

WRONGFUL ACTS BY JUDGE JULIA B. OWDZIEJ – *Reasons to IMPEACH*

*In The Matter of Roberta M. Asplund*

The acts are divided into sections:

I.) FAILURE TO PROVIDE OR ENSURE DUE PROCESS

II.) ACTS AND DECISIONS SPECIFICALLY VIOLATING THE U.S. CONSTITUTION

III.) KNOWING CONDONEMENT OF ACTS BY OTHERS WHICH VIOLATE THE US CONSTITUTION

IV.) ACTS AND DECISIONS SPECIFICALLY VIOLATING MICHIGAN STATE LAW

**I.) FAILURE TO PROVIDE OR ENSURE DUE PROCESS**

- \* Failing to provide Roberta with an attorney of her preference. (Also MCL 700.5306a(d))
- \* Failing to have her present in court for original competency hearing 12/14/2017.
- \* Failing to require evidence of incapacity during initial hearing 12/14/2017.
- \* Appointing to attorneys for Roberta Asplund's case who would intentionally sabotage her efforts to change the guardianship, and conservatorship and otherwise act against Roberta's stated preferences.
- \* Changing Roberta Asplund's January 23, 2018 Petition to replace the guardian and conservator to a hearing on Removal for Cause.
- \* Knowing from statements by Roberta Asplund that she wished to be released from guardianship and conservatorship, but denying all petitions and motions to hear that, and allowing the court appointed counsel to claim he would petition that if he ever obtained evidence to do so -while sufficient evidence to prove the claim was known to exist, was in the hands of the attorney for Roberta, and even after it had been entered into evidence in the trial to remove the guardian and conservator for Cause.
- \* Denial of petition by Judge Ralph More as “unpaid” despite it being pointed out that it was paid, and then refusing to verify with the clerks.
- \* Refusing critical witness subpoenas such as for police officers and character witnesses.
- \* Disallowing Ex Parte Emergency orders to free Roberta from wrongful isolation in a mental facility in which she was not lawfully committed, and refusing to hear petitions to free her or to protect her assets from a guardian and conservator who were accused of fraud and conspiracy to exploit Roberta.
- \* Conversely to the above, judge Owdziej allowed many Ex Parte petitions by the guardian and conservator, and made TEN Orders supporting the conservator between September 23, 2019

and February 18, 2020, where judge Owdziej canceled the hearings despite them being objected to.

- \* Refusing to appoint temporary guardian and conservator while they were on trial for Removal for Cause with accusations of fraud and exploitation.
- \* Conducting hearings and trial in such a way that clear, obvious and unreasonably explainable judicial bias designed to always favor the guardian and conservator was used as a tool to ensure that the guardian and conservator would prevail.
- \* Truncating witness testimony.
- \* Refusing to allow questioning of the guardian regarding her roll in destructive acts towards Roberta between her appointment and June 21, 2018.
- \* Accepting hearsay evidence from the guardian and conservator and their witnesses, but rigorously obstructing full and meaningful testimony from the opposition witnesses.
- \* Denying a pre-trial petition for the court to order the conservator to produce Records of administration per MCL 700.5417(2).
- \* Redesigning the subpoena for Conservator's Records of Administration to make them effectively unavailable for pre-trial study (Subpoena rewritten by judge to have conservator bring them to court, but access not available to prepare for trial).
- \* Refusal to allow litigants pre-trial and during trial access to the most important witness, Roberta Asplund., despite Randall Asplund citing MCL 330.1726(5).
- \* Judge Owdziej attempted to create a false record during trial by making statements about Randall Asplund and Alexis More which accused them of upsetting Roberta so much that Randall had to be asked to leave the courtroom before anyone else on three occasions, once accompanied by his attorney. However, the court video proves the judge's comments to be false and unwarranted.
- \* Failure to act on the guardian's interference with Mental Health exams when presented as evidence, and then allowing those improperly influenced (tainted by the guardian's false reporting), compromised results as evidence.
- \* Repeated failure to acknowledge evidence of false testimony, even with positive proof of the falsehood, and ruling contrary to that evidence.
- \* Interrupting the guardian's witness response to try to prevent her from self-incrimination.

## **II.) ACTS AND DECISIONS SPECIFICALLY VIOLATING THE U.S. CONSTITUTION**

- \* Judge Owdziej violated her oath to support the US Constitution by engaging in violations of law in concert with her appointees.

