

STATE OF NORTH CAROLINA
COUNTY OF TRANSYLVANIA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
BEFORE THE CLERK
2008 FEB 12 A 9:00 CASE NO. [REDACTED]

IN THE MATTER OF THE ESTATE
OF [REDACTED]
INCOMPETENT

)
BY [Signature] MOTION FOR TRANSFER OF
) PERSONAL PROPERTY BY
) GIFT AS AUTHORIZED BY
) N.C.G.S. §35A-1340, §35A-1341.1

Now come, [REDACTED], General Guardian for [REDACTED] ("Ward"), and [REDACTED] ("Movants"), moving unto the Honorable Clerk of Superior Court of Transylvania County, North Carolina as follows:

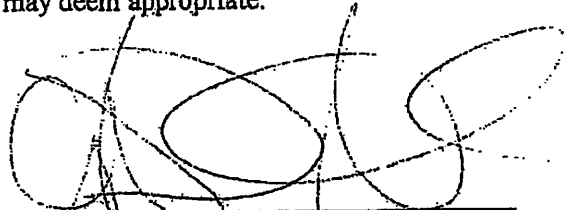
1. That Movant, [REDACTED], is currently serving as General Guardian for the Ward, having originally qualified on August 7, 2006.
2. That the Ward owned certain real property that was previously the subject of a Special Proceeding to sell. The Transylvania County Clerk of Superior Court confirmed said sale on February 19, 2007.
3. That following the sale of the real property, proceeds from the sale were disbursed by Movant, [REDACTED], on behalf of Ward to prepay funeral expenses, to pay past due medical expenses, to pay off credit card debt, to purchase clothing, all of said disbursements have been determined to be within the Guardian's powers set out in N.C.G.S. §35A-1251 (12).
4. Furthermore, proceeds from the sale were disbursed to build Ward a secure outdoor area where he may enjoy nature while residing at The Lake James Lodge, including a fence and garden area.
5. All disbursements from the sale of said real property, including disbursements made to build Ward a secure outdoor area at The Lake James Lodge were approved by Transylvania County Department of Social Services as expenditures on behalf of the Ward pursuant to Medicaid Manual, MA 2240 VII. A.
6. Movants are therefore moving the Court to approve disbursements to provide Ward a secure outdoor area at The Lake James Lodge as gifts to intestate heirs, [REDACTED] and [REDACTED], pursuant to N.C.G.S. §35A-1340 and §35A-1341.1 in the amount of sixteen thousand one hundred seventy-four dollars and sixty-eight cents (\$16,174.68).
7. Pursuant to §35A-1341.1, the Court may issue an order permitting gifting from the principal's estate after determining, to the Court's satisfaction, that all of the following have been met:

- a. The Ward will continue to have reasonable and adequate support, maintenance, comfort and welfare;
 - b. The gifts will not jeopardize the rights of existing creditors;
 - c. It is improbable that the incompetent will recover competency;
 - d. That the incompetent has not executed a will and each donee is a person who would share in the incompetent's estate;
 - e. That all heirs of the ward, at the time of the order, are given 10 days notice.
8. Ward is currently residing at The Lake James Lodge in a secured unit. Ward is a flight risk due to advanced dementia. The gifts requested herein were utilized by the donees to build a secure outdoor area that will provide the Ward with years of enjoyment at the facility and increase his current comfort and welfare, given his medical prognosis is for many continuing years of life with no real ability to return home.
9. Medicaid benefits are meeting all of Ward's current and future obligations for his maintenance, welfare and comfort at The Lake James Lodge. The expenditure for the secure outdoor area on behalf of Ward will result in no negative tax consequence.
10. Upon knowledge and belief of Movants, Ward does not have any existing creditors. The State of North Carolina has the right to recover against the estate of Ward, but does not have a claim against Ward or his estate during his lifetime. See N.C.G.S. §108A-70.5. All expenditures for the secure outdoor area have been approved by Transylvania County Department of Social Services and authorized under current North Carolina Medicaid Rules as for the benefit of Ward.
11. Ward does not have any reasonable expectation of recovery to competency as shown by Ward's current FL-2 form (Exhibit A).
12. The names, ages and addresses of the equal donees and Ward's heirs pursuant to N.C.G.S §29-16 are as follows:
- a. [REDACTED] son, age 18+ years, with an address of [REDACTED]
 - b. [REDACTED] son, General Guardian, age 18+ years, with an address of [REDACTED]
13. The heirs of the Estate join in this motion to approve disbursements to provide Ward a secure outdoor area at The Lake James Lodge as gifts to heirs, [REDACTED]

WHEREFORE, the General Guardian prays unto the Court:

1. That the Court enter an order approving the transfer of Ward's assets to heirs, ~~██~~ as gifts to build a secure outdoor area at The Lake James Lodge for the benefit of Ward, in the amount of sixteen thousand one hundred seventy-four dollars and sixty-eight cents (\$16,174.68); and
2. For such other relief as the Court may deem appropriate.

This 7 day of February, 2008.



Andrew D. Atherton
N.C. Bar No. 28236
Attorney for Movants
Patla, Straus, Robinson & Moore, P.A.
P.O. Box 7625
Asheville, NC 28802
828/255-7641

VERIFICATION

The undersigned, being first duly sworn, does hereby depose and say that he is the General Guardian for [REDACTED], Incompetent, and is a Movant of the above-entitled Motion, that he has read the foregoing Motion for Transfer of Personal Property by Gift in full, and that to his personal knowledge, information and belief, the matters and things stated therein are true, except as to such matters as are stated upon information and belief, and as to them, he is informed and believes that they are true.

This the 6th day of February, 2008.

[REDACTED]
General Guardian for [REDACTED]

Sworn to and subscribed before me this the 6th day of February, 2008.

Kaye Thornton
Kaye Thornton, Notary Public

My commission expires: 11-30-2008.