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D-11
ORIGINAL

FILED
LOS ANGELES SUPERIOR COURT

JUL 16 2009
JOHN A. CLARKE, CLERK
BY C.L. GILES, DEPUTY

DATE OF HEARING

7-21-09 8:30 D-11

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES / CENTRAL DISTRICT

In the matter of
THE CONSERVATORSHIP OF PETER
MICHAEL FALK

Case No.: BP 114111
(Assigned for all purposes to the Hon. Aviva K. Bobb, Dept. 11)

Date: ~~June 30, 2009~~ 7-21-2009
Time: 8:30 a.m.
Dept.: Probate Office (Room 258)

PETITIONER CATHERINE FALK'S *EX PARTE* APPLICATION FOR ORDER CLARIFYING THE COURT'S JUNE 1, 2009 ORDER GRANTING VISITATION RIGHTS; MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATIONS OF STEVEN L. HOGAN, TROY L. MARTIN AND M. DAMIEN HOLCOMB IN SUPPORT THEREOF

Action Filed: December 12, 2008
Trial Date: May 27, 2009

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on June 30, 2008, at 8:30 a.m., in Probate Office Room 258, Petitioner Catherine Falk (Petitioner) will and hereby does apply *ex parte* to this above-referenced Court located at 111 North Hill Street, Los Angeles, California 90012 for an Order Clarifying the Court's June 1, 2009 Order granting Petitioner the right to visit her father, the Conservatee. Specifically, Petitioner seeks for the Court to clarify that Petitioner's children, the Conservatee's grandchildren, are also entitled to visit the Conservatee during those periods when the

EX PARTE APPLICATION FOR ORDER CLARIFYING COURT'S JUNE 1, 2009 ORDER

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1 Petitioner, by court order, is permitted to visit the Conservatee. Petitioner also seeks for the Court to
2 clarify who is responsible for paying the cost of the monitor given that the Court, at Objector Shera
3 Danese Falk's ("Objector") urging, has ordered that the visits most be monitored. Petitioner submits
4 that the estate should be liable for the costs of the monitoring visits.

5 This *ex parte* application is made pursuant to California Rules of Court 3.1200 *et seq.*
6 on the ground that Objector has maliciously and unjustifiably refused to permit Petitioner's children
7 to visit with the Conservatee notwithstanding Judge Aviva K. Bobb's statements in chambers during
8 the trial and shortly before issuing her ruling that the grandchildren should be permitted to visit with
9 Conservatee, their grandfather.

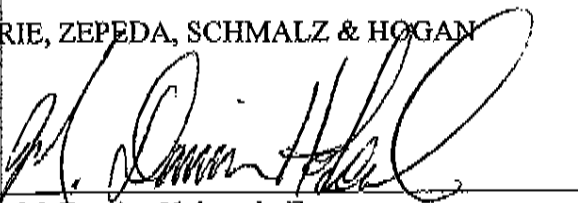
10 Further, the estate should pay for the monitoring during Petitioner's visits with the
11 Conservatee, just as the estate would pay for a professional conservator if one was appointed. Also,
12 a monitor is only necessary because of Objector's unjustified refusal to permit Petitioner to visit with
13 the Conservatee. In fact, Objector contends that these visits could be harmful to the Conservatee.
14 Thus, the monitor benefits the Conservatee, and the cost should be borne by the Conservatee's
15 estate. Moreover, there are clearly sufficient assets in the estate to cover the costs of the monitor's
16 fees. On the other hand, Petitioner, who is out of work and has a husband who just got laid off,
17 cannot afford the monitor's fees, and if she is required to pay for the monitor's fees, she will be
18 unable to visit with the Conservatee.

19 The instant *ex parte* application is based upon this Application, the attached
20 Memorandum of Points and Authorities, the attached declarations of Steven L. Hogan, Troy L.
21 Martin and M. Damien Holcomb, the complete files and records of this action, and such additional
22 evidence and arguments as may be presented to the Court prior to or at the hearing on this
23 Application.