- \* Violating the **5<sup>th</sup> and 14<sup>th</sup> Amendments** equal protection of the laws by denying Roberta Asplund the due process described above. (Procedural Due Process: The Fourteenth Amendment's due process clause has been interpreted by the courts to provide the same "protection against arbitrary state legislation, affecting life, liberty and property, as is offered by the Fifth Amendment." This has meant that state laws that take away a person's property or otherwise jeopardize their life or liberty must afford persons a fair and impartial way to challenge that action.)
- \* Violating the **14<sup>th</sup> Amendment** by imposing Guardianship and Conservatorship on Roberta Asplund without evidence of mental or physical need, and with no representation she was aware of.
- \* Violating the **14<sup>th</sup> Amendment** protection of the right to own property by providing the means for the Conservator to waste the estate of Roberta Asplund for her own profit.
- \* Violating the **14<sup>th</sup> Amendment** protection of the right to life and liberty providing the means for the Guardian to isolate and emotionally harm Roberta Asplund.
- \* Violating federal law **Title 18, U.S.C., Section 241 - Conspiracy to Deprive Rights**, by observable enablement, support and use of judicial discretion to provide means in violation of law for the Guardian and Conservator to commit and continue illegal acts.
  
- \* Violating federal law **Title 18, U.S.C., Section 242 - Deprivation of Rights Under Color of Law**, by stripping Roberta of all of her Civil Rights without due process, and then appointing them under color of law to the Guardian and Conservator.
  
- \*Violating the **13<sup>th</sup> Amendment** by stripping Roberta of all of her Civil Rights without due process of the **5<sup>th</sup> Amendment**, and then appointing them under color of law to the Guardian and Conservator, and allowing them to profit from that control over her body, mind, and estate. Judge Owdziej further obstructed Roberta from changing her Metal Status despite clear doubt of Incapacity displayed by Roberta in court and presented as evidence in trial.

### **III.) KNOWING CONDONEMENT OF ACTS BY OTHERS WHICH VIOLATE THE US CONSTITUTION**

- \* Judge Owdziej allowed the guardian Georgette David to wrongfully petition that Roberta must be removed from her home for Mental Illness, and allowed the Guardian to then isolate her in a locked-down, high security mental facility without any hearing to determine lawful commitment, after Roberta had been cleared of mental illness requiring any treatment.
- \*Judge Owdziej actively and persistently defended the isolation of Roberta Asplund and the emotional harm being done to her, despite clear evidence that it was unnecessary.
- \* Judge Owdziej allowed the Conservators Joelle Gurnoe-Adams and Kathleen Carter to deprive Roberta of property against her will, and then enrich themselves from the sale rather than use the value for Roberta's needs.

\* Judge Owdziej actively and persistently supported and enabled illegal acts by the Guardian and both Conservators as described below.

#### **IV.) ACTS AND DECISIONS SPECIFICALLY VIOLATING MICHIGAN STATE LAW**

##### **1) MCL 330.1281b Involuntary treatment**

(2)(b) Notify the respondent and all other individuals named in the petition under section 281a(3)(d) to (h) concerning the allegations and contents of the petition and of the date and the purpose of the hearing.

(2)(c) Notify the respondent that the respondent may retain counsel and, if the respondent is unable to retain counsel, that the respondent may be represented by court-appointed counsel at public expense if the respondent is indigent. Upon the appointment of court-appointed counsel for an indigent respondent, the court shall notify the respondent of the name, address, and telephone number of the court-appointed counsel.

Judge Owdziej allowed the guardian to make her petition incomplete, leaving out names of interested parties under section 281a(3)(d) to (h).

(2)(f) Conduct the hearing.

No hearing was held, yet Roberta was never returned home.

##### **2) MCL 330.1401 "Person requiring treatment" defined; exception.**

Judge Owdziej allowed the Guardian, Georgette David, to present evidence for Mental Illness which was not itself related to Mental Illness. In fact, it was Hearsay, and when the guardian admitted in trial that it was Hearsay, judge Owdziej allowed the hospitalization to *continue*.

##### **3) MCL 330.1435 Examination; order; detention period; transmitting clinical certificate or report to court; third examination report; dismissal of petition; section inapplicable to petition under MCL 330.1434(6).**

(2) If the petition is not accompanied by a clinical certificate, **and if the court is satisfied a reasonable effort was made to secure an examination**, the court shall order the individual to be examined by a psychiatrist and either a physician or a licensed psychologist.

*And*

**330.1438 Order of hospitalization; protective custody; transportation; conditions to release after 24 hours.**

Judge Owdziej could not possibly have believed that a reasonable effort was made to secure her petition because both the judge and the guardian agreed during the trial that the testimony given by the guardian in the trial was the same thing she told the judge when she made the Mental Health petition, that the guardian's ONLY attempt to have Roberta examined before going to the court for the Emergency Ex Parte petition to have Roberta examined for Mental Illness was to have *simply asked Roberta to go, and Roberta said no*. The guardian went immediately to the court with no other attempts to ask Roberta and without attempting to contact any mental health provider. The judge claimed in court that the point of the supplement provided by the guardian with her Petition was to accomplish that preliminary screening, and that no Hospitalization was requested on the Petition, however, that is a false statement by the judge. The record proves otherwise.

