

Department LA 9 **Court Convened at:** 10:30 AM 11/30/2015

Honorable Clifford L. Klein
S. McKinney , **Deputy County Clerk** L. Flores , **Deputy Sheriff**
Gloria J. Hall, CSR 4165 , **Reporter**

BP168417 4008 FRENKEL, ELLEN - CONSERVATORSHIP
CONSERVATORSHIP-PERS

APPT. TEMP CONSERVATOR OF P & E

Petitioner(s): FRENKEL, MICHELLE

Attorney(s): HANKIN, MARC B., ESQ.

Continuance Number: **Continuance From:**

Last Date Changed: Wednesday, November 25, 2015 12:53:55 PM

Last Note Changed By: MBUTCHER

To clear probate notes "filed documents" must be submitted to Rm 429, within time frames set forth in Rule 4.4 (b) of LASC Rules. You may contact the Probate Attorney or Probate Examiner whose E-Mail address appears at the end of these notes, subject to compliance with all conditions governing the use of Interactive E-Mail. E-mail Rules are available on the Court's web site at www.LACourt.org.

PRIOR ORDERS: Larry Dushkes apptd PVP atty 11/25/15

SUMMARY Temp petn filed: 11/20/15

Petrn is granddaughter [a resident of Australia] seeking apptmt of herself or in the alternative PPF: Monique Cain [license Ok]

PERSON & ESTATE Widow

OTHER CASES: Australia: VCAT ref #: G71783/03 Admin of estae of Ellen Frenkel; Admin: State Trustee, Ltd [STL]

-Amended consent to act by Monique Cain, PPF filed 11/24/15

-Decl of Michelle Frenkel re Miriam Fehring??s 11/23/15 refusal to allow visit with proposed consee filed 11/24/15

-Decl of Michelle Frenkel correcting errors in temp petn filed 11/24/15

- Decl of Michelle Frenkel re fling fees for 1st amended petn [2 pages] filed 11/24/15

FACTS: Petrn state that she and proposed consee: Mrs. Frenke are residents of Australia [AU]. However, proposed consee is currently situated in the home of her daughter: Miriam Fehring [Miriam] in Topanga, CA and is seeking the appointment of herself or in the alternative PPF: Monique Cain, who was approached by petrn's atty: Marc Hankin, who is asking the Court to make 17 different orders for temporary appointment.

Petrn alleges that Mrs Frenkel was diagnosed with Dementia/Alzheimers type [MMSE 17/30] on 5/26/14 by Dr Glenn Sutcliff of Melbourne, AU. That the Australian State Trustee, Ltd [STL] was been

appointed to administrate her estate

Petrn alleges that son: David Frenkel made allegations which prompted a thorough investigation by both the Victoria AU Police Dept and her ad ministrator: State Trustee-petrn has provided a copy of their report dated 2/20/15 which indicates that STL is still in control of Mrs Frenkel's estate there and that POA apptg daughter: Miriam has been revoked due to her bankruptcy in America.

Mrs Frenkel is/had been under guardianship in AU since 2011 [?] and that her daughter Miriam traveled to AU in 2011 to care for Mrs Frenkel but instead she took over her assets, used her POA to obtain credit cards in Mrs Frenkel's name, running up thousands of dollars in debt and moved her to the U.S. in July 2015, where she began isolating Mrs Frenkel from friends and family.

This rpt also indicates that Miriam admitted to using Mrs Frenkel's assets for her own benefit as well as others; that Miriam has still not responded to their request for an explanation of expenditures.

Petrn alleges that **Miriam** has stated that she wants to return to Australia.

MATTERS TO CLEAR:

- A. No ntc/copy to proposed conservatee (5 days personal service)
- B. No ntc/copy of hrg to 5 relatives filed.
- C. STL indicates that proposed consee is recipient of War Widow's Pension. Ntc required? If not why not? File supp
- D. Any POA? If so, not identified in attach 11. Ntc? Declination to act? File supp
- E. No ntc copy to Australian admin: State Trustee Ltd. File supp
- F. Is the Court to consider dispensing with ntc to persons listed in A thru E? If yes, is there a good cause exception to giving 5 days notice? See PC 2250(e) and CRC Title 7 rule 7.1062. Note: a separate application (separate from the petition); a memorandum; a declaration and order is required by CRC Title 7 Rule 1.1062(e)
- G. Has the proposed conservatee expressed a preference concerning the apptmt of a temp consr, including apptmt of petnr? If not, why isn't feasible to ascertain proposed consee's preferences? PC 2250(d)(2). Supp required
- H. Is an order re lacks medical capacity requested? If yes, specific facts necessitating such order(s) must be stated - And, if yes, will temp consr have auth to give consent for medical treatment as provided in PC 2354 (emergency treatment)? Or PC 2355 (general authority)? If PC 2355 authority granted, the Crt will not authorize the temp consr to make health care decisions as provided in PC 4617(c) without specific prior court order
- I. No Cap decl filed re: able/unable to attend hrg; lacks medical capacity [PC 1890(c)]; has dementia & needs or would benefit from dementia medications [PC 2356.5 (c) (3)]
- J. Petnr alleges that value of estate is unknown. What efforts to determine? File supp
- K. Does \$10,000 bond request include a reasonable amount for the cost of recovery to collect on the bond, including attys fees and costs? CRC Title 7 Rule 7.207(c) includes the formula to be used when calculating the additional bond amount. See PC2320 (c)(4). Supp required
- L. Petnr does not include copy of Australian Order & ltrs appointing guardian [or its equivalent]. File supp
- M. Is petnr requesting that proposed consee be returned to Australia? File supp
- N. Should petnr request authority to execute contingent fee agreement for outside litigation? If so, copy of proposed atty fee agreement required
- O. No PVP atty report filed

MATTERS TO CLEAR RE PPF PETNR:

- O. Petn must include the proposed consr's proposed hourly fee schedule or another statement of his or her

proposed compensation from the estate of the proposed consee for services performed as a consr. [PC 1821(c)(1)]

RELIEF:

1. JTD temp consee lacks a capacity to give informed consent to medical treatment?
2. JTD (if consee lacks capacity to consent to medical treatment) PC 2354 powers to be granted (emergency) or PC 2355 powers (general)? If PC 2355 powers granted, temp consr does not have to make health care decisions set forth in PC 4617(c) without specific prior court order
3. JTD court to accept PVP atty report in lieu of court investigator's report
4. JTD is there good cause to waive notice? [] proposed conservatee; [] spouse/registered domestic partner; [] relatives
5. JTD if the proposed conservatee was not present at the hearing because
 - [] The proposed conservatee reported to the PVP attorney that she is not willing to attend the hearing
 - [] The proposed conservatee does not wish to contest the establishment of the temporary conservatorship
 - [] The proposed conservatee does not object to the proposed temp conservator or does not prefer that another person act as temp conservator
6. JTD the proposed conservatee was not present at the hearing and the court finds that holding the hearing in the absence of the proposed conservatee is necessary to protect the conservatee from substantial harm
7. JTD if notice in note B were not given, should crt order copy of the order appointing Temporary Conservator served on rels and file proof of service with the court?
8. JTD apptmt
9. JTD Conservatee has dementia and lacks capacity to give informed medical consent for dementia medications and the conservator is granted authority to authorize the administration of medications appropriate for the care and treatment of dementia. No Capacity Decl filed. No PVP rpt filed. See notes I and O
10. JTD \$10,000 bond request. Appears insufficient. Unable to determine until notes J and K are cleared.
11. JTD Authority to execute contingent atty fee agreement. See note N.
12. JTD petitioners request for an order pursuant to PC2616 et seq. directing the clerk of the court to issue a citation directing Miriam Fehring [Miriam] to appear in this court on November 30, 2015 and to give any legal reason why Miriam should not be ordered to appear on a subsequent date
 - ___[a] to answer questions under oath pertaining to Miriam's and other persons' disposition of the Ellen Frenkels assets since January 1, 2011;
 - ___[b] to answer interrogatories which Petitioner shall propose, pursuant to PC 2617, in a supplement to this petition, and
 - ___[c] to produce at that hearing any and all writings or records in Miriams possession or control reflecting or mentioning Ellens assets or any portion thereof thereof, including but not limited to Ellen's own records, and/or any estate plan documents including but not limited to any durable powers of attorney, advance health care directives, living trusts, testamentary trusts, wills and/or codicils, deeds, checks, and emails and video recordings (e.g., video recordings of Miriam training Ellen to say to mental health experts in Australia and to Australian health care providers that she (Ellen) wanted to move to the USA to live with Miriam), any and all of Ellen's medical records.
13. JTD petitioners request for an order pursuant to PC 2616 authorizing Petitioner to videocam the oral examination of Miriam and all attorneys and/or any other persons attending the oral examination to reduce the likelihood of any disputes about disruptive behavior at the examination by any party or the party's attorney;
14. JTD petitioners request for an order appointing an independent forensic medical expert (IME) to examine Ellen and Ellens medical records, and to acquire such collateral source information (e.g., oral statements or written statements from health care providers, health care examiners, fiduciaries, caregivers, friends, relatives, etc.) as the IME may deem appropriate, consistent with generally accepted