24 DATED: June 27, 2009

LURIE, ZEPEDA, SCHMALZ & HOGAN

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26
27 By:


M. Damien Holcomb, Esq.
Attorneys for Petitioner
Catherine Falk

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Court's intervention is necessary in this case because, despite Judge Aviva K. Bobb's clearly expressed intent to allow Petitioner Catherine Falk ("Petitioner") and her children to visit with her father, Conservatee Peter Michael Falk ("Conservatee"), Objector Shera Falk ("Objector") continues to maliciously, and without justification, interfere with Petitioner's right to visit with her father. Judge Bobb clearly expressed her intent in chambers to allow Petitioner's children to visit with their grandfather. Objector's counsel, however, denies that Judge Bobb made this statement. Because of the Conservatee's failing health, Petitioner is concerned that the right of her children to visit their grandfather would be forever denied if the Court does not contact Judge Bobb and clarify the Court's June 1, 2009 order granting the Petition for Conservatorship and ordering visitation rights.

Objector's malicious refusal to allow Petitioner's children to visit their grandfather stems from the 30 years of unjustified animosity by Objector toward Petitioner. Objector has continuously interfered with Petitioner's relationship with the Conservatee ever since Petitioner was 6 years old. In fact, this Petition for Conservatorship was made necessary due to Objector's cruel refusal to allow Petitioner to visit her father in his ailing health. There is no dispute, and there never has been, that Conservatee is suffering from advanced dementia. Because Objector adamantly refused to allow Petitioner to visit her father, Petitioner had no knowledge as to Conservatee's health and medical care. After attempting to negotiate visits with her father, Petitioner filed the current Petition to insure that her father was getting adequate medical care and to compel visits with her father. Objector opposed this Petition, claiming that no conservatorship was necessary. Objector also filed a Counter-Petition seeking to be named as the conservator if the Petition were granted.

Following the evidentiary hearing in this matter, Petitioner prevailed. Judge Bobb, in one of the final matters she presided over prior to her retirement, granted the Petition for Conservatorship and ordered that Petitioner was entitled to visit the Conservatee on the first of every other month, beginning in July. Prior to issuing her ruling, Judge Bobb, in chambers, stated that it was her belief that Petitioner's children, the Conservatee's grandchildren, were entitled to visit with

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1 their grandfather. The parties also agreed that a professional conservator would be hired to monitor
2 these visits. There was no discussion in chambers regarding who would pay for the monitoring.
3 When Judge Bobb issued her ruling, however, there was no mention of the children's right to visit
4 the Conservatee and no discussion of who should pay for the monitoring. The transcript is silent on
5 these points.

6 Petitioner strongly desires that her children be permitted to visit their grandfather and
7 that they accompany her during her monitored visits ordered by the Court. However, when
8 Petitioner's counsel called to confirm that Petitioner and her children would be attending the July 1,
9 2009 visit, Objector adamantly refused to permit the children to attend. Conveniently, Objector's
10 counsel has no recollection of Judge Bobb's statements in chambers that the children should be
11 permitted to visit their grandfather. Objector's counsel also misrepresented that Petitioner's counsel
12 volunteered that Petitioner would pay for the monitoring. This statement is uncategorically false, as
13 Petitioner has already incurred far too much in order to triumph over Objector's malicious and
14 unjustified interference with her rights to visit her father.

15 The disputes regarding the scope of Judge Bobb's order can easily be cleared up by
16 contacting Judge Bobb to ascertain her intent. Of course, Petitioner and her counsel are not
17 permitted to communicate with Judge Bobb directly to ascertain her intent on these matters.
18 Accordingly, Petitioner respectfully requests that the Court clarify Judge Bobb's June 1, 2009 order
19 by contacting her and ascertaining her intent.