#### **4) MCL 330.1726 Communication by mail and telephone; visits.**

Judge Owdziej repeatedly refused to allow Petitioners seeking to remove the guardian and conservator for cause to have any access to Roberta when they invoked paragraph (5). This severely impacted their ability to prosecute their case.

#### **5) MCL 700.5106 Appointment or approval of professional guardian or professional conservator as guardian or conservator; findings; bond; compensation or other benefits; schedule of visitation; care; appointment of nonbanking corporation to act as fiduciary in state.**

(2) The court shall only appoint a professional guardian or professional conservator as authorized under subsection (1) if the court finds on the record all of the following:

(a) The appointment of the professional guardian or professional conservator is in the ward's, developmentally disabled individual's, incapacitated individual's, or protected individual's best interests.

As no evidence was ever presented that Roberta Asplund was in more than a temporary state of reduced cognition during recovery from a recent operation, the appointment of any guardian or conservator was inappropriate and a violation of this law.

(b) There is no other person that is competent, suitable, and willing to serve in that fiduciary capacity in accordance with section 5212, 5313, or 5409.

Roberta's eldest son Randall Asplund was available in court as a witness, would qualify as suitable and was willing. Randall was never asked by judge Owdziej if he would agree to be guardian and conservator. Randall had been misinformed by social workers that he could not be guardian and conservator for Roberta if his 2 siblings objected, but that is not the law. Suitability is defined in case law and objection by third parties is not a reason for determining suitability.

(3) The court shall not appoint a professional guardian or professional conservator as authorized under subsection (1) unless the professional guardian or professional conservator files a bond in an amount and with the conditions as determined by the court. For a professional conservator, the sureties and liabilities of the bond are subject to sections 5410 and 5411.

Judge Owdziej did not seek a bond for the guardian or either of the conservators.

(4) A professional guardian or professional conservator appointed under this section shall not receive as a result of that appointment a benefit beyond compensation specifically authorized for that type of fiduciary by this act or the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106.

Judge Owdziej made an Order permitting Conservator Kathleen Carter to take a \$100,000.00 mortgage on the home of Roberta Asplund, as both lender and borrower signing for Roberta. Roberta was capable of understanding the mortgage and of signing if she agreed, yet she did not. The mortgage further allowed Ms. Carter to charge 2.5% interest against Roberta's estate.

## **6) MCL 700.5304 Evaluation and report; hearing.**

(1) If necessary, the court may order that an individual alleged to be incapacitated be examined by a physician or mental health professional appointed by the court who shall submit a report in writing to the court at least 5 days before the hearing set under section 5303.

Judge Owdziej never ordered a physician or mental health professional to examine Roberta for competence prior to appointing her a guardian and conservator. Only one doctor at the Rehab facility where Roberta was staying did any kind of exam and report. That exam and letter reporting condition was conducted only two weeks after brain surgery to correct hydrocephalus and treatment for severe malnutrition had begun. That prognosis said "It is difficult at this time to determine whether she will improve or not. Only time will tell."

The surgeon who did have a positive prognosis was not asked to provide a prognosis, neither was an up to date evaluation sought at the time of the competency hearing. The surgeon stated verbally on 12/21/2017 that Roberta had an excellent prognosis and was in the top 10% for her age, and expected to recover fully or near fully. The doctor at the facility wrote on the same day as the guardianship/conservatorship hearing 12/14/17 "Patient's mental status has improved dramatically recently."

Judge Owdziej's hearing to determine Mental Capacity determination lasted a mere 7 minutes. She did not hear any expert witness, did not consider temporary guardianship or conservatorship, and was presented with no actual evidence indicating need of guardianship or conservatorship.

(2) The alleged incapacitated individual has the right to secure an independent evaluation, at his or her own expense or, if indigent, at the expense of the state.

Roberta was not offered a chance or given time to seek an independent evaluation.

3) A report prepared under this section shall contain all of the following:

(a) A detailed description of the individual's physical or psychological infirmities.

The report prepared on 11/21/2017 by Dr. Jenq which was used for the Mental Incapacity determination gave only mention of the conditions affecting Roberta, but no details.

(c) A listing of all medications the individual is receiving, the dosage of each medication, and a description of the effects each medication has upon the individual's behavior.

The medications list was not provided, so there was no way to evaluate the impact of medications on Roberta's cognition.

