

1 IN THE CIRCUIT COURT OF THE TWELFTH
2 JUDICIAL CIRCUIT IN AND FOR SARASOTA COUNTY, FLORIDA
3 PROBATE DIVISION

4 IN RE: GUARDIANSHIP OF
5 File No.: 2006-GA-002251-NC
6 HELEN WOICHOWSKI

7 TRANSCRIPT OF HEARING

8 BEFORE: HONORABLE ROBERT W. McDONALD, JR.
9 CIRCUIT JUDGE

10
11 DATE TAKEN: Wednesday, October 18, 2006

12 TIME: 3:15 p.m. to 4:05 p.m.

13 PLACE: Sarasota Judicial Center
14 2002 Ringling Boulevard
15 Sarasota, Florida

16
17 Transcribed By:
18 Leihla Collins
19 Registered Professional Reporter

20
21
22
23
24
25
**COPY FOR
DISCOVERY**

1 APPEARANCES:

2 Counsel for the Petitioner:

3 NEIL W. SCOTT, ESQUIRE
4 1800 Second Street, Suite 818
5 Sarasota, Florida 34236

6 Counsel for the Ward:

7 RAYMOND E. MILLER, ESQUIRE
8 218 South Harbor Drive
9 Venice, Florida 34285

10 Counsel for Lutheran Services Florida, Inc.:

11 ERIKA DINE, ESQUIRE
12 46 N. Washington Boulevard, Suite 21
13 Sarasota, Florida 34236
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PAGE

STATEMENT BY MS. WOICHOWSKI 6

QUESTIONS OF MS. WOICHOWSKI BY
MR. MILLER 7

CALLED BY THE PETITIONER

WITNESS

ANNE RIDINGS

DIRECT EXAMINATION BY MR. SCOTT 10

DENISE KONSTENIUS

DIRECT EXAMINATION BY MR. SCOTT 24

* * * * *

CLOSING ARGUMENT BY MR. MILLER 32

STATEMENT BY MS. GUARASCIO 35

CERTIFICATE OF REPORTER 51

* * * * *

EXHIBITS

(None marked)

1 (Thereupon, the following proceedings were
2 transcribed via a recording by the clerk):

3 MR. SCOTT: Good afternoon, Your Honor. May
4 I begin?

5 THE COURT: Yeah. We're on the record.
6 Pronounce the last name again.

7 MR. SCOTT: Woichowski.

8 THE COURT: Woichowski?

9 MR. SCOTT: Yes, sir.

10 THE COURT: Okay.

11 MR. SCOTT: That's what I've been told.

12 THE COURT: All right.

13 MR. SCOTT: Good afternoon, Your Honor. I'm
14 Neil Scott, I'm here representing the Petitioner in
15 this matter Kensington Park -- excuse me,
16 Kensington Manor, the facility where
17 Mrs. Woichowski was at the time the petition was
18 filed, and also representing Lutheran Services, the
19 current emergency temporary guardian and the
20 proposed permanent guardian.

21 This is not a stipulated matter, and I'll
22 leave that to Mr. Miller to address at the
23 appropriate time. If you want evidence, I have two
24 witnesses available to testify regarding the
25 propriety of the Ward's choices.

1 THE COURT: All right. Good afternoon.

2 MR. MILLER: Your Honor, I'm here with
3 Mrs. Woichowski and she has with her her
4 granddaughter --

5 MS. GUARASCIO: Dana Guarascio.

6 MR. MILLER: -- Dana Guarascio. And we have
7 -- I will stipulate -- I think we've stipulated to
8 the entry of the reports. We have no evidence to
9 contradict the conclusions of those reports, but my
10 client insists that she does not need a
11 guardianship and she'd like to address the Court on
12 that matter.

13 THE COURT: Okay. Let's go ahead and do that
14 then and see what the concerns are.

15 Good afternoon, Ms. Woichowski. Can you hear
16 me okay? You can stay seated.

17 MS. GUARASCIO: You can sit right there,
18 Grandma.

19 THE COURT: You can stay there. We have a
20 microphone on the table there to help record.

21 I understand that you would like to tell me
22 some things.

23 MR. MILLER: Yes.

24 Would you tell the --

25 MS. GUARASCIO: She's very nervous.

1 MR. MILLER: Would you tell the Judge if you
2 think you need a guardianship or not?

3 MS. WOICHOWSKI: Well, I want Dana and me and
4 her son to live together. The thing we had --

5 THE COURT: Just relax. It's okay.

6 MS. GUARASCIO: She's never been to court
7 before.

8 THE COURT: Well, just take your time, and
9 whatever you'd like me to know, that's, you know,
10 what we're doing right now, so --

11 MS. WOICHOWSKI: Well, I moved there from two
12 hospitals because I had a stroke, but I didn't want
13 to stay there. One year we ran out of money and my
14 insurance and everything was cutoff. And she had
15 -- she had her son to take care of.

16 THE COURT: Who is "she"?

17 MS. WOICHOWSKI: Dana.

18 THE COURT: Okay.

19 MS. WOICHOWSKI: And --

20 THE COURT: And you want to live with Dana
21 and her son, is that what you're saying?

22 MS. WOICHOWSKI: Yes. We want to be a
23 family. We always were a family. It was just one
24 of those things, everybody was -- there was a bunch
25 of hospitals and everything else, including at the

1 (inaudible). Although I do get pension, but that
2 was going to pay for the house. We ran out of it
3 and we ran out of money and we had problems. But
4 it's nothing that we can't get along.

5 I went to this other -- I was in Kensington
6 Hospital and I couldn't use a phone to call her to
7 ask her how things are. They wouldn't let me use a
8 phone. I didn't talk to her for over eight weeks.

9 And then they mentioned Easy Living. Well, I
10 went there because I said if I can't talk here in
11 eight weeks, then I won't be able to talk there.
12 When am I going to talk to my family? We don't
13 hate each other. There was a problem that was
14 confusing to both of us.

15 THE COURT: All right. Well, I can only
16 imagine that this is difficult to be dealing with
17 this issue here and coming to court. I'm sure
18 that's an upsetting thing.

19 Mr. Miller, from your contact and knowledge,
20 do you want to help her tell me anything else or is
21 that --

22 MR. MILLER: Yes.

23 Do you feel that you need a guardian to take
24 care of your affairs for you?

25 MS. WOICHOWSKI: That what?

1 MR. MILLER: Do you feel -- do you feel that
2 you need a guardian to take care of your affairs
3 for you, to handle your affairs, or do you feel
4 that you can do it on your own?

