

STATE OF INDIANA)
)
COUNTY OF JASPER)
)
IN RE: THE GUARDIANSHIP OF)
MARTHA E. HAM, an ADULT)
)
_____)

IN THE JASPER SUPERIOR COURT
37D01-0102-GU-048

CORRECTIONS TO GUARDIAN AD LITEM'S PRELIMINARY REPORT

Comes now Kyle Shayna Hamilton, only surviving child of Mrs. Martha E. Ham, and hereby submits her corrections to the preliminary report submitted by John D. Potter.

I. REBUTTAL TO MR. POTTER'S BACKGROUND INFORMATION

Para 1: This paragraph is essentially true, however, it leaves out facts that should be included:

- A. Prior to the September 28th, 1996, death of her father, Mr. Donald Ham, Kyle Hamilton, on more than one occasion, attempted to convince her aunt, Mrs. Mary Kobek, that the family home in Dolton, Illinois, was in very bad shape, that Martha could not keep the place clean, kept spoiled food in the refrigerator which she continued to use to feed herself and Don, had exploded cans in the pantry, and meats past their expiration dates. On the occasions when Kyle visited her mother she would clean the house and empty out the bad products from the refrigerator and pantry. However, Martha would dig the items out of the trash and put them back. Mrs. Kobek admitted that she realized what Kyle told her was true, however, she took no steps to correct the situation.
- B. After the death of her father, Kyle Hamilton repeatedly tried to get care for her mother through her aunt, Mrs. Kobek, warning her aunt that she believed Martha was going to have some sort of breakdown. Her requests went unheeded.
- C. When Martha was hospitalized in early November, 1996, at Ingalls Hospital in Harvey, Illinois, she was diagnosed with multiple myeloma and underwent chemotherapy. Kyle was told by the doctors that her mother would probably not live through the end of 1996.
- D. On December 24th, 1996, Martha was transferred to Saint Anthony's Nursing Home in Crown Point, Indiana. There, she was again diagnosed with multiple myeloma.

- E. It should be noted that during this time after the death of Donald Ham, Martha was very insistent upon selling the home in Dolton, of which Kyle Hamilton owned 50 percent, and purchasing a condo in Rensselaer, Indiana. Kyle argued strenuously against the condo purchase based on the living conditions she had observed in the Dolton home and on Martha's declining health. Unfortunately, Mrs. Kobek, who had Martha's power of attorney, interceded on Martha's behalf against the wishes and advice of Kyle. The condo was purchased using the proceeds from the sale of the Dolton house, including Kyle's share, and then the condo was titled only in Martha's name.
- F. In John Potter's report he indicates that Martha Ham signed herself out of Saint Anthony's in early 1997, however, that is incorrect. Martha was released from the care facility into the care of Mrs. Kobek with the understanding that Martha would be living with her sister, the doctor felt Martha should not be living alone, and that Mary would bring Martha back for monthly checkups. Instead, Mary helped Martha purchase the condo, never provided living space for Martha in her home as per the doctor's instructions, and never made any return appointments in spite of the doctor's instructions. Martha was simply dropped off at the Dolton home and left to fend for herself. She was unable to pack up her belongings before the new owner took possession. As a result, she had to pay rent to the new owner. Kyle and her husband finally packed up the remains of forty years in the house and did the final cleaning.
- G. It should also be noted at this point that Martha had collected approximately \$40,000 in life insurance benefits from her husband's death. This is important to note because while being financially assisted by Mrs. Kobek, Martha invested the life insurance in Certificates of Deposit, and withdrew \$40,000 from an annuity, taxable income, to help pay for the condo.
- H. When it came time to file 1997 taxes, Martha went to Mrs. Kobek's tax preparer who neglected to count the income from the annuity as taxable income which resulted in Martha not only having to pay back taxes but a very large (\$20,000) penalty. The tax preparer, Blue & Co., informed Martha that they were not responsible for covering any of her loss. This company has since merged or been purchased by Huth Thompson.

- I. Lastly, during this time period, the remaining portion of the annuity, valued at approximately \$60,000, was liquidated from Smith Barney. It is not clear what happened to that money.

Para 2: It is true that Kyle and Martha visited Jackson's Funeral Chapel and that Bill Jackson set up a pre-paid funeral. However, several facts have been omitted and a couple of Mr. Potter's facts are incorrect.

- a. Martha and Kyle were accompanied to Jackson's Funeral Home by Kyle's husband, Jerry Orlemann.
- b. Mr. Potter indicates that Mr. Jackson "may have even referred them to Ned Tonner" when in fact, Mr. Jackson was very strong in his opinion that Martha should have a trust drawn up and he called Ned Tonner on the phone and made an appointment for that very afternoon.
- c. Martha, Kyle and Jerry all met with Mr. Tonner who began the initial draft of a "living trust" with Martha Ham as the trustee. Kyle suggested that Mrs. Kobek be appointed as the successor trustee since she was living closer to Martha and already had the power of attorney. Mr. Tonner informed Kyle that he would have the trust finalized and mail a copy of it to her.
- d. That same evening, Kyle and Jerry visited with Mrs. Kobek and her husband, Mr. Joe Kobek. During the evening, Kyle told her aunt about the events of the day, including the preparation of the trust. Mrs. Kobek's reaction was that the trust was good, that she and her husband had one, also drawn up by Mr. Tonner.

Para 3: Mr. Potter states "That initial trust document was never executed" and that is true. After that first statement there follows several incorrect statements.