20 **II. STATEMENT OF FACTS**

21 **A. Objector's Unjustified Belligerence Toward Petitioner Directly Led to the Current**
22 **Petition for Conservatorship.**

23 The Conservatee and Objector were married in 1976, when Petitioner was only 6
24 years old. Since that time, Objector has continuously interfered with Petitioner's relationship with
25 Conservatee. For the past 32 years, Objector has forbidden Petitioner or her sister from entering
26 their father's house. When the Conservatee would call his daughters, Objector would often become
27 irate and scream for the Conservatee to hang up the phone. In fact, Objector prevented the
28 Conservatee from attending Petitioner's wedding because Objector was furious that her name was

1 not on the invitations. Instead, the Conservatee sent two telegrams to Petitioner at the hotel on her
2 wedding day congratulating her on her marriage.

3 Despite Objector's constant interference, Petitioner and the Conservatee maintained a
4 relationship. Contrary to Objector's contentions in her Objections, the Conservatee maintained a
5 loving relationship with Petitioner under these difficult circumstances. Because of Objector's
6 interference, however, Petitioner and the Conservatee would have to meet away from the
7 Conservatee's home. Petitioner and the Conservatee would frequently meet for dinners out, or
8 would arrange for the Conservatee to visit Petitioner and his grandson at Petitioner's home.

9 In fact, the current Petition for Appointment of a Conservator may have been avoided
10 if Objector did not continue to interfere with the Conservatee's relationship with Petitioner.

11 Petitioner and her sister had arranged to see the Conservatee on Father's Day, June 15, 2008. The
12 Conservatee was scheduled to have hip replacement surgery the following week. Without notifying
13 Petitioner or her sister, Objector rescheduled the surgery for Father's Day. Objector did not inform
14 Petitioner that the Conservatee was in the hospital, so Petitioner was unable to visit with him.

15 Thereafter, Objector prevented Petitioner from visiting or speaking to the
16 Conservatee. When Petitioner called to see how the Conservatee was recuperating after his surgery,
17 Objector cursed at Petitioner and hung up the phone. Objector has cruelly prevented Petitioner from
18 seeing her father since then. Through an attorney, Petitioner attempted to convince Objector to
19 allow Petitioner to see the Conservatee. Petitioner even provided Objector with a draft of the current
20 Petition for Conservatorship prior to filing it, and stated she would not file the Petition if Objector
21 would allow her to see the Conservatee. Objector still refused to allow Petitioner to visit her own
22 father. The Petition for Appointment of a Conservator followed.

23 **B. The Appointment of a Conservator and Order Permitting Petitioner To Visit the**
24 **Conservatee.**

25 After the parties had presented their respective cases at the evidentiary hearing on this
26 matter, but before issuing her ruling, Judge Bobb had the parties' counsel in chambers to discuss this
27 matter and her tentative ruling. During that time, Judge Bobb stated that, after hearing the evidence,
28 she believed that Petitioner *and her children* were entitled to visit the Conservatee. (Declaration of

1 Troy L. Martin ("Martin Decl."), ¶ 2). When Judge Bobb stated that the children were entitled to
2 visit their grandfather, Marshal Oldman, counsel for Objector, opined that he believed that the
3 evidence demonstrated that the Conservatee had no interest in visits from the grandchildren. (*Id.*, ¶
4 3). Judge Bobb responded that the grandchildren had the right to meet their grandfather. (*Id.*)
5 Respondent insisted that these visits be monitored. (*Id.*, ¶ 6). However, there was no discussion in
6 chambers regarding who should pay for the monitoring. (*Id.*)

7 When Judge Bobb returned to the bench and issued her ruling, however, there was no
8 specific mention of the Petitioner's children's right to visit the Conservatee. (Martin Decl., ¶ 4, Ex.
9 A). Nor did Judge Bobb rule who should be responsible to pay for the monitoring. (*Id.*) In fact, the
10 transcript is entirely devoid of any reference to these issues. Based upon the conversations in
11 chambers in the presence of all counsel just prior to the Court issuing its ruling, neither Petitioner
12 nor her counsel considered the lack of a specific reference to the children to be germane or to have
13 any preclusive effects on Petitioner's children's rights to visit with the Conservatee. (*Id.*, ¶ 5).