5 MS. WOICHOWSKI: What?

6 MR. MILLER: Do you feel that -- you told me
7 before that you do not need a guardian; is that
8 true? Do you feel that you do not need a guardian?

9 MS. WOICHOWSKI: No. I wouldn't have -- what
10 money there is I would have my name on it. If the
11 time ever comes, which would be the end of it, I
12 don't care about that, you know. We just want to
13 be a family.

14 MR. MILLER: Okay. If the Court decides that
15 you cannot handle your own finances --

16 MS. WOICHOWSKI: Oh, goodness.

17 MR. MILLER: If the Judge decides that you
18 cannot handle your own finances, do you want your
19 granddaughter Dana to handle that for you?

20 MS. WOICHOWSKI: No, I would take care of it
21 like I did before I got sick. I always did.

22 MR. MILLER: Okay.

23 MS. WOICHOWSKI: And she signed it because
24 when she saw that sickness, well, she got scared,
25 and she had to do things that would have to go to

1 -- you know, fight for it.

2 THE COURT: Mr. Scott, do you wish to ask any
3 questions?

4 MR. SCOTT: No, Your Honor. As I said, I am
5 prepared. I have live witnesses if the Court
6 wishes to hear from them.

7 THE COURT: Hang on just a second.

8 MR. SCOTT: The reports are uniform as you
9 can see, Your Honor.

10 THE COURT: Yeah, I've read through them.
11 I'm looking back through to see if I have any
12 particular questions.

13 There's an allegation in one of the reports
14 by Ms. Oshanski (phonetic). It claims that it was
15 thought that Dana may be exploiting you in some
16 way. Can the attorneys address the status of that
17 claim? Is law enforcement involved?

18 MR. SCOTT: Yes, Your Honor. That's part of
19 the testimony I'm prepared to submit.

20 THE COURT: Okay. Well, let's go ahead then.

21 MR. SCOTT: Okay. Great.

22 THE COURT: All right.

23 MR. SCOTT: May I call my first witness?

24 THE COURT: Yes.

25 MR. SCOTT: I would call Anne Ridings to the

1 stand.

2 THE COURT: What we're going to do right now,
3 Ms. Woichowski, is I'm going to listen to some
4 testimony to help me make a decision. And I've
5 heard from you and whoever I need to hear from
6 right now, in addition to the reports that I got
7 from some experts. That will help me make a
8 decision. Okay?

9 MS. WOICHOWSKI: Okay.

10 THE COURT: Okay. Great.

11 ANNE RIDINGS, called as a witness by the
12 Petitioner, having been first duly sworn, testified as
13 follows:

14 DIRECT EXAMINATION

15 BY MR. SCOTT:

16 Q. Ms. Ridings, would you state your name and
17 spell your last name, please?

18 A. Anne Ridings, R-I-D-I-N-G-S.

19 Q. Who do you work for, Ms. Ridings?

20 A. Lutheran Services Florida.

21 Q. What do you do there?

22 A. I'm the director for guardianship.

23 Q. Okay. Do you know Helen Woichowski, the
24 subject of these proceedings?

25 A. Yes, I do.

1 Q. When did you first meet her?

2 A. March of 2006.

3 Q. And what was the reason for that first
4 meeting?

5 A. We received a referral from Kensington Manor.

6 Q. Can you explain what it means when you
7 receive a referral? What's that mean?

8 A. Kensington Manor sends us over information
9 requesting we assess to see if a guardianship would be
10 appropriate or if there is any assistance we might be
11 able to offer.

12 Q. And what did you do in response to that
13 referral?

14 A. Met with Mrs. Woichowski and some staff at
15 Kensington Manor.

16 Q. Okay. And what did you learn in the course
17 of meeting -- with those meetings?

18 A. Her home was in the process of being
19 foreclosed.

20 Q. Excuse me. Who's home?

21 A. Mrs. Woichowski's.

22 Q. Okay. She was the owner of the home?

23 A. Correct, with Dana.

24 Q. Okay. Sorry. Go ahead.

25 A. There was -- she didn't have access to her

1 income, her Social Security and pension at the time.
2 She had been at the facility at that time for about four
3 months. Three months. The facility hadn't been paid at
4 that time, the pharmacy bill hadn't been paid at that
5 time and the home was in the middle of foreclosure.

6 Q. Okay. And what did you do then regarding the
7 Department? Or excuse me. Was the Department of
8 Children and Families involved in any part?

9 A. Yes, the Department was involved.

10 Q. Okay. In what way?

11 A. They were involving a charge of exploitation
12 and recommended a guardianship.

13 Q. Okay. And who is the subject of the charge
14 of exploitation?

15 A. Mrs. Woichowski.

16 Q. Okay. And who is the alleged exploiter?

17 A. Dana.

18 Q. Okay. And did they discuss any evidence with
19 you or did you discuss the investigation with them?

20 A. They had limited information, but once we
21 became -- actually at that point we became a voluntary
22 guardian and so we proceeded to get the majority of the
23 information, bank account records and things like that.

24 Q. You say we became a voluntary guardian. Who
25 is we?

1 A. Lutheran Services.

2 Q. Okay. So Lutheran Services.

3 At what point did you become voluntary
4 guardian then?

5 A. March 15th, I believe.

6 Q. Of 2006?

7 A. Correct.

8 Q. Okay. And with the information from the
9 Department of Children and Families and the information
10 that you collected as the voluntary guardian, were you
11 able to draw any conclusions regarding the exploitation
12 or the state of Mrs. Woichowski's finances?

13 A. Yes.

14 Q. Okay. What was that conclusion?

15 A. We filed a police report.

16 Q. Okay. We meaning who, ma'am?

17 A. Lutheran Services.

18 Q. Okay. With the police department or with the
19 Sarasota Sheriff's Department?

20 A. Sheriff.

21 Q. Okay. And do you know if anything's happened
22 to that report, ma'am?

23 A. There was a probable cause affidavit filed
24 and it was sent over to the state attorney's office and
25 we haven't heard any more since. We -- Lutheran

1 Services filed that the end of June.

2 Q. Okay. So to your knowledge, this matter has
3 not been resolved one way or the other?

4 A. Correct.

5 Q. Thank you.

6 Did there come a point in the voluntary
7 guardianship where you felt that it was necessary to
8 change the circumstances?

9 A. Yes.

10 Q. Okay. When was that?

11 A. Throughout the beginning of the voluntary,
12 the more I met with Mrs. Woichowski the more I got
13 concerned that she was more confused than we originally
14 had thought, yet checks were still being written on her
15 account. There was a power of attorney. That had been
16 revoked back the beginning of March.