- a. After Kyle left Indiana, Martha did not accompany her sister to Mr. Tonner's office. Mrs. Kobek, without the knowledge of either Martha or Kyle, went to Mr. Tonner the very next day after Kyle left and, using her power of attorney, instructed him not to prepare the trust. Mr. Potter refers to the trust in this paragraph as "the trust with Kyle in charge", however, as previously noted, the trust was not originally including Kyle in any trusteeship whatsoever, at Kyle's own suggestion.
- b. After Mrs. Kobek stopped the initial trust, again without consulting with either Martha or Kyle, Mary instructed Mr. Tonner to draw up papers naming herself as Guardian of Martha Ham, not a different

- trust as Mr. Potter indicates. Mr. Tonner drew up the necessary papers as attorney for Mrs. Kobek in June, 2000.
- c. In August, Kyle telephoned Mr. Tonner to ask why she had not yet received copies of the trust. Mr. Tonner informed Kyle that Mrs. Kobek had cancelled the trust and was preparing to file the guardianship petition. Kyle returned to Indiana to inform Martha of what had taken place.
 - d. When informed of what had taken place, Martha was initially in disbelief, however, she accompanied Kyle to Mr. Tonner's office where he confirmed everything that Kyle had told Martha. A trust was then drawn up on Martha's orders with Kyle as successor trustee, not trustee as indicated by Mr. Potter. A power of attorney was also drawn up allowing Kyle to sign any financial or medical documents on Martha's behalf. A similar power of attorney that had been in Mrs. Kobek's name was revoked. Both the power of attorney and the trust, as well as a health care power of attorney, all contained permanency provisions in the event that Martha became incapacitated.
 - e. Kyle did not pay for any of the documents as stated by Mr. Potter. Mr. Tonner billed Martha Ham for his work on the original (unexecuted) trust which was to make Mrs. Kobek as successor trustee, his work on the Guardianship papers (not the trust as Mr. Potter reports) that Mrs. Kobek had ordered, the trust that made Kyle successor trustee, the revocation of Mrs. Kobek's power of attorney, and the new power of attorney for Kyle. Martha Ham paid for all of this.
 - f. It should be noted here, that when the trust was established, Kyle transferred all assets to the trust. For the most part, these assets were in the name of both Martha Ham and Kyle Hamilton. Martha's condo, though only in Martha's name, had been purchased using \$36,000 of Kyle's money. In such a case, the trust should have designated Martha and Kyle as co-trustees and Mr. Tonner may have shown negligence in not advising either of them of this option. The trust was established in Martha's name only, without acknowledging any of Kyle's financial interests.
 - g. It should further be noted for the record that Mr. Tonner attempted to persuade Kyle to go to a personal friend of his to handle all of Martha's investments. Kyle declined because the commissions of a

financial analyst for investing the amount of money available would have run \$10,000 or more, an estimate Kyle obtained from a financial consultant in California of what he might expect to receive in commissions if Kyle took the business to him. Mr. Tonner informed Kyle that the costs would not be even close to that amount and that if she were to remove any assets from Indiana it would "look suspicious."

- h. Later, there was a phone conversation between Mr. Tonner, Mrs. Kobek, and Kyle, during which Mrs. Kobek denied ever having gone to Mr. Tonner's office, denied stopping the trust, and denied instructing that Guardianship proceedings be started. Mr. Tonner had to inform Mrs. Kobek that she had indeed done all of that after which Mrs. Kobek had very little more to say.

Para 4: This paragraph is essentially correct, however, Martha did not merely get "stuck", she drove the car up on the sidewalk and almost into the beauty shop. She left the car unattended and in gear, which could have resulted in serious injury to her or others. It should be noted for the record, that Mr. Tonner would later decline to represent Kyle in the Guardianship Proceedings he had recommended to Kyle because it would be a conflict of interest for him, even though he did not see it as a conflict of interest in the same situation where Mrs. Kobek was applying for Guardianship.

Para 5: There are several items that require clarification in this paragraph.

- a. The court ordered a \$200,000 bond be posted by Kyle, even though she was the successor trustee of the estate, possessed a power of attorney for Martha, and was the sole heir to the estate. It is questionable whether or not such a bond would have been required if another party had been declared guardian of the estate. Also, the bond requirement was in direct opposition to the terms of the trust.
- b. Mr. Potter states that the guardianship over the estate was dropped because Kyle was unable to be bonded. Mr. Potter also states that "Kyle now claims that this was improper" inferring that this is a recent development. This is totally false. In point of fact, when informed of the guardianship over the estate, Kyle's husband Jerry informed Kyle that with the clauses contained in both the trust documents and her power of attorney, that there should be no guardianship of the estate since both documents became irrevocable

in the event that Martha became mentally incapable of handling her financial affairs. The attorneys, both Mr. Tonner and Mr. O'Brien, confirmed that this was indeed the case under Indiana law and therefore the guardianship over the estate was dropped because it was determined that the court had no legal jurisdiction over the estate and lacked the right to change what Martha Ham had originally established when she was still recognized as being mentally competent enough to handle her own finances.

- c. It should also be noted that the reason Kyle could not be bonded is because she has no credit history. She has been the victim of a stalker for over 10 years and has no assets or established credit in her name. This is to help protect her from being traced by her stalker, and is certainly not an indication of wrongdoing on her part.

Para 6: There are several points needing clarification in what Mr. Potter states.

