

No. 23-239

In The
Supreme Court of the United States

STUART BARNES ON BEHALF OF
SHANNA LEA ALLEN,

Petitioner,

v.

SHAWN ANNITA ALLEN,

Respondent.

**On Petition For A Writ Of Certiorari
To The Supreme Court Of Appeals
Of West Virginia**

PETITION FOR REHEARING

STUART BARNES
3750 Jasmine Ave., #203
Los Angeles, CA 90034
(310) 558-0590
barnessk@outlook.com

Advocate for Petitioner

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REQUEST FOR REHEARING

Petitioner Stuart Barnes (on behalf of Shanna L. Allen-protected party) respectfully requests a rehearing of this case on the grounds that the Court's denial of the petition for a writ of certiorari was based on an "out of time" decision of the final order naming Shawn A. Allen guardian/conservator which was not a point of contention. This judicial circumvention of due process spurned the hearing on the third party "special needs" trust and enforcement of prudent management of the petitioner's assets with the Honorable Judge Akers that negated a fair resolution.

Considering standard operating procedures were not followed at the state appellant level, the Court's denial decision has significant implications on the financial well-being of the protected party and the proper functioning of the legal system. On behalf of the protected party, I am presenting new and expanded information for reconsideration. The petitioner seeks relief in the form of a reversal of the Court's decision and the mandate of a third party "special needs" trust for the protection of Shanna L. Allen.

PETITION FOR REHEARING

The petitioner's attorney filed a motion requesting official bank balances for the evidentiary hearing (see P.R. App. 1-7). The Mental Hygiene Commissioner ignored the request. Considering the Guardian Ad Litem report and the respondent's testimony at the

evidentiary hearing, the Mental Hygiene Commissioner disregarded the information; thereby prohibited transparency and filing of judicial order(s) that would have mandated prudent management of the petitioner's financial assets, and compliance with section 44A-3-4 of the West Virginia Code.

Considering the Guardian Ad Litem report does not contain official bank balances nor detailed expense ledgers, the enclosed spreadsheets of the petitioner's checking and savings accounts were created from: (1) guardian ad litem report information; (2) estimated West Virginia regional utility expenditures; and (3) conservative investment strategies to provide a synopsis of the petitioner's financial health. As of October 2021, the petitioner's checking, and savings accounts should have been (no less than) \$18,170.34 and \$187,590.60 respectively instead of \$2,509.37 and \$138,491.51 per Guardian Ad Litem reporting (see P.R. App. 8-9).

Secondly, the Guardian Ad Litem report highlighted that the original \$147,370.30 "wrongful death" settlement was appropriately held in a savings account as opposed to the third party "special needs" trust account per the Last Will and Testament of Anna Mae Allen. If promptly placed, the assets would have grown from diversified investing, in addition to being an effective hedge against inflation and cost of living exposure that passbook savings accounts do not provide.

Additionally, the Guardian Ad Litem report (filed October 13, 2021) showed a \$138,491.51 savings

account balance. Yet, the respondent and legal counsel showed a \$130,330.13 balance as of May 12, 2022, per 6-month conservator report that revealed a 5.89% (\$8,161.38) percentage drop in account value within a mere 7-month time-period even though the petitioner's monthly income covers all monthly expenses (utilities and personal needs) and appropriately applied residential structural expenditures.

The respondent also requires the petitioner to pay for all structural expenditures and property taxes of their family residence where she has one-third interest in the residence (not recorded) and all expenses of family annual vacations per the respondent's testimony at evidentiary hearing, because it makes the petitioner feel part of the family. Interestingly the petitioner cannot ask for more than \$10.00 for personal needs including weekly church offerings because the respondent falsely claims she takes care of two houses that contradicts sworn testimony at the evidentiary hearing and Guardian Ad Litem reporting. Please note, the \$10.00 comment is a direct quote from the Department of Health and Human Services report dated September 11, 2021.

The court mandates that the Guardian/Conservator file 6-month accountings pursuant to West Virginia Code 44A-3-11 (see P.R. App. 10-14). However, there has been just one filing. These accountings were filed May 12, 2022, but received August 9, 2022. The petitioner's attorney stated a response would be filed for a hearing with the Honorable Judge Akers. However, prior to filing, the petitioner's attorney withdrew due

to apparent political complications, judicial stalls, disrespect from opposing counsel, and predetermined court rulings that eventually led to a confidential release via the West Virginia State Bar. As a result, I filed the response with the court, but it was not acknowledged.

A copy of the response is included (see P.R. App. 15-33). Please note that there was never a guardian hearing, and the appointment order was secretly filed seven days after the evidentiary hearing (November 4, 2021) without disclosure because the Mental Hygiene Commissioner's findings and recommendations report camouflaged its existence by delaying her report two months so the final order could not be challenged and purposely out of time – thereby violating section 44A-2-13 of the West Virginia Code.

This tactic prohibited the petitioner's attorney an opportunity to present concerns including financial, medical, social, and living conditions with the hope of getting assurances that would serve the best interests of the protected person, but was never allowed. An email from the petitioner's attorney shows as late as June 20, 2022, she had not received notification of the guardian/conservator appointment which would have initiated a motion for a hearing to present her case (see P.R. App. 34).

The respondent and legal counsel mislead the court and stonewalled the petitioner's counsel by not providing official documents, detailed invoices, and receipts in the 6-month accountings. Considering the

original wrongful death settlement was \$147,370.30 and the current balance was \$130,330.13 (as of report date), there has been a \$17,042.17 or 11.56% reduction in account value since settlement. The amount does not take into consideration the loss of interest/earnings due to the funds being in a 0.01% savings account instead of sound and income earning investment products.

Further, the \$130,330.13 amount had not been officially verified and there has been no supporting documentation provided that a financial advisor was consulted due to the respondent's admission of a limited business acumen while possessing the funds for over five years. Without a thorough audit/examination, these numbers cannot be accepted as factual or accurate. The account balances are unknown as of this writing and the petitioner's savings account continues to be used as a quasi-transactional account.

Considering the mismanagement of decedent's estate and financial affairs as noted in the petitioner's initial (non-disputed) petition, the petitioner's wrongful death settlement should have been placed in a third-party special needs trust. The trust was stipulated in the Will, and considering our mother's death in 2014; it remains unestablished.

The estate closed in 2016 and the wrongful death settlement of my mother occurred in 2017. The funds should have been held by the court until the trust was established. It is unclear what the Guardian Ad Litem was thinking at the time. Furthermore, the Guardian

Ad Litem at the financial exploitation hearing could have filed a motion for the funding of the trust if he was working in the best interest of the petitioner and the Mental Hygiene Commissioner could have prepared an order given the depletion of resources and lack of safeguards in place to curtail overzealous spending, and blind eyes towards the future. Although the third party “special needs” trust should have been established in 2014, there is no timeline or age restrictions that would prevent this action from being implemented at this time.

SUMMARY

Humbly and respectfully, I come to the court seeking a ruling that would require the third party “special needs” trust be established and funded via the wrongful death settlement awarded to the petitioner. This request also includes a professionally advised investment plan for the short-and long-term benefit of the petitioner.

Prior to contacting the court, I had numerous conversations with the respondent, but I could not reach an understanding with her. Giving her advice is a fine art that I never mastered – fighting the ever-present need for greed that clouds her vision. I have two retirement accounts (e.g., Traditional and Roth IRAs) at Fidelity Investments so we discussed blue-clip/dividend stocks, bonds, asset diversification, mutual funds, CDs, and REITs to name a few, but she never followed-up. I

assume she has a retirement account through her employer (CAMC), and I guarantee that the company employs an investment firm to administer their employees' retirement funds, so, she could mimic the strategies to assist her sister. It seems, she is more interested in self-serving her desires with the petitioner's estate without understanding the purpose and benefits of a third party "special needs" trust. Simply, the "wrongful death" settlement should be viewed as a retirement fund for the protected party. The key is self-discipline and letting the assets grow with proper management, but that does not mean the interest income cannot be used for needed expenditures, but the goal is to leave the principal intact (at a minimum) for as long as possible.

Secondly, I advised the respondent to obtain a current and in-depth mental and physical evaluation of the petitioner. There is a need to determine the petitioner's social and development ceiling. The petitioner's physician stated that she lacks social skills and the Guardian Ad Litem stated, it would be a waste of time to teach her how to read and write. The petitioner is 54 years old with a non-verified 8-year-old mental capacity. The respondent is unwilling to engage non-profit organizations, social workers, senior citizens facilities, education institutions/community outreach departments to expand skillset. The respondent and sister residing in Washington, D.C. are opposed to establishing a comprehensive care plan, as if preceding the petitioner in death, and expanding current care practices so the petitioner will be able to function as

independently as possible as if she is alone in the world.

Finally, I believe the request to replace the Guardian Ad Litem with the hiring of an outside attorney tilted the balance of objectivity. Considering the nature of the case, the Guardian Ad Litem should have recused himself, considering his private practice are primarily DUI and DWI cases. The Mental Hygiene Commissioner and Guardian Ad Litem took the request personally that gave rise to short-sighted retaliation, but unfortunately at the expense of the protected party.

Considering the Honorable Judge Carrie Webster's assistant stated, they never handed a financial exploitation case previously, I pray for the court's intervention to correct missteps that have long-term implications on the petitioner/protected party.

Respectfully submitted,

STUART BARNES
3750 Jasmine Ave., #203
Los Angeles, CA 90034
(310) 558-0590
barnessk@outlook.com

Advocate for Petitioner

CERTIFICATE OF PETITIONER

Pursuant to Rule 44, Rules of the Supreme Court, Petitioner hereby certifies that this petition for rehearing is restricted to the grounds specified in Rule 44, paragraph 2, Rules of the Supreme Court, and is being presented in good faith and not for delay.

STUART BARNES

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P.R. App. 1

**IN THE CIRCUIT COURT OF
KANAWHA COUNTY, WEST VIRGINIA**

**IN RE: CIVIL ACTION NO.: 21-AF-3
SHANNA L. ALLEN JUDGE CARRIE WEBSTER**

**STUART BARNES' OBJECTION
REGARDING THE APPOINTMENT OF
SHAWN ANNITA ALLEN AS GUARDIAN/
CONSERVATOR OF SHANNA L. ALLEN**

COMES NOW Stuart Barnes (“Mr. Barnes”), by and through counsel, and hereby files his Objection to the Appointment of Shawn Annita Allen as Guardian/ Conservator of Shanna L. Allen (“Objection”). In support of his Objection, Mr. Barnes states the following:

PARTIES

1. Shanna L. Allen (“Shanna”) is an alleged protected person pursuant to WEST VIRGINIA CODE §44A-1-1 et seq. Shanna is, and was at all times relevant to this action, a resident of Kanawha County, West Virginia.

2. Mr. Barnes is the brother of Shanna. Mr. Barnes is, and was at all times relevant to this action, a resident of Los Angeles County, West Virginia.

3. Shawn Annita Allen (“Shawn”) is the sister of Shanna and sister of Mr. Barnes. Shawn is, and was at all times relevant to this action, a resident of Kanawha County, West Virginia.

JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to WEST VIRGINIA CODE §44A-1-1 et. seq.
2. Venue is proper in this Court pursuant to WEST VIRGINIA CODE §44A-1-1 et. seq.

FACTS

1. On July 22, 2021, Mr. Barnes filed a Petition for Temporary Financial Exploitation Protective Order pursuant to WEST VIRGINIA CODE §55-7J-1 because of a concern regarding Shawn's potential financial exploitation of Shanna.
2. Subsequently, on August 20, 2021, Circuit Judge Webster entered an Order Granting Temporary Financial Exploitation Protective Order. In that Order, Judge Webster transferred this matter to Mental Hygiene Commissioner Grottendieck ("Commissioner Grottendieck") for an evidentiary hearing and appointed Edward L. Bullman as Guardian *ad litem* for Shanna.
3. Thereafter on September 13, 2021, Shawn, by and through counsel, submitted her Motion to Continue the above-referenced hearing based in part on the fact that counsel anticipated filing a Petition for Guardianship/Conservator for Shanna. That day, Commissioner Grottendieck granted the same.

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4. Mr. Barnes does not dispute that Shanna requires a guardian/conservator pursuant to WEST VIRGINIA CODE §44A-1-1 et. seq.

5. Further, Mr. Barnes agrees that Shawn is the best person to be Shanna's guardian/conservator because of her familial relationship and physical proximity to Shanna.

6. Mr. Barnes, however, has concerns regarding Shawn's potential appointment of guardian/conservator because of comments Shanna has made to Mr. Barnes and others regarding Shawn's use of Shanna's financial resources for Shawn's personal benefit, specifically to pay for Shawn's residence. For example, Shanna has commented that she is not permitted to ask Shawn for additional funds that she is rightfully entitled to without upsetting Shawn. See letter from Dwayne O. Combs, attached hereto as **Exhibit 1**.

7. Additionally, Shanna suffers from medical problems that are not adequately addressed. Specifically, Shanna is diabetic and has dietary restrictions. Upon information and belief, Shawn is, and has been, providing Shanna with food items that do not comply with Shanna's dietary needs.

8. In addition to Shanna's dietary medical concerns, upon information and belief, Shanna is experiencing a skin issue that necessitates medical attention. This issue is described with particularity in a letter authored by Dwayne O. Combs with Adult Protective Services, WV DHHR. See **Exhibit 1**.

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9. In addition to the aforementioned medical concerns, upon information and belief, Shanna's residence is infected with rodents that are not being addressed at this time. *See id.*

10. As previously stated, Mr. Barnes believes that Shawn is an appropriate choice for guardian/conservator of/for Shanna, subject to oversight discussed more thoroughly below, but is requesting that Shawn, as guardian/conservator, be required to do the following:

a. Establish a team of medical specialists for Shanna, including, but not limited to, (1) primary physician, (2) endocrinologist, (3) cardiologist, (4) ophthalmologist, (5) podiatrist, (6) dentist, (7) dermatologist, and (8) dietician/nutritionist to thoroughly address and monitor her health issues including, but not limited to, diabetes and its affects and her skin issue within sixty (60) days of this Court's Order and

b. Hire a licensed exterminator to eradicate the rodent problem at Shanna's residence within seven (7) days of this Court's Order;

c. Submit an initial report of Shanna's accounting from 2016 to the present including, but not limited to, bank statements, a list of assets, receipts, and disbursements within three (3) months of Shawn's appointment as guardian/conservator;

d. Submit an accounting and guardian report every six (6) months after the initial report referenced above including, but not limited to, the

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above-requested document and documents evidencing that Shanna's assets are invested in a manner that a financial planner deems appropriate; and

e. Be required to post bond in the amount of the value of Shanna's assets pursuant to VIRGINIA CODE §44A-1-9.

11. In consideration of the aforementioned, Mr. Barnes will agree to withdraw his request for a Financial Exploitation Protective Order.

12. Moreover, because Mr. Barnes does not want Shanna to suffer financially from these proceedings, Mr. Barnes respectfully requests that this Court allow him to pay the Guardian *ad litem* fee so that it does not come out of Shanna's assets.

PRAYER FOR RELIEF

WHEREFORE. Mr. Barnes requests the following forms of relief:

1. An Order from this Court ordering the above-mentioned requests;
2. For such other relief as this Honorable Court deems just and fair and as Mr. Barnes may require in this proceeding.

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Dated this _____ day of September, 2021.

**STUART BARNES,
By Counsel.**

Paige K. Vagnetti (WV Bar # 12828)
Esha R. Sharma (WV Bar # 13461)
Dinsmore & Shohl LLP
215 Don Knotts Boulevard, Suite 310
Morgantown, WV 26501
Telephone: (304) 296-1100
Facsimile: (304) 296-6116
Counsel for Stuart Barnes

**IN THE CIRCUIT COURT OF
KANAWHA COUNTY, WEST VIRGINIA**

**IN RE: CIVIL ACTION NO.: 21-AF-3
SHANNA L. ALLEN JUDGE CARRIE WEBSTER**

CERTIFICATE OF SERVICE

I hereby certify that I served STUART BARNES' OBJECTION REGARDING THE APPOINTMENT OF SHAWN ANNITA ALLEN AS GUARDIAN/CONSERVATOR OF SHANNA L. ALLEN on this _____ day of September, 2021 by delivery to the following via U.S. Mail:

Ashton Bias, Esq.
Lyne Ranson Law Offices PLLC
1528 Kanawha Blvd. E.
Charleston, WV 25311
Counsel for Shawn Annita Allen

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Shanna Allen
1204 Grant Street
Charleston, WV 25302

Edward L. Bullman
607 Ohio Avenue
Charleston, WV 25302
Guardian ad litem

Brian E. Phillips
WV DHHR (APS)
350 Capitol Street I
Room 730
Charleston, WV 25301

Paige K. Vagnetti (WV Bar # 12828)

SHANNA'S CHECKING ACCOUNT

Information derived from Mr. Bullman's Guardian Ad Litem Report dated October 13, 2021