medical protocols for the assessment of a geriatric patient who has dementia, and to render a report to the court

15. JTD petitioners request for an order (i) directing Miriam to allow Ellen to meet with Ellens son, David Frenkel and granddaughter Michelle Frenkel, outside of Miriams home and outside of the presence of Miriam and/or Miriams son or husband, for a three (3) hour visit as soon, as possible so that Michelle may return home to Australia , and (ii) to appoint Monique Cain (or another professional conservator) as a monitor of the visit, to ensure that David and Michelle do not harm Ellen

16. JTD petitioners request for an order authorizing Petitioner and/or whoever is appointed temporary conservator, to request that Ellens Australian attorney produce all of Ellens financial documents to the PVP attorney, to the temporary conservator, and to the Court's confidential conservatorship file, for in camera review with counsel, subject to an order pursuant to PC 2586, to not reveal anything to anyone, except as the Court may direct. This would include durable powers of attorney, advance health care directives, living documents, testamentary instruments (i.e., Wills and codicils), regardless whether superseded or revoked or not, and would include any notes, drafts, correspondence, and would include any document acquired directly or indirectly from Ellen. The term document would have the same meaning as the term writing as employed in EC250.

17. JTD petitioners request for an order, inter alia, pursuant to PC 2580 et seq. authorizing the Temporary Conservator to execute a new Will having the same terms as the terms of Ellens Will as last amended before the lack of capacity and any exercise of undue influence by Miriam or anyone else.

18. JTD petitioners request for an order at a hearing after November 30, 2015, inter alia pursuant to PC 1873, ordering that Ellen lacks the capacity to sign a testamentary instrument, and/or to exercise any power of appointment

19. JTD petitioners request for a Temporary Restraining Order TRO prohibiting Miriam Frenkel and/or any person acting in concert with Miriam, from alienating or hypothecating any item of real or personal property (tangible or otherwise) in which Ellen has any interest, and any property which is the fruit (in whole or in part) of property in which Ellen had an interest within the six (6) years preceding the filing of this petition;

20. JTD petitioners request for an order suspending all (durable or non-durable) powers of attorney appointing Miriam, which Miriam may have procured after Australia's Victorian VCAT tribunal issued an order in July 2014 REVOKING the enduring (durable) power of attorney Ellen gave Miriam

21. JTD petitioners request for an order suspending any health care power of attorney (a.k.a. Advance Health Care Directive) which Miriam may have procured appointing Miriam

22. JTD petitioners request for an order determining that Ellen lacked the capacity, and at all times relevant lacked the capacity to move to the United States.

23. JTD petitioners request for an order directing the temporary conservator to make reasonable efforts to keep Ellens family involved in Ellens life to the extent that the Conservator can facilitate the family's involvement, without violating any fiduciary duties

24. JTD petitioners request for an order directing the temporary and probate conservator to honor the Conservatees wishes unless and to the extent that doing so, in the Conservators opinion, would violate the Conservators fiduciary duties, or be impractical and unduly burdensome for the conservator

25. JTD petitioners request for an order instructing the PVP attorney that the PVP attorneys duty to provide effective assistance of counsel in the probate court includes a duty similar to a criminal defense attorneys duty under Penal Code 41367 et seq. (to act in Ellens best interests, and not as a zealous advocate or blind advocate)

Permanent is set for: 1/11/16

COMMENTS: If continued, should court order petnr/atty to give notice together with a copy of the petition to persons identified in notes A thru E who did not receive notice. If PVP counsel did not file a written report, Crt to order the written report filed within 2 court days from today's hearing?

MButcher@lacourt.org
eMB 11/2/15

RECOMMENDED DISPOSITION:

RELATED ITEMS:

Order to be Prepared By Clerk: Attorney:
