

NORTH CAROLINA
BUNCOMBE COUNTY

FILED IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

2007 JAN -8 P 4:42
BUNCOMBE COUNTY, N.C.

BEFORE THE CLERK
2007 SP ~~2007 SP 0010~~

IN THE MATTER OF:

~~BRANDIA T. STEPP~~, Petitioner
vs.
ANDREW D. ATHERTON, Guardian ad
Litem for ~~FRANKLIN O. PLEW~~

PETITION FOR TRANSFER OF
REAL AND PERSONAL
PROPERTY BY GIFT
AS AUTHORIZED BY
NCGS 32A-14.10

COMES NOW, ~~BRANDIA T. STEPP~~ Petitioner and Attorney-in-Fact for ~~FRANKLIN O. PLEW~~, and, shows unto the Honorable Clerk of Superior Court of Buncombe County, North Carolina as follows:

Background.

1. ~~BRANDIA T. STEPP~~, Petitioner, is an adult, competent citizen of Henderson County residing in Hendersonville, North Carolina.
2. ~~FRANKLIN O. PLEW~~, Respondent, is an adult citizen of Buncombe County, currently residing at ~~The Oaks at Sweeten Creek, 3864 Sweeten Creek Road, Asheville, North Carolina~~.
3. Petitioner is the daughter of Respondent. Petitioner resides at ~~2118 Gill~~.
4. There are two adult children of ~~FRANKLIN O. PLEW~~: ~~BRANDIA T. STEPP~~ and ~~FRANKLIN O. PLEW, JR.~~
5. Respondent suffered oxygen deprivation during surgery in [February 2004]. Due to oxygen deprivation, Respondent is not oriented as to person, place or time and requires assistance with all activities of daily living. Respondent requires permanent placement in a long-term care facility. He is currently a resident of The Oaks at Sweeten Creek in Asheville, North Carolina, where he has resided since [January 2004]. See Exhibit A attached hereto and incorporated herein by reference.
6. Due to Respondent's debilitated mental and physical state, Petitioner asserts that Respondent no longer possesses the requisite capacity for informed consent needed to execute a

new power of attorney or to make property transfers of any kind. Petitioner therefore asserts that Respondent requires representation by a guardian ad litem for purposes of this special proceeding.

7. Upon information and belief, on October 18, 1998, Respondent, while an adult with capacity and informed consent, properly executed a General Power of Attorney appointing [REDACTED] Petitioner, as attorney-in-fact for Respondent (the "General Power of Attorney"). See Exhibit B attached hereto and incorporated herein by reference.

8. The General Power of Attorney executed by Respondent survives his incapacity pursuant to N.C.G.S. § 32A-8 and § 32A-9.

9. The General Power of Attorney executed by Respondent does not specifically authorize gifts to charities, individuals other than the named attorney-in-fact, nor the named attorney-in-fact.

10. Respondent owns certain real estate with his wife as tenants-by-the entirety in Buncombe County, North Carolina, having a tax value of approximately \$121,900, and being more specifically described on Exhibit C attached hereto and incorporated herein by reference.

11. The attorney-in-fact, Petitioner, wishes to transfer such real property to the Respondent's wife, [REDACTED].

The Law.

12. At N.C.G.S. §32A-14.10, the legislature set out the procedure for the authorization of gifting under a power of attorney that fails to expressly authorize the same.

13. N.C.G.S. § 32A-14.10 provides that the attorney-in-fact may initiate a special proceeding before the Clerk for authority to make gifts of the principal's property to the extent not inconsistent with the express terms of the power of attorney if (a) the power of attorney does not authorize an attorney-in-fact to do, execute or perform any act that the principal might or could do or evidence the principal's intent to give the attorney-in-fact full power to handle the principal's affairs or deal with the principal's property, and (b) does not expressly authorize gifts of the principal's property.

14. Pursuant to § 32A-14.10, the Clerk may issue an order permitting gifting from the principal's estate after considering all relevant factors, including, but not limited to:

- (i) the size of the principal's estate;
- (ii) the principal's foreseeable obligations;
- (iii) the principal's foreseeable maintenance needs;
- (iv) the principal's personal history of making or joining in the making of lifetime gifts;
- (v) the principal's estate plan; and
- (vi) the tax effects of the gifts.

Application of the Law.

15. The Respondent's estate is comprised of certain benefits and his ownership interest in the real property described in Exhibit C. Transfer of ownership of the real property from the joint ownership of Respondent and his wife as tenants by the entirety to sole ownership by his wife, Juanita B. Plemmons, would result in no gift or income tax costs to Respondent. The Respondent's current and future obligations, comprised of health and medical care costs, are and will be met by Medicaid. The transfer will not negatively impact on the best interests of and quality of life of Respondent.

16. Upon knowledge and belief, the Respondent does not have any existing creditors. The State of North Carolina has the right to recover against the estate of the Respondent, if he is not survived by his spouse, but does not have a claim against the Respondent or his estate during his lifetime. See N.C.G.S. § 108A-70.5. The Medicaid regulations anticipate and permit the transfer of property between spouses without penalty or sanction. See MA-2240 VII.C.

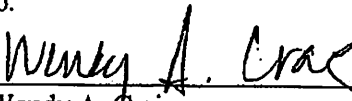
17. The Respondent does not have any reasonable expectation of recovery to competency. See Exhibit A attached hereto.

18. The Respondent and his wife have been married since June 1, 1942. They purchased their home, the home in which [REDACTED] continues to live, in 1966 as tenants by the entirety. Upon information and belief, on October 14, 1998, they each executed a Last Will and Testament in his or her own handwriting leaving, his or her respective estate to their two daughters. See Exhibit D attached hereto and incorporated herein by reference. These wills are mirror images and reflect the Respondent's desire to benefit his family with his estate, presumably acknowledging that the surviving spouse would be the sole owner of any jointly held property.

19. The children of the Respondent have consented to the transfer of the homesite property into the sole name of [REDACTED]

WHEREFORE, your Petitioner respectfully prays the Clerk to enter an order approving the transfer of Respondent's real property described in Exhibit B currently titled in the joint names of Respondent and Petitioner as tenants by the entirety to [REDACTED] in her sole name.

This the 14th day of December 2006.



Wendy A. Craig
Attorney for Petitioner

Wendy A. Craig, PA
207 East State Street
Black Mountain, North Carolina 28711
(828) 669-0799

NORTH CAROLINA

BUNCOMBE COUNTY

VERIFICATION OF PETITIONER

~~_____~~ first being duly sworn, deposes and says:

That she is the petitioner in the foregoing action and as such is entitled to make this verification; that she has read the foregoing Petition for Transfer of Real and Personal Property by Gift as Authorized by NCGS 32A-14.1 and knows the contents thereof, and that the same is true of her own knowledge, save and except those matters and things therein set forth upon information and belief, and as to those matters and things she verily believes them to be true.

~~_____~~
~~_____~~ 99

Sworn and subscribed to before me
this the 19th day of December 2006.

Eleanor Nickalove
Alexander Co., Notary Public

My Commission Expires: My Commission Expires May 24, 2009