17 Q. Power of attorney. Was this a written power
18 of attorney?

19 A. Correct, to Dana.

20 Q. Okay. From Mrs. Woichowski to Dana?

21 A. Yes.

22 Q. And did you just say that Dana was still
23 writing checks after the voluntary guardianship had
24 begun?

25 A. Checks were still being written made payable

1 to Dana with cash, probably signed by Helen.

2 Q. Okay. And what did you do with those checks?

3 A. Contacted the bank. We actually contacted
4 Bank Fraud because we had notified them of the
5 guardianship, notified them of the revocation of power
6 of attorney.

7 Three checks to Publix were written and the
8 state attorney's office started to come after Helen for
9 bad checks. We notified the state attorney's office
10 that Helen did not in fact write those checks, she was
11 in a nursing home.

12 Q. Were you able to resolve those charges or
13 issues being placed against Mrs. Woichowski?

14 A. That's still being worked on as well at the
15 state attorney's office my understanding is.

16 Q. So there are pending charges as far as you
17 know against the subject of these proceedings?

18 A. They are coordinating with the charges that
19 we had filed.

20 Q. Okay.

21 A. Trying to put the two cases together and have
22 it in.

23 Q. Okay. What was the basis of the charges that
24 you filed? Do you believe that there was exploitation?

25 Was it one incident of exploitation or was it

1 more than one?

2 A. More than one.

3 Q. Okay. And can you describe any of those
4 factually?

5 A. Helen moved down here in 1999 and purchased a
6 home. She had a \$47,000 mortgage on that home when she
7 have moved down here in '99. Apparently Dana moved down
8 and moved in with her in April of 2000. Shortly
9 thereafter a power of attorney was obtained. Her name
10 was put onto the deed of the house.

11 Q. Excuse me. Whose name was put on it?

12 A. Dana's.

13 Q. Dana's. All right. Go ahead.

14 A. Helen at that point, because we went back
15 several years in her records to the inception of her
16 account, she stayed with Bank of America the whole time,
17 she had a checking account and a savings account, she
18 had Social Security and a pension and a \$47,000
19 mortgage, she had supplemental insurance as well.

20 When we went back, her savings account slowly
21 dwindled from 2000 to 2003 until her savings was gone.
22 The bank was able to trace that a lot of money was
23 transferred to another account that was in Dana's name
24 individually.

25 In April of 2000 the house was refinanced.

1 We tracked that information back to Azure Title who did
2 the closing. And it looks like that money did not
3 benefit Helen. It didn't get into her account. In
4 April 2004 the house was refinanced a second time.

5 Q. Excuse me. Let's talk about the first
6 refinancing. Was that a cash-out, what's referred to as
7 a cash-out refinancing?

8 A. Yes, it was.

9 Q. Do you have any idea how much cash was taken
10 out?

11 A. She had originally a \$47,000 mortgage and
12 that refinance was for a total of 100,000.

13 Q. Okay. Thank you. Please continue.

14 A. April 2004, a year later, a second
15 refinancing was done for cash again, \$124,000. In
16 December of 2004, just seven months later, another
17 refinance was done for 147,000. That was in December
18 2004.

19 Q. Was there any activity involving a motor
20 vehicle?

21 A. A motor vehicle was purchased. We never were
22 able to locate the motor vehicle, but we did ascertain
23 through the assistance of the sheriff that it was
24 actually titled in Dana's name but the loan for it was
25 in Helen's name.

1 I spoke with GMAC and let them know because
2 they were coming after Helen for the payment and that
3 balance was 16,000. When I first spoke to them in June,
4 they hadn't been able to find the car. And then they
5 were looking to repossess it, but my understanding is
6 they found it in September.

7 Q. And has that matter been resolved with GMAC?

8 A. It was sold and a balance is due of almost
9 8,000. They're still sending the notices to Helen and
10 we're working with them to, again, put them in touch
11 with the state attorney's office and the sheriff as part
12 of the exploitation.

13 Q. So to the best of your knowledge, is
14 Mrs. Woichowski still liable for that remaining balance?

15 A. They're sending the notices to her.

16 Q. Okay. Can you tell us about the creation of
17 the voluntary guardianship? Did you have conversations
18 with Mrs. Woichowski regarding that?

19 A. Yes.

20 Q. And what were those?

21 A. She would -- due to her stroke it's difficult
22 for her to get words out sometimes, but whenever you
23 talk to her about the financial situation and that the
24 house is being sold, she would get extremely emotional
25 and upset.

She does deeply love Dana and Dana's son, yet she's not capable of protecting herself and her finances from the situation. So she actually did want some assistance at that point.

Q. Okay. From whom did she want -- she wanted assistance from Lutheran Services?

A. She was agreeable to Lutheran Services at that time.

Q. When you also took over the finances in the voluntary guardianship, did you learn of any nonpayment of other bills?

A. Well, when she was in the nursing home, her Social Security check was still going into the Bank of America account as well as her pension.

Q. Was there any activity on that account?

A. The accounts were being sent checks written to cash for groceries. The mortgage was not being paid, the car payment was not being paid. Her supplemental insurance was cancelled for nonpayment.

Helen had four outfits and two pair of socks with her in the facility. There was no other clothing. She was in need of clothing, in need of eyeglasses. She didn't have any real personal items with her at the facility. The account was being depleted for groceries, spending money, cash, cleaning, checks to Dana.

1 Q. To your knowledge, was any of that money from
2 that account being used to benefit Mrs. Woichowski
3 herself?

4 A. We haven't found any evidence of that.

5 Q. Okay. Switching gears. Did Lutheran
6 Services ever attempt to restrict Dana's access to
7 Mrs. Woichowski?

8 A. Yes, we did.

9 Q. Okay. When and why?

10 A. When we first got involved, one of the issues
11 with her, outside of the fact that the house was being
12 foreclosed upon, is that Helen did actually progress
13 with her therapy and was probably ready to move on,
14 according to the doctor, to a less restrictive
15 environment than a nursing home.

16 And so' we -- it took us a while to get the
17 finances redirected to Lutheran Services and then we
18 started the process of transferring her to an assisted
19 living facility. At that point was the closing on the
20 house because we were able to close on the house right
21 before it foreclosed.

22 Q. And what were the results of that closing?

23 A. The house sold and the money was put into
24 escrow pending further order of the Court or agreement
25 of Dana and Lutheran Services as to the distribution of

1 those funds.

2 Q. Is it still currently in escrow?

3 A. Yes, it is.

4 Q. Thank you. I'm sorry. Please continue
5 with --

6 A. I think it was the end of June, June 29th or
7 June 30th, Dana -- we only had a couple calls that Dana
8 would be at the facility visiting with Helen. Numerous
9 calls by the facility to try and get payment before we
10 got involved. And Dana wasn't there.