ITEM	INCOME	AMOUNT	COMMENTS
1.	Social Security Disability Income	\$1,140.00	This amount is taken from the Guardian Ad Litem report. There were no Bank Statement(s) attached or additional monthly income listed.
2.	Total Income	\$1,140.00	
	EXPENSES		
	Household		
3.	Suddenlink (phone & television)	\$60.00	Although requested via numerous conversations with Respondent and conversation with Guardian Ad Litem, household expenses were never shared. Therefore, the amounts shown are average West Virginia resident expenditures derived from Internet. Further, it is not known if the utilities are in Shanna's name. If not, a name change should be processed so Shanna would benefit from timely payments regarding credit scores with credit reporting agencies and low-income programs.
4.	Sewer, Fire and Trash	\$40.00	Same as item 3.
5.	Water	\$25.00	Same as item 3.
6.	Gas	\$92.95	Same as item 3.
7.	Electric	\$126.67	Same as item 3.
8.	Total	\$344.62	
	Other Expenses		
9.	Personal Needs	\$600.00	This amount includes church offerings, clothing, food, hair, and non-food and utility expenditures excluding SNAP and LIHEAP programs. In addition, entertainment activities, and funds available for supplemental insurance premiums for services not provided by Medicare.
10.	Total Expenses	\$944.62	
11.	NET INCOME	\$195.38	This is the amount after monthly expenses. Taking this figure multiplied by 93 months (7 years and 9 months) the amount of time the Respondent has had sole control of Petitioner's income since the death of our mother on January 22, 2014. The checking account balance should be <u>\$18,170.34</u> not <u>\$2,509.37</u> as shown on Respondent's records submitted to the Court. The account should be reimbursed \$15,660.97 .

SHANNA'S CHECKING ACCOUNT

Information derived from Mr. Bullman's Guardian Ad Litem Report dated October 13, 2021

ITEM	INCOME	AMOUNT	COMMENTS
1.	Wrongful Death Settlement	\$147,372.30	This amount includes an initial check of \$146,590.38 and a supplement check of \$781.92.
2.	Account Appreciation	\$47,159.14	This amount represents appreciation if funds were invested with a financial advisor with a conservative strategy earning 8% since January 2017. This was the period of President Trump and one of his accomplishments was the stock market performed extremely well.
3.	Stimulus Payments	\$3,200.00	
4.	Total Income	\$197,731.44	
	EXPENSES		
5.	Withdrawal	\$2,200.00	Withdrawal occurred on 3/20 with no date, description or purpose noted.
6.	Mr. Handyman	\$2,203.17	No date noted or purpose.
7.	Withdrawal	\$2,000.00	Withdrawal occurred on 10/26/20 with no description or purpose noted.
8.	Purchase from Home Depot	\$1,609.21	No date noted or purpose.
9.	Transfer to Checking Account	\$500.00	Transfer occurred on 10/20/20 with no purpose noted.
10.	Mr. Handyman	\$768.15	11/16 was noted as purchased date, but year is omitted. Further, there is no description or purpose noted.
11.	Debit Charge to Hampton Inn	\$628.43	Charge occurred on August 5, 2019. No information was provided to distinguish charges from other individuals in attendance at this family gathering. There is no mentioning of Virginia Beach/Hampton Inn charges of vacation that occurred in July 2021.
12.	Property Taxes	Amount Unknown	Although it is noted that Shanna is paying property taxes on 1204 Grant Street residence, Shanna has only a 1/3 ownership of the property.
13.	Dinners and Lunches	\$231.88	Dinners and lunches for sisters and guests: Fat Patty's (\$52.43) on 6/3/20; Fat Patty's (\$38.99) on 6/4/21; Mi Cocina (\$34.00) on 6/22/20; Mi Cocina (\$36.98) on 7/13/20; and Secret Sandwich (\$69.48) on 8/4/20.
10.	Total Expenses	\$10,140.84	
11.	NET INCOME	\$187,590.60	This amount represents an account balance if the funds were properly invested, instead of having the funds in an account earning only .01%, shows oversight is desperately needed. The current interest rate in a savings account does not cover the inflation rate or COLA rate. Therefore, the difference between \$187,590.60 and the Respondent's \$138,491.51 court submitted account balance should be reimbursed. The reimbursable amount is \$49,099.09 .

**IN THE CIRCUIT COURT OF
KANAWHA COUNTY, WEST VIRGINIA**

**IN RE: AN ALLEGED
PROTECTED PERSON
SHANNA L. ALLEN** **CIVIL ACTION NO.:**
2021-G-20-83-OA

MOTION TO ENFORCE

COMES NOW interested party Stuart Barnes (“Mr. Barnes”), by counsel, and hereby requests that this Court enforce the Order of Appointment of Guardian and/or Conservator entered on November 12, 2021, by Circuit Court Judge Akers (“Order”). In support thereof, Mr. Barnes avers the following:

1. The initial hearing in the above-referenced matter was scheduled for October 15, 2021.
2. On October 15, 2021, Mental Hygiene Commissioner Grottendieck entered an Order of Continuance because interested parties Shane Allen and Mr. Barnes were not served by certified mail more than fourteen days prior to the hearing.
3. On November 4, 2021, Mental Hygiene Commissioner Grottendieck conducted a hearing in the above-referenced matter.
4. Subsequently, Judge Akers entered the Order finding that Shanna L. Alien is a protected person pursuant to W. Va. Code § 44A-1-4. See Order, attached hereto as **Exhibit 1**.

5. Additionally, the Order appointed Shawn A. Alien as full guardian and full conservator for Shanna L. Allen. *See id.*

6. The Order further stated that “Shawn A. Allen shall provide the Reports of Guardian, Inventory, and Accountings of Conservator to the statutorily identified interested parties as set forth in W. Va. Code sections 44A-3-2, 44A-3-8, and 44A-3-9 respectively.” *See id.*

7. Pursuant to W. Va. Code § 44A-3-2, any guardian appointed shall file periodic reports in accordance with section eleven of this article which states that reports of guardians and accountings conservators must be filed *within six months of being appointed*. *See* W. Va. Code § 44A-3-11 (emphasis added).

