

IN THE COURT OF COMMON PLEAS  
IN AND FOR THE COUNTY OF MONTGOMERY, PENNSYLVANIA  
ORPHANS' COURT DIVISION

IN RE: : NO. 2021-X2110  
JANE T. HERRING, AN ALLEGED :  
INCAPACITATED PERSON :  
:

Petition for Adjudication of Incapacity and to Appoint  
a Guardian of the Estate and/or Person

Friday, August 6, 2021  
Commencing at 1:37 p.m.

Courtroom 15  
Montgomery County Courthouse  
Norristown, Pennsylvania  
Amy Boyer, Official Court Reporter

BEFORE: THE HONORABLE GAIL A. WEILHEIMER, JUDGE

COUNSEL APPEARED AS FOLLOWS:

BRITTANY J. CAMP, ESQUIRE  
for the Petitioner

DAVID A. JASKOWIAK, ESQUIRE  
for the Alleged Incapacitated Person

ALSO PRESENT:

ARTHUR HERRING, III  
Pro se Respondent

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**I N D E X**

PETITIONER'S EVIDENCE

<u>Witness</u>	<u>Voir Dire</u>	<u>Direct</u>	<u>Cross</u>	<u>Redir</u>	<u>Recr</u>
Ronald Fenstermacher, Jr.		5		57	
by Mr. Jaskowiak			15		
by Mr. Herring			20		60
	-	-	-		

ARTHUR HERRING, III'S EVIDENCE

<u>Witness</u>	<u>Voir Dire</u>	<u>Direct</u>	<u>Cross</u>	<u>Redir</u>	<u>Recr</u>
Arthur Herring, III		66		165	
by Mr. Jaskowiak			130		
by Ms. Camp			148		
	-	-	-		

**E X H I B I T S**

PETITIONER'S

<u>Number</u>	<u>Description</u>	<u>Marked</u>	<u>Rec'd</u>
P-17	Reply to Motion by Matt Nahrgang for Expedited Withdrawal as Counsel for Arthur Herring, III filed on September 29, 2020 in the United States Bankruptcy Court, Eastern District of Pennsylvania	149	164
P-18	Transcript of June 1, 2021 Conference via Zoom with the Honorable Gail Weilheimer	157	164

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PETITIONER'S

<u>Number</u>	<u>Description</u>	<u>Marked</u>	<u>Rec'd</u>
P-22	Melody Lakes Management, LLC v. Arthur Herring, III - Magisterial District Judge 07-2-05 Landlord/Tenant Docket No. MJ-07205-LT-0000043-2021	151	164
P-25	Motion to Demand Removal of Judge Brannon as Incompetant [sic] filed by Arthur Herring, III on June 21, 2019 in the United States District Court, Southern District of Florida	146	164
P-26	Demand Note - - -	58	62

JANE T. HERRING'S

<u>Number</u>	<u>Description</u>	<u>Marked</u>	<u>Rec'd</u>
H-4	5/14/20 Fenstermacher - Jane Herring letter and 5/14/20 Fenstermacher - Arthur Herring letter	16	62
H-6	Dr. Kenneth Carroll's Evaluation, 5/24/21	157	164
H-8	Checks from Raymond James' Account (17)	7/29	138
H-10	Internal Medicine Visit	132	164
H-11	Recorder of Deeds documents	141	142

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ARTHUR HERRING, III'S

<u>Number</u>	<u>Description</u>	<u>Marked</u>	<u>Rec'd</u>
AH-2	1/10/2014 handwritten note	28	30
AH-3	Document entitled "Jane Herring's Will"	34	NA
AH-4	Three photographs	69	69
AH-5	Photocopies of 29 notes	74	118
AH-6	Six photographs	76	76
AH-7	Photograph	77	77
AH-8	Two photographs	78	78
AH-9	Photograph	78	78
AH-10	Three photographs	79	79
AH-11	Photograph	80	80
AH-12	Photograph	80	80
AH-13	Page from transcript	99	NA

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2 THE COURT: Good afternoon, everyone.  
3 We are reconvening for the guardianship hearing for  
4 Jane Herring, Case No. 2021-X2110.

5 Ms. Camp, it's my understanding you have  
6 an additional witness to call; is that correct?

7 MS. CAMP: Yes, Your Honor. I have  
8 Mr. Ronald Fenstermacher, Jr., Esq. He's here in  
9 person today.

10 THE COURT: Okay. I expected to see him  
11 on Zoom, but, Counsel, please come forward. And just  
12 as a reminder to everyone, I do take notes on my screen  
13 so if I'm not looking at you or the witness I am still  
14 paying attention to you.

15 - - -

16 **RONALD FENSTERMACHER, JR.**, having been  
17 duly sworn/affirmed, was examined and  
18 testified as follows:

19 MS. CAMP: Before we get started, do we  
20 have the binders for the witness up there?

21 THE COURT: We do. They're right there.

22 DIRECT EXAMINATION

23 BY MS. CAMP:

24 Q Mr. Fenstermacher, what is your occupation?

25 A I'm a lawyer.

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Q And what area of law do you practice?

A I practice in the area of trust and estates.

Q And how long have you been an estate planning attorney?

A For 30 years.

Q What is your relationship with Jane Herring?

A I was her attorney.

Q How long did you represent Mrs. Herring?

A I believe I began to represent Mrs. Herring and her late husband in 2003 or 2004.

Q And what estate planning documents have you prepared for Mrs. Herring over the years?

A I prepared wills, trust agreements, powers of attorney.

Q And I'm going to point you to the binder here, P-3.

THE COURT: So the larger black binder.

MS. CAMP: Yes.

BY MS. CAMP:

Q And this document has already been moved into evidence, but is this the most recent financial and healthcare power of attorney that you prepared for Mrs. Herring?

A Yes.

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Q All right. And this was dated July 9, 2004; is that correct?

A Yes.

Q If we can flip to Page 2 here, I'm going to read the appointment. Mrs. Herring appointed her two children, Jill and Arthur, as agents. And then there is an interesting provision that says "Should my children be unable to agree on any decision that must be made, my attorney, Ronald W. Fenstermacher, Jr., shall make the final decision." Do you recall why that provision was included?

A I believe there was a concern on the part of Mr. and Mrs. Herring that their children might not be able to agree in the future.

Q And have you ever exercised your tiebreaker power, for lack of a better term, under that 2004 power of attorney?

A I believe I have with respect to Raymond James. I believe that's the only time I had to act.

Q I'm going to point you to Exhibit P-4. Are you familiar with this document? It's already been moved into evidence.

A Yes.

Q And this is a supplemental directive that you

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executed. When was this dated?

A May 7th of 2020.

Q Okay. So under this document what action did you take in connection with your role under the 2004 power of attorney?

A I believe it was an attempt to put in writing in this directive essentially what had been happening, how the two children of Mrs. Herring had been acting, who had responsibility for what, which was, you know, as it says, Ms. Herring -- Jill Herring had responsibility for financial powers and Mr. Herring had authority for healthcare powers.

Q Do you recall what led to the creation of this document?

A There had been disagreements between them as to the various matters, financial matters and healthcare matters.

Q Prior to May 7, 2020 when this was executed, did Mrs. Herring get in touch with you about making any changes to her estate planning documents?

A She did.

Q And what was the nature of her request for changes?

A She had wanted to change the percentages under her



1 trust agreement, which was the primary dispositive  
2 document.  
3

4 Q Do you recall when about that was?

5 A I met with her -- I believe it was the beginning  
6 of February of 2020.

7 Q And did you meet with her alone or did you meet  
8 with her with Jill and Arthur as well?

9 A All three of them were there. But I did meet with  
10 her alone as well.

11 Q And did she end up signing any new documents at  
12 that time?

13 A No.

14 Q Why was that?

15 A Well, I, you know, obviously, met with her alone  
16 because I had -- given the nature of what she wanted to  
17 do, I was concerned that it was, in fact, what she  
18 wanted and that it was not some sort of undue  
19 influence, which I would have done with any client of  
20 her age trying to change a long-standing dispositive  
21 scheme under her estate planning documents. And I was  
22 not convinced that it was, in fact, what she truly  
23 wanted and that there was no other influence.

24 Q And this was in February of 2020. Were there any  
25 changes in Mrs. Herring's residential arrangements that

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you're aware of at that time?

A As I recall, Mr. Herring had just moved into her home.

Q Okay. I'm going to point you to P-5. Is this the most recent will that you had prepared for Mrs. Herring?

A Yes.

Q Okay. And what is the date of this document?

A November 26, 2018.

Q All right. And this directs that the residue of her estate goes to a trust agreement dated April 26, 1993; is that correct?

A Correct.

Q All right. We're going to flip then to P-6. Is this the most recent version of Mrs. Herring's trust agreement that you had prepared for her?

A Yes.

Q And can you briefly describe the dispositive provisions of Mrs. Herring's estate plan under these most recent estate planning documents?

A Sure. The residue of her estate was to be divided equally between her two children, with her daughter Jill's share going outright to her and her son's share being in the trust for his benefit.

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Q And Mrs. Herring always provided for equal division of her assets between her two children?

A Yes.

Q And who is the trustee of her trust agreement under this document?

A She is the trustee.

Q And then who is the successor trustee in the event she's unable to act? Let me point you to Page 7, Item 12.

A Thank you. I just wanted to confirm that that -- you know, answer while looking --

Q Sure.

A But I am the successor trustee.

Q And Mrs. Herring had not named either Jill or Arthur as a fiduciary then under her will or her trust agreement?

A No.

Q So after you met with Mrs. Herring in February of 2020, did you have any further contact from her with respect to making changes to her estate planning documents?

A There was an appointment scheduled -- I don't remember exactly the month, but it was -- of course, after February there was the shutdown due to COVID.

1  
2 And once I could see clients in person again, there was  
3 an appointment scheduled for her to come in, but that  
4 was cancelled.

5 Q Would that have been around the time that this  
6 supplemental directive was signed in May 2020?

7 A Probably more or less. I don't remember exactly  
8 when.

9 Q And did she contact you directly to make that  
10 appointment or did someone else contact you to make it  
11 on her behalf?

12 A No. Her son contacted me.

13 Q Can you describe a little bit why Arthur's share  
14 was held in trust under her estate plan instead of  
15 outright?

16 A Yeah. Arthur has -- or there is a significant  
17 judgment against him from a court matter in Florida.  
18 And to protect that for him, as opposed to having it  
19 seized once it became his, it was thought prudent to  
20 put it into a trust for his benefit.

21 Q So when the appointment in the spring,  
22 approximately, of 2020 was cancelled, did you hear  
23 again from Mrs. Herring directly?

24 A No.

25 Q Did she ever formally fire you?

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A No.

Q Did anyone fire you on her behalf?

A Mr. Herring.

Q And how did he do that? Did he call you or email you?

A Yeah. It was via email.

Q Via email. Do you recall approximately when that was?

A It was either December 2020 or January 2021. I don't remember exactly.

Q Do you recall if there was any explanation or simply you're no longer my mother's lawyer?

A I believe he said I was -- my office was too distant and she had engaged other counsel and also had prepared a new power of attorney.

Q So in your professional opinion, when you met with Mrs. Herring the last time you met with her in May of 2020 or 2020, do you believe she had the capacity to execute any new estate planning documents?

A February was the last time, February 2020.

MR. HERRING: Your Honor, I'm sorry. I did not hear the counsel's question.

THE COURT: The question was when you last met with Jane Herring in February of 2020, do you

1  
2 believe she had the capacity to make changes to her  
3 legal documents?

4 MR. HERRING: Thank you.

5 THE WITNESS: I was not convinced that  
6 she did, no.

7 BY MS. CAMP:

8 Q And you've testified that you are the successor  
9 trustee under the most recent trust agreement for  
10 Mrs. Herring; is that right?

11 A Correct.

12 Q If the Court finds that Mrs. Herring is  
13 adjudicated and appoints a guardian of her estate and a  
14 guardian of her person to serve on her behalf, would  
15 you be willing to accept her appointment as successor  
16 trustee for her?

17 A Yes.

18 Q Would that answer change if Arthur Herring was  
19 appointed as guardian of the person or estate?

20 A Yes.

21 Q So you would not be willing to serve as successor  
22 trustee should Arthur Herring be appointed as guardian  
23 of the person or estate?

24 A No.

25 MS. CAMP: Your Honor, I have no further

1 questions.

2  
3 THE COURT: Okay. Thank you, Ms. Camp.  
4 Mr. Jaskowiak.

5 MR. JASKOWIAK: Thank you.

6 CROSS-EXAMINATION

7 BY MR. JASKOWIAK:

8 Q Mr. Fenstermacher, why do you have concerns about  
9 serving as successor trustee if Arthur Herring were  
10 appointed as guardian either of person or estate?

11 A Well, I believe, given the tenor of emails and the  
12 communications with Mr. Herring, I don't believe it  
13 would be very pleasant for me. And so I just -- I  
14 would prefer not to.

15 Q Aside from your own possible interactions with  
16 Mr. Herring if he were to be appointed guardian, do you  
17 have any other concerns about either his or Jill's  
18 capacity to serve as guardian if, in fact, this Court  
19 decides to appoint guardians for my client?

20 A Well, I would be concerned about Mr. Herring. You  
21 know, as I did indicate, I believe Mrs. Herring was  
22 under his influence, which is why I would not prepare  
23 new documents. I would be concerned about that.

24 Q Do you have any concerns about what may happen to  
25 the assets if, specifically, Mr. Arthur Herring were

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appointed as guardian of the estate?

A Well, I would have concerns with -- it's my understanding that someone prepared later documents for Mrs. Herring, which changed the dispositive scheme. I would have concerns about that.

Q After you met with my client and her son and her daughter in or about February of 2020, at some point did you actually send a letter to my client and to Mr. Herring? And I direct your attention, if you would, please, to the small binder to the exhibit which is marked as H-4.

A Yes.

(5/14/20 Fenstermacher - Jane Herring letter and 5/14/20 Fenstermacher - Arthur Herring letter marked Jane T. Herring's Exhibit H-4 for identification.)

BY MR. JASKOWIAK:

Q Could you identify what H-4 is? There are actually two letters in there.

A Sure. The first is a letter to Mrs. Herring from me discussing the power of attorney and the supplemental directive.

Q And I direct your attention -- first of all, it's



1 dated May 14th of 2020?

2 A Yes.

3 Q Do you know why there was a lag between when you  
4 met with Mrs. Herring, my client, and when that letter  
5 went out?  
6

7 A Well, it --

8 Q Was there anything that happened in between, I  
9 guess, is what I'm trying to get to.

10 A Well, in between, yes. As I said, when I met with  
11 Mrs. Herring I was not convinced that what she wanted  
12 me to do was, in fact, what she wanted. I was hoping  
13 to get some clarification on that. I spoke to her  
14 physician. I was hoping to meet with her again. And  
15 when it was clear that that was not going to -- that  
16 was not fruitful, and the joint delegation directive  
17 was signed.

18 Q Directing your attention to the fourth paragraph  
19 in your letter --

20 A Yes.

21 Q -- did you have concerns about the information  
22 that was being provided to my client by her son Arthur?

23 A Yes.

24 Q And what was the nature of that information or  
25 the --

1  
2 A Well, he did continue to talk about Jill's wanting  
3 to sell the house and put her mother into a retirement  
4 home. And despite -- I continually reassured him that  
5 she did not have the authority to do that -- whether  
6 she wanted to or not -- I didn't believe she did -- she  
7 didn't have that authority. So I wanted to put that in  
8 there because I continued to tell Mrs. Herring that. I  
9 thought it was important for me to put that in writing  
10 that that should not be a fear or a concern of hers.