- a. Mr. Tonner advised Kyle in 2001, prior to her trip to Indiana to appear in court regarding the guardianship issues, that she would not be granted guardianship of the person of Martha unless Kyle agreed to leave Martha in her Rensselaer condo and had already established some form of care for Martha. Mr. Tonner then recommended another client of his, Ms. Tonjua Gray. Kyle interviewed Ms. Gray by telephone and, strongly influenced by Mr. Tonner's personal recommendation, hired Ms. Gray as care giver for Martha on a trial basis. After the guardianship hearing, since Kyle was ordered to let her mother remain in her condo, but to hire a caregiver, Kyle had no alternative to paying Ms. Gray. Ms. Gray then demanded significantly more money. Mr. Tonner and Mr. Matt Robertson from Huth Thompson negotiated the details and drew up the contract. Both Mr. Tonner and Mr. Robertson had a fiduciary responsibility to Martha Ham, however the contract terms were heavily in favor of Ms. Gray, to Martha's detriment. Kyle was also advised in the writing of this contract that it would be more beneficial to the trust if Ms. Gray were to be hired and paid as a W-2 employee. This is very dubious considering that only Ms. Gray stood to benefit from this type of arrangement and the trust's taxes would have been better suited to hiring Ms. Gray using a Form 1099.

Ms. Gray started work February 2nd, 2001, not on the contract date of April 23rd.

- b. It should be noted in regard to Ms. Gray's compensation package which was recommended to Kyle, that Ms. Gray's compensation amounted to almost double that of the average rate in the Jasper County area for a licensed practitioner, reporting periodically to a Registered Nurse. To the best of anyone's knowledge, Ms. Gray is not a licensed practitioner. Ms. Gray did not ever report to anyone in the Health Care profession.
- c. The contract was not terminated on March 1, 2002. The contract contained a clause calling for Ms. Gray's termination should her services no longer be needed in the event Martha was admitted to the hospital, which she was on February 17th, 2002. Ms. Gray was paid through the end of February as her severance.

Para 7: Where Mr. Potter is quick to point out that there is evidence of some bills being paid late, it should be noted that Martha was never seriously inconvenienced, if at all, by any late payment, and that, not only were bills frequently forwarded from Indiana to Kyle in a less than timely fashion, but also that the bill payments were forwarded to Ms. Gray to distribute. Ms. Gray may very well have delayed in delivering the bills. She evidently opened the sealed envelopes and photocopied the contents, as was verified in the packet of "evidence" forwarded to Mr. Riley by Mr. Tonner, and which was not in the scope of her duties and constitutes a serious invasion of Martha's and Kyle's privacy.

Para 8: As stated by Mr. Potter, the distance between Hawthorne (not Los Angeles) and Rensselaer contributed to the hassles with the bills. This is indeed one of the primary reasons Kyle has wanted to move her Mother to California to live in Kyle's home. This hassle was exacerbated by the fact that nobody in Rensselaer seemed able to process any form of electronic payment or pay-by-phone (even using a credit card), bills sent to Kyle were incorrectly addressed (i.e., Hollyglen, FL), address change requests went unheeded (which was the direct cause of the few late payments referred to in the previous paragraph), and mail delivery was further slowed after the events of 9/11. There was, however, one doctor's bill that was missed- for the sum of under \$60.; this one error hardly justifies the expense of these proceedings. Mr. Potter takes issue with the testimony from both Ms. Gray and Kyle, inferring that Kyle may be less than honest in her testimony regarding Ms. Gray, however, there has never been any evidence that Kyle has

acted in any way that was less than honest whereas the following points indicates that Ms. Gray lied outright regarding issues dealing with Martha, withheld extremely important information relating to Martha's health and welfare, achieved her means through fraud, and obtained information illegally:

- a. Kyle fully trusted Ms. Gray from the start, primarily because of the vouching made by Mr. Tonner. Her trust extended to the point of never questioning additional expenses claimed by Ms. Gray and also in forwarding her extra cash to be used in case of any emergency, or if there was a problem with any bill slipping through the cracks. This extra cash was never applied to anything that Ms. Gray felt was past due or in danger of being past due and to date remain unaccounted for.
- b. Ms. Gray illegally opened U.S. mail and photocopied the contents prior to forwarding the mail to Kyle (verified in the packet of "evidence" forwarded to Mr. Riley by Mr. Tonner).
- c. Ms. Gray not only illegally opened and photocopied items, some items such as Form 1099's were never forwarded to Kyle. These Form 1099's were needed by Kyle to prepare Martha's income tax returns. The only copy Kyle ever received of these forms were the copies in the packet of "evidence" forwarded to Mr. Riley by Mr. Tonner. In fact, one Form 1099 still had a note written on it saying "Matt said not to forward this to Kyle."
- d. Ms. Gray made certain charges that have yet to be substantiated. In actuality, the claims made were bogus. One insurance bill that Ms. Gray claimed Kyle had not paid was for Martha's burial. Martha had paid for that, in full, long before any of the later court proceedings began regarding guardianship, and yet a copy of this contract was in the packet of "evidence" forwarded to Mr. Riley by Mr. Tonner as another example of Kyle's alleged negligence. Kyle has evidence to refute these charges but has never been granted the opportunity to have her evidence examined by the Court or even any of the attorneys involved in the case.
- e. Ms. Gray visited several establishments in Rensselaer and obtained financial information about Martha by posing as Martha's daughter-in-law, even though Martha has no daughter-in-law. This has been verified a number of times by different persons.