8. W. Va. Code § 44A-3-8 directs conservators to file an inventory *within sixty (60) days following the entry of the order of appointment*. Additionally, said code section states that a conservator shall mail a copy of the inventory to the individuals who received notice of the hearing *no later than fourteen (14) days following its presentation of the inventory*. *See* W. Va. Code § 44A-3-8 (emphasis added).

9. Moreover, W. Va. Code § 44A-3-9 requires a conservator to file accountings *within six months of being appointed* pursuant to W. Va. Code § 44A-3-11.

10. In direct contravention of the Order, to date, over six months after the entry of the Order, Shawn A. Allen has failed to provide her report of guardian,

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inventory, and accountings of conservator to the statutorily identified interested parties in accordance with the time provisions discussed above pursuant to West Virginia law.

11. The undersigned have attempted to obtain copies of said documents from counsel for Shawn A. Allen and from the Office of the Clerk of the Circuit Court of Kanawha, West Virginia, however, said requests were refused.

12. In addition to the foregoing, the Last Will and Testament of Anna Allen, a copy of which is attached hereto as **Exhibit 2**, required that all assets inherited by Shanna L. Allen from Anna Allen be held in the “Shanna Lea Allen Irrevocable Discretionary Supplemental Care Trust” with Shawn A. Allen serving as trustee.

13. Based upon conversations during the November 4, 2021, hearing. Shawn A. Alien stated that she, was unaware of such requirement and would take the steps necessary to follow through with the aforementioned Last Will and Testament of Anna Allen.

14. Based on the foregoing, copies of the accounting is required to assure that the appropriate trust account has been established.

Therefore, Mr. Barnes requests that this Court grant this Motion to Enforce and order Shawn A. Allen to provide her report of guardian, inventory, and

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accountings of conservator to Mr. Barnes and the statutorily identified interested parties.

**STUART BARNES,
By Counsel.**

Paige K. Vagnetti (WV Bar # 12828)
Esha R. Sharma (WV Bar # 13461)
Dinsmore & Shohl LLP
215 Don Knotts Boulevard, Suite 310
Morgantown, WV 26501
Telephone: (304) 296-1100
Facsimile: (304) 296-6116
paige.vagnetti@dinsmore.com
esha.simon@dinsmore.com
Counsel for Stuart Barnes

**IN THE CIRCUIT COURT OF
KANAWHA COUNTY, WEST VIRGINIA**

**IN RE: AN ALLEGED
PROTECTED PERSON
SHANNA L. ALLEN** **CIVIL ACTION NO.:
2021-G-20-83-OA**
JUDGE
CARRIE WEBSTER

CERTIFICATE OF SERVICE

I, Paige K. Vagnetti, hereby certify that I served the foregoing *Motion to Enforce* on this day ____ of July, 2022, by delivery to the following via U.S. Mail:

P.R. App. 14

Ashton Bias, Esq.
Lyne Ranson Law Offices PLLC
1528 Kanawha Blvd. E.
Charleston, WV 25311
Counsel for Shawn Annita Allen

Shanna Allen
1204 Grant Street
Charleston, WV 25302

Edward L. Bullman
607 Ohio Avenue
Charleston, WV 25302
Guardian ad litem of Record

Paige K. Vagnetti (WV Bar # 12828)

Date Submitted: November 10, 2022

Recipients:

Ms. Cathy Gatson, Clerk of Courts
(cathy.gatson@courtswv.gov)

M. Cynthia Bumpus, Assistant Clerk of Courts
(cynthia.bumpus@courtswv.gov)

Ms. Kim Gregory, Assistant to the
Honorable Judge Maryclare Akers
(kim.gregory@courtswv.gov)

PERIODIC REPORT OF GUARDIAN

Name of Protected Person – Missing

Court Case Number – Missing

Name of Guardian – Missing

Date of Appointment – Missing

Date of Report – Missing

Covering period – Missing

Protected Person's mental, physical, and social condition . . .

(Questions 1-12)

- 1. Describe the Protected Person's mental, physical, social condition during the time-period covered.**

The guardian failed to address the time-period covered. The guardian is presenting generalities. What is well within capabilities? Where is a neurologist' report? Where is a primary care physician's report? Where the nutritionist/physical therapist's report? Where is the podiatrist's report? Where is the dentist's report? Where is the optometrist/ophthalmologist's

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report? Where is the audiologist/speech therapist's report?

Recently, the petitioner asked, "Is it alright to talk to yourself?" The petitioner lives alone, and her day consists primarily of watching television re-runs.

The respondent works 10 days and only sees the petitioner one hour or less a day. On weekends, the respondent has been asked to document an hourly schedule of activities outside of grocery stores, dog track, and restaurants to determine how many hours of the day She shares with the petitioner, she refused and would not respond. During the week, their bonding time is primarily regulated to dropping off McDonalds, Taco Bell, and Wendy's.

Other than walking to the Kanawha Blvd (one and half blocks away) and visiting a friend on her way back, the protected person is home within an hour. The petitioner wakes at 5:00am and is alone until 5:45pm, when she goes to church activities for approximately 90 minutes on scheduled days. During weekdays, she watches television the entire day without outside visitors. Further, the respondent has refused to allow the purchase of a puppy that the petitioner has always wanted for companionship. The protected person loves to play miniature golf and bowling. The respondent refuses to take her to Hurricane where there is supposedly a nice miniature goal facility. I assume there are bowling alleys in the Charleston area. Primarily, the respondent goes to the dog track and makes the respondent accompany her.

P.R. App. 17

The respondent never provides the time she spends with the petitioner. The visits are brief. The respondent deals with her as if she is an obligation as opposed to a loving sister. The respondent refuses to provide hugs. Regardless of age, the respondent must realize (as Guardian) she is a parent. One of the most important things is to provide encouragement which something she does not do or display. The respondent does not understand the power of "Human Touch", nor does she attend church services or church activities with the petitioner. If it wasn't for Ms. Ruth, the protected person would have nominal social activities and limited church involvement. The respondent is misleading the Court.