11 But Dana was there, Helen was very upset. We
12 were in the process of getting ready to move her. She
13 was going to go to Heron East, and Dana -- we got a
14 phone call from the facility that Dana was there and was
15 intimidating and Helen was extremely upset and agitated.
16 She wanted to go home. She was going to live with Dana.

17 About a week after that I received a call
18 from Dana in the office. A few choice words as well as
19 demanding of all the money in escrow, that she was
20 taking her grandmother. And Dana had no place to live
21 and her and her grandmother were going to live together
22 and to give her all the escrow money.

23 July 11th --

24 Q. How did you respond to that?

25 A. That I couldn't turn over the escrow money

1 and I wasn't going to turn over the escrow money, that
2 we needed to come to an agreement and she should discuss
3 it with her attorney.

4 Q. Okay. I'm sorry. Please continue.

5 A. July 11th, I think -- I got another call from
6 the facility. Dana was there and actually had Helen in
7 her car and was removing her from the facility. So we
8 -- at that point we had actually recently become -- or
9 we were just in the process of becoming guardian,
10 emergency temporary guardian. But she was removing her
11 from the facility so we did get that stopped.

12 We then called in -- Kensington had their
13 staff and the doctor for Helen looking at the situation,
14 but we called in an independent counselor to come and
15 talk to Helen to get their recommendations. And that
16 was Brenda Schimmel. And her recommendation --
17 immediately we received a fax from her after her visit
18 that she recommended no phone contact and supervised
19 visits only.

20 Q. Do you know the reason for that?

21 A. The situation was inappropriate. The
22 comments about living together, it was upsetting Helen.
23 It wasn't beneficial for her.

24 Q. Thank you. Please continue.

25 A. There was concern for her emotional

1 well-being.

2 Q. So you did -- Lutheran Services did
3 restrict --

4 A. Supervised visits. *+ phone calls*

5 We sent a letter to -- a letter was sent to
6 her attorney, to Dana's attorney, indicating that if she
7 wanted to visit, she needed to contact us to make
8 arrangements so it could be supervised.

9 Q. Okay. To your knowledge, has Dana ever
10 attempted to access those restricted visits?

11 A. Once.

12 Q. Okay. When was that?

13 A. September 11th she contacted us, and she
14 visited the 17th, Sunday afternoon.

15 Q. Have you ever, you or anyone else at Lutheran
16 Services, ever tried to discourage her from having
17 contact under these restrictions with her grandmother?

18 A. No, she just needs to call to set up a time.

19 Q. Okay. Do you know what level of care -- as
20 the emergency temporary guardian, do you know what level
21 of healthcare Mrs. Woichowski currently requires?

22 A. We actually have applied for and she needs
23 the level of care for the diversion program. The
24 diversion program is a Medicaid assistance program for
25 assisted living facilities and that's when somebody is

1 at risk of requiring nursing home care.

2 Q. Okay. As you may know, Mrs. Woichowski wants
3 to leave Heron East and live with Dana. If that
4 happened, do you believe that Dana would be able to
5 provide the necessary level of care that she requires?

6 A. No, I don't.

7 MR. SCOTT: I have no other questions, Your
8 Honor.

9 THE COURT: Mr. Miller, any questions?

10 MR. MILLER: No, Your Honor.

11 THE COURT: Okay. Thank you.

12 MS. RIDINGS: Thank you.

13 THE COURT: Next witness.

14 MR. SCOTT: I have another witness. I call

15 * Denise Konstenius, please.

16 DENISE KONSTENIUS, called as a witness by the
17 Petitioner, having been first duly sworn, testified as
18 follows:

19 THE COURT: Good afternoon.

20 DIRECT EXAMINATION

21 BY MR. SCOTT:

22 Q. Denise, would you state your name and spell
23 your last name for the record, please?

24 A. My name is Denise Konstenius and my last name
25 is spelled K-O-N-S-T-E-N-I-U-S.

1 Q. Okay. Who do you work for?

2 A. I work for Kensington Manor Nursing Home.

3 Q. Okay. And what do you do there?

4 A. I'm a social worker at the facility.

5 Q. Okay. And in the course of your working for
6 Kensington Manor, do you know Helen Woichowski, the
7 subject in these proceedings?

8 A. Yes, I do.

9 Q. Okay. When did you first meet her?

10 A. I met Helen when she was admitted to our
11 facility in early January of 2006.

12 Q. And what was your impression of her then?

13 A. My impression was that she was obviously
14 recovering from a stroke that she had, that's why she
15 was admitted to the facility. And what happened in the
16 course of my contacts with her, she did have some
17 problems expressing herself, but I got to know her and I
18 learned from Helen that she was having a great deal of
19 distress over the fact that her granddaughter had not
20 come in to see her.

21 Q. During what period of time? You say she was
22 admitted in January of --

23 A. Well, at the end of January her granddaughter
24 had not come in.

25 Q. Okay.

1 A. And I began to be concerned because of the
2 level of care this lady needed and the help that she
3 needed and there was no family coming to the forefront
4 to help us make some plans.

5 Q. Okay. And did you meet with Mrs. Woichowski
6 again?

7 A. Yes.

8 Q. How often?

9 A. I met with Helen quite frequently actually.

10 Q. Several times a week?

11 A. Yes, probably several times a week.

12 Q. Okay. In the facility?

13 A. Uh-huh.

14 Q. And what were your interactions with her
15 like? Did she initiate them? Did you initiate them?

16 A. It was -- initially I would go in to see how
17 she was doing. Like Anne had said, she needed personal
18 things, clothing and things like nail clippers and a
19 hair brush and little things like that. And she was
20 very concerned about her financial situation.

21 Q. Okay. Did she speak to you about that more
22 than once?

23 A. Yes, she did.

24 Q. Okay. And what did she say -- or how did she
25 express her concern?

1 A. She was concerned that her house was being
2 sold. I think Dana came in sometime in early February
3 and wanted Helen to sign papers to sell the house. And
4 Helen was very, very upset about this.

5 Q. Okay. Do you know whether Mrs. Woichowski
6 actually signed the papers that Dana brought in?

7 A. No, she did not.

8 Q. Okay. Did you take any action in response to
9 that visit by Dana?

10 A. I talked to Helen about what she was going to
11 do, that she needed someone to help her manage her
12 affairs because at that time she could not. And I
13 explained to her about the guardianship program that
14 could help her coordinate her finances and help plan and
15 make some goals for her, which I was interested in the
16 assisted living, and she was very, very willing to do
17 that.

