

FILED

DEC 09 2005

SHARON FRANZEN
ISLAND COUNTY CLERK

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF ISLAND**

In re the Guardianship of)	
)	NO. 05-4-00151-0
EMMA ENDICOTT)	
)	REPORT OF THE
)	GUARDIAN AD LITEM
Alleged Incapacitated Person.)	

I. HISTORY OF THE ACTIONS

6-17-05	Petition for Order for Protection Emma files for restraining order against Ronald and Donald Endicott Temporary Order of Protection	05-2-00465-1
6-27-05	Hearing on petition for order for protection Reissuance of Temporary Order for Protection	
7-7-05	Respondents' Motion for Revision Ronald and Donald asked for a review of the Commissioner's decision to reissue a temporary order of protection while not finding that an act of domestic violence was committed Declaration of Counsel in Support of Motion for Revision	
7-11-05	Petition for Appointment of Guardian and Interim Order Protecting Vulnerable Adult Notice of Pending Guardianship Summons (for Order Protecting Vulnerable Adult) To Robert and Samantha Saul and Vernon and Linda Gabelein Declaration of Counsel Re: Public Records (Order Protecting Vulnerable Adult) Lis Pedens (Order Protecting Vulnerable Adult) Scheduling Order, Notice of Hearing Dates, and Order to Show Cause Hearing on Guardianship to be scheduled by court administrator	05-4-00151-0

128

Hearing on request for entry of interim order to protect from exploitation set
 Relief Sought:
 Restrain Robert and Samantha Saul and Vernon and Linda Gabelein from
 committing acts that exploit Emma Endicott
 Restrain RSS and VLG from communicating with Emma Endicott about
 these proceedings, the protection order, or matters at issue in either proceeding
 Restrain RSS from transferring or encumbering property sold to them in May
 of 2005 by Emma Endicott until decision on guardianship
 Restrain Emma Endicott from transferring or encumbering any of her other
 property until decision on guardianship
 Restrain Emma Endicott from transferring anything of value to RSS or VLG until
 guardianship is determined
 Restrain RSS and VLG from accepting anything of value from Emma Endicott
 until guardianship is determined
 Direction to Emma Endicott to appear and show cause
 Direction to RSS and VLG to appear and show cause
 Order Appointing Guardian ad Litem

7-13-05 Guardian ad Litem Statement

7-19-05 Declaration of Counsel Regarding Interim Relief
 Receipt for Deposit of Disputed Funds into Court Registry
 \$10,000 from Carolyn Cliff
 \$43,333.33 from Alaska, USA

7-27-05 Motion to Strike Trial Date

7-29-05 Motion for Order Appointing Attorney for Alleged Incompetent
 Order Appointing Attorney for Alleged Incompetent

8-5-05 Order Granting Motion to Strike Trial Date

8-9-05 Hearing on Motion for Order Granting Interim Relief

8-19-05 Order Granting Interim Relief entered
 Court found fiduciary relationship between Vernon and Linda Gabelein and
 Emma Endicott and between Samantha Saul and Emma Endicott
 Court made other findings about property transactions
 Order restrains Gabeleins and Sauls from accepting anything of value from Emma,
 from transferring or encumbering the property, restrains Emma from transferring or
 encumbering any of her remaining property, from transferring anything of value to
 the Sauls or Gabeleins and the Gabeleins, Sauls and Ron and Don Endicott are
 restrained from discussing these proceedings or the protective order proceedings
 with Emma Endicott.

8-19-05 Petition for Order of Protection 05-2-00637-9
 Temporary Order of Protection

There was a five-acre piece of property that Emma inherited from her mother behind that home. Robert and Earl believed that the five-acre piece was intended for them and paid the taxes on that piece for many years. In 2001 Emma, again some say at the insistence of Donald and Ronald, put the acreage up for sale instead of holding it for Robert and Earl, selling it to them or giving it to them. That piece was sold through Samantha Saul and purchased by her sister, Dina Thompson. Ronald and Donald were involved in that sale. That sale, and giving her portion of the home to her sister, were the two causes of conflict between Emma and her older sons, particularly Robert.

Robert had little contact with Emma for several years. Earl has had fairly minimal contact with Emma following his move from the island and establishment of his own life on the other side.