- f. Ms. Gray used false information in order to get Martha admitted to Jasper County Hospital in that she used Martha's next door neighbor as next-of-kin rather than Kyle so that none of the hospital staff had any idea who Kyle was and refused to cooperate with her or even furnish any information regarding her mother's condition.
- g. Ms. Gray had Martha admitted to Jasper County Hospital in spite of the fact that written instructions as to Martha's care in the event of hospitalization was to admit Martha to St. Anthony's where Martha's own doctor would be responsible for her care.
- h. Ms. Gray falsely filled out admittance forms at Jasper County Hospital indicating that there were no medical records for Martha, even though such records were readily available from several sources and this fact was fully known by Ms. Gray.
- i. Ms. Gray failed to indicate on the Jasper County Hospital admittance forms that Martha had been diagnosed with multiple myeloma on more than one occasion and a fact that Ms. Gray was fully aware of, which resulted in Martha having an adverse and potentially lethal reaction to a drug used by hospital staff that is designated as causing reactions in patients with multiple myeloma.

Para 9: Mr. Potter states in this paragraph that some of the information provided by Ms. Gray has been substantiated, however, he fails to mention that all of the statements made by Kyle either have been, or can be substantiated as indicated by the following:

- a. While it is indeed true that Martha's doctor recommended a bone density test and a podiatric consultation, Ms. Gray failed to report that Kyle had informed her, Ms. Gray, that she intended to personally take her mother to these appointments. She had questions regarding whether the test was simply for indications of osteoporosis or if there were indications that Martha's myeloma was progressing, which would be far more serious and a legitimate concern.
- b. Mr. Potter's investigation also failed to reveal the following:
 - 1) several phone conversations between Kyle and the doctor discussing the prescribed test,
 - 2) the information that it was not an urgent test because it was relative to the osteoporosis rather than the multiple myeloma,

- 3) that the doctor informed Kyle that it would be perfectly all right to postpone the test until Kyle's next trip to Indiana (only a couple of weeks in the future), and
- 4) that Kyle would personally accompany her mother to the doctor for the testing.

c. Mr. Potter indicates that Ms. Gray sought assistance from Mr. Tonner in January and February of 2002 because of Kyle's alleged lack of follow-up regarding Martha's health problems and that the bone density test was requested on January 17, 2002. However, the so called evidence that was being illegally collected by Ms. Gray and was contained in the packet of "evidence" forwarded to Mr. Riley by Mr. Tonner, predates January 17, 2002, indicating premeditation and conspiracy on the part of Ms. Gray to try to build a case against Kyle in order to have Kyle removed as Guardian of Martha's person and to protect Ms. Gray's lucrative job.

Para 10: The last part of this paragraph where Mr. Potter reflects on conversations with Martha and the nursing staff in the Alternacare ward at Jasper County Hospital is the only valid observation made. The first part of the paragraph, although true, is absolutely ludicrous as indicated by the following:

- a. Mr. Tonner did indeed file a request in February of 2002, "on behalf of Martha Ham", to request the termination of Kyle as the Guardian of Martha's person. However, it was clearly evident at the time that Martha was not legally competent to sign anything, as Mr. Potter indicates later in the paragraph, and as Mr. Tonner knew only too well since he had been involved in the original court case where Martha Ham was declared legally incompetent to handle both her financial and health affairs. Again, the reason Kyle was not appointed Guardian of Martha's estate was not because the court felt that Martha was competent, but rather because the court knew it had no jurisdiction to alter any of the wishes contained in Martha's trust which had been written, by Mr. Tonner, at a time when Martha was still legally competent to handle her own financial affairs.
- b. Mr. Tonner filed his motion based on allegations made by Ms. Gray even though he was supposedly representing Martha Ham, although he was never retained by either Martha or Kyle. Martha has been very happy with the way her daughter has cared for her and did not want any lawsuit filed on these or any other matters. Also, Mr. Tonner

- apparently did not bother checking on any of the allegations to verify the facts and thus we end up involved in a frivolous and malicious lawsuit. The only other possible explanation is that Mr. Tonner is in conspiracy with Ms. Gray.
- c. The documents Mr. Tonner had Martha sign are obviously an exact copy of the statements made by Ms. Gray, in Ms. Gray's words, not in Martha's. One of the statements attributed to Martha is very obviously a statement made personally by Ms. Gray.
 - d. On February 18th, 2002, at Jasper County Hospital, while Kyle was visiting with her mother, Martha expressed concern that Kyle appeared exhausted and worn down and wanted to know what was wrong. Kyle replied that she was very tired due to stress and lack of sleep because of the pending legal actions and concern over Martha's health. Martha indicated no knowledge of any legal actions and asked Kyle for more information. When Kyle explained that the legal actions were set in motion by her (Martha) to have herself (Kyle) removed as Guardian of Martha's person, Martha was greatly agitated and exclaimed she had no knowledge of any such action. When Kyle asked her if she had signed any papers given to her by Mr. Tonner, Martha replied that she had indeed signed some papers because Mr. Tonner and Ms. Gray had told her to do so and they were nice people. When Kyle informed Martha as to what the papers were for, Martha became extremely upset and demanded that Kyle call Mr. Tonner to the hospital immediately and put a stop to all this at once, that she wanted Kyle to continue taking care of her. When informed that Ms. Gray was being paid to assist Martha with her personal needs and the cost of that care, Martha became very indignant and exploded that Ms. Gray was not worth that much money, that she didn't do anything except lay on the sofa and watch television. This entire episode was witnessed by a member of the hospital staff who was standing in the room during Martha's entire tirade. It does not appear that Mr. Potter has interviewed this witness.

Para 11: This is a problematic paragraph because Mr. Potter accuses Kyle of mismanaging the trust funds and violating her fiduciary as trustee.

- a. First of all, the trust fund was not an issue in this case. The issue was the Guardianship of Martha's person.
- b. The trust was not an issue because it was specifically written so that Kyle would become the trustee in the event that Martha became

- mentally incompetent to handle her financial affairs. The language is very specific that in such an event, both the trust and the power of attorney granting Kyle the right to sign for all of Martha's legal, financial and healthcare needs, were to become irrevocable.
- c. These were Martha's wishes when she was still legally competent to make her own decisions. Martha did not wish for Kyle to have any checks or balances, or have to answer to anybody as trustee. This is clearly stated in the trust and is consistent with their family dynamics.
 - d. Martha expects Kyle to take care of her as she grows older and has expressed on numerous occasions how proud she is of the job Kyle has been doing.
 - e. Kyle has indicated from the start that she intended to move her mother to California to live with her and her husband as a family. She has complied with the court's order to leave her mother in the Rensselaer condo, even though it is not in Martha's best interests to do so.
 - f. Kyle did indeed spend money, not to add on to her home as Mr. Potter says, but to remodel the master suite of her home so that it would be comfortable for her mother, provide a feeling of privacy for her mother, and be equipped in such a manner as to be handicapped accessible. That was because the original intent was, and always had been, to move Martha to California.
 - g. In fact, Martha would have private quarters totaling 330 square feet, including a full bathroom designed for handicapped access. Kyle and her husband would be living in 315 square feet of private area. The remaining 1155 square feet of indoor living space would be shared.
 - h. Mr. Potter states that Kyle purchased a digital camera with trust funds to attend a family reunion, indicating that this was some sort of misuse of funds. The reality is that the camera, purchased at Martha's request, was used for a family reunion, Martha's class of 1936 65th reunion, visits by friends, trips to the old neighborhood in Dolton by Kyle and Martha, Martha's best friends' 50th wedding anniversary, and other major events which Martha attended. The pictures were used for immediate feedback for Martha because film did not have to be developed and the pictures could be displayed on Martha's television. The pictures were also used to help Martha

identify people from her past whose identities she was already forgetting. Kyle has photographed these types of occasions for her mother for over 20 years, at her mother's request.

- i. When mentioning all this spending on Kyle's part, Mr. Potter fails to mention that Kyle purchased a new wardrobe for Martha since her clothes no longer fit (having gone from a size 18 to a 2), that Kyle purchased many items for Martha's house so that the condo would be more homey and pleasant for Martha, that Kyle spent money on some outdoor patio furniture so that Martha could sit out on her deck, watch the horses in the next yard (one of Martha's favorite pastimes), and visit with the neighbors instead of being isolated inside.
- j. It should be noted for the record that in the years Martha lived in her condo there was virtually nothing spent on décor because Martha refused to spend money on herself. Kyle wants her mother to enjoy nice things in her day to day living. It should also be noted that all or most of the dress and outfits that were of the larger sizes in Martha's wardrobe are currently unaccounted for. Kyle had instructed Ms. Gray to pack and store them in the attic over the condo's garage, however, they are not anywhere on the premises.

Para 12: This paragraph is extremely troubling in the manner in which Mr. Potter stresses certain words. Mr. Potter has apparently confused some of the facts.

- a. Martha Ham has always had a love for gardens and the outdoors. When living in Dolton, Illinois, Martha grew prized alliums that were featured in the local paper each year. She loved to spend time in her back yard. In Rensselaer, she loved to look out her back window and watch the horses and look at the flowers growing. After Kyle purchased some furniture items for the outside deck, Martha liked to sit out on the deck and watch the horses and enjoy the outdoors. She also walked around her Countryside neighborhood several times each day, weather permitting.
- b. What Mr. Potter refers to as an "unconventional" investment to remodel and landscape her "unique" 6500 square foot back yard was done with the primary objective of creating a safe, well-protected place where Martha could sit outside and enjoy the outdoors as she so loves whenever the weather permitted, which is nearly all the time. She would also have a spectacular view of the garden from her

bedroom, even when lying in bed. The idea of the landscaping was an effort to make things more pleasant and enjoyable for Martha in her aging years instead of being cooped up in a long term care facility. Kyle envisioned "puttering around" the garden with her mother and filling her mother's bedroom and living area with fresh flowers for whatever time is left for Martha. The rest were secondary, not primary purposes:

1) Marketing the yard as a "location" spot for the television and film industry and other photographers was an idea that occurred to Kyle after the garden was completed when a casting director visited and commented on what a wonderful spot it would make for location shooting. Income of this nature would not be immediate since the garden itself has to fill in, so the marketability would not really come until the late summer of this year. However, there was a booking already for shooting an infomercial (which was subsequently cancelled due to scheduling problems) and it was used for a photography location in shooting pictures to be used in the successful campaign of a city politician. The following should also be noted:

- a) that Kyle and Jerry each have over 20 years experience in the film and television industry and have made widespread contacts with producers, directors and casting directors,
- b) the yard is located within two miles of a major studio (Raleigh Studios) where Kyle and Jerry both have a number of contacts,
- c) a new television episodic (CSI Miami) is being filmed in this area and they do quite a bit of location shooting and have, in fact, already begun scouting for homes, business sites and other properties that could be used in the series,
- d) rental rates for this type of location shooting average \$150 per hour or \$1000 per day, which should ultimately yield significantly more than conventional investments such as Enron stock, Kmart stock, or low-interest certificates of deposit, and

- e) Mr. Potter did not mention that Kyle is a third generation photographer, does business as KOPHOTO (Knock Out Photography), and has been creating a lot of interest within the 1140 home neighborhood for using the yard as a backdrop for family pictures, engagement portraits, graduation pictures, etc.
- 2) Kyle never stated to Mr. Potter that the yard was to be featured in an upcoming issue of *Better Homes and Gardens*. She did say that, after a year's growth to fill in the garden, a pictorial display would be submitted to *Better Homes and Gardens* as well as to other national publications. This idea was brought up by the landscape designer after the job was completed. The designer wants the publicity he could get for any layouts published. The going rate for the more spectacular layouts runs in the neighborhood of \$10,000 and this designer's work has been featured in numerous magazines in the past.
- c. Mr. Potter appears skeptical of this "investment" because the property is not in Kyle's name or that of the trust. Mr. Potter should be made aware that California is a community property state and that any property purchased by her and her husband, no matter how titled, is still regarded as community property.
- d. Mr. Potter should also be made aware that according to the California Association of Realtors, as published in the Los Angeles Daily Breeze on April 26, 2002, the median home price in Hawthorne rose 40.1% between February, 2001, and February, 2002. Not only that, but the same source has also published the median home price increases in Hawthorne as being in the double digits for the two years previous to this reported market activity.
- e. Another interesting note in support of Kyle's real estate investing is in a May 21, 2002, article in the Los Angeles Daily Breeze quoting statistics compiled by DataQuick Information Systems of La Jolla: "The stock market slump of the past two years also has helped boost the housing market. If you have any kind of cash sitting around, the California real estate market is probably about as good a thing as you can find right now."
- f. Mr. Potter states that Kyle Hamilton is not Kyle's real name. Mary Frances Ham legally changed her name to Kyle Shayna Hamilton on

December 22nd, 1976, at the urging of her agent. The reality is that the last name "Ham" does not bode well for an aspiring actress (any more than Francis Marion would have worked for John Wayne). Changing her name has caused a great deal of consternation to several of Kyle's relatives who currently live in Rensselaer. This is one of the reasons that Mr. Riley told Kyle that people in Rensselaer distrust her because they think she is "weird", or words to that effect.

Para 13: It is true that Kyle is concerned about the delay in Court proceedings because of the pile up of unexpected (legal, hospital, travel expense, and long term care) costs due to the court's restrictions. The entire Court case is frivolous and serving only to cost Martha Ham's estate more and more money, none of which would be an issue had Kyle not been halted from moving her mother to California as had been her intention all along and had been expressed to Mr. Tonner from the very beginning.

II. REBUTTAL TO MR. POTTER'S CONCLUSIONS AND RECOMMENDATIONS

- A. The conflict referred to by Mr. Potter should not be resolved by this Court. There is no conflict.
1. The matter of Guardianship of the Person of Martha Ham is a separate issue from the trust.
 2. Kyle has not violated her fiduciary duty as trustee. There is no evidence to support this allegation; only hearsay from an unreliable source (Ms. Gray) supposedly supported by documents obtained illegally, which said documents in reality do not even support the allegation.
 3. Mr. Potter is correct that Martha is without the necessary faculties to protect her own interests, however, Martha was in control of those necessary faculties when she had Mr. Tonner draw up the trust and the power of attorney, clearly indicating her wish to have Kyle as her sole beneficiary, the successor trustee for her estate, and for Kyle to have the power of attorney to make health care and other decisions for Martha should she become unable to take care of herself.
 4. The power of attorney survives Martha's mental and/or physical incapacity.
 5. Mr. Potter is correct that the Court has no jurisdiction over the trust because of the power of attorney.

6. Mr. Potter is mistaken in believing the Court has any jurisdiction to appoint a new guardian of Martha's person. The same rule of law applies to the power of attorney given to Kyle regarding Martha's health care as did the power of attorney in regard to trusteeship of the estate.
 7. In point of fact, the Court had no legal need to grant guardianship of any sort. Once Martha was deemed unable to adequately care for herself or handle her finances, the power of attorney immediately became irrevocable.
- B. Mr. Tonner should definitely be removed from this proceeding.
1. Mr. Tonner had Martha sign legal papers knowing that she was not legally permitted to do so and that she had been diagnosed as suffering from Alzheimer's disease, an act that appears both irresponsible and possibly fraudulent.
 2. Mr. Tonner showed a great lack of judgment in filing papers with the court based on false accusations without attempting to determine whether or not there was any truth in the allegations.
- C. There should be no immediate accounting made available. Contrary to Mr. Potter's belief, the legal documents placed in effect prior to Martha being declared incapable of handling her person and property are very clear regarding accountability of the trustee of her estate.
- D. The condominium in Rensselaer should indeed be sold. The fact that the court instructed Kyle that she could not sell the condominium is in direct conflict with Kyle's legal right to act on her mother's behalf as clearly stated in the trust agreement, the power of attorney making Kyle Martha's Attorney-In-Fact, and Kyle's appointment as Martha's health care representative.
- E. There can be no new guardian. Again, this would be in direct conflict with Martha's wishes as expressed before the Court found her to be incapable of her person or property.
- F. The Court has no right to set a speedy hearing or any hearing regarding this matter. The Court has no jurisdiction to alter any of the documents empowering Kyle to act on her mother's behalf and that is expressed clearly and repeatedly throughout the documents.
- G. Martha should indeed continue to have contact with Kyle.