11 Q Did Jill Herring ever express to you that she  
12 wanted to have the house sold and put her mother into a  
13 retirement home?

14 A No.

15 Q Turn, if you would, to Page 2 of 4 of that same  
16 exhibit. And, if you would, please read into the  
17 record that paragraph.

18 A Sure. "Arthur has contacted me about changing  
19 your power of attorney to remove Jill. It is clear to  
20 me that this is his wish and that he is trying to  
21 influence you to do so. Under these circumstances, I  
22 cannot prepare a new power of attorney for you as I do  
23 not believe it would be valid."

24 Q Now, in addition to the letter to my client, you  
25 also, as I understand it, prepared a separate letter to

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Mr. Herring as well; correct?

A Correct.

Q And I note that this is to Mr. Herring and it's sent to Chancery Court, which is my client's house. Why was that?

A Mr. Herring was living there.

Q Okay. And so if you would direct your attention to the second page?

A Yes.

Q What exactly did you tell Mr. Herring?

A Well, I told him as I had written to his mother. I wrote essentially the same thing, about the changing of the power of attorney to remove Jill, that I felt that he was using his influence against his mother and that I would not prepare new documents for her under those circumstances. And it also references his contention that Jill wanted to sell the house -- excuse me -- Ms. Herring wanted to sell the house and place Mrs. Herring in a retirement home.

Q Did Mr. Herring ever respond to this letter, either verbally or in writing?

A I'm sure he did. I don't remember offhand what that response was. It would be in my file.

Q Fair enough. Do you have any knowledge of whether

1  
2 or not Mr. Herring contacted other lawyers to attempt  
3 to have these documents prepared that he had been  
4 seeking to have prepared?

5 A Well, he advised me -- he contacted me telling me  
6 I was fired as Mrs. Herring's attorney and said that he  
7 had -- that new documents had been prepared, that she  
8 signed new documents.

9 Q The attorney that prepared those documents in or  
10 around December 2020 and January of 2021, did that  
11 attorney ever contact you for any information  
12 whatsoever?

13 A No.

14 Q Thank you. That's all I have. Thank you very  
15 much.

16 THE COURT: Okay. Mr. Herring, do you  
17 have any questions for Mr. Fenstermacher?

18 MR. HERRING: Yes.

19 THE COURT: Okay.

20 CROSS-EXAMINATION

21 BY MR. HERRING:

22 Q You had said something about you had dealt with  
23 matters between my sister and myself. What were those  
24 matters?

25 A I said I believed they were financial matters

1  
2 having to deal with Raymond James, the Raymond James  
3 account.

4 Q Specifically what?

5 A Well, it probably would have been paying the  
6 bills. I don't remember exactly.

7 Q On February 20 there was a meeting with the three  
8 of us -- you, myself, my mother, and my sister -- and  
9 what was that about?

10 A It was a discussion of changing the trust  
11 essentially. I believe it was referred to as the will,  
12 the dispositive provisions that were in the trust.

13 Q Was it also including the fact that matters were  
14 being in chaos, the fact that whenever something was  
15 needed it never got done because my sister wouldn't  
16 respond, and the meeting was to make it ironclad as far  
17 as getting things done to work with -- between my  
18 sister and myself to work together for the benefit of  
19 our mother? Wasn't that really the purpose of the  
20 meeting?

21 A Well, I would say there was a lot that was said at  
22 that meeting. That was something that was ongoing,  
23 trying to ensure that you and your sister would work  
24 together for the benefit of your mother. So I'm sure  
25 that was discussed.

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Q Was anything created by you for that purpose?

A As a result of that meeting?

Q Yes.

A Eventually the delegation agreement that was already discussed was created.

Q I'm sorry. What was that?

A The delegation agreement that was previously discussed was created eventually in May.

Q Are you referring to the delegate authority document?

THE COURT: Are you talking about the supplemental directive? P-4?

THE WITNESS: Yes.

THE COURT: Okay. So he's talking about Exhibit P-4 in the larger binder.

BY MR. HERRING:

Q Did my mother ever sign that? Was that something she had signed or was that simply --

A No. No. That was something I signed.

Q Okay. So was a copy sent to my mother to review or anything?

A It was sent to you and your sister under the exercise of that, the power of attorney.

Q So February 20th of 2020, was that the last time

1  
2 you met my mother personally?

3 A Yes.

4 Q And what type of evaluation did you use to decide  
5 or determine that my mother knew what was going on?  
6 Any?

7 A It was just a general conversation with her with  
8 some specifics about you and your sister and the  
9 relationship between and amongst you.

10 Q That wasn't my question. I asked you what  
11 critique did you use to determine if my mother, at the  
12 time, knew what she was doing, thinking, saying, if she  
13 had mental capacity to discuss those matters?

14 A Well, I think it was just -- I would say, again,  
15 this was something or this is something that I would do  
16 with any client coming in who was looking to make  
17 changes such as were discussed. And just trying to get  
18 a general sense of whether or not the person was really  
19 -- this really was what the person wanted to do. So  
20 with your mother I was just trying to get a sense of  
21 whether she generally wanted to change the dispositive  
22 provisions after so many years, but keeping everything  
23 equal, or whether this was actually coming from you and  
24 she was just doing what you wanted her to do.

25 Q As I recall --

1  
2 A And I was not satisfied with her responses that it  
3 was what she, in fact, wanted to do.

4 Q I'm sorry. Can you repeat that first part?

5 A I was not satisfied with her responses that this  
6 was what she wanted to do.

7 Q What made you decide that point?

8 A You know, it's just, as I said, from experience.  
9 I don't think I can point to any specific question or  
10 anything specific, it's just a general sense. I was  
11 not comfortable at that point thinking that I could  
12 prepare new documents.

13 Q Well, if that was what your client wanted, wasn't  
14 that your obligation to do so?

15 A No. Not -- let me re- -- let me change that  
16 response. If I was convinced that it was what she  
17 wanted, yes; but I was not convinced that it was what  
18 she wanted.

19 Q Why didn't you feel that's what she wanted?

20 A I think you're asking me the same thing over and  
21 over, and I keep telling you it's just a general sense  
22 I had, that this was coming from you and not from her.

23 Q It was just a feeling you had? Is that what  
24 you're saying?

25 THE COURT: This has been asked and



1 answered. An attorney doesn't do objective testing  
2 like a psychologist or a psychiatrist would do. He has  
3 to make an assessment of each client as to whether or  
4 not they are making this decision voluntarily or  
5 whether it's due to undue influence. And he determined  
6 that he believed it was due to undue influence, and  
7 that was his decision at the time.

8  
9 BY MR. HERRING:

10 Q You stated in, I think, both those May 14 letters  
11 that -- maybe this is the one -- you stated I moved May  
12 of 2020. How did you come to that conclusion?

13 MR. JASKOWIAK: Objection, Your Honor.

14 I don't believe that was his testimony that --

15 THE WITNESS: (cross-talk)

16 MR. JASKOWIAK: Wait a second,  
17 Mr. Fenstermacher.

18 Objection. I think it's misstating the  
19 testimony. I don't think he said he moved in in May of  
20 2020.

21 THE COURT: He said that's where he was  
22 living. So sustained as to the misstatement. The  
23 testimony was that he sent the letter to Mr. Herring at  
24 the Chancery Court address because that's where he was  
25 living in May of 2020. But if you want to follow up on

1  
2 that you're welcome to, that testimony.

3 MR. HERRING: I'm sorry. You lost me.  
4 I'm sorry.

5 THE COURT: He didn't testify that you  
6 moved in May of 2020. His testimony was that he sent  
7 you the letter to the Chancery Court address because  
8 that's where you were living in May of 2020.

9 MR. HERRING: Okay.

10 THE COURT: And you are welcome to ask  
11 questions about that if you wish to.

12 MR. HERRING: Okay.

13 BY MR. HERRING:

14 Q How did you arrive that I was living at 26  
15 Chancery Court?

16 A Well, at the meeting with your family in February  
17 of 2020 I was told that you had just moved into your  
18 mother's house.

19 Q Who told you that?

20 A You and your mother told me that.

21 Q Why would I tell you that I was living at 26  
22 Chancery Court --

23 MR. JASKOWIAK: Objection.

24 Argumentative --

25 BY MR. HERRING:

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Q -- when I still had my house --

MR. JASKOWIAK: -- Your Honor.

THE COURT: Let him finish the question.

MR. HERRING: That's going to be  
objected to.

BY MR. HERRING:

Q Isn't it true that you got that date from what my  
sister had been telling you, that I had moved in  
because she saw me taking some boxes for storage?

A No. It's what you and your mother told me at the  
meeting in February.

Q So you have nothing to --

Are you aware that I had a house in  
Quakertown?

A I don't know if I was aware of that or not. I  
just know what you told me.

Q It doesn't make sense that I would say that  
because I still was living in my house up until --

MR. JASKOWIAK: Objection.

BY MR. HERRING:

Q -- two months ago.

MR. JASKOWIAK: May we have a question,  
Your Honor, rather than a statement?

THE COURT: It's a statement and it's

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augmentative. So sustained.

MR. HERRING: Okay.

BY MR. HERRING:

Q You said my mother divides equally between her children; is that correct?

A Correct.

MR. HERRING: Okay. I have a document here. I'd like to have it passed around.

THE COURT: Okay. So we're going to mark this as --

MR. HERRING: The last time, Your Honor, it was AH.

THE COURT: That's what we're doing.

MR. HERRING: Okay.

THE COURT: So this will be AH-2.

(1/10/2014 handwritten note marked Arthur Herring, III's Exhibit AH-2 for identification.)

MR. JASKOWIAK: May we see it first?

THE COURT: Of course you can see it first. If we can give a copy to each counsel?

MR. HERRING: One for them and one for Her Honor.

THE COURT: So, sir, we've shown you

1 what's been marked as AH-2. And do you know what that  
2 is?  
3

4 THE WITNESS: Yes, ma'am.

5 THE COURT: Okay. What is it?

6 THE WITNESS: It's a letter from  
7 Mrs. Herring addressed to me, "Dear Ron." And it's  
8 stating that she had forgiven -- I believe it's  
9 \$25,000, it's hard to read. I believe it's \$25,000 of  
10 a \$100,000 loan that had been made to her daughter Jill  
11 in 2011.

12 THE COURT: Okay. What date was the  
13 letter written?

14 THE WITNESS: January 10, 2014.

15 THE COURT: Okay. And is that  
16 Mrs. Herring's -- have you ever seen Mrs. Herring's  
17 handwriting --

18 THE WITNESS: Yes.

19 THE COURT: -- prior to -- okay. And is  
20 the handwriting you see and the signature consistent  
21 with what you know Mrs. Herring's handwriting and  
22 signature to be?

23 THE WITNESS: Yes.

24 THE COURT: Okay. And is that a letter  
25 that you ever saw before today?

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THE WITNESS: Yes.

THE COURT: Okay. So you can then move that into evidence.

MR. HERRING: Yes.

THE COURT: So that will be admitted into evidence.

(Arthur Herring, III's Exhibit AH-2 received in evidence.)

THE COURT: And then you can ask -- why don't we have that stay with you, Mr. Fenstermacher.

And then if you have questions about it you can ask him any other questions you have about it.

MR. HERRING: Thank you, Your Honor.

BY MR. HERRING:

Q Since I didn't keep a copy myself, was that loan made in 2011?

A I believe so. That is what it says, 2011.

Q I understood that it was sent to you in 2011.

A I'm sorry. What was sent to me?

Q That document. I understood that it was sent to you in 2011 --

MR. JASKOWIAK: Your Honor, I'm providing Mr. Herring with a copy of his own exhibit.

THE COURT: Ms. Camp, if we can take

1  
2 yours? We're just going to have two copies made.

3 MS. CAMP: Sure.

4 THE COURT: Thank you.

5 The Court order does say to provide two  
6 copies to the Court, that was the presumption. And all  
7 other copies would be provided to counsel in advance.  
8 But, Mr. Herring, you hold on to that. We're making  
9 other copies.

10 BY MR. HERRING:

11 Q Did you ever get any type of documents from my  
12 mother saying I also got a \$100,000 loan?

13 A No.

14 Q Would it surprise you that she never did?

15 A No.

16 Q So if she never gave me a \$100,000 loan to match  
17 what she gave my sister, then that's really not equal  
18 as you had said Jane divides equally between her  
19 children.

20 THE COURT: I think that's -- let's  
21 rephrase that.

22 So, Mr. Fenstermacher, in your  
23 understanding of Jane Herring's intent to equally  
24 divide her estate between her children, knowing in the  
25 years that you spent as her counsel, how, if at all, do

1  
2 you reconcile a loan that may have been given to one  
3 child with this interest in equally dividing her  
4 assets?

5 THE WITNESS: Well, it was a loan, but  
6 it was an enforceable loan that was intended to be paid  
7 back. So it wasn't a gift; it was a loan.

8 THE COURT: So just to make sure I'm  
9 clearly stating this on the record for everyone to  
10 hear, am I hearing it correctly that it was your  
11 understanding that any loans made to Jill would be paid  
12 back either directly to Mom or to the estate, and then  
13 that estate is what would be divided equally?

14 THE WITNESS: Right. Yes.

15 MR. HERRING: Okay.

16 BY MR. HERRING:

17 Q Do you have any record that or any knowledge that  
18 any of that money was ever paid back?

19 A I believe I would, in my file, have various  
20 documents pertaining to the loan. It's my  
21 understanding that Ms. Herring did make payments on the  
22 loan, but also that, I believe, the bulk of it was  
23 forgiven as -- you know, under annual giving, annual  
24 exemption giving, gifts.

25 Q So she forgave the \$25,000 two years ago, as I



1  
2 understand it. This is sort of new to me. And are you  
3 saying that she -- did I understand you correctly when  
4 you said she forgave the bulk of it, meaning the rest  
5 of it?

6 A I believe over several years it was forgiven.  
7 Yes.

8 Q I might have asked you. The directive that you  
9 referred to, that was signed in May of twenty -- I'm  
10 sorry. Did my mother sign that directive in May of  
11 2020? Did she ever sign it or --

12 A No.

13 Q No. Okay. Okay.

14 Now, you stated in one of your two  
15 letters, the one to my mother, at the top -- was at  
16 P --

17 MR. JASKOWIAK: H-4, Page 2.

18 BY MR. HERRING:

19 Q You state, at the top, to my mother, "It is clear  
20 to me that this is his wish and he is trying to  
21 influence you to do so." If I have this undue  
22 influence, how did I ever benefit from it?

23 A I don't know.

24 Q But you stated I had this influence on her just  
25 because she wanted to change her will.

1  
2 A I believe you were influencing her to change her  
3 power of attorney to remove Jill so that you would have  
4 sole power, and also to change her trust agreement.

5 MR. HERRING: I'd like to submit another  
6 document, Your Honor.

7 THE COURT: Okay. So you want to have  
8 it marked as AH-3?

9 MR. HERRING: Three, I guess.

10 (Document entitled "Jane Herring's Will"  
11 marked Arthur Herring, III's Exhibit  
12 AH-3 for identification.)

13 THE COURT: Counsel, we're showing you  
14 what's been marked as AH-3. Are you familiar with this  
15 document?

16 THE WITNESS: Yes.

17 THE COURT: Okay. And what is it?

18 THE WITNESS: It's --

19 MR. JASKOWIAK: Objection, Your Honor.

20 THE COURT: Okay. Basis?

21 MR. JASKOWIAK: This has not been  
22 properly authenticated. It does appear to have my  
23 client's signature on the bottom. I've never seen it  
24 before. And I can't attest to whether or not what was  
25 above it was before, during, or after my client's

1 signature, assuming that is her signature.