In 2002 Emma sold a five-acre piece of property on Wahl Road to Samantha and Robert Saul. Emma and Samantha both say that this was Emma's idea. Donald and Ronald Endicott were involved in this sale also.

Emma later sold a piece of property adjacent to that she sold to the Sauls to Stewart and Jenny Taylor (or Carl and Pam Taylor).

In late 2002 Emma says that she asked Vernon and Linda Gabelein to purchase a part of her property close to her and build there. This sale did not take place until 2004. Ronald and Donald were not involved in that sale, but the Gabeleins say that they were told about it prior to the sale. It was clear to them that Ronald and Donald did not agree to the sale and did not believe that Emma had the right to sell the property.

Donald and Ronald believe, as do many others, that Shorty Endicott left a will leaving all of the property that he had inherited, the Endicott property, to them with a "lifetime lease" to Emma. Shorty and Emma did have a community property agreement. No will has been found. Nevertheless, Donald and Ronald, along with relatives and friends, believe that the property belongs to Donald and Ronald because that's what they believe that Shorty wanted. A part of the conflict involves Emma selling property that Donald and Ronald believe belongs to them.

Emma had had the opportunity to sell pieces of her property many times for large sums of money. Frank Robinson, Jim Kossert, Ray Lotto, and Verlane Gabelein have all told Emma that they would offer, in some cases, over a million dollars for her land. She has refused. She does not want her land sold to any of these people, believing that Mr. Kossert, Mr. Lotto and Mr. Gabelein will only use it to put up many houses. That's not how she chooses to live. Mr. Robinson is interested in her beachfront property, saying that he wants to adjoin it to his property and the county property to make a park dedicated to his family. Emma believes that the people with money are helping her sons with this action in order to take her land. She knows that Mr. Lotto is paying for Ronald and Donald's attorney and that substantiates her belief that all of this is coming about because of her land.

Emma has been adamant that it is her right to sell her land to whomever she wishes for however much she wishes for whatever reasons she wishes and to refuse to sell to whomever she wishes for whatever reasons she wishes.

On Sunday, June 12, 2005, Jim Kossert told Ronald that Emma had sold fourteen and a half acres of her land to Vernon and Linda Gabelein. Ronald and Donald were angry and confronted Emma, who told them she had sold five acres. As it turns out, the paperwork they were shown by Mr. Kossert was in error.

Ronald and Donald confronted Samantha and Robert and later Linda and Vernon. According to Ronald's declaration, this would have been on June 12th or 14th. They said they were going to get a lawyer and get Emma evaluated to see if she was competent. It's likely that that's not the language they used. Emma has said for many years that her sons have threatened to take her to Fircrest or to put her in a mental institution.

On June 14th, Donald and Ronald took Emma to the bank. She had the \$80,000 from the sale of property to the Sauls in the bank and they brought her to the bank to withdraw two-thirds of that amount, \$53,333. Two-thirds is the amount they believe they are due from the sale of the property. They wanted to use this money to obtain an attorney and said that Emma agreed. They also said that they had seen an attorney that morning.

When Emma and Donald and Ronald first came to the bank, the bank personnel, who know Emma well, would not allow the withdrawal because they were not satisfied that Emma was aware of what was happening; she was not able to sign her name. Donald and Ronald took her away and returned later in the day. Emma was able to sign her name at that point and the bank was unable to refuse to allow the transaction.

Ronald's declaration says that Emma fell several times that day and evening. They called an ambulance on June 14th in the evening. Emma refused to go to the hospital and the paramedics found her to be oriented and competent to refuse the ambulance.

Ronald and Donald state that they found her on the floor of her bedroom on the morning of June 16th. They took her to the hospital and she was "not deemed competent to refuse hospitalization as she was quite confused."

She became less confused in the hospital and demanded to return home. The physicians saw the possibility of a TIA, Transient Ischemic Attack (also called a "mini-stroke"), but a CT scan "did not show an acute event."

She was diagnosed with a urinary tract infection and given medication for that. It was noted by both the hospital social worker and the Adult Protective Services worker that a urinary tract infection can sometimes be the cause of confused behavior that they see. The U.S. National Library of Medicine and the National Institute of Health note that "...sometimes in the elderly, mental changes or confusion are the only signs of a urinary tract infection."