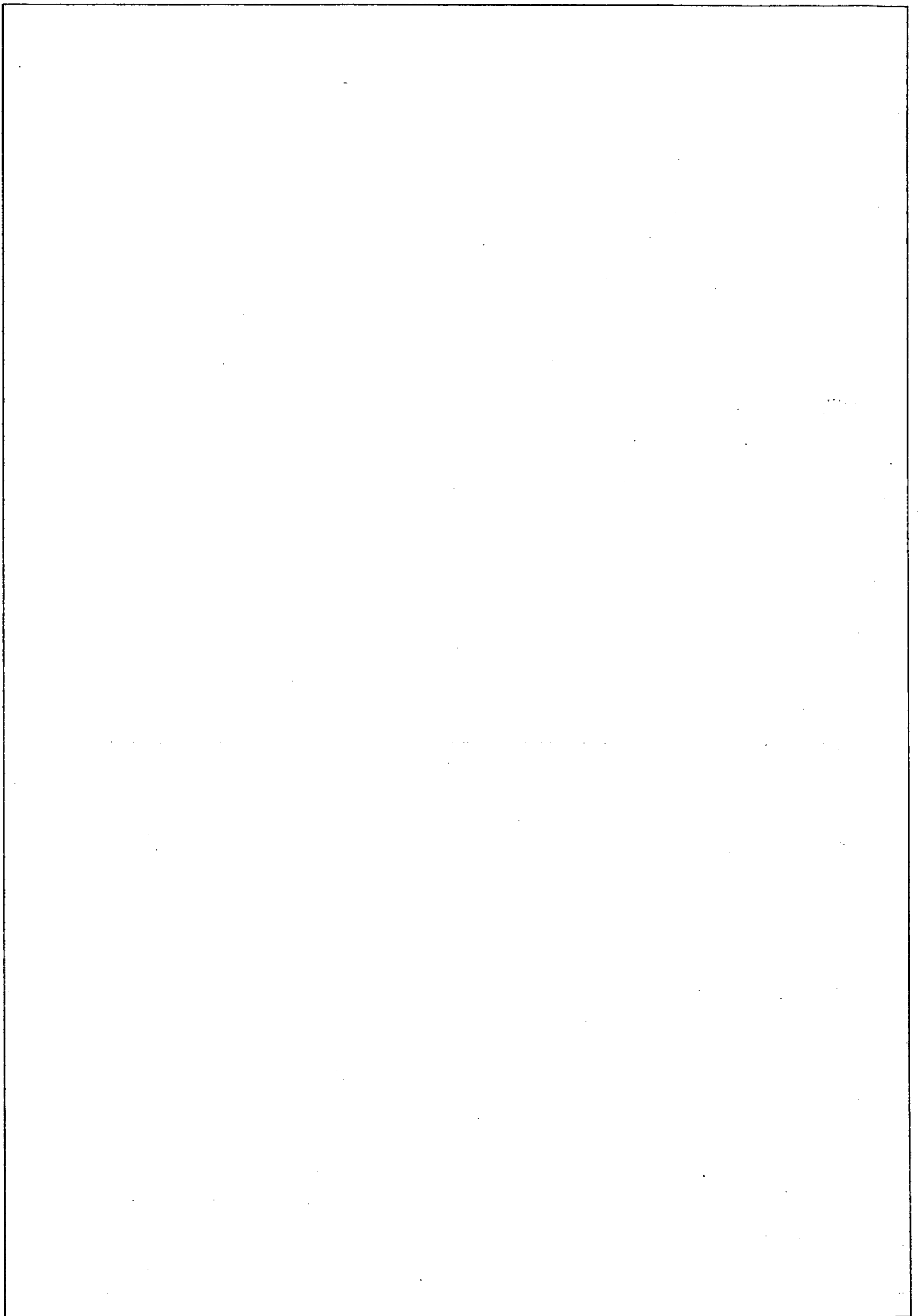
18 Q. And were you involved in the process of
19 getting Lutheran Services?

20 A. Yes, I was.

21 Q. Great.

22 Before today, Mrs. Konstenius, when did you
23 last see Mrs. Woichowski?

24 A. I actually saw Mrs. Woichowski at the Heron
25 house. I went to visit her, I think it was September,



1 grandmother and talking about going home to live with
2 her. And Helen wanted to do that. But, you know, I
3 said, Helen, who is going to manage your finances? And
4 Helen said that she was going to do that. And Helen
5 based on, you know, her interaction with the speech
6 therapist at Kensington Manor really cannot process that
7 kind of task. Handling her finances would be just out
8 of the question. But it was a very painful experience
9 for Helen. She expressed that. And I know it was. I
10 know she cares very much about her granddaughter.

11 Q. Mrs. Konstenius, when Mrs. Woichowski was at
12 Kensington Manor, did you have any contact with Dana?

13 A. I had fleeting contact with Dana. Dana came
14 in once in February. I think that was when she asked
15 her grandmother to sign the forms. And Helen just
16 totally refused to do that. And Dana said that she had
17 talked to her attorney and that Helen would be staying
18 at Kensington Manor. That's all she could afford.

19 And then -- I'm trying to think of something
20 else. Then she came in another time, maybe a month or
21 so later, asking for her power of attorney papers. And
22 then she just left abruptly.

23 Q. Okay.

24 A. Then she came in maybe, I think, in early
25 August to let us know that she wanted to take Helen

1 home.

2 Q. You heard Ms. Ridings testify earlier about
3 an alleged attempt by Dana to remove her grandmother
4 from the facility. Do you have knowledge of that?

5 A. I have knowledge -- the information I have
6 was reported to me.

7 Q. Okay. So you don't have any personal
8 knowledge of that?

9 A. I was on the premises, but it happened so
10 fast. I was told that Dana came. And her grandmother
11 was at the door of the facility. And the nurses told me
12 that Dana had said she was going to take her to see a
13 detective, but --

14 MR. MILLER: I'm sorry. Take her what?

15 THE WITNESS: Take her to see a detective.

16 But Dana left when she was told that she didn't
17 have the authority to take her out of the facility.

18 BY MR. SCOTT:

19 Q. Switching gears. Do you have any knowledge
20 regarding whether or not Mrs. Woichowski's bills were
21 ever paid at Kensington Manor, and if so, by whom?

22 A. I don't know where that is right now. I
23 think possibly Lutheran Ministries is going to be taking
24 care of that. They were -- Lutheran Ministries was very
25 instrumental in applying for Medicaid for

1 Ms. Woichowski, reinstating her secondary insurance and
2 putting together that diversion program so that she
3 could go through assisted living.

