

IN THE PROBATE COURT OF SHELBY COUNTY, ALABAMA

IN THE MATTER OF THE ESTATE OF) CASE NO. PR-2007-000073
LOLA M. BENSON,)
an alleged incapacitated person in need of protection)

ORDER

This cause is before the Court on motions filed by James C. Ayers, Jr. acting as attorney for Respondent Lola Benson. Said motions are as follows:

1. Motion to Request Authorization for Medical Examination, filed April 10, 2007;
2. Motion for Relief from Undue Control by Temporary Guardian, filed April 10, 2007;
3. Motion to Terminate "Perpetual" Temporary Guardian, filed April 11, 2007; and
4. Motion to Clarify Order Terminating Defendant's Legal Representation, filed April 11, 2007.

This cause had come before the Court for hearing on April 9, 2007, and all parties were present and represented by counsel. The gravamen of the hearing was a petition filed by Mrs. Benson's guardian ad litem to set aside the transfer of real estate wherein Mrs. Benson had executed a deed in favor of her son Kirt Benson. The Court had previously set aside a power of attorney which had been executed by Mrs. Benson, conditionally vesting Kirt Benson with Mrs. Benson's general power of attorney. On the date of the hearing setting aside the power attorney, the subject deed in favor of Kirt Benson was recorded. Mr. Ayers was present at the hearing. At no time, during or after, did Mr. Ayers disclose this deed to the Court.

During all of these transactions, Mrs. Benson's attorney of record was James C. Ayers, Jr. It is worthy of note that Mr. Ayers's secretary is the common law wife of Kirt Benson. The legal documents executed by Mrs. Benson in favor of Kirt Benson were prepared by Mr. Ayers. The preparation and execution of these documents occurred well after the filing of this petition, and all parties were fully aware that Mrs. Benson was

alleged to be an incapacitated person in need of protection. At that time, Mr. Ayers collected \$6,500.00 from Mrs. Benson to represent her in this matter.

Prior to the commencement of this action Dr. Anthony Ciulla had diagnosed Mrs. Benson as suffering from Alzheimer type dementia, and had opined that she needed assistance in managing her affairs. Shortly after commencement the Court and the parties received a copy of another psychological evaluation of Mrs. Benson which was performed by Dr. Catherine Ramey on February 14, 2007. A cursory reading of Dr. Ramey's report indicates that Mrs. Benson suffers difficulty with her memory, the understanding of abstract concepts, creative thought and problem solving. Dr. Ramey found that "[w]hen her total score was adjusted for her educational level, Mrs. Benson overall DRS-2 score [Dementia Rating Score] indicated that her symptoms of dementia were still worse than those of 99% of people her same age."

At the time of the hearing on April 9th the parties had available Mrs. Benson's third and most recent evaluation performed on March 14, 2007, by Dr. Richard Azrin. Dr. Azrin found that Mrs. Benson "has clear evidence of dementia, most likely of the Alzheimer's type.... She now has been experiencing memory problems for such a long time that she no longer is able to recall that she is forgetting information. She also has significant executive dysfunction, reasoning impairment, motor coordination and speed impairment, language impairment with dysnomia and dysflunecy, impaired cognitive speed, and even intellect has been adversely affected to a quite significant degree. The patient is considered to be mildly to moderately demented presently and it is quite clear. The patient is not able to able to manage her own finances even be aware of what she was just told about her finances. For the same reason, she is unable to manage her own financial affairs."