1. Kyle is her daughter and is the only person since the death of Mr. Donald Ham who has acted in Martha's best interests.
2. Other relatives have complained about Martha's incontinence and senility and expressed their shame and embarrassment at such. They have verbally abused Martha, and according to letters from Martha, have at times resorted to physical abuse.
3. Kyle has been the only person involved in this case who has consistently taken actions to better the quality of life for her mother, to see that she eats correctly, to see that she changes her clothes, baths regularly, and wears her Depends.
4. Much is inferred in how Kyle invested monies from the trust, however, nothing is being mentioned that almost half of the monies placed in the trust came from accounts owned jointly between Martha and Kyle. Nor is it mentioned that Kyle allowed her mother to use \$36,000 of Kyle's own proceeds from the sale of the Dolton home to help Martha finance her condo.
5. In the past year, Kyle spent over 70 days in Rensselaer with her mother. That is two and a half months of the year.
6. Kyle has been the only person to not give in to Martha when Martha persists in pursuing a course that is dangerous to her health. Everyone else seems to think the best thing is to let Martha do whatever she wants to do. Kyle thinks that Martha should do what is in her best interests, whether or not it is what she wants. Relatives and friends in Rensselaer allowed the following to continue unabated until Kyle stepped in:
 - a) Martha used to eat only candy and junk food (i.e., Little Debbie Nutty Bars).
 - b) Martha fought hard against having Meals-on-Wheels, but Kyle insisted that Martha accept the service.
 - c) Martha did not want anyone coming in to clean her home, but Kyle made the arrangements anyway and cajoled her mother into accepting the help.
 - d) Martha fought against changing her clothes or her soiled under things, but Kyle taught her how to use Depends. Kyle even changed Martha's diapers when nobody else would (prior to the hiring of a care giver).

- e) Martha wanted Ms. Gray to stay out of her house, but Kyle would not allow Martha to keep Ms. Gray out.
 - f) Martha used to fix food to eat that had mold growing out of it, but Kyle would take it from her and replace it with healthy foods.
 - g) Martha insisted on continuing to drive her car in spite of Kyle's efforts to prevent her from doing so. Others in Rensselaer did what they could to allow Martha to continue driving which resulted in Martha driving on an expired license, driving in a snowstorm and ending up almost running into the front wall of her hair dresser.
7. Martha didn't want to leave her condominium and Kyle did her best, at ridiculous expense, and a vast amount personal time and effort, not to mention inconvenience, to allow Martha to remain in the condo until her hospitalization. Kyle also made it very clear at the time that, in Martha's best interests, she intended to move Martha to California.
- H. No further medical opinion needs to be made. Kyle is the final authority on all health care matters pertaining to her mother, by her mother's own wish and appointment.
- 1. Martha granted Kyle the right to "consent or refuse health care" for her.
 - 2. Martha granted Kyle the right to have Martha put into or taken out of any "hospital, health care facility, nursing home, or other institutional care or health care provider."
 - 3. The best recommendation for Martha's long term care and residency resides with her daughter Kyle in California for a number of reasons:
 - a) Kyle is Martha's closest living relative, Martha's only living daughter.
 - b) Kyle is not too old or incapacitated by health issues to prevent her from adequately caring for her mother.
 - c) Kyle and her husband have both undergone medical alert and first aid training and been licensed as Foster Parents in California.
 - d) Kyle and her husband both have, over the last half dozen years, been (and still are) members of a care group who

work with hospice caring for cancer patients in their last days.

- e) Kyle has already made arrangements with her family physician, Dr. Lauren Vu, to treat Martha when she moves to California.
- f) Dr. Vu's office is located one mile away from Kyle's residence.
- g) The medical office in which Dr. Vu works has an oncologist available so that Martha would not have to wait two weeks, as she did at Jasper County Hospital, to have her oncologist read the results of her medical tests.
- h) Martha has been diagnosed with multiple myeloma. Kyle lives within 18 miles of the USC-Norris Cancer Hospital, one of the foremost leaders in cancer treatment in the United States.
- i) Martha has been diagnosed Alzheimer's and UCLA's medical research facilities, one of the leading research facilities on Alzheimer's, are less than 15 miles from Kyle's home.