The respondent has refused engaging outside social activities (e.g., community workshops, adult day care centers etc.,) that would provide services including exercise activities and workshop/sessions to enhance the petitioner's social skills and expand her social network. There are activities to teach her how to read and write.

There has not been an in-depth mental or physical assessment performed, including a documented action plan to address areas of concern.

Further, the respondent has refused "face-time" equipment for the petitioner. She continues to maintain an adversarial relationship as if she is hiding something.

2. Describe the Protected Person's Living arrangements during the time-period covered by report.

The protected person continues to live alone. The protected person lives in a high-crime area. The respondent refuses to implement a security system. The protected person is a diabetic and complained about splinters in the floor. The respondent has refused to have the floors sanded and polished. Further, the protected person has been using insulin for years. If the protected person had a different diet and structured exercise program, she probably would not be diabetic or at the minimum taking diabetic pills instead of injecting insulin. Furthermore, the protected blood sugar reading has fluctuated from 45-145 daily for the past several weeks. I called the protected person's doctor and left messages regarding the readings and the possibility the blood sugar machine might need to be replaced. There has been no response nor action taken by the respondent.

The protected person's meals are primarily frozen/microwaved entrees. Due to a continual high sodium diet of fast and microwaved foods; she refuses to provide weight, BMI, and blood pressure readings. I can see if I was stranger, but I am the petitioner's brother. What is the respondent hiding?

Although there has been a surge of rodent activity in the house, the protected person stated, the respondent cancelled their longstanding Terminix contract. The respondent refuses to purchase/rent a drinking water cooler for the protected person causing the protected

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person's brother to send water via Amazon. Further, respondent does not provide detail invoices from Handyman for repairs that should be shared by the other owners of the house, if the protected person is obligated to pay for all utilities, structural repairs, property taxes out of her SSDI checks and a wrongful death settlement that should be in a "special needs" trust then she should have complete ownership of the house.

3. Describe the medical, educational, vocational, and other professional services which were provided to the Protected Person during the time-period covered by this report.

The respondent provides general and vague statements. The respondent refuses to provide specific dates, times, and nature medical appointments during this time-period. The respondent states there are no other services available. That is incorrect.

The respondent failed to utilize the City of Charleston and Kanawha County's vast community resources (i.e., **Chamber of Commerce, Visit Charleston, YWCA, AARP Charleston, National Association of Social Workers, West Virginia Department of Health and Human Resources, West Virginia Council on Aging etc.**) if so, the protected person would reap immeasurable benefits and expand her skill set. In addition, most metropolitan areas have multi-cultural adult day care centers that provide numerous activities and services. Again, the respondent has shown no interest.

4. What is your opinion as the adequacy of the Protected Person's care:

As the protected person's brother, I believe she would benefit from having a caregiver periodically. I believe the petitioner is a little too close to the situation to objectively assess the needs and desires of the protected person.

5. Do you agree with the current treatment and/or habilitation plan for the Protected Person? Explain response

As the protected person's brother, I do not agree with the current treatment and/or habilitation plan for the protected person. The protected person should not be living by herself. The problem is the mood-swings and/or bipolar disposition of the respondent that makes a difficult situation:

- The protected person does not possess the ability to purchase, read, and understand prescription labels to accurately fill out weekly pill boxes. As a result, she is at risk of being over medicated or not taking prescribed medications when appropriate.
- If the refrigerator or related appliances goes out, she does not have the ability to check and verify possible food spoilage, and expiration dates. Further, she is unable to establish transportation options and obtain necessary funds to purchase needed groceries or health items at appropriate retail outlets.
- She does not have the ability to establish Lift or Uber accounts, in addition to calling,

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scheduling, and paying drivers for transportation to satisfy emergency and personal needs.

- She does not have the ability to write checks and/or use debit card to pay utility bills or challenge misapplied payments. She is also incapable of verifying bank account balances and counting money.
- She does not have the ability to read and comprehend notices, signs, or signals regarding imminent health dangers.
- If you ask Shanna to provide a synopsis of a program she viewed, she would not be able to provide a coherent summary of that program (e.g., Andy Griffith, The Heat of the Night, Gomer Pyle, and Everybody Loves Raymond). Please note, these programs are viewed daily.
- Shanna is unable to distinguish what foods should and/or should not be microwaved.
- Shanna is unable to determine which garments should be washed or more appropriately dry cleaned.
- Since Shanna cannot cook on a stove, she continues to be highly microwaved dependent. As a result, she continues to eat a high sodium diet which heightens heart disease.
- Although it has been discussed with Shawn, Shanna's concerns regarding her bed hurting her back and splinters on the floor continues to be ignored, even though she is diabetic.

6. What is your recommendation as to the need for continued guardianship? Explain response?

As the protected person's brother, I highly recommend the respondent utilize the civic, county, and state resources available to her. In addition, I highly recommend utilizing my abilities and her sister in Washington, D.C. to assist the situation. The respondent has a grown son living in Huntington, who has a teenaged son residing in Charleston whom I would assume comes to Charleston to visit on a consistent and continual basis. I recommend that the respondent sees a physician regarding her mood-swings, communicate with a financial planner to map out a retirement plan since it seems her problems seems to be job-related, and reduce the intake of vices (i.e., cigarettes and alcoholic beverages) to reduce anxiety. The respondent paints a picture that no one else is willing to do anything. That is not true. Using technology, food purchasing, schedule medical appointments, arrange transportation, engage caregivers, purchase medicines, pay bills (online/autopay), arrange social activities can be done from Los Angeles, CA or for that matter anywhere in the world.

7. Do you recommend any changes in the scope of the guardianship? If so, detail the changes recommended and explain the reasons for recommending such changes.

