement agency may maintain or dispose of the firearm or ammunition as otherwise provided in this subsection.

(D) At the time the person is adjudicated as a mental defective or is committed to a mental institution, the court shall provide to the person or the person's representative, as appropriate, a written form that conspicuously informs the person or the person's representative, as appropriate, of the provisions of this section.