III. **FINAL CONCLUSION**

- A. The removal of Kyle from her role in handling both her mother's person and property would be a gross injustice, a blatant disregard and violation of Martha's rights, and would be in direct conflict with Martha's wishes and intentions which were made evident long before the Court found her incapable.
- B. According to the Power of Attorney making Kyle Attorney-in-Fact for Martha, and the Appointment of Health Care Representative appointed Kyle as the representative for Martha, and the Living Trust Agreement drawn up by Mr. Tonner, Kyle is not accountable to anyone for any of her actions and the Court has no jurisdiction for making any changes to Martha's previously stated and legally documented instructions.
- C. There is no evidence that Kyle has, in any way, neglected her mother's needs or wishes and, in actuality:

1. There is ample evidence that Kyle is the only person willing to do the necessary work to ensure the best care for her mother.
 2. The evidence shows that Kyle has done an exceptional job of seeing to her mother's needs. Martha has bragged about how well Kyle has been taking care of her.
- D. Living in California would put Martha in much better position for treatment of her diagnosed conditions because the surrounding facilities are world leaders in breaking new ground in the field of medicine.
- E. The weather in Hawthorne, California, a part of the Southbay Area called Hollyglen, is ideal most of the year. Martha would not be subjected to the harsh Midwest winter storms or summer heat and humidity if she were living in California. She would not have to live the rest of her life indoors.
- F. The Hollyglen neighborhood is very much like the Dolton neighborhood where Martha spent over 35 years of her adult life.
- G. Martha's standard of living in California with Kyle would be much higher than either staying where she currently is or in moving to a nearby nursing home.
- H. In numerous recent phone conversations between Kyle and her mother, Martha has stated that she misses Kyle, that she wishes she could see Harvey (the play in which Kyle is currently playing the female lead), and, though the food she's getting is very good, she is very lonely.
- I. Martha has maintained in the past that she does not wish to live in California, however, there are two basic reasons behind her choice:
1. Martha is awaiting the return of a particular man who she fantasizes will be coming to find her and live with her. The letters she has written are extremely explicit and graphic. The man in question lives in Florida and is believed to be living with his wife.
 2. Martha believes that if she were to die in California then she would not be able to be buried in Rensselaer next to her husband of 50 years. When purchasing her burial insurance, Mr. Bill Jackson explained clearly that the insurance would cover transporting her body back to Indiana, however, she no longer remembers this fact.

J. All of the allegations made against Kyle have been unsubstantiated.

1. Ms. Gray has proven to be not only unreliable, but dishonest.

- a) She has made false accusations in an attempt to defraud Martha's estate,
- b) she illegally opened mail and photocopied the contents,
- c) she lied to people about her identity in attempting to gain access to information that she was not entitled to,
- d) she did not live up to the terms of her contract but continued to bill as though she were,
- e) she misrepresented herself in order to illegally open medical billing accounts in Martha's name, and
- f) she lied on hospital admittance forms which ended up endangering Martha's life.

2. Mr. Tonner has tried to lend credence to Ms. Gray's allegations and has placed himself in the position of being shaded as an accomplice to Ms. Gray.

- a) He failed to determine the validity of Ms. Gray's accusations,
- b) he told Martha to sign legal documents knowing that she suffers from Alzheimer's and had also been judged to be incapable of handling her person and property by the court in February of 2001,
- c) he persisted in pushing forth in support of his client, Ms. Gray, in spite of overwhelming evidence that she was not forthright,
- d) he has claimed to have a conflict of interest in one case and yet in an identical case claimed that no conflict existed,
- e) he failed to make all options available to Martha and Kyle in drawing up legal papers for them,
- f) he used Kyle's trust to influence her decision in hiring his client, Ms. Gray, and
- g) he helped put together an "equitable" compensation package for Ms. Gray that was entirely one-sided and outrageously inflated for her salary.

K. With Martha being a member of Kyle's household, any financial burden extending beyond the capacity of the trust would be taken on by Kyle and her husband, as family taking care of family which goes to the

heart of all of Martha's intentions in the legal documents she had prepared when she was still mentally competent enough to handle all of her affairs.

- L. Additionally, by Kyle's religious beliefs, it is her moral responsibility to personally care for her mother.
- M. Kyle has seen both of her grandmothers die in nursing homes and is very adamant that her mother not die in some institutionalized setting, but in the loving care of family as was the case with her father, Donald Ham.
- N. Based on the preceding paragraphs, the Court should take the following actions:
 - 1. Immediately drop all proceedings and end the harassment of Kyle Hamilton and allow Kyle and her mother to get on with their lives, or what little time there may be left for them to enjoy each other's company.
 - 2. Initiate criminal proceedings against Ms. Gray for fraud, tampering with the mail, invasion of privacy, stealing personal documents, making false statements on hospital records and admittance forms, and reckless endangerment to the life of Martha Ham.
 - 3. Initiate an investigation into the past actions of Mr. Tonner to determine any complicity with Ms. Gray, or any other party or client, to defraud the estate of Martha Ham or to participate in any cover up of the money unaccounted for from Donald Ham's annuity. At the very least, Mr. Tonner should be censured for his negligence and irresponsible actions.
 - 4. The Court itself appears biased in this case. This Court has repeatedly accepted motions containing allegations against Kyle and then scheduled hearings without bothering to even obtain any kind of a response from Kyle regarding those allegations. As an example, the Court has, based on the Guardian Ad Litem's Preliminary Report, and without asking for any response from Kyle regarding the accuracy of said report, has scheduled a hearing on the 28th of June, 2002, "for the purpose of establishing a new guardian over the person and estate of Martha Ham". This court has tried and convicted Kyle without ever giving her a chance to defend herself and without even looking at all of the evidence.

5. Kyle has made every attempt to cooperate with the Court. The original hearing scheduled for March 1st, 2002, was cancelled and not rescheduled while Kyle was in Rensselaer to defend herself. Subsequent hearings/meetings/orders have been scheduled/held at times when Kyle could not possibly attend and her input has never been solicited by the Court.
6. Ms. Gray, Mr. Tonner, and the Court should be held liable for all costs incurred as a result of the false allegations being made and the illegal Court rulings based on those false allegations.