(d) A prognosis for improvement in the individual's condition and a recommendation for the most appropriate rehabilitation plan.

Dr. Jenq gave no indication of a prognosis or any recommendations at all. She did not recommend guardianship.

(4) The individual alleged to be incapacitated is entitled to be present at the hearing in person, and to see or hear all evidence bearing upon the individual's condition. If the individual wishes to be present at the hearing, all practical steps shall be taken to ensure his or her presence, including, if necessary, moving the hearing site.

My understanding is that since the court failed to even properly inform Roberta of the hearing, but Roberta has demonstrated an insistence on attending all hearings. No attempt to bring her or to move the hearing to her was made.

(5) The individual is entitled to be represented by legal counsel, to present evidence, to cross-examine witnesses, including the court-appointed physician or mental health professional and the visitor, and to trial by jury.

My understanding is that since the court failed to even inform Roberta of the hearing she had no way to exercise the right to obtain an attorney, cross examine witnesses or confront the physician. The Guardian ad Litem admits in her report that she visited Roberta at a time when she was not responsive. A patient recovering from brain trauma, surgery and malnutrition, and who has pain medications, etc., is frequently very tired. The GAL makes no attempt to contact Roberta at a better time.

**7) MCL 700.5306 Court appointment of guardian of incapacitated person; findings; appointment of limited guardian; effect of patient advocate designation.**

1) The court may appoint a guardian if the court finds by clear and convincing evidence both that the individual for whom a guardian is sought is an incapacitated individual and that the appointment is necessary as a means of providing continuing care and supervision of the incapacitated individual, with each finding supported separately on the record. Alternately, the court may dismiss the proceeding or enter another appropriate order.

Judge Owdziej did not require “clear and convincing evidence,” nor did anyone provide it. Judge Owdziej made her decision based on Randall Asplund's non-expert opinion that he based on a hospital social worker's opinions, and the incomplete and very ambiguous report from Dr. Jenq. Therefore judge Owdziej wrongfully stripped a citizen of all of her civil rights without any factual evidence, a fundamental negligence of judicial requirement.

(2) The court shall grant a guardian only those powers and only for that period of time as is necessary to provide for the demonstrated need of the incapacitated individual. The court shall design the guardianship to encourage the development of maximum self-reliance and independence in the individual.

Judge Owdziej completely ignored this law. Then when Roberta and family all tried to have the determination of incapacity reversed, and even after evidence that Roberta did not need guardianship was introduced, she refused all motions and petitions. The appointment of the guardian was de facto permanent.

(3) If the court finds by clear and convincing evidence that an individual is incapacitated and lacks the capacity to do some, but not all, of the tasks necessary to care for himself or herself, the court may appoint a limited guardian to provide guardianship services to the individual, but the court shall not appoint a full guardian.

Judge Owdziej never even considered making the guardianship limited, and never would consider reducing the level of guardianship, even after Roberta clearly stated that she did not need or want guardianship.

(4) If the court finds by clear and convincing evidence that the individual is incapacitated and is totally without capacity to care for himself or herself, the court shall specify that finding of fact in an order and may appoint a full guardian.

Judge Owdziej abused this law to declare a false finding. This was not an error by accident. It was an appointment of fiduciaries who would rob the estate.

**8) MCL 700.5306a Rights of individual for whom guardian is sought or appointed; form.**

(1) An individual for whom a guardian is sought or has been appointed under section 5306 has all of the following rights:

f) To an independent evaluation of his or her capacity by a physician or mental health professional, at public expense if he or she is indigent, as provided in section 5304.

Judge Owdziej refused to acknowledge that Roberta had the right to an independent evaluation. When presented with testimony and written documentation that the guardian had insisted on providing information to the mental capacity evaluator on 7/30/2018 the judge ignored the complaint that the guardian had interfered with the evaluation. The judge allowed the evaluation to stand as evidence. In all evaluations where the guardian was unable to influence them, Roberta passed as not needing guardianship. In all evaluations where Ms. David or Richard Asplund was able to influence them, Roberta failed.

(g) To be present at the hearing on the petition to appoint a guardian and to have all practical steps taken to ensure this, including, if necessary, moving the hearing site, as provided by section 5304.

(h) To see or hear all the evidence presented in the hearing on the petition to appoint a guardian, as provided in section 5304.

(i) To present evidence and cross-examine witnesses in the hearing on the petition to appoint a guardian, as provided in section 5304.

As stated above, all of these rights were ignored without need.

**9) MCL 700 5306a(1)(l), (m), (n), (o), & (p)**

These were all improperly carried out by the GAL. The court was responsible for knowing this.