4 Q. To your knowledge, did Dana ever make payment
5 either using Mrs. Woichowski's money or anyone else's --

6 A. No.

7 Q. -- to Kensington Manor?

8 A. No, never.

9 Q. Do you know what level of care
10 Mrs. Woichowski required when she left Kensington Manor?

11 A. This was discussed with her -- Helen's
12 therapist and with her physician. We thought that the
13 assisted living would be a very nice setting for her in
14 terms of the help that she needed, because she does need
15 assistance with medications. And that really was the
16 next step for Helen.

17 Q. Okay. Do you believe that the level of care
18 that Mrs. Woichowski requires has changed since she left
19 Kensington Manor?

20 A. No, I do not.

21 Q. Okay. As you may know, as you heard today,
22 Mrs. Woichowski wants to leave Heron East and live with
23 Dana. If that happened, do you believe that Dana would
24 be able to provide adequate care?

25 A. No.

1 Q. Okay. Is there anything else that you
2 believe that Judge McDonald should know before making
3 his decision in this matter today?

4 A. I can't think of anything.

5 MR. SCOTT: Okay. Thank you. I have no
6 other --

7 MR. MILLER: No questions.

8 THE COURT: Thank you, ma'am.

9 So that completes your testimony?

10 MR. SCOTT: Pardon? Yes, that completes our
11 proposed testimony. Yes, Your Honor. And I have
12 proposed orders.

13 THE COURT: All right.

14 MR. MILLER: May I make a closing?

15 THE COURT: Yes, you can.

16 MR. SCOTT: Oh, I'm sorry. Of course.

17 MR. MILLER: My client, I met with her on
18 three occasions. She has consistently told me that
19 she wants Dana to be allowed to visit her whenever
20 Dana wants to without unrestricted visits, if
21 possible. And that's not been allowed in the past.

22 And also if a guardian is appointed, she's
23 indicated she wants Dana to be the guardian. I'm
24 not sure my client has the ability to really
25 understand really what a guardian does, but that's

1 what she's expressed to me.

2 She also is adamant that she says that no
3 guardian is needed. She's been consistent with
4 that. She thinks she can handle her own affairs
5 and wants to handle her own finances and make her
6 own decisions. She prefers apparently to be
7 involved with her life instead of strangers and has
8 confidence that Dana has her best interest at
9 heart. She's expressed that to me. That's all I
10 have.

11 Dana -- I'm not going to call Dana as a
12 witness or anything. Dana's expressed to me that
13 she feels that she may want to tell the Court
14 something. I don't know if that's proper or not.

15 THE COURT: Well, if you wish, but let me
16 explain a few things to you that I do in every case
17 where a potential witness is being either
18 investigated for a criminal allegation or could be
19 investigated. And you may already understand some
20 of the things I'm going to tell you, but I feel
21 obligated to say these things.

22 Anything you say could be used against you in
23 a prosecution. You'll be under oath. There will
24 be things recorded. And I've been a judge for
25 quite a while, an attorney for a long time and I

1 know that it is not unusual for someone to invoke
2 their right to remain silent and wish to make a
3 statement in a proceeding whether it's a criminal
4 case or for a civil case. And they think that the
5 things they say are going to be helpful and not
6 harmful. But because they did not fully appreciate
7 some of the nuances of the law, it turns out that
8 some of the things they say hurt them and assists
9 in obtaining a conviction.

10 So do you understand what I just said?

11 MS. GUARASCIO: I think I understand what you
12 said, but I'm really very confused and --

13 THE COURT: Well, the bottom line is you're
14 being investigated for allegations of committing a
15 crime. If you testify, anything you say could be
16 used against you. You're not obligated to testify,
17 nobody here is asking you to testify, but if you
18 wish to with those warnings so to speak given so
19 that you really know the situation you're in, if
20 you wish to make a sworn statement to me, I'll be
21 glad to listen to you.

22 MS. GUARASCIO: I just want to say that my
23 grandmother's been taking care of me my whole life.

24 THE COURT: Okay. So you do wish to give a
25 statement?

1 MS. GUARASCIO: I just want to say something.

2 THE COURT: All right. Well, you want to
3 raise your right hand?

4 DANA GUARASCIO, having been first duly sworn,
5 testified as follows:

6 THE COURT: Okay. You do understand all the
7 warnings that I gave you?

8 MR. GUARASCIO: Yeah.

9 THE COURT: Okay. Go ahead.

10 MS. GUARASCIO: Grandma's been taking care of
11 me my whole life since my mother abandoned me. And
12 my son is Robert Hawk III, and he's had problems
13 with ADD, ODD, anchoprecess (phonetic) and defiance
14 disorders, since the age of two. He has lit seven
15 fires. He has been in this Court system since --
16 we put him in it. He's been in the Court system.
17 My grandmother was taking care of him.

18 THE COURT: Have you been in front of me in
19 the juvenile division?

20 MS. GUARASCIO: Yes, sir.

21 THE COURT: Yeah, you look familiar.

22 MS. GUARASCIO: Yes, sir.

23 THE COURT: Okay.

24 MS. GUARASCIO: My son is a very challenging
25 individual. I was a single parent. And no one's

1 taken care of me financially. The only person
2 that's put a roof over my head was my grandmother
3 for me and my son. We always had money problems.
4 I only worked part time at the Old Packing House
5 Cafe so I could stay home and take care of her. I
6 wasn't making enough money.

7 I got married in 2002 to a man who extorted
8 both me and her, beat me and beat my son, yelled at
9 her until I finally got the courage to kick him out
10 of my house.

11 THE COURT: Let me focus you on what we're
12 here on today.

13 MS. GUARASCIO: Right, the hearing. But
14 Grandma's always taken care of me.

15 THE COURT: Let me focus you on some things.
16 This proceeding is simply for me to make decisions
17 about what is necessary or needed for your
18 grandmother. Okay? So I don't want to get away
19 from that. That's the issue we're here on.

20 I've heard some testimony that obviously
21 raises great concerns about a lot of money, a lot
22 of refinancing and monies going away. That's the
23 subject obviously, I would assume, of what you're
24 being investigated for.

25 MS. GUARASCIO: Right.

1 THE COURT: Do you wish to explain any of
2 that to me? You don't have to.

3 MS. GUARASCIO: I think so.

4 THE COURT: All right.

5 MS. GUARASCIO: I mean, I was advised not to,
6 but I think I need to let you know.

7 THE COURT: Do you have an attorney?

8 MS. GUARASCIO: No, I can't find one.

9 THE COURT: All right. Well, if and when you
10 get charged, if that happens, then you may qualify
11 for the public defender's representation. But is
12 there an attorney William Fuller that's been --

13 MS. GUARASCIO: He's my real estate attorney.

14 THE COURT: Okay. I don't know if he does
15 any criminal work or not. But did you discuss with
16 him the possibility of you testifying about this
17 allegation?