2 THE COURT: The only thing that's been  
3 presented is a single page without anything further.  
4 So the objection is overruled for now.

5 Mr. Fenstermacher, what is the document  
6 you're holding in front of you?

7 THE WITNESS: It looks to be -- I don't  
8 know whether you'd call it notes, but maybe directions,  
9 some changes to Mrs. Herring's will, specific items  
10 such as a car, other furniture, and furnishings. But  
11 then also changing the percentage of the financial  
12 assets from 50/50 to 75/25.

13 THE COURT: Have you ever seen this  
14 document prior to today?

15 THE WITNESS: Yes. I believe  
16 Mr. Herring sent this to me.

17 THE COURT: Did you have anything to do  
18 with the creation of this document?

19 THE WITNESS: No.

20 THE COURT: So can you in any way  
21 authenticate who prepared it or when it was prepared?

22 THE WITNESS: No.

23 THE COURT: Okay. Mr. Herring, any  
24 further questions about -- to authenticate it?  
25

2 MR. HERRING: Yes, Your Honor.

3 BY MR. HERRING:

4 Q There was a document that was just recently  
5 submitted to you and you said you recognized my  
6 mother's signature. You can look at that too and,  
7 also, would you conclude that the signatures matched?

8 A I would just say they do appear to be similar.

9 Q And that document, wasn't that document submitted  
10 to you in the -- what was it, the February 20th  
11 meeting, and my mother asked you to put that into or  
12 modify the will to have that in there?

13 A I don't recall when this was presented to me. I  
14 don't know that it was given to me at that meeting in  
15 February. I do note, though, that the document is  
16 dated March 23rd, which would have been after the  
17 meeting.

18 Q Right. The document that was submitted to you in  
19 February was not -- it did not look like that, but it  
20 had the same --

21 MR. JASKOWIAK: Objection, Your Honor.

22 This is testimony --

23 THE COURT: Sustained.

24 MR. JASKOWIAK: -- not a question.

25 THE COURT: You can ask him questions.

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MR. HERRING: Okay.

BY MR. HERRING:

Q Would it be so unusual for a parent to modify their will for one child or another child as the years progressed?

A In 30 years of practice, yes, I would say it would be unusual. Highly unusual.

Q It's a parent's prerogative to give one child something and not the other, wouldn't it?

A Sure.

Q Okay. You saw that my mother gave my sister a \$100,000 loan, but I can -- but not to me. Isn't that kind of strange that somebody would give \$100,000 to a child and not the other one?

A Again, in my 30 years of practice, I wouldn't say it's unusual at all. If one child needs a loan and it's structured as a loan maybe to be repaid when the person dies, it's an advancement. No, it's not unusual at all.

Q Would you say that that document is very specific in that it does not leave anything to argument or lawsuits or whatever, that such a document spells out specifically how that estate is to be divided?

MS. CAMP: Objection. I don't

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understand which document we're referring to.

THE COURT: Are you talking to --

MR. HERRING: The loan.

THE COURT: -- AH-3?

MR. HERRING: The \$25,000 loan forgiveness letter to Fenstermacher.

MS. CAMP: AH-2?

MR. HERRING: I don't have that.

THE COURT: You do have it. We made copies for you.

MR. HERRING: Okay. Excuse me, Your Honor.

THE COURT: And it's your exhibit.

MR. HERRING: Yes. Yes, that is correct. Sorry.

MS. CAMP: Could you repeat the question?

THE COURT: He was asking if the document AH-2 is a binding contract.

Am I'm stating that correctly, Mr. Herring?

MR. HERRING: Umm ...

THE COURT: Or you can rephrase your question in any way you wish.

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MR. HERRING: Okay.

BY MR. HERRING:

Q No. The document that was just submitted -- what was that, AH-3? Okay. Doesn't that -- isn't that document extremely specific and basically airtight that it decides how the possessions and the monetary -- money would be divided so there --

THE COURT: I'm going to sustain that because that's a legal conclusion that I get to make. So counsel can't answer that one.

MR. HERRING: Ahhh ...

THE COURT: That's how it works.

MR. HERRING: No. No. I'm just trying to -- what, I cannot ask that question? Is that --

THE COURT: You cannot ask that question.

MR. HERRING: Okay.

THE COURT: Whether or not a document is, in fact, a binding contract, legally airtight, enforceable, that's up to me to decide -- with all due respect to Mr. Fenstermacher and his experience -- not his.

MR. HERRING: Okay. What I was trying to ask was comparing the present will of the 50/50 as

1  
2 Mr. Fenstermacher had written it, doesn't that leave a  
3 lot of open space for challenge after the person has  
4 died, as opposed to that document that makes it very  
5 specific?

6 THE COURT: Well, let me ask you,  
7 Mr. Herring, how is that relevant to the guardianship  
8 hearing?

9 MR. HERRING: Well, the relevance would  
10 be that my mother wanted -- she did not want arguments,  
11 she did not want lawsuits after she died.

12 THE COURT: Okay.

13 MR. HERRING: And as the will was  
14 written that's what was going to happen.

15 THE COURT: Okay. So we can --

16 MR. HERRING: So that's why she and I  
17 worked together and she filled out the percentage of  
18 assets and also the number of items each person was  
19 going to get.

20 THE COURT: Okay. Well, you've answered  
21 my question for relevance, and I understand that you  
22 helped your mom prepare this. Why don't I help you  
23 phrase that.

24 Mr. Fenstermacher, for the will that you  
25 prepared for Mrs. Herring, which is Petitioner's



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Exhibit --

MS. CAMP: P-5, Your Honor.

THE COURT: Thank you.

-- P-5, was there anything that was left as an outstanding question, in your professional opinion, that needed to be -- any kind of supplementary documentation to address?

THE WITNESS: No. No, ma'am.

THE COURT: Okay.

BY MR. HERRING:

Q You stated that I had fired you. What gave you that conclusion?

A You sent me an email telling me I was no longer your mother's attorney.

Q Would you deny that that decision was both of ours?

A Since I had no contact with your mother I have no way of knowing.

Q Well, wouldn't you call her to ask her?

A I don't know what the point of that would have been since you would have been there.

Q Well, if you stated --

A You made it quite clear in your email, Mr. Herring, that my services were no longer required

1 and that you had already had new documents prepared.  
2 Under those circumstances, I felt I was in limbo.

3 I didn't feel that those documents were  
4 valid because I didn't think your mother had capacity  
5 to sign new documents; but, on the other hand, if they  
6 were valid I had no authority, your mother could  
7 certainly fire me if she wanted to. You, acting as the  
8 power of attorney, perhaps, but the power of attorney  
9 had both you and your sister. So it was -- as I said,  
10 I felt very much in limbo.

11 Q Well, if you were my mother's lawyer, only my  
12 mother could fire you; correct?

13 A Well, under the power of attorney you and your  
14 sister could fire me.

15 Q You stated that you were concerned about how I  
16 would handle assets if I had the power of attorney --  
17 or if my mother changed the power of attorney to me  
18 exclusively. What led you to that conclusion?

19 A Well, I remember, Mr. Herring, you specifically  
20 stating to me in the telephone call that you had never  
21 opened a brokerage account statement and you didn't  
22 understand how to read them. So that would be one  
23 indication.

24 Q Well, it sounds like from that statement that you  
25

1  
2 thought I might be -- if I had power of attorney that I  
3 would abuse my mother's assets in some way. Is that  
4 what --

5 A I don't believe -- if you're referring to my last  
6 statement, I don't believe that's what I said at all.

7 Q Well, when you said you were concerned about me  
8 handling assets, it was simply because you didn't think  
9 I knew how to read a statement?

10 A Are you referring to what I just said or earlier  
11 today? I'm not sure -- I want to answer you, but I'm  
12 not sure exactly what testimony you're referring to.

13 Q Well, when you were giving -- when you were  
14 answering questions before it came to me you stated  
15 that you were concerned about me handling assets. I  
16 interpret that as being that I was -- you were  
17 concerned that I might abuse my mother's assets if I  
18 had the sole power of attorney.

19 A Well, given that I believe you unduly influenced  
20 your mother to change her documents and change her  
21 dispositive provisions, I would have concern about what  
22 you would do.

23 Q How can you say that I have unduly influenced my  
24 mother? In what way has that been shown?

25 THE COURT: Okay. That's -- you know

1  
2 what, I believe it's been asked and answered.

3 But if there is anything you haven't  
4 said to address that, you are welcome to.

5 THE WITNESS: Honestly, Your Honor, I  
6 just don't think there is anything else that I can say.  
7 I was not convinced, when I met with Mrs. Herring, that  
8 she was acting of her own accord and trying to change  
9 the dispositive provisions of decades. And nothing  
10 that happened after that meeting showed me otherwise.

11 BY MR. HERRING:

12 Q Are you aware that what has happened the last  
13 couple years could have very easily influenced what my  
14 mother had now decided to do as far as changing the  
15 will?

16 A I don't know what you're referring to.

17 Q Well, I'll say it again -- or ask again.

18 THE COURT: Okay. Mr. Herring,  
19 Mr. Fenstermacher only knows what he knows. And the  
20 decision that he's testified to multiple times now, the  
21 decision that your mother did not have capacity to make  
22 this decision on her own, was based on his independent  
23 interview with her in February of 2020. So he didn't  
24 have contact with her afterwards and did not know what  
25 happened afterwards. So that's his testimony. That

1  
2 was his reason for not changing the documents in the  
3 way that you or she expressed she wanted to in February  
4 of 2020.

5 BY MR. HERRING:

6 Q I may be asking this again, but you did not do any  
7 type -- other than your feelings about what you think  
8 of me having some influence over my mother, you did not  
9 give her any type of paper and pencil tests or any  
10 other types of tests --

11 MS. CAMP: Objection.

12 MR. JASKOWIAK: Objection. Asked and  
13 answered.

14 THE COURT: Sustained. This has been  
15 asked and answered. It was his professional judgment,  
16 and that's the basis for his decision.

17 BY MR. HERRING:

18 Q Do you have any documents in your possession that  
19 indicates if my sister has been making payments for  
20 that loan, of that \$100,000 loan?

21 A I believe I have documentation in my files in my  
22 office.

23 Q And what type of documents are they?

24 A Without looking at them I can't answer that.

25 Q Would they be receipts of some type?

1  
2 A Again, I can't answer that. Without looking in  
3 the file I don't know if it's letters from your parents  
4 or -- I just don't know. Sitting here today I don't  
5 know.

6 Q Well, as I see the document, the loan was made in  
7 2011, which was two years before my father died.

8 THE COURT: But when you say "the  
9 document," what document are you referring to?

10 MR. HERRING: I'm sorry. The loan.

11 MR. JASKOWIAK: AH-2.

12 THE COURT: Okay. Well, that loan is  
13 your loan; correct? The \$25,000 loan.

14 MR. HERRING: No. No. No. That's the  
15 \$100,000 loan --

16 THE COURT: Okay. That's the  
17 \$100,000 --

18 MR. HERRING: -- that my parents gave my  
19 sister.

20 THE COURT: No one's given me a copy of  
21 anything, so I don't know.

22 So if you can look at AH-2?

23 And if you can ask your question again?

24 All right. So now I'm on the same page  
25 with AH-2. And, Mr. Herring, do you have a question?

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MR. HERRING: I'm going to have to rephrase it.

BY MR. HERRING:

Q When the loan was made in 2011 for \$100,000, it was made by both my parents, correct, because my father was still alive?

A Correct. Correct.

Q And did you say -- did you make out that agreement of that loan?

A I believe there was a promissory note of some sort which your sister signed. And I believe I prepared that.

Q So who was in your office or was it done by email, as far as that promissory note and who signed it? Was it in your office when the parties did so or how was that done?

A You know, it was ten years ago. I don't remember the exact circumstances. I don't know.

Q But you believe you have documents in your files pertaining to this loan --

MR. JASKOWIAK: Objection, Your Honor. This is about the third time he's asked the same question.

THE COURT: Correct.

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MR. JASKOWIAK: Asked and answered.

THE COURT: It's sustained.

BY MR. HERRING:

Q Did my sister ever send you emails saying that my mother was crazy and mentally ill?

A Your sister sent me emails. I don't know if she's used those specific terms, but she's expressed concerns over the years.

Q Do you recall anything in the past year where she sent such emails to you stating basically those terms?

A I believe she has -- again, I don't know about the exact terms, but certainly she has sent me emails over the past year concerned about your mother.

Q Well, did those emails indicate that she thought my mother was mentally ill and she had delusions and paranoia and so forth?

A Again, I don't know about delusions and paranoia. Certainly discussing memory issues and potential dementia. Yes, there were emails with that sort of mental decline.

Q Can you speak up? I did not hear your last --

A I apologize. There were certainly -- there were -- she did raise issues of dementia and mental decline, yes.



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Q And what was the purpose of that?

A I don't know. You would have to ask your sister the purpose behind her sending those.

Q Well, how did you interpret those emails?

A I interpreted them as your sister being concerned about your mother's mental state.

Q And what was your interpretation of what she expected you to do about it?

THE COURT: Let me rephrase that. Is it common, in the 30 years you've been practicing trust and estates law, for family or your -- family of clients or your clients directly to express concerns about mental decline or defect?

THE WITNESS: Yes, I would say it is common.

THE COURT: And why is that important for you, as a trust and estates lawyer, to have an understanding of someone's capacity?

THE WITNESS: Well, I think it -- certainly if -- you know, if this person is subject to undue influence by anyone -- you know, you certainly hear of clients who have someone coming to the house and somehow get control of things, people that are susceptible to fraudulent phone calls, attempts to take

1  
2 money from them.

3           But then there is also the question of  
4 if there is a power of attorney -- and usually there  
5 is -- should the agents, should they be taking on some  
6 of the duties of making sure Mom or Dad are taken care  
7 of, making sure the bills are paid, et cetera, et  
8 cetera. So really it's an expression of concern of are  
9 there any legal issues we should be watching for more  
10 than anything else. So it's usually out of concern  
11 about the principal.

12           THE COURT: And if a family member,  
13 whether it's Jill Herring or anyone else in any of your  
14 cases, comes to you with a concern for someone's  
15 cognitive decline, what, if anything, does that have  
16 you, as the attorney, do when assessing your client or  
17 any circumstance -- future circumstance?

18           THE WITNESS: Well, again, usually if  
19 it's a routine circumstance where they're just raising  
20 that issue we might talk about, well, what testing has  
21 been done, what are the doctors saying? And then  
22 usually there is no issue. This case is highly  
23 unusual. Usually the children or whoever it might be  
24 get along and they all work towards what's best for my  
25 client.

1  
2 If I need to get involved -- which  
3 usually I don't because the power of attorney is in  
4 place for the children or whoever it is, again, can act  
5 on behalf of the principal. So it wouldn't -- again,  
6 it's -- you're there too, there wouldn't be much for me  
7 to do. I think some of it, too, was just so that I  
8 know what the circumstances may be.

9 THE COURT: And have you ever had a  
10 concern regarding impropriety when it comes to a family  
11 member reporting cognitive decline concerns to you?

12 THE WITNESS: May I ask what you mean?  
13 In the sense that --

14 THE COURT: Have you ever found that  
15 there is malicious intent?

16 THE WITNESS: Okay. Okay. That was my  
17 question.

18 THE COURT: That's probably a better way  
19 of phrasing it.

20 THE WITNESS: Thank you. Thank you. I  
21 don't know -- you know, without really thinking about  
22 it and just as the question comes to me while I sit  
23 here, I can't recall any. I'm sure if I thought back  
24 over the years, I'm sure I could come up with something  
25 where there were questions. But nothing is really -- I

1  
2 mean, there are arguments amongst siblings, but usually  
3 not a serious question of concern. So I'm just -- as I  
4 said, you can probably see the gears turning in my head  
5 as I try to remember.