14 On June 26, 2009, at approximately 10:45 a.m., Petitioner's counsel, Steven L.
15 Hogan, telephoned Mr. Oldman, counsel for Objector, and inquired whether Petitioner's scheduled
16 visit with the Conservatee could be confirmed for July 1, 2009. (Declaration of Steven L. Hogan
17 ("Hogan Decl."), ¶ 2). During the course of that conversation, Mr. Hogan stated that Petitioner
18 wished to bring her children, the Conservatee's grandchildren, along to visit with the Conservatee.
19 (*Id.*) Mr. Hogan further stated to Mr. Oldman during that conversation that Troy Martin had
20 informed him that Judge Bobb had stated in chambers that the grandchildren would be permitted to
21 accompany Petitioner when she visited with the Conservatee. (*Id.*) Mr. Oldman informed Mr.
22 Hogan that he had no such recollection and that Objector refused to permit the grandchildren to
23 accompany Petitioner during her visit with the Conservatee. (*Id.*) Mr. Oldman also stated that
24 Petitioner's counsel, Troy L. Martin, volunteered to have Petitioner bear the costs incurred by the
25 monitor. (Martin Decl., ¶ 7).

26 This is utterly false. (Martin Decl., ¶ 8). Mr. Martin would never have made such a
27 concession, because Petitioner has already incurred over \$70,000 in attorneys' fees due to Objector's
28 unjustified and malicious actions in preventing Petitioner from visiting her father. (*Id.*)

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Because an order of the Court appears to be the only thing which has the power to thwart Objector's propensity to exclude Petitioner and her children from the Conservatee, Petitioner has yet again been forced to seek court intervention to seek the most basic of orders; an order that the Conservatee's grandchildren be permitted to visit the Conservatee during those visits when Petitioner visits with the Conservatee. Petitioner further requests that the Court order that the Conservatee's estate bear the costs of the monitor's fees incurred as a result of the visits between Petitioner and the Conservatee.

III. LEGAL POSITION

A. Judge Bobb Has Already Ordercd That Petitioner's Children Are Entitled To Accompany Petitioner On Her Visits With The Conservatee.

In this matter, Judge Bobb has already made a finding that Petitioner's children are entitled to visit their grandfather. Petitioner does not seek any affirmative relief which was not granted previously by Judge Bobb. The Court's failure to provide specific reference to Petitioner's children in its ruling from the bench is by no means prohibitory. The Court's ruling is simply silent. Had the Court never addressed the Petitioner's children's rights to visit the Conservatee, that would be a different story. Here, however, Judge Bobb stated in chambers before all counsel that the children should be entitled to visit their grandfather.

It is inherently unfair and malicious for Objector to refuse to permit Petitioner's children from visiting the Conservatee. Moreover, Objector has provided no legitimate reason for excluding the children. Rather, it is simply another step in what can only be described as an campaign to exclude Petitioner and her family from any communication or contact with the Conservatee.

Inevitably, Objector will continue to refuse the children permission to visit the Conservatee, and Objector's counsel will conveniently fail to recall Judge Bobb's statements in chambers. Fortunately, there is a very easy way for the Court to resolve this matter. The Court could simply contact Judge Bobb and inquire what was said in chambers to counsel. Judge Bobb is presently serving as a mediator with ARC. An announcement that Judge Bobb is serving on the ARC panel, and the contact information for Judge Bobb, are attached hereto as Exhibit "B". After

1 contacting Judge Bobb to determine her intent, the Court should clarify the June 1, 2009 order by
2 expressly stating that Petitioners' children shall be allowed to attend the visits between Petitioner
3 and Conservatee.