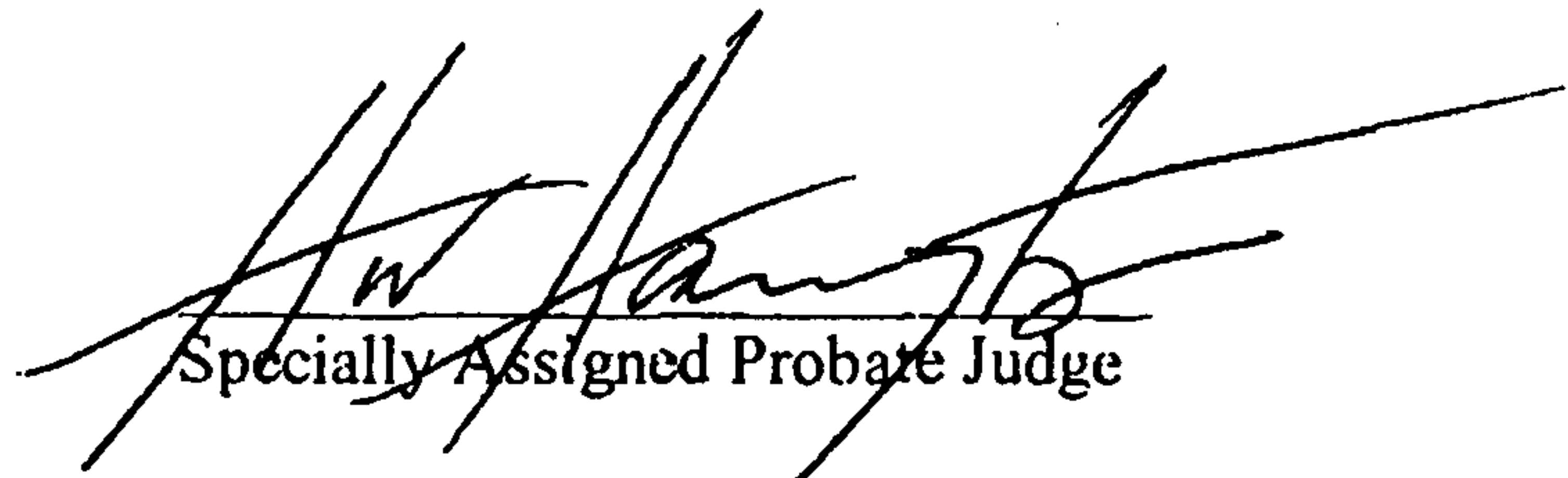
Dr. Azrin's diagnosis and conclusions were corroborated by Mrs. Benson's testimony proffered in open Court at the hearing on April 9, 2007. Based upon the evidence presented, this Court made a finding of fact that Mr. Ayers had a direct conflict of interest in this matter; that Mr. Ayer's was not acting in the best interests of Mrs. Benson; that Mr. Ayers's conduct favored his secretary's husband over that of his named client; and that the documents prepared by Mr. Ayers and executed by Mrs. Benson were to her detriment. By her own testimony, Mrs. Benson did not intend or understand the

ramifications of her having signed either the power of attorney or the quit claim deed (for which it is admitted there was no consideration) in favor of Kirt Benson.

The Court ordered from the bench that the deed prepared by Mr. Ayers which transferred Mrs. Benson's home to her son Kirt Benson was set aside and held for naught. The Court further ordered that the blatant conflict of interest and the conduct of Mr. Ayers in this matter constituted sufficient cause for his removal as attorney of record for Mrs. Benson. The Court then ordered that Mr. Ayers was to no longer represent Mrs. Benson in this matter. It was further ordered that the \$6,500.00 paid by Mrs. Benson to Mr. Ayers be immediately refunded to Mrs. Benson through payment in the amount of \$6,500.00 to be deposited with the Probate Court. The Court hereby RATIFIES those verbal Orders as pronounced in open court. It is FURTHER ORDERED that said \$6,500.00 payment shall be made on or before April 30, 2007, and that, except for mandamus or appeal, Mr. Ayers shall cease and desist from his continued participation in this case. Failure to do so shall result in the issuance of a show cause Order.

In accordance with the foregoing, Mr. Ayers had been prohibited from representing Mrs. Benson in this matter prior to his having filed the four motions delineated above. Each of these motions is, therefore, improvidently filed, and each is summarily DENIED.

DONE and ORDERED this 13th day of April, 2007.


Specially Assigned Probate Judge

ENTERED AND FILED

APR 13 2007

Kimberly Melton, Chief Clerk
Probate Court
Shelby County, Alabama

EXHIBIT "A"
20070226000086390 1/2 \$22.00
Shelby Cnty Judge of Probate, AL
02/26/2007 10:56:21AM FILED/CERT

20070821000395240 4/5 \$23.00
Shelby Cnty Judge of Probate, AL
08/21/2007 04:23:53PM FILED/CERT

This instrument prepared by
James C. Ayers, Jr.
300 Highway 47 South
Columbiana, Alabama 35051