**10) MCL 700 5306a(q) & (r)**

As stated above, all of these rights were ignored without need.

**11) MCL 700 5306a(s)**

To a guardianship designed to encourage the development of maximum self-reliance and independence as provided in section 5306.

Judge Owdziej actually supported the guardian in isolation and deprivation of rights, including placement in LTC and then later isolation in a mental facility and then an AFC, all limiting Roberta's progress towards healing, steady health and interaction with society, family, and friends.

**12) MCL 700 5306a(v)**

To, at any time, seek modification or termination of the guardianship by informal letter to the judge, as provided in section 5310.

When Roberta did petition for this on January 23, 2018, and it was heard on 3/22/2018, Judge Owdziej *CHANGED* the petition to *Removal for cause*. This denied Roberta's right to seek simple modification changing the guardian from Georgette David to her son Randall Asplund.

**13) MCL 700 5306a(x)**

To the same rights on a petition for modification or termination of the guardianship including the appointment of a visitor as apply to a petition for appointment of a guardian, as provided in section 5310.

During the Hearing for Modification on 3/22/2018 and Resignation heard 6/21/2018, Judge Owdziej would not allow Roberta the same rights as she had for the appointment on 12/14/2017.

**14) MCL 700 5306a(aa)**

To choose the person who will serve as guardian, if the chosen person is suitable and willing to serve, as provided in section 5313.

Judge Owdziej has never supported Roberta's right to choose who takes care of her. She refused to allow Roberta to choose her guardian three times. Once on 12/14/2017 and once on 3/22/2018, and again on 10/1/2019. She has also refused to allow Roberta to even nominate the successor conservator. In her findings after the trial to remove the guardian and conservator for cause, and without having had a suitability hearing for ANY of the people Roberta put forth, judge Owdziej stated: “

**15) MCL 700 5306a(ff)**

To have the guardian take reasonable care of the individual's clothing, furniture, vehicles, and other personal effects, as provided in section 5314.

Judge Owdziej allowed the guardian and conservator to liquidate all of Roberta's personal possessions without Roberta's knowledge, consent, or input regarding what she wished to preserve, what she wished to keep for herself, and to whom she would wish to give items. Judge Owdziej allowed them to trash, to confiscate and give away at no cost to persons of their choice in order to prepare the house for sale. This was February 2019 and the conservator did not even file for permission to sell the house until July 2019. All of this was done while the guardian and conservator were on trial for Removal for Cause, accused of financial and real estate fraud, and elder abuse to achieve that fraud.

#### **16) MCL 700.5309 Review of guardianship.**

The court shall review a guardianship not later than 1 year after the guardian's appointment and not later than every 3 years after each review.

Judge Owdziej waited until after the anniversary of the guardianship and after Randall Asplund had filed a petition to remove the guardian for cause before she ordered the review. The review order approving the guardianship was made during the trial three months after it was ordered. The judge approved the guardianship after seeing damning evidence against the guardian and before the Petitioner or the guardian had been called as witnesses.

#### **17) 700.5310 Resignation or removal of guardian.**

(1) On petition of the guardian and subject to the filing and approval of a report prepared as required by section 5314, the court shall accept the guardian's resignation and make any other order that is appropriate.

Judge Owdziej received Georgette David's petition to resign in January 2019, during the start of the trial to remove her for cause. Despite the law saying the judge "shall" accept the resignation, and despite the seriousness of charges against the guardian, judge Owdziej's response was instead to ask her to stay on as guardian.

(2) The ward or a person interested in the ward's welfare may petition for an order removing the guardian, appointing a successor guardian, modifying the guardianship's terms, or terminating the guardianship. A request for this order may be made by informal letter to the court or judge.

In December 2018, Roberta's brother in New York, a retired judge, petitioned to terminate the guardianship and protect Roberta's home and possessions from the guardian and conservator. The petition was properly made and paid for, as confirmed with a receipt. Judge Owdziej insisted that it was improper and unpaid. The law allows for an informal letter, and does not require it to comport to MCR regarding filing, and when it was pointed out to judge Owdziej that the petition had been paid for and she need only to confirm with the clerks, the judge *refused*.

#### **18) MCL 700.5312 Court exercise of power of guardian; temporary guardian.**

(2) If an appointed guardian is not effectively performing the guardian's duties and the court further finds that the legally incapacitated individual's welfare requires immediate action, the court may appoint, with or without notice, a temporary guardian for the legally incapacitated individual for a specified period not to exceed 6 months.