6 THE COURT: So would it be fair to say,  
7 based on watching you struggle for a specific instance,  
8 that it is not -- it has not been common in your  
9 practice that you feel that there is any malicious  
10 intent when you are notified that someone may be having  
11 cognitive difficulties?

12 THE WITNESS: Correct. Correct.

13 THE COURT: All right. Mr. Herring.

14 BY MR. HERRING:

15 Q Did you ever talk to my mother about her mental  
16 decline that you indicate?

17 A I didn't. When I spoke with her alone in February  
18 of 2020 --

19 MR. HERRING: Your Honor, can he speak  
20 closer to the microphone?

21 THE WITNESS: Sure. When I spoke with  
22 her in February of 2020 I wanted to -- I didn't want --  
23 I didn't want to raise that issue. I thought it best  
24 to get at that in a different way instead of  
25 approaching it directly to her, not wanting to raise

1  
2 any sort of concern on her part, you know, wanting to  
3 ensure that she was comfortable talking to me, you  
4 know, because I could probably get a better indication  
5 of what she was thinking if she was calm and relaxed as  
6 opposed to, perhaps, agitated because of a potential  
7 mental decline. I've seen people. People, if they're  
8 aware that they're declining, in my experience, that  
9 can agitate them, just knowing that they're not what  
10 they used to be.

11 BY MR. HERRING:

12 Q So you did not talk to her about it because you  
13 thought she might get agitated about it?

14 A Yes. If you want to put it that way, yes.

15 Q When you say "agitated," are you referring to you  
16 thought she might get violent?

17 A No. No.

18 Q Well, agitated -- how do you define agitation?

19 A I just think of it as, you know, just her mental  
20 state and whether it would make her nervous or make her  
21 upset. You know, I just didn't feel that going down  
22 that path, if that were to happen, that I would get an  
23 accurate understanding of her mental state.

24 Q Don't you feel a lawyer's duty to his client is to  
25 discuss matters that might have a problem, that might

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cause problems if that person was not more educated or discussed?

A I think, for my purposes, I would have my own way of going about trying to find out what I was trying to find out. I don't know about other attorneys, but that's how I would handle it.

Q Last year, as I understand it, my sister requested you okay \$1,200 to pay her lawyer Cavanaugh that created that delegate authority. Did you ever contact my mother and ask her if it was all right?

A No.

Q Why not?

A That was -- I'd say that was an instance where I exercised my authority. And given that your sister had engaged Ms. Cavanaugh really to help the situation, that it was appropriate, an appropriate expenditure.

Q I'm sorry. I didn't hear that last part. What?

A I felt it was an appropriate expenditure given that it was to help resolve the situation.

Q Well, that's something you would do, wouldn't you, as an estate lawyer?

A I didn't represent your sister any more than I represented you.

Q So you had no problem with my sister hiring a

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lawyer and thinking my mother should pay for it?

A My understanding is your mother didn't pay for all of it, your mother paid -- if it was \$1,200, she might have paid \$1,200. But it was to help resolve the situation pertaining to your mother and dealing specifically with the power of attorney.

Q So you're saying my mother was aware that my sister wanted that \$1,200?

A I don't know if she was aware or not.

Q So, in other words, again I ask, you were going to give away \$1,200 of my mother's money without even asking her if it was all right?

THE COURT: That's a misstatement.

So ...

MR. HERRING: I'm sorry. What?

THE COURT: That's a misstatement. So it's sustained. And it's really not relevant to this proceeding because Jill is not asking to be the guardian.

MR. HERRING: Well, no. I'm just --

THE COURT: It's not "just" anything. The scope of this hearing is, number one, is your mother in need of a guardian? Is she incapacitated and is in need of a guardian? And, number two, who that

1 guardian should be if she is. And those are the big  
2 picture issues. There were also questions on whether  
3 or not she had the capacity when she changed her  
4 documents, but that all goes under capacity.  
5

6 MR. HERRING: Okay.

7 BY MR. HERRING:

8 Q So when was the last time you spoke to my mother?

9 MS. CAMP: Objection.

10 MR. JASKOWIAK: Asked and answered, Your  
11 Honor.

12 THE COURT: February of 2020 was his  
13 answer.

14 MR. HERRING: Okay. Thank you.

15 BY MR. HERRING:

16 Q In your practice, do parents always equally divide  
17 assets among their children?

18 MS. CAMP: Objection.

19 MR. JASKOWIAK: Objection.

20 MS. CAMP: Asked and answered.

21 THE COURT: Sustained. We've already  
22 gone over this.

23 BY MR. HERRING:

24 Q Have you okayed any other monies to my sister  
25 without my mother's knowledge?



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A To your sister? I believe there was annual gifting last year, but I believe that was all. But that was in keeping with what your mother did for the two of you.

Q I don't understand what you mean by "annual dividend."

A Annual gifting.

Q Oh, "gifting."

A Gifting.

Q All right.

MR. HERRING: Nothing more, Your Honor.

THE COURT: Okay.

Any redirect, Mrs. Camp?

MS. CAMP: Just a few questions, Your Honor.

REDIRECT EXAMINATION

BY MS. CAMP:

Q I'd like to clarify and go back to P-3, the power of attorney, the 2004 power of attorney. The authority granted to you under that 2004 power of attorney, would that have required Mrs. Herring to sign off on your exercise of authority under that document?

MR. HERRING: Which book?

THE COURT: P-3. It's the big binder.

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THE WITNESS: No.

BY MS. CAMP:

Q So your signature and execution only on this P-4 supplemental directive would not have required Jane's signature?

A No.

Q Okay. With respect to this loan document that might be helpful to pass around, I've marked this as P-6.

THE COURT: We already have a P-6.

MS. CAMP: I'm sorry. P-26.

THE COURT: Thank you.

(Demand Note marked Petitioner's Exhibit P-26 for identification.)

BY MS. CAMP:

Q Mr. Fenstermacher, did you prepare this document?

A Yes.

MR. HERRING: Excuse me. P-26?

THE COURT: That's what was just handed to you.

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(Discussion off the record.)

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BY MS. CAMP:

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Q What is the date on this document?

A November 2, 2011.

Q And is this the note that was prepared in connection with the loan given to Jill?

A Yes.

Q And this is -- the loan is from Mr. and Mrs. Herring; is that correct?

A Correct.

Q So it was while he was still alive?

A Correct.

Q All right. And you prepared documents -- the most recent documents you prepared for Mrs. Herring were in 2018; is that correct?

A Correct.

Q Okay. So a number of years after this loan was --

A Correct.

MS. CAMP: I have nothing further, Your Honor.

THE COURT: Okay.

Mr. Jaskowiak.

MR. JASKOWIAK: No questions.

THE COURT: Okay.

MR. HERRING: Your Honor --

THE COURT: Mr. Herring, you have the

1  
2 ability to ask questions just on the scope of those few  
3 questions Mrs. Camp asked.

4 MR. HERRING: Okay.

5 RECROSS-EXAMINATION

6 BY MR. HERRING:

7 Q This was signed November 2011. That was  
8 approximately one year before my father died. Within  
9 two years or so he did have memory loss.

10 MR. JASKOWIAK: Objection, Your Honor.  
11 He's testifying at this point.

12 MR. HERRING: I'm phrasing it into a  
13 question. I have to give some background.

14 THE COURT: No, you don't. You actually  
15 can just ask a question.

16 MR. HERRING: Okay.

17 THE COURT: That's what we talked about  
18 last time. So what's your question?

19 BY MR. HERRING:

20 Q Okay. The question is when this was made in  
21 November 2011, did you do any type of evaluation of my  
22 father to determine if he was -- if he had the capacity  
23 to make such a loan?

24 A I don't recall doing that, no.

25 Q Wouldn't you think that would be proper for a

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lawyer to do such --

A Without going --

THE COURT: Okay. And that's also outside of the scope of this hearing.

So you don't need to answer that.

MR. JASKOWIAK: And it's outside of the scope of the questions that were asked.

THE COURT: Well, and the redirect.

MR. HERRING: I was only trying to --

THE COURT: It doesn't matter. Because whatever happened with your father, whether or not your father had capacity or not is not relevant to this hearing.

MR. HERRING: Okay.

No questions, Your Honor.

THE COURT: Okay.

Mr. Fenstermacher, thank you for your appearance today and your testimony and for the diligence and attention you gave to the needs of your client. And you are welcome to stay with us if you choose, but you also may be excused if you wish to be.

THE WITNESS: I think I will be excused.

THE COURT: Understood.

All right. Mrs. Camp, any further

1 evidence or testimony on behalf of Petitioner?

2 MS. CAMP: No, Your Honor.

3 THE COURT: Okay. Do you wish to admit  
4 P-26 into evidence?

5 MS. CAMP: Yes, Your Honor.

6 THE COURT: Okay. 26 is admitted.

7 (Petitioner's Exhibit P-26 received in  
8 evidence.)

9 MR. JASKOWIAK: No objection.

10 THE COURT: All right.

11 Mr. Jaskowiak, during that last witness  
12 you marked H-4 and H-8 into evidence. Do you wish --  
13 you identified -- I'm sorry, just H-4.

14 MR. JASKOWIAK: Just H-4. Yes, Your  
15 Honor.

16 THE COURT: Do you wish to move that  
17 into evidence?

18 MR. JASKOWIAK: I wish to have that  
19 moved into evidence.

20 THE COURT: Okay. So moved.

21 (Jane T. Herring's Exhibit H-4 received  
22 in evidence.)

23 THE COURT: Mr. Jaskowiak, do you have  
24 any evidence or testimony you wish to present at this  
25

1  
2 time?

3 MR. JASKOWIAK: No.

4 THE COURT: Okay. You, of course, will  
5 be able to make argument later.

6 Okay. Mr. Herring, in addition to  
7 yourself, do wish to present anyone else to testify in  
8 this matter?

9 MR. HERRING: As I recall, my sister was  
10 up there and we didn't have a chance to finish that.

11 THE COURT: We finished your sister.  
12 She is done. She testified fully and I made it clear  
13 to you she would not be recalled.

14 MR. HERRING: Well, time had run out,  
15 Your Honor.

16 THE COURT: Time had not run out. Her  
17 testimony was completely concluded before we finished  
18 the day.

19 MR. HERRING: And I was asking her  
20 questions.

21 THE COURT: You had finished your  
22 questions. You said you had no further questions. We  
23 would not have finished on our last hearing date unless  
24 her testimony had been completed. And her testimony  
25 was completed at that time.

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MR. HERRING: As I understood --

THE COURT: She will not be recalled.

So in addition to yourself, without recalling any witness who has previously testified, do you intend to call any other witnesses?

MR. HERRING: Am I allowed to ask a question? I mean, my point is, Your Honor, as I understood the procedure, that after she was questioned by her attorney and Mr. Jaskowiak was done, then I ask questions pertaining to --

THE COURT: And you asked extensive questions. You don't get the opportunity to recall her. You were given every opportunity to question her. You cannot call her again. She testified fully and completely and you were given the opportunity to fully cross-examine her. So it is now your time to present evidence. So my question to you is I presume you wish to testify; am I correct?

MR. HERRING: Yes, Your Honor.

THE COURT: Okay. In addition to yourself, do have any other witnesses that you will be calling?

MR. HERRING: No, Your Honor.

THE COURT: Okay. Then we're going to



1 take a five-minute recess and then we will reconvene.

2 - - -

3 (Recess, 2:47 - 3:01 p.m.)

4 - - -

5 THE COURT: All right. Mr. Herring, you  
6 are going to testify. So you're going to come forward  
7 here.  
8

9 MR. HERRING: Your Honor, if it please  
10 the Court, I've got lots of documents and pictures and  
11 all. I think it would be easier if I stayed here,  
12 sworn in. But it would be faster than going back and  
13 forth three --

14 THE COURT: The problem is the attorneys  
15 can't see you that way. So if there is no objection by  
16 counsel. Or, Mrs. Camp, you can move your chair if you  
17 need to.

18 MS. CAMP: I have no objection, Your  
19 Honor.

20 MR. JASKOWIAK: No objection, Your  
21 Honor.

22 THE COURT: Okay. All right. Then  
23 since there is no objection we'll have you proceed that  
24 way.

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**ARTHUR HERRING, III**, having been duly sworn/affirmed, was examined and testified as follows:

DIRECT TESTIMONY

THE COURT: All right. Mr. Herring, I'm going to start off asking you some preliminary questions. Sir, where do you currently live?

THE WITNESS: I live in 26 Chancery Court, Your Honor.

THE COURT: Okay. And who do you live with?

THE WITNESS: My mother, Jane Herring.

THE COURT: Now, my question is not when did you sell your own place, my question is when did you start living with your mother more than 50 percent of each week?

THE WITNESS: Approximately two months ago, Your Honor, I moved in.

THE COURT: And prior to two months ago how often were you there?

THE WITNESS: I was there basically every day for the last eight and a half years for about six hours a day to visit my mother and to have dinner with her.

1  
2 THE COURT: Okay. And where was your  
3 residence that you said you sold two months ago?  
4 What's the address?

5 THE WITNESS: I did not sell it, Your  
6 Honor, as I will explain. My address was 1045 North  
7 West End Boulevard in Quakertown. It's a mobile home  
8 park, Melody Lakes.

9 THE COURT: Okay. In Quakertown; right?

10 THE WITNESS: Yes, ma'am.

11 THE COURT: Okay. How old are you, sir?

12 THE WITNESS: Sixty-seven.

13 THE COURT: How far did you go in  
14 school?

15 THE WITNESS: Two years of college.

16 THE COURT: Are you currently employed?

17 THE WITNESS: I've been self-employed  
18 for 41 years.

19 THE COURT: Okay. And what is your  
20 current position of employment? What do you do?

21 THE WITNESS: Lie detection.

22 THE COURT: Okay. All right. Now, sir,  
23 there is testimony today -- the first question is  
24 whether or not your mom is incapacitated, and the  
25 second question is if she is incapacitated, is she in

1  
2 need of a guardian? As part of the question of  
3 incapacity, there is a question for the Court of  
4 whether or not the documents she entered into in 2020  
5 should be considered valid because -- whether or not  
6 she had the capacity to enter into them, just so you  
7 understand the scope. So at this time I'm going to let  
8 you testify regarding your position regarding the  
9 relevant aspects here in this court in a narrative  
10 form, so just speaking to me. If either counsel  
11 objects you'll have to stop, I'll rule on the  
12 objection, and then you'll be able to keep going. But  
13 I am going to limit you to the relevant testimony  
14 today. Understood?

15 THE WITNESS: Yes, ma'am.

16 THE COURT: Also understand that your  
17 sister is not asking to be a guardian. So if she has  
18 financial or personal improprieties, that's not  
19 relevant today because she's not asking to be the  
20 guardian. Understood?

21 THE WITNESS: Yes, ma'am.

22 THE COURT: Okay. All right. With  
23 that, sir, you may proceed.

24 THE WITNESS: Okay, Your Honor.  
25 I'd like to start off, if the

1  
2 gentleman -- we've been talking a lot about Jane  
3 Herring. I'd like the Court to see Jane Herring.

4 THE COURT: Okay. So we're going to  
5 mark this as AH-4. And if you can show it to counsel.

6 THE WITNESS: One picture is of my  
7 mother at her 96th birthday.

8 THE COURT: Okay. You first have to let  
9 them --

10 THE WITNESS: Oh, I'm sorry.

11 THE COURT: -- see the pictures.

12 THE WITNESS: Sorry.

13 THE COURT: And are we marking these  
14 collectively, three pictures, as AH-4?

15 MR. JASKOWIAK: No objection, Your  
16 Honor.

17 THE COURT: I'm sorry. You said no  
18 objection?

19 MR. JASKOWIAK: No objection.

20 MS. CAMP: No objection.

21 THE COURT: Okay. And, Phil, if I can  
22 see that? And since there is no objection, we'll mark  
23 these collectively as AH-4 and move them into evidence.