Send tax notice to:
Kirt Benson
P.O. Box 164
Columbiana, Alabama 35051

THE STATE OF ALABAMA
SHELBY COUNTY

QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS, That in consideration of the sum of Five Thousand and no/100 (\$5,000) dollars, cash, and other valuable consideration, to the undersigned Grantor in hand paid by the Grantee herein, the receipt whereof is acknowledged, I, **Lola Mae Benson, widowed**, (herein referred to as Grantor) do grant, bargain, sell and convey unto **Kirt Benson, married** (herein referred to as Grantee), the following described real estate, situated in Shelby County, Alabama, to-wit:

That part of the NW 1/4 of the NE 1/4 of Section 16, Township 22 South, Range 1 East, Shelby County, Alabama, described as follows: To find the point of beginning start at the Northwest corner of said 1/4-1/4 Section and run in an Easterly direction and along the North boundary of said 1/4-1/4 Section for a distance of 721.34 feet to the point of beginning of the property described herein, thence continue in an Easterly direction and along the North boundary of said 1/4-1/4 Section for a distance of 169.13 feet to its intersection with the West right -of-way margin of Alabama Highway #145, 120 feet from centerline; thence with a deflection angle of 110 deg. 06 min.. 54 sec. Right run in a Southwesterly direction and along said West right-of-way margin for a distance of 3.69 feet to a concrete right-of-way monument at Station 337+00; thence with a deflection angle of 2 deg., 13 min., 18 sec. left, continue in a Southwesterly direction and along said West right-of-way margin for a distance of 136.32 feet to the P.T. Station 335+64.13. Said point being 115 feet from centerline; thence with a deflection angle of 2 deg., 32 min., 01 sec. Right, continue in a Southwesterly direction an along said west right-of-way margin for an arc or chord distance of 310.87 feet to Station 332.52, 115 feet from centerline; thence with a deflection angle of 40 deg., 18 min., 10 sec., right, continue in a Southwesterly direction for a distance of 129.27 feet to Station 144+77 on the North right-of-way margin of Shelby County Road #42, 40 feet from centerline; thence with a deflection angle of 52 deg., 40 min., 44 sec., right, run in a Northwesterly direction and along said North right-of-way margin for a distance of 106.32 feet to a point; thence with a deflection angle of 90 deg., 00 min., 00 sec., right, run in a Northwesterly direction for a distance of 485.43 feet to the point of beginning. Said parcel being 2.00 acres, more or less. LESS AND EXCEPT all oil, gas, mineral and mining rights reserved to Gulf States Paper Corporation by that certain deed dated April 20, 1982 and recorded in Deed Book 339, Page 327, in the Office of the Judge of Probate of Shelby County,

Shelby County, AL 02/26/2007
State of Alabama

Deed Tax: \$5.00

20070226000086390 2/2 \$22.00
Shelby Cnty Judge of Probate, AL
02/26/2007 10:56:21AM FILED/CERT

Alabama.

Subject only to the following encumbrances, limitations and easements:

20070821000395240 5/5 \$23.00
Shelby Cnty Judge of Probate, AL
08/21/2007 04:23:53PM FILED/CERT

1. Ad Valorem taxes for 2007 and subsequent years.
2. All oil, gas, mineral and mining rights reserved to Gulf States Paper Corporation by that certain deed dated April 20, 1982 and recorded in Deed Book 339, at page 327, in the Probate Office of Shelby County, Alabama.
3. Right-of-way to Shelby County, as shown by instrument recorded in Deed Book 234, Page 634, in said Probate Records.
4. Right-of-way to State of Alabama, as shown by instrument recorded in Deed Book 242, at Page 262; in Deed Book 252, at Page 135; and, in Deed Book 255, at Page 563, in said Probate Records.

Grantee, Lola Mae Benson is the surviving spouse to Ray Eugene Benson deceased, having died on May 30, 2004 in that certain deed recorded in Deed Book 055, Page 103.

TO HAVE AND TO HOLD unto the said Grantee their heirs and assigns, forever.

IN WITNESS WHEREOF, we have hereunto set our hands and seals, this the 26 day of February, 2007.

Lola Mae Benson (SEAL)
Lola Mae Benson

THE STATE OF ALABAMA
SHELBY COUNTY

I, the undersigned, a Notary Public in and for said County and State, hereby certify that **Lola Mae Benson, widowed** whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, she executed the same voluntarily on the day the same bears date.

Given under my hand and seal, this the 26th day of February, 2007.

Wm. H. Jones
Notary Public
My Commission Expires: 3.3.07

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Mar 3, 2007