The guardian should be compelled to enhance the skill set of the protected person and maximize her independence. Hoping a re-evaluation could be conducted

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that would warrant limited guardianship in the future. It must be noted that the guardianship/conservatorship was only applied for in 2021 and the protected person has had a limited mental capacity since birth.

8. Summarize your visits with, and activities on behalf of, the protected person

The visits are brief. The respondent and protected person do not have meals together other than at a restaurant. The protected person does not want to spend overnight at the respondent's house. The protected person always is referencing the respondent's nasty attitude.

The protected person and respondent goes grocery shopping, but primarily she must go herself. The financial exploitation petition was initiated through the respondent spending the protected person's money at the store.

As stated previously, the protected person and respondent goes primarily to the dog track. Respondent does not do anything "special" for the protected person. The protected person's brother is the one purchasing umbrellas, necklets, designer tennis shoes, numerous watches, bracelets, and Fitbit monitoring equipment.

9. In the space below, provide any information requested by the Court but not otherwise requested in this form.

The financial exploitation petition was not disputed. The respondent could have provided financial statements at the hearing to invalidate the entire

investigation, but refused. Another case of wasting tax-payers' money. The respondent opted to file a guardian/conservatorship petition to ward off having to disclose the protected party's financial assets. To assist in not having to disclose the protected party's financial assets, the Court appoints the respondent as guardian and/conservator on November 12, 2021, but not disclosed until July 8, 2022, so the appointment could not be appealed.

10. In the space below., provide any further information, which, in your opinion, the Court may find useful in reviewing the case of the Protected Person:

Shanna would benefit from an in-depth neurological evaluation of cognitive abilities. She would also benefit from audiology and speech pathology evaluations. During Bible study conversations, she abruptly changes the subject to what she ate; and continually make statements . . . "is it okay if you talk to yourself? These statements are very concerning. Further, Shanna eats a very high-sodium diet microwave dinners, fast-foods etc.) and am repeatedly refused BMI readings and her weight. Given there is no structured exercise program in place, I would hope a cardiologist and nutritionist are part of the medical team and consulted.

I believe Shawn is doing the best she can, but she needs help. Her unwillingness to accept assistance from me and community agencies continues to be problematic; therefore, your assistance is greatly needed and appreciated (in advance). As we briefly discussed, I would like to see a case worker assigned, if only

temporarily, to ensure proper hygiene, dental, nutrition and social activities are in place. For example, Shanna had four (4) teeth removed, recently. She could have benefited from an overview of dental care (i.e., flossing, brushing, and mouth washing) to save her teeth. However, she is under the impression that her teeth will grow back. Shanna's daily activities continue to be watching television. Her only weekday outlet is going to Bible study on Thursdays. She is picked-up at 5:45pm. Further, she is not allowed to have church members at her house even if supervised. Again, I do not believe she should live alone, but Shawn's mood swings will not allow it. I believe Shawn would benefit from counseling.

11. Are you requesting compensation for your services as guardian?

Although the respondent is not requesting compensation for her services, the money supposedly in a savings account instead of a "special needs" trust allows free access to satisfy her personal needs without spending her money.

12. What are the reasonable and necessary expenses you have incurred as guardian

Whatever the respondent is spending, she is being reimbursed by the protected person's resources.

ACCOUNTING OF CONSERVATOR

PART 1: RECEIPTS

Description and Source of Receipt

The income information should be within the requested six-month reporting period, not a Social Security (2021) entry without verification. The total income should be itemized and validated via SSDI checks/wires, stimulus payment checks/wires, and savings account interest earned documentation.

Part 2: Disbursements or Distributions

Payee and Purpose of Disbursement or Distribution

The expenses should have detailed invoices and payment receipts. Given the petitioner has a third interest in the house, she should be obligated to a third of the expenses. If proper oversight was implemented, (e.g., cleaning gutters) the roof/ceiling leaking problem would have been avoided. As a result, the petitioner's financial accounts have been adversely affected. The respondent continues to misuse the petitioner's assets due to poor decision-making.

Part 3: Assets of the Estate

Description of Asset

The home value is not supported by an appraisal or a reputable realtor's assessment using comparable properties and recent sales.

The Guardian Ad Litem report (filed October 10, 2021) showed a savings account balance of \$138,491.95. Yet, the respondent and legal counsel listed a savings account balance of \$130,330.13 as of May 12, 2022; an

\$8,160.87 decrease within a mere 7-month period, even though the petitioner's monthly income covers her monthly expenses and appropriately applied structural expenditures.

The Respondent and Legal Counsel continues to mislead the Court by not providing official documents, detailed invoices, and payment receipts. Considering the original wrongful death settlement was \$147,372.30 and a current balance of \$130,330.13, the petitioner's account balance has been reduced \$17,042.17. This amount does not take into consideration the loss of revenue by leaving funds in a 0.01% savings account instead of investing. The respondent continues to exploit the petitioner's financial assets. Most importantly, these balances have never been verified. Further, it would not be surprising to discover the petitioner is paying the respondent's legal fees (Lyne Ranson (LLP) as well.

Part 4: Liabilities of the Estate

None

**Part 5: Other Information
(Questions 1-4)**

The Respondent and Legal Counsel does not provide any pertinent training the petitioner received during the reporting period. The petitioner would like to improve reading, writing, and speech skills with the respondent and legal counsel continuing to overlook the desire and need. The petitioner would like to attend Zumba (exercise) classes, but the respondent continues stating Zumba classes are closed. That may be true for

one proprietor, however other Zumba classes are offered or similar activities via other organizations with transportation provided by those organizations or local driving services (i.e., Lyft, Uber, City ride etc.).

The Respondent and Legal Counsel continues to make excuses, and is unwilling to research and implement alternatives (e.g., YWCA, hospital-affiliated walking groups, and fitness clubs). The respondent continues to refuse assistance. It is imperative a social worker/caregiver be assigned with case management oversight to aid the respondent given her unwillingness to accept and anticipate the growing needs of the petitioner. The respondent is too close to be objective and unwilling to accept suggestions in the best interests of both parties.