24 (Three photographs marked Arthur  
25 Herring, III's Exhibit AH-4 for

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identification and received in  
evidence.)

THE COURT: All right. The Court has  
reviewed them. All right.

THE WITNESS: Okay.

THE COURT: And that's admitted into  
evidence.

THE WITNESS: Thank you.

THE COURT: Keep going.

THE WITNESS: To give you some  
background on myself, for 41 years I've been in the lie  
detection business. Lie detection is not the  
instrument that I have used for 41 years, is not the  
polygraph, the device with attached wires. In 1970 --

MR. JASKOWIAK: Objection, Your Honor.  
I don't think it's relevant to -- the whole history of  
lie detection.

THE COURT: Sustained.

You can give me background on yourself;  
I don't need to know -- this is not a case that deals  
with lie detectors. So ...

THE WITNESS: Okay. Well, I feel it is  
important to know --

THE COURT: Right. But I am the one

1  
2 that decides what's important. And --

3 THE WITNESS: Okay.

4 THE COURT: -- whether or not your lie  
5 detector is the same as a polygraph doesn't matter to  
6 this case. But go ahead.

7 THE WITNESS: Okay. I got into it back  
8 in 1981. I did the testing nationwide for about 20  
9 years for various law enforcement, government, private  
10 corporations, and so forth. And for the last 20 years,  
11 with the permission of one of the co-creators of it, I  
12 was selling the equipment, which is a software program  
13 on a laptop. And I have been training people worldwide  
14 to do that, including military, government,  
15 corporations, and so forth. And I have been  
16 interviewed many times and I've written articles about  
17 it, and I'd like to have those handed out.

18 THE COURT: No.

19 MS. CAMP: Your Honor, objection.

20 THE COURT: It's not relevant to this  
21 proceeding.

22 THE WITNESS: Well, it gives --

23 THE COURT: It doesn't matter, sir. You  
24 can be the greatest expert in the world in your  
25 occupation and it's not relevant to this proceeding.

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So that request is denied.

THE WITNESS: My mother and I have had a very, very close and loving relationship. And it's been that way for 50 years. We have done many, many things together and, as the attorney for my mother has -- would testify, she has conveyed that love to him and to Mr. Ledakis. And, again --

MS. CAMP: Objection. I think that's a mischaracterization of testimony.

THE WITNESS: Oh, give me a break. For crying --

THE COURT: No, that's not how it works. You don't get to say "give me break." You don't get to, when I'm in the back, throw things around and curse around here. This is a courtroom and there is a procedure. You chose to fire your lawyer and, therefore, you are stuck making sure you understand the rules of court. You have not abided by them for the day and a half of this hearing, and you need to. That's how it works.

So sustained as to the misstatement.  
Continue.

THE WITNESS: What was the objection? I don't --



1  
2 THE COURT: That you made a misstatement  
3 of the evidence regarding your attribution of something  
4 to Mr. Ledakis.

5 MS. CAMP: Correct.

6 THE COURT: I will remember the  
7 testimony; I was here.

8 THE WITNESS: Okay. We have spent many  
9 times together, as I have gone over there to my  
10 mother's house for a visit for the last eight and a  
11 half years, six hours a day, usually the same time,  
12 from 3 o'clock to 9 o'clock at night. We'd have  
13 dinner, talk, watch a movie.

14 And she has trusted me to make many,  
15 many decisions for her because we have discussed it and  
16 I have given her the options as far as what she would  
17 like to do.

18 Once in a while she would leave a note  
19 just to show that love for me, and she -- and I've made  
20 copies of some of those notes. Mr. Jaskowiak has seen  
21 the actual documents during a conference with -- where  
22 he interviewed me about a month or so ago so he can  
23 testify that these are true and correct copies of those  
24 notes that my mother has left for me to see when I  
25 arrived at times.

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THE COURT: Have you shown these to counsel in advance besides Mr. Jaskowiak? Ms. Camp and Mr. Jaskowiak both have the right to see them in advance. Have they both seen them?

THE WITNESS: Mr. Jaskowiak has seen the originals. I did not want to lose them, so I made copies.

THE COURT: Okay. But has Ms. --

MR. JASKOWIAK: I have seen some notes, Your Honor. Whether they are the same notes he's referencing I can't say. I have not been provided copies for today.

THE COURT: Why don't you show counsel a copy -- give counsel their copies of the exhibits.

And, counsel, if you want to look through them and let me know when you're finished. And we'll mark these as AH-5, please, Phil.

(Photocopies of 29 notes marked Arthur Herring, III's Exhibit AH-5 for identification.)

MS. CAMP: Your Honor, half of these don't have signatures on them, there is no way to tell who wrote them.

THE WITNESS: Your Honor, they were

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notes that were left --

THE COURT: Well, but that doesn't mean they can be authenticated in court, sir.

Now, it is possible that this witness may or may not be able to authenticate them, and we'll have to go through and --

MS. SCOTT HERRING: Disgusting.

THE COURT: -- see.

MR. JASKOWIAK: I have the same concerns, Your Honor, because I don't know who wrote the notes.

THE COURT: Okay. Well, we'll see if this witness can authenticate them.

Phil, could you make two copies of this packet?

- - -

(Discussion off the record.)

- - -

THE COURT: So why don't you continue to your next topic while those copies are being made.

THE WITNESS: As a loving son, I have tried to provide for my mother for any types of needs that she might have and, consequently, I have done so for her safety and her well-being. I have pictures of

1  
2 the various grab bars I've installed at her house for  
3 her safety, which I can pass out. Okay.

4 THE COURT: Okay. So they have to be  
5 shown to counsel.

6 Sheriff, if you don't mind helping us?

7 And we'll mark this AH-6.

8 (Six photographs marked Arthur Herring,  
9 III's Exhibit AH-6 for identification.)

10 MR. JASKOWIAK: No objection, Your  
11 Honor.

12 MS. CAMP: No objection.

13 THE COURT: Okay. Since there is no  
14 objection, AH-6 will be admitted into evidence  
15 collectively.

16 (Arthur Herring, III's Exhibit AH-6  
17 received in evidence.)

18 THE COURT: And, Mr. Herring, what am I  
19 looking at as this exhibit?

20 THE WITNESS: You are looking at the  
21 various grab bars that I have installed at my mother's  
22 house in the den, in her bathroom, outside of the den.  
23 So she has a problem getting up from sitting, so I've  
24 installed them at various locations, including next to  
25 her toilet, to help her assist when she stands up, to

1 hold on to, so she doesn't fall.

2 THE COURT: Okay. All right. You can  
3 continue. I take notes, as I said multiple times for  
4 every witness. If I'm not looking at you I'm taking  
5 notes and you don't have to worry about it. Keep  
6 going.

7 THE WITNESS: Okay, ma'am.

8 Another problem that she has is weak  
9 ankles. So I bought her two ankle braces. That's the  
10 next one.

11 THE COURT: Okay. We will make that  
12 AH-7.

13 MS. CAMP: No objection, Your Honor.

14 MR. JASKOWIAK: No objection.

15 THE COURT: Okay. We will admit those  
16 into evidence. All right.

17 (Photograph marked Arthur Herring, III's  
18 Exhibit AH-7 for identification and  
19 received in evidence.)

20 THE WITNESS: In addition, Your Honor,  
21 because of situations that happen in the world, as we  
22 have found out, there have been troubles where supplies  
23 are in very short availability and, consequently,  
24 because of that, I wanted to make sure that it was  
25

1  
2 always provided -- or food and water and supplies were  
3 always provided for my mother and myself in case that  
4 was ever needed. So I bought a very large supply of  
5 water, bottled water.

6 MS. CAMP: No objection.

7 MR. JASKOWIAK: No objection.

8 THE COURT: All right. AH-8 is admitted  
9 into evidence.

10 (Two photographs marked Arthur Herring,  
11 III's Exhibit AH-8 for identification  
12 and received in evidence.)

13 THE WITNESS: In addition to the bottles  
14 of water, I also have containers, five-gallon  
15 containers of fresh water, in case that is ever needed,  
16 to supplement the bottled water. All that water is --

17 MR. JASKOWIAK: No objection.

18 MS. CAMP: No objection.

19 THE WITNESS: -- sanitary.

20 THE COURT: Okay. AH-9 will be admitted  
21 into evidence.

22 (Photograph marked Arthur Herring, III's  
23 Exhibit AH-9 for identification and  
24 received in evidence.)

25 THE WITNESS: In addition, besides water

1  
2 I keep a very large supply of canned food, including  
3 food that's dehydrated that lasts 25 years. So in case  
4 there is ever a food shortage because of cyber warfare  
5 or because of any other type --

6 MS. CAMP: No objection.

7 THE WITNESS: -- of problems that trucks  
8 could not get to the stores, we have an ample amount of  
9 food, dehydrated food that last for 25 years. And, as  
10 we all found out, when there is a problem there is a  
11 shortage of toilet paper and paper towels, which that  
12 picture indicates in part of the basement I stacked up  
13 on that.

14 THE COURT: Okay. So the collective  
15 pictures of the food are AH-10. They're admitted into  
16 evidence, as there is no objection.

17 MR. JASKOWIAK: No objection.

18 (Three photographs marked Arthur  
19 Herring, III's Exhibit AH-10 for  
20 identification and received in  
21 evidence.)

22 THE COURT: And the pictures of the  
23 toilet paper will be AH-11.

24 MR. JASKOWIAK: No objection.

25 MS. CAMP: No objection.

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(Photograph marked Arthur Herring, III's Exhibit AH-11 for identification and received in evidence.)

THE WITNESS: Here is another picture, Your Honor, of shelves with food on it, and along with the five-gallon bottles of water -- or five-gallon cans of water -- and, also, the dehydrated food.

MR. JASKOWIAK: No objection, Your Honor --

MS. CAMP: No objection.

MR. JASKOWIAK: -- to the picture.

THE COURT: All right. AH-12 is the storage in the basement.

(Photograph marked Arthur Herring, III's Exhibit AH-12 for identification and received in evidence.)

THE WITNESS: What Your Honor is not able to see are the various Tupperware containers that have medical supplies, breathing masks like the one I'm wearing -- which is the only approved kind, the N95 -- for filtering out viruses, medical supplies, water filtration systems and water purifying systems -- which you are not able to see because they're in the container -- all of which would be used in case of any



1  
2 type of emergency.

3           And I'm very lucky, Your Honor, that I  
4 have a mother that loves me as much as she does. She  
5 has -- both my parents were very good parents. I was  
6 closer to my mother and, again, we've spent many, many  
7 decades doing various things together. I'm very lucky  
8 to have her. And I've always tried to do whatever I  
9 could to please her, to help her, and in any  
10 situation -- including situations that currently exist  
11 with her memory -- so she can always have somebody that  
12 could help her.

13           THE COURT: Do you need a tissue, sir?

14           THE WITNESS: (Shakes head from side to  
15 side.)

16           As I have explained to Mr. Jaskowiak, in  
17 the meeting with my lawyer about a month ago I was  
18 asked could I make serious decisions if they were ever  
19 needed, including hospital and end-of-life. And I said  
20 I can do those decisions without hesitation based on  
21 information that I feel is the best information that I  
22 could have available. I would have no problem seeing  
23 that time if my mother should have to have that  
24 terminal decision made.

25           For 20 years I had a dog rescue for

1 golden retrievers, and once in a while when I found out  
2 they had cancer I would have to put them down. But I  
3 was always with them. And it's a difficult decision;  
4 but whether it's a dog or somebody you love, if the  
5 decision has to be made, it has to be made.

7 THE COURT: So, Mr. Herring, if the  
8 Court would decide that you're the appropriate person  
9 to make the significant decisions for your mother's  
10 life -- whether it be end-of-life decisions, medical  
11 decisions, or financial decisions -- how would you keep  
12 your sister involved?

13 THE WITNESS: Your Honor, because I  
14 cannot bring in documents, emails -- and maybe I can, I  
15 don't know. But emails that I have sent to my sister  
16 through the years, I have clearly reached out to her to  
17 try to work together. I have sent her emails when tax  
18 documents were due and they were never responded to.

19 THE COURT: Mr. Herring, let me just  
20 interrupt you. Because from my observation in court,  
21 even in the way you were questioning your sister you  
22 couldn't use her name, you didn't call her "my sister,"  
23 you called her "the petitioner" or "the former  
24 plaintiff," you didn't make eye contact with her. Part  
25 of the job of the guardian is to keep all other family

1  
2 members informed and to consider their opinion. So why  
3 should I think that you would be able to do that with  
4 your sister?

5 THE WITNESS: Well, Your Honor, in  
6 those -- in the petition, as an example, it was clear  
7 most of that was directed at me with the comments, as I  
8 feel they were just disgusting insults. And in those  
9 emails where once in a while my sister did reply, she  
10 made just remarks that just had no bearing on what I  
11 was saying to her as far as, you know, how our mother  
12 is very -- is doing quite well and she's active, and so  
13 forth and so on. Or if I ask for a document -- because  
14 my mother would ask me as far as when documents needed  
15 to be mailed or something -- and I didn't know, I would  
16 reach out to my sister. Never heard from her. And I  
17 have copies of those documents.

18 Now, as far as, yes, you were quite  
19 observant. No, I just can't look at somebody that  
20 filed a false police report claiming I'm a violent  
21 person and I tried to push her down the steps. This  
22 court heard that as I was trying to push her down the  
23 steps I was laughing in a demonic way and my eyes  
24 rolled back into my head where she could see the  
25 whites. Now, how can you just say, well, yes, let's

1  
2 forget all of that? Yes, I have feelings and I'm  
3 just --

4 THE COURT: That is a question for you,  
5 sir. Because if you are the appointed guardian it is  
6 your obligation to not only keep your sister informed,  
7 but to consider her views and her opinions regarding  
8 what should happen to your mother. So if you can't  
9 even look at her, explain to me how you would work with  
10 her.

11 THE WITNESS: Well, Your Honor, all I  
12 can do is reach out. And, again, pertaining to taxes,  
13 I had tax documents -- Mr. Jaskowiak, again, I told  
14 him. I sent emails to my sister saying "Mother's taxes  
15 are due, you have documents over here to pick up  
16 pertaining to filing the taxes." Never heard from her.  
17 I have the emails.

18 And two months after they were due  
19 Mr. Jaskowiak asked for a duplicate copy of those  
20 documents that I gave him to give to my sister, which  
21 turns out, as I understand it, she was not doing the  
22 taxes, people that my mother fired three years earlier  
23 were actually doing them. All I can do is try and  
24 reach out; but remember for the last 50 years she has  
25 not wanted me in her life, no birthday cards, no

1  
2 Christmas cards. She can't even talk to me on the  
3 phone.

4 Now, again, it doesn't take two siblings  
5 to have problems; it can only -- it can be one -- and,  
6 again, the fact that my emails prove I have constantly  
7 reached out to her. I've tried to give very happy  
8 information as far as how my mother is doing and  
9 different situations that I thought she'd be interested  
10 in, but no contact from her. She can't even look at  
11 me. So, I mean, when somebody shows their hate and  
12 disgust for you, then what, are you supposed to smile  
13 and say, oh, let's forget all that?