18 MS. GUARASCIO: Well, both him -- Mr. Fuller
19 and Mr. Miller here both tell me I should not say
20 anything.

21 THE COURT: Okay. Well, you know, Mr. Miller
22 obviously isn't your attorney. He may very well be
23 telling you things that any attorney would say.
24 But the reason I'm trying to be clear on that is if
25 an attorney hasn't spoken to you about criminal

1 investigations, then the only apparent advice or
2 comments you have is from me. And simply because
3 I'm asking questions, I don't want you feeling
4 compelled to answer.

5 But the relevance of your testimony, if
6 you're going to testify, the main relevance to me
7 is the alleged financial exploitation. And if you
8 start talking to me about that, you could say
9 things that hurt you and get you charged with
10 crimes. But for me to put any relevance on your
11 testimony in this hearing, that's what I need to
12 know about. So if you aren't going to talk about
13 those things, then that's not going to help me make
14 a decision. Have I confused you or do you
15 understand what I'm saying?

16 MS. GUARASCIO: Yeah, I'm a little confused.

17 THE COURT: Well, I can't explain it any
18 better.

19 MS. GUARASCIO: I know.

20 THE COURT: I will ask you questions that you
21 don't have to answer.

22 Did you play a role in her home being
23 refinanced on one or more occasions?

24 MS. GUARASCIO: We all did it.

25 THE COURT: You did. That's a yes.

It sounds like up to \$100,000 was obtained over a relatively short period of time. It went from a \$47,000 mortgage to a \$147,000 mortgage, if I understood the testimony correctly. What happened with that money?

MS. GUARASCIO: We put a fence on the house. We fixed the poly pebble. We had to pay for a pool person. We did a lot of shopping. We always bought groceries. Our house was always full of food. We had two cars. She paid for my wedding.

THE COURT: Okay. That doesn't sound like \$100,000.

MS. GUARASCIO: Everything my son wanted she always just went out and said, here, go buy it for him.

THE COURT: I'm not sure that's in her best interest. You know, loving families is one thing, but rising to another level of will it jeopardize her well-being for the rest of her life financially is another.

MS. GUARASCIO: When Grandma broke her ankle in Connecticut, she had six screws in her leg, I took care of her. When Grandma had cancer, I took care of her. When Grandma had her heart attack, I was there, I took care of her. I secured the

house. I took care of my grandmother. I took care of all of our needs and she took care of mine.

THE COURT: All right. Did you wish to make any other comments?

MR. SCOTT: Just, Your Honor, we believe based on the evidence, including Ms. Guarascio's statement, there's competent substantial evidence in the record to support the finding that Mrs. Woichowski, A, needs a plenary guardian, B, that Dana is not an appropriate choice, C, that LSF should not be prohibited from restricting access to Mrs. Woichowski from Dana or her son. We believe those restrictions are in Mrs. Woichowski's best interest. We believe the restrictions to date, which they would want to continue, are not unduly burdensome.

THE COURT: Okay. Well, Ms. Woichowski, let me just speak to you for a little bit here because this is all about, you know, you and your situation. And a judge's job -- can you hear me okay?

Can you hear me now?

MS. WOICHOWSKI: Yes.

THE COURT: I just want to speak to you for a moment here because the case is about you. You

1 know, it's your life we're talking about. And a
2 judge's job is to try to be neutral, try to be in
3 the middle and hopefully make good decisions.

4 And I've handled a lot of these kinds of
5 cases and judges have to rely upon to a large
6 extent expert opinions as to matters. And I've got
7 some reports from some experts that the Court uses
8 a lot and I'm satisfied that you can use some help,
9 that you need some help.

10 Please keep in mind that we're all trying to
11 make decisions that are good for you. We're not
12 trying to oppose our will on your life for no good
13 reason. And this has got to be particularly
14 difficult that we're talking about a family
15 situation here and people being investigated for
16 criminal activity involving you. So that can't be
17 in and of itself easy much less coming in here for
18 a guardianship proceeding. So the whole thing has
19 got to be, you know, very, very hard.

20 I have had an awful lot of cases that
21 involves Lutheran Services. I have not had a case
22 that I have not -- that I have had cause to
23 question their judgment or to have them removed.
24 They do an awful lot of cases for what's called pro
25 bono. You know, they don't charge fees. So

1 they're not really just out to make money off of
2 people. That's not their goal.

3 So I am satisfied that they will be of
4 assistance, and I am going to appoint them. The
5 emergency will come into a further order of the
6 Court and will remain in effect.

7 It is their job to help make decisions as to
8 what is best for you. By law they have to listen
9 to your wishes as long as your wishes are believed
10 to be reasonable. So they will confer with you
11 about a variety of things. And if the things that
12 you would like they think are in your best interest
13 and they're reasonable, then they're expected to do
14 those things. There may be times that they
15 disagree with that and that's where their
16 professional judgment will come in.

17 So I am going to go ahead and grant the
18 petitions. Obviously, as in any case, Lutheran
19 Services can make an informed judgment as to what
20 kind of contact is in her best interest.

21 Particularly until this criminal investigation is
22 over, I think it should remain supervised and
23 possibly beyond that, you know, if you wish.

24 I am -- after all that I've heard here today,
25 I am concerned about this petition for approval of

1 settlement. What is the status of that?

2 MR. SCOTT: Thank you, Your Honor.

3 If we may, we had noticed this for hearing
4 today. Ms. Dine, who represents Lutheran Services,
5 she's been handling the settlement and the
6 litigation, I'm just involved in the guardianship
7 portion. She may be better able to respond
8 concerning the settlement itself.

9 We are at this time based upon approval of
10 the guardianship asking that Lutheran Services be
11 authorized to enter into the settlement agreement.
12 I realize the Court may have questions for Ms. Dine
13 or others.

14 THE COURT: Yeah. And I do want to ask some
15 things and be told some things. But my strong
16 inclination at this moment is to not approve that.
17 The thinking being without knowing more, my mind
18 isn't made up. My strong preliminary impressions
19 are that until it's determined either through a
20 criminal investigation or some more thorough civil
21 related investigation as to whether or not there's
22 a need for restitution for monies that might have
23 been exploited, I am not at all inclined at handing
24 over more and then trying to get it back. So
25 that's the thinking that goes into this. So I'm

1 thinking it's premature..

2 But what does this involve? Why -- basic
3 reason to whatever extent you can tell me at
4 mediation. I don't want to put you in the position
5 of you telling me things you shouldn't be telling
6 me. Can you tell me the basic legal premise that
7 would justify this?