Judge Owdziej refused to appoint either a temporary guardian or conservator after Randall Asplund filed to remove them for cause. The gravity of the accusations of fraud and exploitation would seem to compel this action. And judge Owdziej was aware of the civil rights violations

against Roberta, including the isolation. If she would not appoint temporary G & C under those circumstances, it is difficult to understand what level of danger to the ward she would accept before acting. *This appears to support the argument that the judge was improperly defending the interests of the guardian and conservator in order to assist them in the exploitation.*

#### **19) MCL 700.5313 Guardian; qualifications.**

(2) In appointing a guardian under this section, the court shall appoint a person, if suitable and willing to serve, in the following order of priority:

(a) A person previously appointed, qualified, and serving in good standing as guardian for the legally incapacitated individual in another state.

(b) A person the individual subject to the petition chooses to serve as guardian.

Judge Owdziej has never once respected this law providing Roberta the priority of choice for who would care for her. Roberta was not asked who she wanted for guardian or conservator at the initial hearing, she was not allowed to have the guardianship and conservatorship modified to replace them with her choice- ever. Roberta was appointed an attorney who refused to ever seek modification or termination as per Roberta's wish, and who in fact obstructed evidence that showed she did not need guardianship.

Judge Owdziej went along with claims that she had determined Randall Asplund to be unsuitable during the 3/22/2018 hearing, when in fact she said herself in that hearing on 3/22/2018 that she would not hold a suitability hearing for Randall because she had no intention to remove the current guardian or conservator. She has repeatedly expressed that she would appoint professionals (meaning attorneys from her court).

#### **20) MCL 700.5401 Protective proceedings.**

(3) The court may appoint a conservator or make another protective order in relation to an individual's estate and affairs if the court determines both of the following:

(a) The individual is unable to manage property and business affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance.

(b) The individual has property that will be wasted or dissipated unless proper management is provided, or money is needed for the individual's support, care, and welfare or for those entitled to the individual's support, and that protection is necessary to obtain or provide money.

Judge Owdziej failed both criteria. As described above, the mental incapacity was never properly established in accordance with law, and when Roberta healed and regained her cognition, the fiduciaries had already done irreparable damage to her estate which would not have occurred if the estate had been left alone, to continue to be handled by Randall Asplund, who had just managed to get it in order and on budget. The second criteria fails for two reasons. The

conservators whom judge Owdziej appointed stripped the estate rather than protecting it, and the requirement that the protection be necessary to obtain and provide money did not apply. At the time the Conservator was being appointed, Roberta had sufficient guaranteed income from Social Security and Retirement benefits, her payments were all being paid on time by Randall Asplund, and her debt was managed with payments Randall was making on time. Therefore, Conservatorship could not legally be appointed.

## **21) MCL 700.5406 Procedure concerning hearing and order on original petition.**

**21) MCL 700.5406(2)** Upon receipt of a petition for a conservator's appointment or another protective order for a reason other than minority, the court shall set a date for hearing. Unless the individual to be protected has chosen counsel, or is mentally competent but aged or physically infirm, the court shall appoint a guardian ad litem to represent the person in the proceeding. If the alleged disability is mental illness, mental deficiency, physical illness or disability, chronic use of drugs, or chronic intoxication, the court may direct that the individual alleged to need protection be examined by a physician or mental health professional appointed by the court, preferably a physician or mental health professional who is not connected with an institution in which the individual is a patient or is detained. The individual alleged to need protection has the right to secure an independent evaluation at his or her own expense.

Judge Owdziej did not order a physician or mental health professional to examine Roberta. She used an incomplete and scant report from only one doctor from the facility who was not expert in Roberta's surgery. Roberta was never offered the opportunity by the court to obtain her own doctor's assessment, and later, on May 3, 2018 judge Owdziej refused to even look at evidence obtained by Roberta and Randall from Roberta's own doctor saying she did not show any signs of requiring guardianship or being declared Mentally Incapacitated.

## **22) MCL 700.5406**

(4) A guardian ad litem, physician, mental health professional, or visitor appointed under this section who meets with, examines, or evaluates an individual who is the subject of a petition in a protective proceeding shall do all of the following:

- (a) Consider whether there is an appropriate alternative to a conservatorship.
- (b) If a conservatorship is appropriate, consider the desirability of limiting the scope and duration of the conservator's authority.

At no time did the court even attempt to consider whether there was an alternative to conservatorship or limiting the scope of the conservatorship. The judge is responsible for making sure this is considered before taking away the Civil Rights under the 14<sup>th</sup> Amendment.

### **23) MCL 700.5406**

(5) The individual to be protected is entitled to be present at the hearing in person. If the individual wishes to be present at the hearing, all practical steps must be taken to ensure the individual's presence including, if necessary, moving the site of the hearing. The individual is entitled to be represented by counsel, to present evidence, to cross-examine witnesses, including a court-appointed physician or other qualified person and a visitor, and to trial by jury.