14 Now, again, her actions --

15 THE COURT: So you --

16 THE WITNESS: Yes, ma'am?

17 THE COURT: So you have answered my  
18 question. So you were in the middle of telling me  
19 about, you know, the care that you and your mom have  
20 for each other, and you can continue from there.

21 THE WITNESS: Okay. As I said, it's --  
22 my mother -- again, my mother and I have a very, very  
23 close relationship. Those notes that she left me when  
24 I visit or when I used to visit her every day, once in  
25 a while she'd leave a note, I would -- when my father

1 died eight and a half years ago every month I would  
2 take her down to the cemetery with roses to my father's  
3 grave and then I'd take her out to dinner afterwards.  
4 That was basically a standard thing with us. Also,  
5 during the week or a couple times during the month I  
6 would take her out to lunch. Or if I took her  
7 someplace we'd go to lunch afterwards, such as her  
8 doctor visits or whatever.  
9

10 I have constantly taken control of the  
11 car maintenance, house maintenance, garden, for what  
12 it's worth. For the last year and a half I have done  
13 100 percent of the food shopping because I did not want  
14 her in those stores with the virus. And, as I said, I  
15 was able to buy, a couple years ago, a nice stock of  
16 the N95 masks, which are the only ones approved by the  
17 Center for Disease Control to stop inhaling the virus.  
18 Basically nobody else has those.

19 THE COURT: So, sir, you're addressing  
20 for me your concerns with the COVID-19 virus; is that  
21 correct?

22 THE WITNESS: Yes, ma'am.

23 THE COURT: And you are the one who has  
24 been taking your mom to all of her medical  
25 appointments; is that correct?

1  
2 THE WITNESS: She stopped driving two  
3 months ago, but she would do -- if the weather was all  
4 right, if it wasn't snowing or ice -- which she did not  
5 feel comfortable driving in -- yes. If it was snowing,  
6 raining, icy, I would take her to the different  
7 doctor's appointments; otherwise, she would drive.

8 THE COURT: Has your mom taken herself  
9 to any doctor's appointment alone, without anyone else,  
10 since COVID started in March of 2020?

11 THE WITNESS: No.

12 THE COURT: All right. Have you taken  
13 her to all of her appointments since --

14 THE WITNESS: Yes.

15 THE COURT: -- since March of 2020?

16 THE WITNESS: Including dental, eye  
17 doctor, feet doctor.

18 THE COURT: Why hasn't your mom been  
19 vaccinated?

20 THE WITNESS: We have talked about that,  
21 Your Honor, and she just does not feel that the vaccine  
22 is safe because we keep reading about side effects, the  
23 fact -- now the latest news is even if you're  
24 vaccinated, that's only about 92 percent that will  
25 prohibit or supposedly stop the virus, but the fact

1 that people can still get it if they are vaccinated.  
2 And they can still spread it even if they're  
3 vaccinated.  
4

5 So the side effects at her age, at 96,  
6 is a darned if you do, darned if you don't. I don't  
7 get it because I don't feel it's safe and I don't feel  
8 the side effects --

9 THE COURT: Well, I'm not asking about  
10 you.

11 THE WITNESS: Okay. Her.

12 THE COURT: I'm asking about your mom.  
13 When your mom made this decision, did she have the  
14 opportunity to speak with her doctor privately without  
15 you present?

16 THE WITNESS: She has spoken with  
17 Dr. Kuhar, yes. I leave the room when she's going to  
18 have a physical examination.

19 THE COURT: Okay. So, sir, it's my  
20 understanding that you are requesting to be your  
21 mother's legal guardian; is that correct?

22 THE WITNESS: Yes, ma'am.

23 THE COURT: And you're requesting to be  
24 her legal guardian to both make her personal decisions,  
25 which includes health care, residences,



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entertainment -- is that correct?

THE WITNESS: Yes, ma'am.

THE COURT: And also her financial decisions; is that correct?

THE WITNESS: Yes, ma'am.

THE COURT: Okay. Have you ever declared bankruptcy?

THE WITNESS: Yes, ma'am. I have.

THE COURT: Okay. When and how many times?

THE WITNESS: Technically, when I was sued by a business in Florida --

THE COURT: I'm just asking if you've declared bankruptcy. You said yes so the question was when.

THE WITNESS: Okay. I was trying to give you a little background.

THE COURT: I don't want background. I just want to know when.

THE WITNESS: Okay. Okay. The first time was February of 2019; I hired a bankruptcy lawyer and he filed the wrong bankruptcy. I had paid him \$7,000. He recently -- he had passed away, I think it was about a year ago. He had 50 years of bankruptcy

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law. His name was --

THE COURT: So, sir, February of 2019 is the answer. Did you declare bankruptcy any other time?

THE WITNESS: That bankruptcy was thrown out by the court because he filed the wrong bankruptcy. So, technically, I don't know how you want to interpret that.

THE COURT: Okay. So did you declare bankruptcy again?

THE WITNESS: Yes, I declared bankruptcy again in, I think it was February of 2020. I hired another bankruptcy lawyer to do --

THE COURT: Just all I need is the date. And you're saying that was related to the same circumstance that caused you to file bankruptcy in 2019; is that correct?

THE WITNESS: Yes.

THE COURT: Okay. Have you ever had a judgment issued against you?

THE WITNESS: Yes, I did.

THE COURT: Okay. By whom and for how much?

THE WITNESS: The Florida court gave the judgment of \$850,000, and just about three months ago

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the bankruptcy court wiped it all out.

THE COURT: Okay. That's not usually how it works, but that's okay.

THE WITNESS: Did I explain myself correctly?

THE COURT: Just one second.

THE WITNESS: The judgment was discharged. That's --

THE COURT: So do you still have a judgment against you?

THE WITNESS: No. No.

THE COURT: And are you requesting -- so we've heard testimony about money that is going to be left for you in trust or gifts that were given to you in trust from your mom. Do you know why things were placed in trust for you?

THE WITNESS: Yes, Your Honor. It was because of the business I was in, that business being a type of business where people, if they don't get what they want, they'll -- the easiest thing to do is to sue. So because of that the trust was set up so nobody could touch any of the assets that were ever left to me.

THE COURT: Mr. Fenstermacher testified

1  
2 that the items were placed in -- the money left to you,  
3 whether it be a gift or as a result of the trust, were  
4 placed in trust to protect the assets from the judgment  
5 against you. Do you disagree with that testimony?

6 THE WITNESS: Can you repeat that, Your  
7 Honor?

8 THE COURT: Sure. You were here when  
9 Mr. Fenstermacher testified.

10 THE WITNESS: Yes.

11 THE COURT: And he testified that your  
12 mother had the money she was leaving to you in her will  
13 sent to you via a trust to protect it from the judgment  
14 against you. Do you disagree with what he said?

15 THE WITNESS: I don't know how he had  
16 set up -- again, I don't understand the law to a  
17 certain point -- or I do understand the law, only to a  
18 certain point; that is why I go to lawyers and have  
19 them explain things to me. Again, all I understand is  
20 the trust was set up because of the type of business I  
21 was in to protect the possibility that if a lawsuit was  
22 ever filed against me for whatever reason, those assets  
23 would be protected from being seized.

24 THE COURT: Have you ever been evicted  
25 from a rental property?

1  
2 THE WITNESS: Let me explain that. When  
3 I went into bankruptcy the second time -- well,  
4 technically, to me, I only had bankruptcy once.

5 THE COURT: Okay.

6 THE WITNESS: The fact it was thrown out  
7 because the lawyer filed the wrong one, that wasn't my  
8 fault at all. Okay. Now, when I entered the  
9 bankruptcy in approximately February of 2020, my  
10 bankruptcy lawyer told me not to pay any bills, that  
11 includes the lot rent up at Melody Lakes. We own the  
12 homes -- they're manufactured homes, they're made in a  
13 factory -- but we pay -- we own the homes, but we pay a  
14 lot fee to have the home there and that's \$800 a month.  
15 So what my bankruptcy lawyer told me was do not pay the  
16 lot fee until after the bankruptcy is over.

17 THE COURT: Okay. So did you wind up  
18 being evicted from that property?

19 THE WITNESS: If I kind of can fill in  
20 the blank, please?

21 THE COURT: I just need a "yes" or "no,"  
22 and then you can fill in the blank. Yes or no were you  
23 evicted?

24 THE WITNESS: At this time, yes, Your  
25 Honor.

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THE COURT: Okay.

THE WITNESS: Now, if I can just --

THE COURT: When did that occur?

THE WITNESS: I think it was about a month and a half ago or so.

THE COURT: Okay. And were you ever evicted from any other property?

THE WITNESS: No, Your Honor. Before that I owned another mobile home down in Lansdale, Village of Neshaminy Falls. I lived there for about 15 years.

THE COURT: "No" was the answer.

THE WITNESS: Okay.

THE COURT: That's all I needed was "no."

THE WITNESS: Now may I explain?

THE COURT: I'm not there yet. I have a couple more questions.

THE WITNESS: Okay.

THE COURT: Have you ever been convicted of any crime?

THE WITNESS: Yes.

THE COURT: Okay. And what is that?

THE WITNESS: It was 21 years ago, I

1  
2 think it was. I was accused of eating a half a pound  
3 of loose candy in a store and I was fined about \$250  
4 for it.

5 THE COURT: Okay. Were you charged as a  
6 misdemeanor or summary theft offense?

7 THE WITNESS: I don't know how -- what,  
8 technically, it was. I was fined \$250. I was never  
9 fingerprinted or anything like that.

10 THE COURT: Okay. Probably a summary  
11 offense.

12 THE WITNESS: Now --

13 THE COURT: All right. So, sir, you can  
14 give me some explanation regarding your eviction as  
15 whether or not you have financial improprieties that  
16 are relevant for me to consider as to whether or not I  
17 would appoint you as guardian. So you can address that  
18 if you wish to.

19 THE WITNESS: Okay, Your Honor. As I  
20 said, when I was in bankruptcy the first time -- I mean  
21 February 2020, when I came out of bankruptcy, I had  
22 about \$12,000. The bankruptcy trustee divided up the  
23 cash and so forth in my accounts and I got about twelve  
24 thousand, twelve and a half thousand dollars out of it.  
25 So I was going to use that to pay off my back lot rent,

1  
2 which was about ten and a half, eleven thousand  
3 dollars. No problems.

4 But within a month or so this bomb  
5 dropped of this petition so I had a choice, I could use  
6 the money to pay off my lot rent and keep my house  
7 that's worth about \$25,000, or I could hire my own  
8 lawyer pertaining to this petition, and even though my  
9 mother had her own lawyer, I didn't know who he was or  
10 what he was going to do. I know public defenders have  
11 maybe 150, 200 cases at any time, so this was all new  
12 to me.

13 So for the benefit of my mother I used  
14 about \$10,000 of that money to hire Ms. Cornelison and,  
15 because of that, I didn't have the money left to pay  
16 off the back lot rent. So basically I just let the  
17 house go. And the eviction was simply a formality that  
18 I didn't pay the back rent so, therefore, they evicted  
19 me.

20 THE COURT: You knew when you hired  
21 Ms. Cornelison that the Court had appointed  
22 Mr. Jaskowiak to represent your mom; correct?

23 THE WITNESS: Yes, ma'am, I did. But,  
24 again, as I said, I didn't know how this process works.  
25 I don't know if Mr. Jaskowiak has 20 other cases or 10



1 cases or a hundred cases, based on my experience in lie  
2 detection where I know public defenders are  
3 overwhelmed. So I wanted to protect my mother.  
4

5 So I lost the house, valued at about  
6 \$25,000, to make sure my mother was protected and that  
7 her lawyer -- because I hired my own lawyer, I made  
8 sure that by asking her questions that Mr. Jaskowiak  
9 was doing what he should be doing to protect my mother.  
10 So that, to me, was a sacrifice that I would make again  
11 to make sure my mother was protected.

12 THE COURT: All right. Before we get to  
13 your Exhibit 5, the notes that you wanted to go over,  
14 is there anything else you want to say at this time  
15 before we start going over these?

16 THE WITNESS: Yes, Your Honor. I wanted  
17 to comment about the shoplifting.

18 THE COURT: Okay.

19 THE WITNESS: Okay. Now, when it  
20 happened, two store employees -- I had went to the  
21 store to buy a couple things for dinner. I paid for  
22 them. As I was leaving the store two store employees  
23 stopped me, they claimed I was eating store candy, and  
24 they called the police. They told the police they were  
25 watching me the whole time.

1  
2           When the police arrived he asked them to  
3 go get the bag of candy that I was eating from. They  
4 couldn't find it. Again, they claimed they were  
5 watching me the whole time, but they couldn't find it.  
6 Well, while we were waiting for the police one of the  
7 store employees said to the other -- and I quote --  
8 "Let's do what we do in the south and take him out  
9 back." Well, I took that as a threat. And the fact  
10 that in court they lied about what I had done, but, I  
11 had my own stenographer and she recorded it.

12                       Sir, if you would pass this out?

13           And one of the store employees admitted,  
14 yes, they had said that. So the fact that they would  
15 lie like that about me stealing candy when, in fact, it  
16 was basically they were trying to intimidate me to  
17 maybe confess.

18                       THE COURT: Well, let me ask you, sir.  
19 Did you plead guilty or were you found guilty by the  
20 Court?

21                       THE WITNESS: I was found guilty.

22                       THE COURT: Okay.

23                       THE WITNESS: Now, as the year shows,  
24 this was about what, 21, 22 years ago. If I wanted to  
25 spend a couple thousand dollars --

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THE COURT: There is actually no year.

MS. CAMP: No, there is no date.

THE COURT: There is no date on this transcript, it is just a Page 63 of a transcript, sir.

MR. JASKOWIAK: The only date that appears, Your Honor, is on Line 18, October 30, 1998 Shop 'n Save, something, but --

THE WITNESS: Well, we can assume it was in that --

MR. JASKOWIAK: -- I don't know what it's from.

MR. HERRING: -- within a month or two months that a district court -- it was in district court, so we can assume it was within a couple of months of that date.

THE COURT: Okay. I'm going to mark this Page 63 of the transcript as AH-13 for identification purposes, but it will not be admitted into evidence.

MR. JASKOWIAK: Thank you.

(Page from transcript marked Arthur Herring, III's Exhibit AH-13 for identification.)

THE WITNESS: Now, because -- and I'm

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not sure about the statute or whatever, but --

THE COURT: The --

THE WITNESS: No. No.

THE COURT: It doesn't matter, sir.

What's relevant to the Court is whether or not you're convicted of a crime, whether or not that's a crime of dishonesty, and whether or not it's a crime that could have any implications on safety for your mother.

THE WITNESS: Okay.

THE COURT: That's it. So you were convicted of a crime. I will presume, from what you're telling me, it is a summary offense since you only had to pay a fine, but there may be cross-examination on that and I will need to make a final determination based on that. But I don't need a full explanation of anything further to know anything other than whether or not you were convicted and whether you pled guilty or were found guilty.

THE WITNESS: Okay. As I was saying, I am aware that after five years or so you can apply to get it expunged.

THE COURT: Correct.

MR. HERRING: And I have found out, you know, it's going to cost three or four thousand

1  
2 dollars. So, to me, it was just not worth it, spending  
3 two, three, four thousand dollars to have a lawyer  
4 expunge it because it was just such a ridiculous  
5 accusation to start with.

6 Now, the second one -- which, again, I  
7 don't know if you're going to bring it up or not -- but  
8 about 11 or so years ago I hired a Lehigh University  
9 professor to write a security software program for me.  
10 I paid him \$35,000. He failed to do so, so he quit.  
11 So I tried to get the university to talk to him to  
12 refund my money. The president of the university  
13 refused to get involved. I contacted the board of  
14 trustees, they refused to get involved in the matter.  
15 I tried to file a complaint with the Bethlehem Police  
16 Department; they wouldn't even take my report. I  
17 contacted the District Attorney's Office to file a  
18 private criminal complaint and it was rejected the same  
19 day.