8 MS. DINE: That would justify the --

9 THE COURT: The settlement.

10 MS. DINE: The settlement agreement.

11 Your Honor, we had been in negotiations since
12 the initiation of the lawsuit. As you know, we did
13 counter-file for an --

14 THE COURT: Now, remind me of what the
15 lawsuit's about.

16 MS. DINE: Okay. Mr. Fuller actually sued
17 Lutheran Services along with the escrow agent
18 holding the monies in escrow.

19 THE COURT: Now, which monies?

20 MS. DINE: Your Honor, when -- there was a
21 sale of the home, which was in the process of
22 foreclosure. Dana is actually on the title of the
23 home and they own it as tenants by the entirety.
24 So if one -- if one would pass, one would obviously
25 receive the home.

1 THE COURT: Okay. All right. So she is
2 wanting --

3 MS. DINE: Her 50 percent share of the home.
4 However, at closing we were told that Dana would
5 not sign the closing papers unless two separate
6 checks were issued. We did not want that to occur.

7 At the time I was representing Lutheran
8 Services, as was Mr. Boyer. We did not believe
9 that that was in the best interest of the Ward. We
10 felt that the monies belonged to the Ward,
11 therefore, we stated that the only way that we
12 would agree to sign is if that money was put into
13 escrow until we could reach some sort of settlement
14 agreement as to what --

15 THE COURT: So the sale wouldn't fall
16 through, the monies are there and nothing's going
17 to happen?

18 MS. DINE: Exactly. So that's what brought
19 the basis for the suit.

20 And then Mr. Fuller sued Lutheran Services
21 that Ms. Woichowski had a right to those proceeds,
22 she had a right --

23 THE COURT: That Dana does?

24 MS. DINE: That's correct. She had a 50
25 percent right to those proceeds.

1 I counter-petitioned, Your Honor, for two
2 charges. One was I stated that we were doing an
3 accounting because Dana wasn't in a fiduciary
4 position and never provided an accounting. The
5 second count that we filed, Your Honor, was breach
6 of fiduciary duty as well. And we were going to
7 also include a third charge of exploitation in a
8 civil sense, civil fact. And then the Court -- we
9 also at the same time, as you know, went to the
10 sheriff's office and filed the criminal
11 proceedings.

12 When we met with the detective, just to get
13 to the criminal matter so I can tell you how it
14 related, they were not inclined to file the
15 exploitation because of the refinances. Okay?
16 They were more inclined because of the recent
17 activity. The recent activity being the lack of
18 payment on the mortgages, the car, the fact that
19 Publix was pursuing Ms. Woichowski criminally
20 for --

21 THE COURT: Guarascio?

22 MS. DINE: Yeah. Ms. Woichowski had -- the
23 state attorney's office had filed worthless check
24 charges.

25 THE COURT: Oh, okay.

1 MS. DINE: Yeah. So those were the things
2 that they were more concerned about.

3 When I started to enter into negotiations
4 with Mr. Fuller, we had made a settlement offer
5 that was lower than what you see in this settlement
6 offer.

7 THE COURT: You don't have to get into that.

8 MS. DINE: Right. But the bottom line is is
9 we did a cost analysis of what it would cost us to
10 litigate this, and that's why we arrived at where
11 we arrived at.

12 So we believe that it's fair enough and to
13 end it. And we've made it clear -- and initially
14 there were confidentiality agreements. We've taken
15 those out. We made it clear that anything that is
16 done criminally would not be affected by this
17 agreement.

18 THE COURT: All right. That the agreement
19 wouldn't be admissible for criminal prosecution, is
20 that what you mean?

21 MS. DINE: No.

22 THE COURT: No?

23 MS. DINE: No, sir. What I mean is is that
24 we -- and this was a concern of both Mr. Scott as
25 well as Mr. Miller, was that we did not want this

1 agreement to affect what was going on in the
2 criminal proceedings.

3 THE COURT: Oh, I see. Okay. Well, yeah, it
4 obviously could have, you know, an impact.

5 Okay. Who's assigned to the civil case?
6 Judge Titus?

7 MS. DINE: Judge Titus is.

8 THE COURT: Okay. That's the division I'm
9 going to be going into.

10 I would ask that you all talk a little bit
11 more before -- if it is resubmitted. Any thought
12 that comes to mind, that might not work. But you
13 can go over this with Mr. Fuller. He was aware
14 this was going to be brought up today --

15 MS. DINE: Yes, Your Honor.

16 THE COURT: -- and chose not to be here?

17 Okay. Perhaps there could be some type of
18 partial settlement releasing X amount of funds to
19 Lutheran on Ms. Woichowski's behalf and having the
20 other monies held in some type of escrow pending
21 the conclusion of the criminal investigation, et
22 cetera, so that at least if it turns out in theory,
23 okay, you're entitled to get half the home but you
24 owe 100,000 for this other stuff, you know, those
25 monies are available. I don't know that you all

1 can reach an agreement as to that.

2 MS. DINE: I don't think so. I think
3 Mr. Fuller is prepared to litigate it at this
4 point. And so be it if you don't sign this, I'm
5 very -- you know, I'm okay with it going to trial.

6 THE COURT: You know, the whole thing from
7 what I've heard, which isn't completed yet, I
8 simply don't feel right about saying plus give her
9 another \$19,000. So, yeah, I'm not going to
10 approve that.

11 MS. DINE: I'm okay with that.

12 THE COURT: Okay. Good.

13 All right. Should I sign the --

14 MR. SCOTT: Should I submit a proposed order?

15 THE COURT: Yeah, I signed those.

16 MR. SCOTT: Yeah, but should I submit a
17 proposed order behind that?

18 THE COURT: Yes. That would be good. That
19 denies the petition. And put the reason in there
20 that I've just stated.

21 MR. SCOTT: Yes, Your Honor.

22 THE COURT: Okay?

23 All right. Anything else at this point?

24 MR. SCOTT: I have nothing else, Your Honor.

25 Thank you.

1 THE COURT: All right. Thank you all.

2 (Concluded at 4:05 p.m.)

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

STATE OF FLORIDA)

COUNTY OF SARASOTA)

I, LEIHLA COLLINS, Registered Professional Reporter, do hereby certify that I was authorized to and did transcribe the foregoing proceedings and evidence in the captioned case and that the foregoing pages constitute a true and correct transcription of the recordings thereof.

IN WITNESS WHEREOF, I have hereunto affixed my hand **OCT 18 2006** , 2006, at Sarasota County, Florida.



LEIHLA COLLINS, RPR