As explained above under the Guardian laws.

### **24) MCL 700.5406**

(7) After hearing, upon finding that a basis for a conservator's appointment or another protective order is established by clear and convincing evidence, the court shall make the appointment or other appropriate protective order.

As described above, there was no appropriate legal evidence produced, let alone "clear and convincing evidence."

### **25) MCL 700.5409 Appointment of conservator.**

(1) The court may appoint an individual, a corporation authorized to exercise fiduciary powers, or a professional conservator described in section 5106 to serve as conservator of a protected individual's estate. The following are entitled to consideration for appointment in the following order of priority:

(a) A conservator, guardian of property, or similar fiduciary appointed or recognized by the appropriate court of another jurisdiction in which the protected individual resides.

(b) An individual or corporation nominated by the protected individual if he or she is 14 years of age or older and of sufficient mental capacity to make an intelligent choice, including a nomination made in a durable power of attorney.

(c) The protected individual's spouse.

(d) An adult child of the protected individual.

Judge Owdziej would not consider appointing Roberta Asplund's choice on 12/14/2017 at the initial hearing (Roberta's input was not sought), on 3/22/2018 on Roberta's petition to modify, or on 6/21/2018 when Judge Owdziej claimed that despite her knowing Roberta preferred her son Randall to replace the resigning conservator, she refused to even consider him. She claimed that there was no paperwork before her which nominated Randall. Roberta's court appointed attorney had been instructed to do so by Roberta, yet he had neglected to do so. It is believed that he intentionally did not file that. Nevertheless, the intention of Roberta was known to the judge, and a paper trail is not a requirement for consideration. This judge has stated that she will not follow the order of priority and will only appoint a professional for Roberta.

## **26) MCL 700.5410 Bond.**

(1) The court may require a conservator to furnish a bond. If the court determines that the value of cash and property that is readily convertible into cash in the estate and in the conservator's control exceeds the limit for administering a decedent's estate under section 3982, adjusted in the manner provided under section 1210 for the year in which the conservator is appointed, the court shall require the conservator to furnish a bond, unless 1 or more of the following apply:

(a) The estate contains no property readily convertible to cash and the cash is in a restricted account with a financial institution.

(b) The conservator has been granted trust powers under section 4401 of the banking code of 1999, 1999 PA 276, MCL 487.14401.

(c) The court determines that requiring a bond would impose a financial hardship on the estate.

(d) The court states on the record the reasons why a bond is not necessary.

None of these conditions applied, so the court was obliged by law to require a bond. Judge Owdziej did not require that bond, even after the issue was raised in court and the conservator was accused of fraud.

## **27) MCL 700.5414 Death, resignation, or removal of conservator.**

The court may remove a conservator for good cause, upon notice and hearing, or accept a conservator's resignation. Upon the conservator's death, resignation, or removal, the court may appoint another conservator. A conservator so appointed succeeds to the title and powers of the predecessor.

This law does not compel a judge to remove a conservator for cause, but it allows it because at times it is necessary. Times like this, when the conservator and guardian are financially exploiting the victim. By NOT removing the conservator for cause, but knowing that the wrongful acts were true and by the judge herself actually participating by enabling the conservator to do so, the judge is in effect in violation.

## **28) MCL 700.5416 General duty of conservator.**

In relation to powers conferred by this part or implicit in the title acquired by virtue of the proceeding, a conservator shall act as a fiduciary and observe the standard of care applicable to a trustee.

Throughout the entire conservatorship judge Owdziej allowed both Ms. Gurnoe-Adams and Ms. Carter to act outside of fiduciary duty. This allowance provided them means to strip Roberta of her estate.

### **29) MCL 700.5417 Inventory and records.**

(2) The conservator must keep suitable records of the administration and exhibit those records on the request of an interested person.

Randall Asplund requested the Records of Administration from the conservator in November 2018. She refused to provide them. Randall Petitioned the court to compel them, but judge Owdziej refused to order it. Randal attempted to subpoena the records, but judge Owdziej changed the subpoena order to tell the conservator to bring them to court during the trial to remove her. This violation of law meant Randall was effectively blocked from obtaining vital evidence.

\* Judge Owdziej has allowed the conservator to further conceal her actions by doing nothing about Ms. Carter never filing her second annual accounting (due June 21, 2020) and by not terminating the conservatorship long after there was no estate for her to handle. At the time of this submission 10/8/2020, Ms. Carter has still been allowed to fail to file these essential records.