While at the hospital, she talked with a social worker. The social worker was meeting with her for discharge planning. In talking about her living situation, she told the social worker

that her sons yelled at her a lot. She talked about being hit with packing from a refrigerator and yanking her arm. She said the boys were upset with her because they had heard that she had sold five acres of property to her friends.

The social worker reported that Emma could not remember why she was in the hospital or how she got there, could not remember the bank transaction of the day before in which she withdrew \$53,000 and gave it to her sons. Other than possibly the last couple of days, Emma's short term and long term memory appeared to be intact and her confusion cleared while she was in the hospital. She was released the day following her admission.

Emma made contact with her attorney while in the hospital and filed for an order of protection against Don and Ron. She said she didn't want them in the home any longer. A temporary order was entered on June 17th. Following the reissuance of the temporary order, Don and Ron moved for a revision of that order. That motion was heard on July 7th, a Thursday. On July 11th, a Tuesday, Don and Ron filed a petition for guardianship and asked for an interim order protecting Emma as a vulnerable adult.

III. SOURCES:

Emma Endicott
Ron Endicott
Don Endicott
Bob Fisher
Sandy Fisher
Earl Fisher
John Ohm
Ruth Ohm
Steve Smiley
Linda Gabelein
Vernon Gabelein
Samantha Saul
Robert Saul
Dr. Janice Edwards,
Jack Endicott
Mary Endicott
Karen Militich
Sallie Hawkins, Washington Mutual Bank
Chris McCarthy, Adult Protective Services
Medical records, Whidbey General Hospital
Social Worker's records, Whidbey General Hospital
Deputy Rick Norrie, Island County Sheriff's Office
Partial transcript, hearing on petition for order of protection, 6/27/05
Testimony during petition for order of protection, 8/22/05
(Randy Bradley, Earl Fisher, Donald Endicott)
Frank Robinson, Neighbor
Jim Kossert, Neighbor

Carla Grau-Egergton, Neighbor
Larry Gabelein, Family Friend
Janet Lotto, Former Neighbor
Marsha Guerin, Former Neighbor
Roxanne Olsen, Neighbor
C. C. (Murph) Cross, Former Deputy Sheriff
Terry Greene, Friend of Family
Larry Kwarsick, Sound Planning Services
Ann Lundwall, Prosecuting Attorney's Office, Island County

IV. REPORT

A. Description of the nature, cause, and degree of incapacity, and the basis upon which this judgment was made:

Emma Endicott's sons have filed a guardianship action saying that Emma is incompetent based on the sales of property described above. They also note that they have lived with Emma all of their lives and believe she needs assistance in her daily living.

Emma stayed with her son, Robert, and his wife following her hospitalization and has recently moved back into her own home. While staying with Robert, Emma required no assistance in handling her daily living requirements. She bathes herself, dresses herself, walks with the assistance of a cane sometimes and sometimes does not, feeds herself, performs her own toiletries and the like. She did not have to cook for herself at Robert's home and family and friends continue to bring food to her. She continued to pay her own bills.

The sale of the property is a matter of whether or not one has the right to sell to whomever one wishes for however much one wishes for whatever reason one wishes and is also a matter of whether or not Emma was unduly influenced or exploited. For many friends, neighbors and relatives, the sale is also a matter of a belief that the property belonged to Ronald and Donald Endicott and not to Emma Endicott. This is a belief based on things that Shorty Endicott may or may not have said. There is no document except a community property agreement that designates to whom ownership of the property passed following Shorty's death.

Emma was evaluated by Dr. Janice Edwards and that evaluation is attached. Dr. Edwards did not find Emma "to have any mental, emotional or organic disorder which affects her cognitive or volitional control or her ability to handle her own affairs."

I've met with Emma several times in several different places. Based on my own time with Emma, conversations with friends, relatives, neighbors, and professionals involved with her, and the report of Dr. Edwards, I could not tell the court that Emma is incapacitated. Emma is seventy-nine; Emma is unsophisticated; Emma is eccentric; Emma has been bullied by her husband and younger sons in my opinion; Emma wants

a simple life in a place where she feels comfortable and safe with the people for whom she cares around her. She has had the ability to place people who have been good to her in close proximity to her.