The petitioner would love to learn how to read and write to the level of her peers. She would love to be able to operate a DVD player so she can watch her Gospel DVDs without waiting for her sister in Washington D.C. to visit on holidays. She would love to have a grey female puppy that she wants to call Carolyn, the name and color of her sister's car in Washington. Further, she would love to learn to play her mom's unused piano in the house.

INVENTORY OF CONSERVATOR

Schedule A:

(Describe any real estate, or any interest in any real estate)

There is no appraisal to support the house value. Given the house has had a rodent problem for the past 30 years or more, I would assume it would have a negative impact on its market value. Further, there is a termite infestation problem that contributes to rodent entries into the house that has not been addressed. If Terminix cannot fulfill its contractual obligations, then the company should be replaced.

Schedule B:

(List items of tangible personal property)

The tangible assets (e.g., stove, refrigerator, and washer/dryer) there no manufacturers' names or model numbers listed. Based upon market value, the other items (e.g., television, bed, dressers, couch, and loveseat chair) are extremely old. Further, the methodology used to determine values is not included. The petitioner has consistently complained about her back when sleeping and apparently there is a problem with the springs in the mattress. The respondent has refused or allowed me) to purchase a new bed frame and mattress for the petitioner.

The petitioner is being taken advantage of emotionally and financially. She cannot speak up for herself due to retaliation and mood swings. My advocacy has been totally ignored. Again, there needs to be a social

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worker/care giver assigned with a supervising case manager. The arrangement should be in effect for at least the first year.

Schedule C:

(List bonds and securities)

A sound and conservative investment strategy would enhance value of wrongful death settlement.

Schedule D:

(Corporate Stock of every kind)

A sound and conservative investment strategy would enhance value of wrong death settlement.

Schedule E:

The bank accounts listed are not listed as of dates. The account balances are riot accompanied by official bank statements.

Schedule G:

(Liens and Encumbrances)

None

Schedule H:

(Inventory Summary)

Total inventory is not listed. Documentation to support inventory value not provided.

Schedule I:

A market value of television could be determined by television repairmen and/or EBay. The clothing could

be donated. Goodwill or Salvation Army could provide a value and the amount is tax deductible.

MOTION TO ENFORCE

The respondent has repeatedly misinformed the court and continually preyed on the Court for sympathy. The respondent claims she is the only one able and interested in providing care for the petitioner. Simply, that is not true!

The respondent refuses to utilize family, social, and community resources available. The respondent has an adult son, wife, and family residing in Huntington. She has a first cousin and his two adult children in Huntington. She has (on father's side) several relatives in Huntington. She has a grandson in High School and his immediate family in Charleston. She's a long-time member of Ebenezer Baptist Church in Charleston. She is a member of the Alpha Kappa Alpha sorority with a national network. A long-time employee of the Charleston Area Medical Center, there are numerous outreach resources upon which she is privileged. The respondent is 52-years old and has lived her entire life in Charleston with numerous friends and associates. She has a sister in Washington, D.C. who is only an hour away by airplane, and of course me, because we are here.

The respondent plays the victim. If Shanna lived in Los Angeles, CA and our mother died, she would stay me. Shawn was not abandoned. If she does not like living in Charleston WV, she could relocate. The problem is

that she has done nothing to expose Shanna to other environments and activities to make it easier for her to adapt to different surroundings.

The Respondent cancels Terminix appointments to give the false impression there is not a rodent problem even though there have been contracts in effect for years. On August 9, 2022, Mr. Bryan Hopkins, Area Manager of Terminix was (red coded) by the call center and came to the house and placed gummy traps upstairs and downstairs. He stated part of the gutter is laying on the side of the house and mice are travelling through the gutter to the upstairs bedrooms. Secondly, he stated there is a hole in a pipe that connects to the sewer system where he stated rats are entering into the house. He was supposed to go back on August 10, 2022, and send pictures, but the respondent cancelled the appointment. The respondent called the office to cancel the initial appointment (using her guardian/conservator power), but since Mr. Hopkins was red coded the appointment was not in the system, therefore she thought no appointment was made. I have not heard back from Mr. Hopkins, an indicator where the respondent is misusing her newfound authority and foolishly cancelling appointments in the best interest of both parties.

It is imperative that a court order is executed for a social worker/caregiver under supervision of a case manager. Further, there should be a court order that would mandate communication amongst the siblings for the benefit of the petitioner's care and wellbeing.

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If you believe the financial information provided, the petitioner has enough resources to obtain housing away from the Kanawha River and its rats and mice. The Court should not subject her to live in this type of environment.

Finally, the respondent must realize bills can be auto paid. Groceries and medications can be ordered online and delivered. There are websites where you can scan body and shoe sizes to have clothing and shoes purchased. I do not think the respondent realizes how much one person can accomplish using technology and effective time management skills, and more importantly, how much she is loved.

barnessk@outlook.com

From: Vagnetti, Paige
<Paige.Vagnetti@DINSMORE.COM>
Sent: Monday, June 20, 2022 10:25 AM
To: stuart barnes
Subject: RE: Distribution of Sums and Instructions
& Financial Protections

Follow up Flag: Follow up

Flag Status: Flagged

Stuart:

I have been thinking about this one, and I think our next step would be to file a motion to show cause as to why a guardian/conservator was not appointed nor was the trust formed. That way, they will be forced to respond.

Dinsmore

Paige K. Vagnetti

Attorney

Dinsmore & Shohl LLP • Legal Counsel

205 Don Knotts Blvd.

Suite 310

Morgantown, WV 26501

T: (304) 225-1451 • F: (304) 296-6116

E: paige.vagnetti@dinsmore.com • dinsmore.com