20 The Lehigh University professor, who was  
21 a department chair, he was good friends with their  
22 public defender, and when they found out I had tried to  
23 file the complaint he filed a --

24 THE COURT: Sir, were you convicted of a  
25 crime relating to something at Lehigh?

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THE WITNESS: Yes.

THE COURT: Okay. What were you convicted of?

THE WITNESS: Harassment.

THE COURT: Okay. And did you plead guilty or were you found guilty?

THE WITNESS: Found guilty.

THE COURT: And what was the penalty?

THE WITNESS: It was about -- I think it was a \$300 fine or something.

THE COURT: Okay. And this was about 10, 11 years ago?

THE WITNESS: Yes.

THE COURT: Okay.

THE WITNESS: Now, what that charge was --

THE COURT: It doesn't -- that's all I need. That's all I need to know. It had nothing to do with your mom; right?

THE WITNESS: No.

THE COURT: It had nothing to do with anyone who was elderly?

THE WITNESS: No.

THE COURT: Okay.

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2 THE WITNESS: Am I allowed to say what  
3 it was?

4 THE COURT: It's not really relevant to  
5 this. The only relevant crimes that I'm concerned with  
6 is if I feel like you're going to be at risk of harming  
7 your mom, who you want to be the guardian for, or if  
8 you would have financial improprieties or crimes of  
9 dishonesty. So I don't need to hear any more about  
10 this.

11 THE WITNESS: Well, I understand, Your  
12 Honor, you are the judge, but I do feel certain details  
13 should be explained. I mean, that's --

14 THE COURT: It's not relevant --

15 THE WITNESS: Okay.

16 THE COURT: -- to this proceeding.

17 THE WITNESS: Okay, Your Honor.

18 THE COURT: Okay. So let's look at  
19 AH-5, which is the packet of notes that Mr. Herring  
20 wishes to introduce. I have numbered mine in  
21 sequential order. There are pages going from the first  
22 page, being No. 1, to the last page, being No. 38, and  
23 I'm going ask Mr. Herring questions in that order. So,  
24 for the record, if I say -- every page number I  
25 reference is all encompassed in AH-5. And if everyone

1 -- you know, I see counsel numbering theirs, so I'll  
2 wait until we get there.

3 MS. CAMP: I only get 29.

4 MR. JASKOWIAK: I also get 29, Your  
5 Honor.

6 THE COURT: I have 38. So some of mine  
7 may be duplicates.

8 - - -

9 (Discussion off the record.)

10 - - -

11 THE COURT: I'm first going to look at  
12 Page 1, a note that says "Good morning. Love ya."

13 Mr. Herring, what is this?

14 THE WITNESS: That's one of the notes my  
15 mother left for me.

16 THE COURT: When?

17 THE WITNESS: I have no idea. I just  
18 kept the notes out of sentimental reasons. I just kept  
19 the various notes, just -- you know.

20 THE COURT: Okay.

21 THE WITNESS: I didn't date them or  
22 anything.

23 THE COURT: All right. So Page 2 says,  
24 "Me."  
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THE WITNESS: Yes.

THE COURT: What is that?

THE WITNESS: If you look at the next page, it was a rectangular piece of paper that said "Me, You."

THE COURT: Okay. And who is that from?

THE WITNESS: My mother.

THE COURT: Okay. Where was it?

THE WITNESS: She might leave them on my dinner plate, she might leave them on the stairs to my bedroom. I don't recall where she had left it. Again, this is over the course of, you know, four, five years.

THE COURT: Okay. So you don't have a specific date?

THE WITNESS: No, ma'am.

THE COURT: All right. I'm looking at Page 4. At the top it says "It's 3:05 a.m. Tuesday, October 20." And what is that?

THE WITNESS: That's another note my mother left for me.

THE COURT: Okay. Looking at Page 5 it says on the top "July 2019." And who wrote this?

THE WITNESS: My mother.

THE COURT: And did she write it in its

1  
2 entirety or did someone write it and she signed it?

3 THE WITNESS: No. No. She wrote it.  
4 You can tell the handwriting and the ink and so forth,  
5 the same magic marker.

6 THE COURT: All right. I can't tell  
7 anything. So I see that she has her signature, and  
8 then the rest is written, printed, which is why I'm  
9 asking you.

10 THE WITNESS: She -- for whatever  
11 reason, that's how she wrote it.

12 THE COURT: Okay. At the time -- this  
13 note says "My caretaker for personal and business care  
14 is my son, Arthur Herring, III, but shared with my  
15 daughter Jill and his lawyer. Love ya." Who was your  
16 lawyer at the time?

17 THE WITNESS: Well, we didn't get a new  
18 lawyer until December of 2020, so I'm assuming it's  
19 Fenstermacher.

20 THE COURT: Okay. Do you see where the  
21 word "his" is underlined three times?

22 THE WITNESS: Yes, ma'am.

23 THE COURT: You didn't have a separate  
24 lawyer at the time?

25 THE WITNESS: No.

1  
2 THE COURT: Okay. And did you  
3 personally ever retain Mr. Fenstermacher to do work for  
4 you?

5 THE WITNESS: No.

6 THE COURT: Okay. All right. And I'm  
7 looking at Page 6, and this is a note. Who wrote this?

8 THE WITNESS: My mother.

9 THE COURT: All right. And this, at the  
10 top, says, "Signed for 26 Chancery Court."

11 Counsel, if you want to make sure we're  
12 all on the same page?

13 All right. Why did she write this?

14 THE WITNESS: I have no idea. It's on  
15 her stationery.

16 THE COURT: Did she give it to you or  
17 did you just find it in her home?

18 THE WITNESS: I didn't find it. She  
19 left it at either the steps to my bedroom or on my  
20 dinner plate or in my seat in the den where I would sit  
21 to watch TV with her.

22 THE COURT: Okay. When you say the  
23 steps to your bedroom, in June of 2019 were you  
24 sleeping over at the house regularly?

25 THE WITNESS: No. If it was snowing or

1 if we watched a movie -- like I said, normally I would  
2 be there from 3 o'clock in the afternoon to 9 o'clock  
3 at night; that was just basically our schedule. But if  
4 there was a movie that started late and I would be  
5 there until 11 or 12 o'clock to watch the movie,  
6 sometimes I would just spend the night instead of going  
7 home late.  
8

9 THE COURT: So --

10 THE WITNESS: Or if the weather was bad  
11 I would spend the night.

12 THE COURT: So in June of 2019, can we  
13 agree that there wasn't likely to be a snowstorm at  
14 that time?

15 THE WITNESS: Yes, ma'am, we can.

16 THE COURT: Okay. And even if you  
17 weren't regularly staying at your home, your mother  
18 would sometimes leave you notes outside your bedroom?

19 THE WITNESS: The house, Your Honor, is  
20 technically a one-story house; it has basement, but  
21 there is a -- above the first floor there is an attic.  
22 In some of the homes they have converted it into a  
23 room, so it's like a half a floor, and I have a full  
24 bedroom and a full bathroom. So there are steps that  
25 go up to -- if you want to call it the attic or the

1  
2 bedroom. There is about 30 steps.

3 So she would leave these at different  
4 places. Like I said, I never -- I just kept the notes  
5 for sentimental reasons just because I thought they  
6 were very touching.

7 THE COURT: Okay. I'm going to ask you  
8 -- oh, I see the problem. You know what, you are  
9 right. I --

10 THE COURT CRIER: They were left over in  
11 the --

12 THE COURT: I think we just misnumbered.  
13 So your numbering is correct, the 29. I had some  
14 duplicates.

15 Okay. So I'm going to ask you to look  
16 at Pages 7 through 12. And just look at all of those  
17 and just let me know, were all of those notes from your  
18 mom to you?

19 THE WITNESS: Yes, ma'am. They are.

20 THE COURT: Okay. And do you know the  
21 specific dates or circumstances that caused her to  
22 leave any of these?

23 THE WITNESS: No, I do not, Your Honor.

24 THE COURT: Okay. If we can look at  
25 Page 13? Is this a note that your mom wrote to you or

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you to your mom?

MS. CAMP: Which?

THE COURT: Page 13 is sideways. It said "Happy Mother's Day. Good morning. 4:11 a.m."

MS. CAMP: Oh, I do not have that one.

THE WITNESS: Your Honor, was I supposed to number these? I'm sorry. I didn't know --

THE COURT: I told you I had numbered them so I could follow along and keep track on the record.

THE WITNESS: Okay. But I did not number mine, so --

THE COURT: Well, you can go to the beginning, just like counsel did, and write in sequential order --

THE WITNESS: Okay.

THE COURT: -- the pages. But do you see where I am? It says "Happy Mother's Day." These are your exhibits, sir. It's written sideways if you look at the top page.

THE WITNESS: Oh, okay. Yeah, I got it.

THE COURT: Okay. Is this a note from you to your mom or your mom to you?

THE WITNESS: My mother to me.

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2 THE COURT: Okay. So your mother wrote  
3 herself a note that says "Happy Mother's Day"?

4 THE WITNESS: She was just indicating  
5 the day it was.

6 THE COURT: Okay.

7 THE WITNESS: I buy her dinner and  
8 roses, she leaves me notes.

9 MR. JASKOWIAK: Can we note the time,  
10 Your Honor, 4:11 a.m.?

11 THE WITNESS: Yes. Your Honor, if I may  
12 explain that comment? My mother would always get up  
13 about 3 o'clock, 3:30 in the morning because she had to  
14 go to the bathroom. And then she'd get a piece of  
15 toast and a warm glass of milk and then she'd go back  
16 to bed. Sometimes she might watch TV or something in  
17 the middle of the night, but, basically, 3, 3:30 is  
18 when she would get up to go to the bathroom.

19 THE COURT: Okay. And how do you know  
20 that, sir?

21 THE WITNESS: Because she's told me.

22 THE COURT: All right. If you can look  
23 at Pages 14, 15, 16, 17, 18, 19, 20, 21, and 22? Are  
24 those notes that your mother wrote to you or you to  
25 your mom?

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THE WITNESS: All those notes my mother wrote to me.

THE COURT: Okay. I'm looking at the last page that I asked you to look at, on Page 22, that says "What shall we do today? Thursday." That's a note from your mom to you?

THE WITNESS: Where it says at the top "Love you, See you later, Love you"?

THE COURT: Correct.

THE WITNESS: Okay. Yes, all those notes were made out by my mother to me.

THE COURT: Okay. What do you call your mom? What name do you call her by?

THE WITNESS: "Mother."

THE COURT: Okay. Would you look at Page 20? Do you see where she signed it "Jane"? Did your mom write notes to anyone else?

THE WITNESS: I did not get a chance to number these, Your Honor, so I'm sorry.

THE COURT: It says on the top "Friday, 3 o'clock a.m., back to bed." If you look at what Mr. Jaskowiak's showing you, that's the exhibit I'm --

THE WITNESS: Yeah.

THE COURT: -- looking at.



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THE WITNESS: Yeah, she wrote that to me.

THE COURT: So she would sign things to you "Jane"?

THE WITNESS: That's the only time I ever saw that.

THE COURT: Okay. You said you just moved in two months ago; correct?

THE WITNESS: Approximately two months ago. Yes, Your Honor.

THE COURT: Okay. If you can look at Page 19? So the page before. It starts at the top, "It is early, go to bed. Ha ha, April Fool." Let me just ask it this way. It's written at 2:10 a.m., and it says "Your door squeaks." Why would your mom be noting that your door squeaks at 2 o'clock in the morning if you weren't there?

THE WITNESS: Well, as I said, sometimes, if there is a late movie, I might spend the night. In the morning or during the night she would close my door because, you know, she might be out in the kitchen with a pot or something and she didn't want me to wake up, so she would pull my door shut.

THE COURT: Okay. If you can look at

1 the remainder of the exhibits? So that would be  
2 Page 23 through 29, so the last six pages in your  
3 packet. Are these all notes from your mom to you?  
4

5 THE WITNESS: Yes, ma'am.

6 THE COURT: Okay. And the same thing,  
7 you don't recall when they were written?

8 THE WITNESS: No, ma'am.

9 THE COURT: Sir, have you noticed any  
10 cognitive decline in your mom?

11 THE WITNESS: Starting when?

12 THE COURT: Ever.

13 THE WITNESS: Well, we all forget. As  
14 far as -- yeah, instant memory, it's not like it used  
15 to be, I would say maybe a 20 percent decline. She  
16 always knew who I was, she always knew who relatives  
17 were. She was driving her car up until two months ago  
18 when her driver's license expired, and the DMV had sent  
19 her a letter saying they were going to ask her to do  
20 special tests because of her age. And my mother talked  
21 about it with me and she basically said, you know, she  
22 didn't feel like driving anymore. But she's never had  
23 an accident, she's never had a ticket for the last 50  
24 years.

25 THE COURT: Have you noticed her being

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confused at all?

THE WITNESS: She might be confused as far as what day it was. Her routine is basically exactly the same day after day after day. So the only day that is different is when she goes to the hairdresser on Fridays.

But I've never denied she has a little memory loss or instant recall problem. But she has never -- and what I feel is very important, Your Honor -- she has always shown common sense and she's always known right from wrong. She cooks dinner. And you can understand if you don't cook dinner properly and keep foods at the right temperatures, you can have food poisoning; cooking chicken and pork, if you don't clean the countertops, that can cause Salmonella poisoning. She's always maintained her hygiene and so forth.

THE COURT: Okay. I'm looking at Page 26. This is not your mom's only reference to the squirrels, but this page says "Bad squirrels." What is that related to?

THE WITNESS: Are you referring to the one in the middle that says "It is nice out, but bad squirrels"?

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THE COURT: Correct.

THE WITNESS: Yeah. My mother likes to feed the birds. We have two bird feeders and the squirrels seem to like the birdfeed too, so they climb up and they dangle with their tail as they eat the food.

THE COURT: Okay. All right. Sir, do you believe your mother needs help making decisions?

THE WITNESS: Not everyday decisions, certainly not. But if they're technical in nature, like I do, as far as if it's a legal matter I will call up a lawyer or make an appointment; if it's pertaining to auto, I will certainly ask my mechanic. But for her, as far as everyday activities, she gets the paper, she reads it, she knows how to take a --

THE COURT: Well, let me ask more specifically. Can she pay her own bills?

THE WITNESS: Her bills are paid for automatically, Your Honor. That was set --

THE COURT: But if they were not automatically paid, could she do it herself?

THE WITNESS: I can't answer that, Your Honor.

THE COURT: If she had to move, would

1 she be able to coordinate a mover and figure out where  
2 to go on her own?

4 THE WITNESS: I really don't know.

5 THE COURT: Okay. If she needed to make  
6 an important health care decision on her own -- for  
7 example, if she God forbid had cancer and whether or  
8 not she should have chemotherapy, would she be able to  
9 make that decision on her own?

10 THE WITNESS: She would relay her  
11 concerns to me and we would talk about it as  
12 mother-son.

13 THE COURT: Okay, but that's not my  
14 question. My question is would she be able to --  
15 presume you weren't around, you're out of the country  
16 and she's got to make the decision. She talks to her  
17 doctor. Would she have the ability to make that  
18 decision on her own?

19 THE WITNESS: Positively yes, Your  
20 Honor.

21 THE COURT: Okay.

22 THE WITNESS: We've talked about this  
23 many times as far as at her age would she want to go  
24 through a painful operation if it will extend her life  
25 a couple years and all, and her answer is basically

1 she's lived a good life and she doesn't want to go  
2 through that.