None of this means that Emma has not been unduly influenced. But Emma has gotten what she wants from the sale of these properties. She doesn't feel the need to get the most out of a sale because that would bring development to her property, in her opinion, and that would be very undesirable to her. The people who have offered her large sums for her property are people that she does not wish to sell to.

B. Description of the needs of the incapacitated person for care and treatment, the probable residential requirements of the alleged incapacitated person and the basis upon which these findings were made:

Emma is not in need of any residential care and treatment. She is capable of living alone in her own home. There have always been for her neighbors and friends who would give her a ride to the store or the bank. (Emma does not drive.) Without those friends and neighbors, there would be the services offered by Island Transit and other services available through Senior Services.

Emma has the same needs as many elderly people on Whidbey Island who live alone and don't drive. Their needs are met in many ways that do not involve a guardianship.

The basis of this opinion is time spent with Emma, discussions with friends, neighbors, and professionals and my own observation of others who live as Emma does.

C. An evaluation of the appropriateness of the guardian or limited guardian whose appointment is sought and a description of the steps the proposed guardian has taken or intends to take to identify and meet current and emerging needs of the incapacitated person:

Earl Fisher, Emma's oldest son, was proposed as a guardian for Emma. Earl has had the least amount of contact with Emma of any of her children and would not be appropriate for that reason. Emma and Earl have not made peace and placing Earl in a position of authority over Emma would be a considerable and unnecessary blow to her. That is not to say that Earl would not be a competent manager of finances and property. The consideration is for Emma's feelings.

Samantha Saul and Karen Milletich were mentioned in the petition as being inappropriate to serve as guardians. Karen Milletich is Emma's niece and lives in Canada. She would not feel it appropriate to be considered as a guardian. Samantha Saul was given Emma's power of attorney by Emma. If Emma were to need a guardian, she would approve of Samantha. Samantha is not in a position to handle Emma's estate and to handle dealings with Emma's children and I believe she would also say that.

If there were to be any sort of guardianship, it could only, in my opinion, be a very

limited guardianship of the estate. If the court found that there needed to be oversight over Emma's property, the court could order a limited guardianship for the sale of any of Emma's property. In my opinion such a limited guardianship would need to include Emma's ability to veto any sale to certain parties or any sale for certain reasons such as development. Such a limited guardianship would need to include Emma's ability to sell for a reasonable price to whomever she wished. Reasonable price would need to include sale at a price under assessed value. Michael Waller, an attorney in Oak Harbor with no relationship to any of these parties, would be a reasonable guardian in this circumstance.

However, even this doesn't make sense in terms of Emma being able to follow her wishes for her property. She ought to be able to give her property to her sons if she wishes. She ought to be able to sell it to them at an amount upon which they could agree. She ought to be able to do the same to someone she feels is adopted family.

D. A description of any alternative arrangements previously made by the alleged incapacitated person or which could be made, and whether and to what extent such alternatives should be used in lieu of a guardianship, and if the guardian ad litem is recommending discontinuation of any such arrangements, specific findings as to why such arrangements are contrary to the best interest of the alleged incapacitated person:

Emma executed a Power of Attorney naming Samantha Saul as her attorney in fact. Samantha has not used that power of attorney. It is unknown whether or not Samantha wishes to continue to be Emma's attorney in fact. At this point she feels intimidated by Ronald and Donald and, should there be a time when Emma was incapacitated, she would need to deal with them.

A durable power of attorney would be an excellent thing for Emma to have. She should take stock of friends and relatives and propose a different power of attorney at this time, in my opinion.

Karen Milletich was named as substitute attorney in fact, but did not have any knowledge of that and is not in a position to fulfill those duties should the need arise.

Emma has a personal attorney and has used the services of another attorney in terms of selling property. While this is not a substitute for a power of attorney, one needs to be aware that Emma knows how to avail herself of legal assistance.

Emma would benefit from some financial planning for the money that now is in a savings account. But that is not a reason for guardianship. And it's not a sign of incompetency.

E. A description of the abilities of the alleged incapacitated person and a recommendation as to whether a guardian or limited guardian should be appointed:

In my opinion there is not a need for a guardian or a limited guardian. Emma is competent to handle her own affairs and handles them in her own way. She is enjoying the peace she now finds in her own home with no one else there. She is assisted in much the same way as many elderly are assisted by friends, neighbors and relatives to be able to remain in her own home.

She's capable of paying her own bills, of buying her own groceries, of putting food out for meals, of taking care of herself physically, of washing her clothes and cleaning her home.

She has sold property for less than she could have gotten were she out to get as much money as she possibly could. She knows that. She doesn't want the money; she wants the peace and the space and the view and the knowledge that a friend is close by.

F. An evaluation of the person's mental ability to rationally exercise the right to vote and the basis upon which the evaluation is made:

Emma Endicott has never voted and does not intend to in the future. She is aware of current events and has opinions about them based on news stories. She is able to rationally exercise the right to vote should she wish to.

G. Any expression of approval or disapproval made by the alleged incapacitated person concerning the proposed guardian or limited guardian or guardianship or limited guardianship:

Emma Endicott is adamant that she has no need for a guardian. She states she is capable of living alone and caring for herself. She pays her own bills. She makes her own food. She shops for her groceries. She does her laundry. She absolutely disapproves of the idea of her older son as a guardian.

H. Identification of persons with significant interest in the welfare of the alleged incapacitated person who should be advised of their right to request special notice of proceedings pursuant to RCW 11.92.150:

Earl Fisher
14964 18th Avenue SW
Burien, WA 98166
206-248-0716

Robert Fisher
6075 S. Wahl Road
Freeland, WA 98249
360-331-2946

Ronald Endicott
c/o Terry Greene
2174 Clearview Lane

Langley, WA 98260
360-321-0377

Donald Endicott
c/o Terry Greene
2174 Clearview Lane
Langley, WA 98260
360-321-0377

Emma has two sisters and a brother who might file for special notice. They are listed here, but are not receiving copies of the report.

John Ohm
15818 NE 51st
Redmond, WA 98052
425-885-0241

Elsie Ball
13243 First Avenue South
Burien, WA 98168
206-243-4039

Annie Smiley
94694 Rudet Road
Astoria, OR 97103
503-458-6402

I. Explanation of how the alleged incapacitated person responded to advice of the right to jury trial, to independent counsel and to be present at the hearing on the petition:

Emma immediately took steps to ensure that she had an attorney to represent her. Jessie Valentine represented her in the protection actions. It was agreed that Ms. Valentine would not represent her in the guardianship action and H. Clarke Harvey was appointed to represent her upon my motion.

She was advised of her right to a jury trial and to be present at the hearing. She wishes to be present and it was agreed that she would discuss the issue of a jury trial with her attorney.

V. RECOMMENDATIONS

It is my belief that Emma Endicott is not in need of a guardianship. It's my belief that her neighbors and relatives are focused on the property and who they believe it really belongs to. Some are focused on the fact that Emma has been offered a significant amount of money by several people and that she turned it down. Her absolute desire is that her property not be developed. Some people seem honestly upset that people they

saw as friends of Emma and of themselves purchased land from Emma at what they believe is a reduced price. Most people do not seem to consider that Emma may have had her own reasons.

In talking with friends, neighbors, relatives and acquaintances, it seems that the focus is totally on the property. There are some examples of eccentricity, of behaviors that people didn't understand, but by and large over time Emma has been a person who knew where she was, how to get by, what made her happy, her history and the events of the day. She was not always happy and was not always at peace. I believe her younger sons have no idea of their bullying behaviors or what would be abusive to their mother. At one point they told me that their father was not abusive because he never used his hand on them, only the belt or a switch.

But if the sale of land was taken out of the equation, people would only be talking about Emma's eccentricities and not about the need for a guardianship.

I am not convinced that she has been unduly influenced. People who know the Sauls and Gabeleins describe them as good people. They don't understand the transactions. They aren't describing people who set out to prey on the elderly. Many of them are people who do have money and wouldn't consider selling property for less than they could get for it and consequently have difficulty understanding Emma.

Because they don't understand or don't approve does not mean that Emma cannot do with her property what she wishes so long as it is her wish.

Dated this *7th day of December, 2005*

Guardian ad Litem