### **30) MCL 700.5423 Powers of conservator in administration.**

(3) A conservator shall not sell or otherwise dispose of the protected individual's principal dwelling, real property, or interest in real property or mortgage, pledge, or cause a lien to be placed on any such property without approval of the court. The court shall only approve the sale, disposal, mortgage, or pledge of or lien against the principal dwelling, real property, or interest in real property if, after a hearing with notice to interested persons as specified in the Michigan court rules, the court considers evidence of the value of the property and otherwise determines that the sale, disposal, mortgage, pledge, or lien is in the protected individual's best interest.

While judge Owdziej had the technical right to approve the sale of Roberta's home and land, that decision had to be made responsibly, and in the best interests of the ward. However, judge Owdziej allowed the conservator to dispose of all of Roberta's possessions in her home and clear it for sale FIVE MONTHS BEFORE Ms. Carter petitioned to sell the home. Ms. Carter's accounting was known by testimony to be lacking in very significant amounts which were obvious conflicts with her claims, were being disputed, and judge Owdziej refused to allow Randall Asplund to provide new and meaningful testimony on January 24, 2020, claiming he had nothing to add. This is further evidence of the judge intentionally tipping the scale of justice to favor one party over the other.

### **31) MCL 700.5428 Preservation of estate plan; right to examine.**

(1) When doing any of the following, the conservator and the court shall take into account the protected individual's estate plan as known to them, including a will, a revocable trust of which the individual is settlor, and a contract, transfer, or joint

ownership arrangement originated by the protected individual with provisions for payment or transfer of a benefit or interest at the individual's death to another or others:

(a) Investing the estate.

(b) Selecting estate property for distribution under section 5425 or 5426(1).

Judge Owdziej was required to ensure that the conservator distribute Roberta's possessions to family in accordance with her Estate Plan. When it was brought to judge Owdziej's attention that the conservator had been acting entirely against the Last Will of Roberta, and that the conservator had been committing Larceny by Conversion, judge Owdziej did not act to protect Roberta's interests or the possessions of persons whose property was also in the home and not under probate jurisdiction. She acted to support the conservator who had confiscated possessions of Randall and Dellmar Asplund which were in the home, and for which Randall had been asking to be given sufficient time to recover but been denied, and which were never part of Roberta's estate.

\*When Randall petitioned to stop an estate sale which included personal heirlooms, possessions belonging to himself and Dell Asplund, judge Owdziej allowed the sale and sanctioned Randall for the cost of the conservator filing to restrain Randall, his attorney, or any agents from obstructing the sale of his own property.

### **32) MCL 700.5431 Termination of proceeding.**

The protected individual, conservator, or another interested person may petition the court to terminate the conservatorship. A protected individual seeking termination is entitled to the same rights and procedures as in an original proceeding for a protective order.

Judge Owdziej repeatedly refused Roberta and other family members this right.

## **Summary**

Beginning with the initial hearing to determine Mental Capacity, through the various other hearings concerning the management of Roberta and her estate, the trial of Georgette David and Kathleen Carter to Remove them for Cause, and the handling of the estate and hearings on that which followed, Judge Owdziej has been consistent on these points:

1) She has appointed fiduciaries who did not protect Roberta physically, mentally or emotionally, and did not protect her assets, pay her significant bills or behave with any semblance of responsibility.

- 2) She has defended and supported those fiduciaries in gross elder abuse of a vulnerable, protected person,
- 3) She has ignored due process and violated numerous state and Federal laws to support the fiduciaries,
- 4) She has obstructed family from being able to come to Roberta's aid by fair and just legal means,
- 5) She has appointed attorneys to the case Of Roberta who then clearly sabotaged her stated preferred position, working against her and in favor of the guardian and conservator whom Roberta and family opposed,
- 6) She has aided and abetted the stripping of Roberta's entire estate in quick time,
- 7) She has aided and abetted the larceny by conversion of personal property which was not part of the estate,
- 8) She has abused judicial discretion to a high and grossly unreasonable degree by citing incomplete, inexpert, contradicted, implausible, and hearsay testimony all provided by her appointed fiduciaries as if fact, while ignoring and dismissing actual facts, video proofs, expert testimony, corroborated testimony, and documented evidence by petitioners seeking to aid Roberta. This gross abuse is so clear and obvious as to be implausible as mere error.

The allegations are that the court of judge Julia B. Owziej has all of the hallmarks of being run as a criminal enterprise. It is an affront to responsible judicial procedure, a defiance of law, and engages in direct and significant harm of the people of Washtenaw County.

For these reasons and others, judge Julia B. Owziej must be Impeached. A criminal investigation should be opened against her and the following attorneys associated negatively with this case:

Georgette David, Kathleen Carter, Joelle Gurnoe-Adams, Patrick Carmody, Samuel Bernstein, and Adam Eichner.