4 The urgency of this matter cannot be ignored. The Conservatee is 81 years old and
5 suffers from advanced dementia. It is beyond dispute that the Conservatee's mental and physical
6 health are fading quickly. These visits may be the last time for Petitioner and her children to visit
7 with the Conservatee before he passes. Moreover, there is a visit presently scheduled for July 1,
8 2009, the day after the hearing on this *ex parte* application. If Petitioner's children are not allowed
9 to visit their grandfather, the next time they could be allowed to visit their grandfather would be
10 September 1, 2009. Given the Conservatee's declining health, Petitioner's children could forever be
11 denied the right to meet their grandfather if the Conservatee were to pass away in the interim.
12 Accordingly, Petitioner respectfully requests that the Court immediately contact Judge Bobb to
13 determine her intent with respect to Petitioner's children's right to visit the Conservatee and issue a
14 clarification of the Court's June 1, 2009 order by expressly allowing Petitioners' children to visit the
15 Conservatee.

16 **B. The Conservatee's Estate Should Bear The Costs Incurred By The Monitor.**

17 In this matter, the estate should pay for the monitoring fees incurred during
18 Petitioner's visits with the Conservatee. The monitor serves a purpose analogous to a professional
19 conservator acting in the best interests of the conservatee. When a professional conservator is
20 appointed, it is generally the estate which bears the costs associated therewith, or, at least, when the
21 estate has sufficient resources to do so. Under no circumstances would the Court compel a neutral
22 third party to pay the professional's fees. Similarly, Petitioner should not be compelled to pay the
23 monitor's fees. Rather, the Court should order that the estate, which certainly has sufficient
24 resources, is obligated to pay the monitoring fees.

25 Moreover, a monitor is only necessary because of Objector's unjustified refusal to
26 allow visits. Objector has contended that Petitioner's visits with the Conservatee could be harmful
27 to the Conservatee. Accordingly, the monitor purportedly benefits the Conservatee. Thus, the cost
28 should be borne by the Conservatee's estate. Finally Petitioner, who is out of work and has a

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husband who was just laid off, cannot afford to pay for the monitoring fees. Ordering Petitioner to pay the monitoring fees would be tantamount to reversing the Court's prior order because if Petitioner is obligated to pay the fees in order to visit her father, she may never be able to do so. Accordingly, Petitioner respectfully requests that the Conservatee's estate be ordered to pay the monitor's fees.

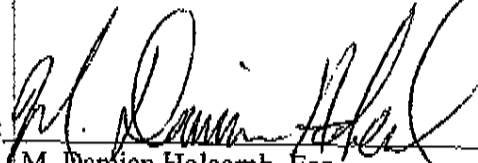
IV CONCLUSION

Based on the foregoing, Petitioner respectfully requests that the Court grant this application and clarify its June 1, 2009 order to permit Petitioner's children to visit with the Conservatee, their grandfather, during those periods when Petitioner has been permitted to visit with the Conservatee, i.e., that Petitioner be permitted to bring her children with her when she visits with the Conservatee. Petitioner further requests that the Conservatee's estate be ordered to pay any and all monitor's fees incurred as a result of those visits.

DATED: June 26, 2009

LURIE, ZEPEDA, SCHMALZ & HOGAN

By:


M. Damien Holcomb, Esq.
Attorneys for Petitioner
Catherine Falk

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DECLARATION OF STEVEN L. HOGAN

I, STEVEN L. HOGAN, declare and state as follows:

1. I am an attorney duly admitted to practice before all courts of this state and I am a member of Lurie, Zepeda, Schmalz & Hogan, attorneys of record for Petitioner Catherine Falk ("Petitioner") herein. I have personal knowledge of the foregoing facts and, if called upon as a witness, could and would competently testify thereto.

2. On June 26, 2009, at approximately 10:45 a.m., I telephoned Marshall Oldman, counsel for Respondent Shera Falk, and inquired whether Petitioner's scheduled visit with the Conservatee, Peter Falk, could be confirmed for July 1, 2009. During the course of that conversation, I stated that Petitioner wished to bring her children, the Conservatee's grandchildren, along to visit with the Conservatee. I further stated that Troy Martin had informed me that Judge Bobb had stated in chambers that the grandchildren would be permitted to accompany Petitioner when she visited with the Conservatee. Mr. Oldman informed me that he had no such recollection and that Respondent refused to permit the grandchildren to accompany Petitioner during her visit with the Conservatee.

3. During the same June 26, 2009 telephone conversation with Mr. Oldman, I gave notice that on Tuesday, June 30, 2009, at 8:30 a.m. in Room 258/Department 11 of the Los Angeles Superior Court located at 111 N. Hill Street, Los Angeles, California 90012, Petitioner would apply *ex parte* for an order permitting Petitioner's children to accompany her during her visit with the Conservatee on the grounds that Judge Bobb had stated in chambers that the Conservatee's grandchildren had a right to visit with the Conservatee. Mr. Oldman said that he would appear at the stated time and place and that his client would oppose the *ex parte* application.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed on June 26, 2009, at Beverly Hills, California.



STEVEN L. HOGAN

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7. Objector's counsel has taken the position that while the parties' counsel were in chambers with Judge Bobb, I volunteered to have Petitioner bear the costs incurred by the monitor.

8. This is utterly false. I would never have made such a concession because Petitioner has already incurred over \$70,000 in attorneys' fees due to Objector's unjustified and malicious actions in preventing Petitioner from visiting her father. Petitioner is currently out of work and her husband was recently laid-off from his job. Accordingly, Petitioner simply cannot afford to pay for the monitoring requested by and made necessary due to Objector and her malicious refusal to allow Petitioner to visit her father. Requiring Petitioner to pay for the monitoring would be tantamount to denying her right to visit with her father.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed on June 28, 2009, at Beverly Hills, California.


ROY L. MARTIN

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DECLARATION OF M. DAMIEN HOLCOMB

I, M. DAMIEN HOLCOMB, declare and state as follows:

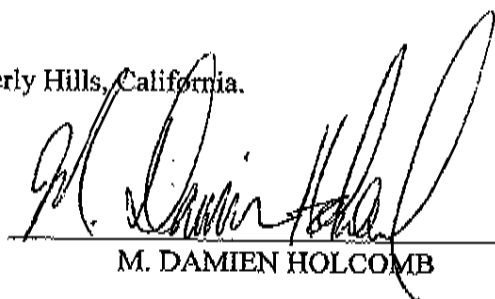
1. I am an attorney duly admitted to practice before all courts of this state and I am an attorney with Lurie, Zepeda, Schmalz & Hogan, attorneys of record for Petitioner Catherine Falk ("Petitioner") herein. I have personal knowledge of the foregoing facts and, if called upon as a witness, could and would competently testify thereto.

2. On June 29, 2009, I prepared a letter to Messrs. Marshal Oldman, Esq., counsel for Objector Shera Danese Falk ("Objector"), and Clark Byam, Esq., PVP counsel, and indicated that Petitioner would apply *ex parte* to the Los Angeles Superior Court located at 111 North Hill Street, Los Angeles, California 90012 for an Order Clarifying the Court's June 1, 2009 Order. Specifically, clarifying that Petitioner's children be permitted to visit with the Conservatee, Peter Falk, and that the Conservatee's estate bear any and all costs incurred by the monitor at these visits. I caused this letter to be faxed to Messrs. Oldman and Byam at approximately 9:34 a.m. A true and correct copy of my June 29, 2009 letter to Messrs. Oldman and Byam is attached hereto as Exhibit "C".

3. As of approximately 11:34 a.m. on June 29, 2009, I have not received any communication from Messrs. Oldman and Byam. Thus, I have no information as to whether counsel intend to appear and/or oppose the instant application.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed on June 29, 2009, at Beverly Hills, California.



M. DAMIEN HOLCOMB

DECLARATION