3  
4 THE COURT: Okay. So Exhibit 5.  
5 Mr. Herring, you want me to consider all these notes?

6 THE WITNESS: Yes, ma'am.

7 THE COURT: Okay. Mr. Herring is moving  
8 Exhibit 5 into evidence, and I understand there is an  
9 objection from counsel.

10 Anything else you want to place on the  
11 record besides your objections?

12 Okay. The Court will admit this into  
13 evidence over objection and give it the weight it  
14 thinks is appropriate in this matter.

15 (Arthur Herring, III's Exhibit AH-5  
16 received in evidence.)

17 THE COURT: Okay. Mr. Herring, anything  
18 further?

19 THE WITNESS: Well, Your Honor, I would  
20 like to -- I guess maybe Petitioner will probably bring  
21 up the bankruptcy and so forth. I have documents here.  
22 I would like to explain why I got sued to start with  
23 and the reason for it. Because before this lawsuit  
24 three years ago, I had an 804 credit rating. I owned  
25 two old cars, which I'm happy with. I've always owned

1 old cars. And my mobile home is 40 years old. And the  
2 one before that was about 40 years old. I have no  
3 problems living cheap within my means.  
4

5 THE COURT: Mr. Herring, I think it's  
6 better to see if anyone asks you the question about it.  
7 And if they do, you'll be able to fully answer any --

8 THE WITNESS: Okay.

9 THE COURT: -- questions asked of you  
10 for bankruptcy.

11 THE WITNESS: Okay.

12 THE COURT: So, understanding that, is  
13 there anything else you wish to say to me to regarding  
14 your mom's need for a guardian, her -- you know what, I  
15 do have one additional question. We first met over  
16 Zoom for a conference -- let me just get the date.

17 MS. CAMP: June 1, Your Honor.

18 THE COURT: All right, June 1st of 2021.  
19 And at that time I was asking you questions about the  
20 lawyers that you saw when your mom changed her  
21 documents.

22 THE WITNESS: Yes.

23 THE COURT: My recollection is that you  
24 went to eight or nine lawyers before you encountered  
25 the one who changed your mom's documents. Am I

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remembering that correctly?

THE WITNESS: Approximately that was the number. Yes, Your Honor.

THE COURT: Okay. Why did you go to so many different lawyers?

THE WITNESS: Good question, Your Honor. When my mother and I -- again, two and a half, three years ago my mother basically said she was not pleased with Fenstermacher anymore. And as time went on she just became more and more dissatisfied with his work. So it was approximately, I would say, about January or so of 2020, we came to an agreement that maybe we should find a new lawyer.

So using the internet I searched around Montgomery County, Bucks County -- whatever -- for lawyers, and we went to different ones. We had to make appointments and, you know, lawyers are busy. So when we would go to one we'd bring all the documents -- the old documents, and they'd usually charge us between one to two hours of their billing time to review the documents and to talk to us.

Well, at the end every one that we went to said that before they would make those changes my mother would have to get a neuropsychological



1 evaluation. Now, okay, fine. But none of them had any  
2 people to recommend. So we went from one lawyer to  
3 another lawyer to another, and every one -- after they  
4 billed us -- told us the same thing, they demanded this  
5 neuropsychological evaluation before they made the  
6 changes.  
7

8 So once we got the name from Dr. Kuhar,  
9 my mother's doctor of 20 years -- I think they're  
10 called Penn Neurology in Lansdale. So my mother and I  
11 went there and the woman we talked to, her name was  
12 Dr. Wang, and she had a very heavy accent and she wore  
13 a mask because it was last year, it was the virus.

14 So my mother also has about a 25 percent  
15 hearing loss. She doesn't wear a hearing aid, she just  
16 gets through it. So my mother sometimes was not able  
17 to understand what she was saying and so forth. But  
18 that Dr. Wang, all she did was, like, part one of the  
19 test, which was a physical test, you know, make a fist,  
20 open your hand, pull her finger, that kind of stuff.

21 At the end they gave us the name -- Penn  
22 Neurology gave us the name of a neuropsychologist, his  
23 name was Troiani -- T-r-o-a-n-i, I think, it's spelled.  
24 He was down in Berwyn. We made an appointment with  
25 him, we went down to see him, hour and a half drive.

1  
2 And no sooner did we get there and Troiani said, "Oh, I  
3 see you want it for legal reasons. I don't do it for  
4 legal reasons, only medical reasons, like for people  
5 with strokes and Parkinson's." So, basically, that was  
6 the problem.

7 THE COURT: Well, did the first doctor  
8 you saw at Penn Neurology make a determination  
9 regarding your mother's capacity, Dr. Wang?

10 THE WITNESS: I can't say for sure, Your  
11 Honor, because it was only a physical type test, there  
12 were no paper and pencil tests or anything like that.

13 THE COURT: Did Dr. Wang issue a report?

14 THE WITNESS: I can't say one way -- I  
15 don't --

16 THE COURT: Do have any report in your  
17 possession or have you seen any report that shows that  
18 your mother did have capacity -- a doctor's finding --  
19 after February of 2020?

20 THE WITNESS: Could you repeat that  
21 question again, please?

22 THE COURT: Sure. Do you have any  
23 report in your possession or have you seen any  
24 report -- even if you don't physically have it -- that  
25 shows that your mother had capacity to make decisions

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after February of 2020?

THE WITNESS: No. I don't recall any -- seeing it or I certainly don't have it.

THE COURT: Okay. And did you see or have any report from any of these doctors you have seen that says she does not have capacity after February of 2020?

THE WITNESS: Yes.

THE COURT: Okay. And who said that?

THE WITNESS: At one point we found a neuropsychologist that was recommended by a lawyer in Colmar who does wills and so forth. His name was Dr. Carroll, Ken Carroll. So my mother and I hired him. He came to the house, spent exactly one hour with her, and gave her about five or so paper and pencil tests, one of them was that mini-mental state exam. And he basically just asked her some general questions and he left. Like I said, he spent exactly one hour there. He left and he wrote up a report -- which I have copies of that report. I don't know if you've seen them.

THE COURT: I have not.

THE WITNESS: And he came to the conclusion that my mother had major cognitive

1 impairment. And his conclusion was -- he basically  
2 made five statements. He said, "I believe" -- you  
3 know, "I believe this" or "I do not believe this."  
4 Well, that, to me, is basically saying he's guessing.  
5 And the fact that --

7 THE COURT: I'm going to stop you there.  
8 When did Dr. Carroll do that report?

9 THE WITNESS: Off the top of my head, I  
10 think it was May 27 or something like that. But around  
11 May 27 -- and I'm guessing at that date to a day or  
12 two -- but it was made about a month earlier, before  
13 the petition was filed.

14 THE COURT: And when did your mom change  
15 her documents -- her legal documents, the power of  
16 attorney and her will?

17 THE WITNESS: They were -- the documents  
18 were changed -- it was the trust, power of attorney,  
19 the will, living will -- they were made over a  
20 two-month period. I believe the will was changed in  
21 December of 2020.

22 THE COURT: Okay. And this was May of  
23 2020 that Dr. Carroll conducted the evaluation?

24 THE WITNESS: Right. And he tried to  
25 claim that he did not think she had the ability to know

1  
2 what she was doing back in December -- which, again,  
3 that's pure speculation, nothing to base it on.

4 Now, what's interesting or what's  
5 important is, again, we went through those different  
6 lawyers, none of them had any suggestion as far as what  
7 neuropsychologist to go to that would do it for legal  
8 reasons. My mother's Dr. Kuhar, a year ago, wouldn't  
9 even write a letter of competency for my mother  
10 because, her words were "She did not want to get  
11 involved in legal matters." Her doctor of 20 years  
12 wouldn't do it.

13 So we finally found Mr. Fravel, we  
14 talked to him. He's in Dublin. And Mr. Fravel  
15 explained that lawyers demand or request -- or  
16 basically demand that -- lawyers demand that  
17 neuropsychological evaluation because it protects them  
18 from getting sued by somebody after the person dies who  
19 would claim, oh, they didn't know what they were doing.  
20 So that's why lawyers demand it, just so they don't get  
21 sued themselves. That's how Mr. Fravel explained it to  
22 us.

23 And Mr. Fravel did not feel that my  
24 mother had any problems understanding what she was  
25 doing. He talked to her privately. I was out of the

1 room. And, you know, my mother said that, you know, he  
2 asked her questions like "Do you really want to do  
3 this," you know, "Why do you want to, you know, change  
4 the will?" And Mr. Fravel said in his letter that he  
5 believed she knew what she was doing when she made  
6 those changes.  
7

8 THE COURT: All right. Anything  
9 further?

10 THE WITNESS: Now that brings us up to  
11 Fravel, which is the lawyer that made those changes.

12 THE COURT: Right. I mean, you can't  
13 tell us what he said, because that would be hearsay.

14 THE WITNESS: Okay.

15 THE COURT: It doesn't matter if it's in  
16 writing or oral, that would still be hearsay and it's  
17 inadmissible.

18 THE WITNESS: Okay. Well, that's -- you  
19 know, I had asked Mr. Fravel to be here and he had said  
20 that -- you know, that because I have his letter, that  
21 I could submit that as an exhibit.

22 THE COURT: If he's a lawyer he would  
23 know that that's not accurate.

24 THE WITNESS: Okay.

25 THE COURT: And I believe Mr. Fravel is

1  
2 the attorney who contacted my chambers who said you  
3 originally told him you were issuing a subpoena and  
4 then told him you weren't going to.

5 THE WITNESS: I did so only after he  
6 told me that he did not have to be here, that I could  
7 just submit his letter to me as an exhibit and that  
8 would be accepted.

9 THE COURT: That's not how it works.

10 THE WITNESS: Okay.

11 THE COURT: Okay.

12 THE WITNESS: All I can do is listen to  
13 him.

14 THE COURT: Right. So anything further?

15 THE WITNESS: Again, I feel, Your Honor,  
16 that I -- you know, it would be to my mother's benefit  
17 that she has somebody that she knows, that she gets  
18 along with, that she trusts, as opposed to somebody  
19 that is an outsider that has no concern, care --  
20 whatever -- for what she really -- what her feelings  
21 are for any particular issue like I would have as her  
22 son, and that I've been there literally for the last  
23 eight and a half years seven days a week.

24 Again, I think that's important to know,  
25 that she does trust me and she does want me to be that

1 person to make not just the simple decisions about  
2 house maintenance or whatever, but also for the  
3 difficult medical decisions, which I'm sure every  
4 parent dreads as far as having a child having to make  
5 life and death situations for them.

6  
7           But my mother is still very independent.  
8 I would have no problem leaving for a week to go out of  
9 town for training, or whatever. I would have no  
10 problem leaving there. She doesn't leave the doors  
11 open. She didn't start the car in the garage with the  
12 door shut. She knows no to do -- you know, again,  
13 leave the oven on or leave the stove on. She knows  
14 these things. Again, I know her hygiene, I know how --  
15 her eating habits and so forth. This is something  
16 where, again, she still has common sense and she knows  
17 right from wrong.

18           As far as a memory loss, yeah, I  
19 estimate it to be about 20 percent or so. Instant  
20 recall, yes, that is a little problem. But, as I've  
21 said -- you know, if you hold up your hand and pretend  
22 your thumb doesn't exist, wouldn't that cause you  
23 problems in life just doing everyday things? Well, I  
24 have learned dealing with somebody that has a little  
25 short-term memory problem, just, yes, she might ask



1  
2 something two or three times, yes; but I've learned  
3 that, yes, that is something that she has no control  
4 over. And it's sort of sad because once in a while  
5 when she can't remember something she'll say, "I'm  
6 stupid. I'm so stupid." And that hurts me, to hear a  
7 woman say to -- to condemn herself for something that's  
8 a medical problem, no more than if a person, you know,  
9 again, without a thumb tries to pick up something and  
10 they spill it. Yeah, do you say, oh, that person's  
11 stupid because they can't pick up something because  
12 they don't have a thumb? It's, again, I've learned  
13 about that, and I've learned that, yeah, patience is  
14 very important, to be sure that you do not yell at  
15 somebody, you don't yell at them because "I just told  
16 you that three times." No, you don't do that.

17 THE COURT: I understand your position,  
18 Mr. Herring.

19 So the Court has admitted into evidence  
20 Arthur Herring 1 through 13, with the exception of  
21 No. 3. Those have all been admitted into evidence, and  
22 the Court will give them the weight they deserve.

23 I'm going to take a five-minute recess  
24 and ask counsel to streamline their questions. And I  
25 don't need you to repeat anything that I asked, but you

1 are welcome to supplement anything that I asked about.

2 MR. JASKOWIAK: Understood, Your Honor.

3 THE COURT: So when we return after we  
4 take a five-minute recess, Ms. Camp, you and  
5 Mr. Jaskowiak can decide who wants to go first. I'll  
6 let you two discuss that amongst yourselves.

7 MS. CAMP: Thank you, Your Honor.

8 - - -

9 (Recess, 4:20 - 4:31 p.m.)

10 - - -

11 THE COURT: Okay. Counsel, who is going  
12 first?

13 All right. Mr. Jaskowiak, you may  
14 cross-examine Mr. Herring.

15 MR. JASKOWIAK: Thank you.

16 CROSS-EXAMINATION

17 BY MR. JASKOWIAK:

18 Q Mr. Herring, you've been aware not only through  
19 Mr. Fenstermacher but through others that back in 2020  
20 there were concerns about your mother's ability to make  
21 decisions and to -- about changing her will and other  
22 similar documents, such as the POA. You've known  
23 throughout 2020; correct?

24 A Can you repeat the question, please?

1  
2 Q Sure. Sorry. It was a little awkward perhaps.  
3 You knew throughout 2020 that there were many people  
4 who had concerns about your mother's capacity as it  
5 related to her ability to draft -- have new documents  
6 drafted for her, whether they be a will, a power of  
7 attorney, a change to a trust. You've known throughout  
8 2020; correct?

9 A Well, I take issue with when you said "many." I  
10 don't. But my mother's Dr. Kuhar knew that she had a  
11 little memory problem, she would give her that  
12 mini-mental state exam twice a year. She did it in  
13 June of this year, her score was 26 out of 30. And her  
14 score of --

15 MR. JASKOWIAK: Objection. Not in  
16 evidence, Your Honor.

17 THE COURT: Right. Sustained.

18 So you can't tell us what somebody else  
19 said or did outside of court. You can tell us what you  
20 said or did, but not what someone else said.

21 BY MR. JASKOWIAK:

22 Q So I will ask you, though, about something that is  
23 in Dr. Kuhar's records.

24 And, Your Honor, I think I'm up to H-10.  
25 If we could have these?

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THE WITNESS: The small book?

THE COURT: Nope. These are new exhibits that he's handing to you.

(Internal Medicine Visit marked Jane T. Herring's Exhibit H-10 for identification.)

BY MR. JASKOWIAK:

Q You went with your mother to Dr. Kuhar on September 17, 2020; correct?

A I'm not sure of the date.

MR. JASKOWIAK: If I may point out to him, Your Honor?

THE COURT: You may.

And, Mr. Jaskowiak, it's awkward to be parallel to the person you're questioning. You can move your chair wherever you need to be comfortable when you're questioning.

MR. JASKOWIAK: I'll try to without infringing on his personal space.

BY MR. JASKOWIAK:

Q You went to see Dr. Kuhar on September 17, 2020 with your mother; correct?

A I can't say for sure.

Q Okay. Well, let's take a look at the paragraph,

1 then, that is right under Assessment & Plan and let's  
2 read together. I'll read it. "Mild memory impairment.  
3 I did review neurology's letter. Patient does need to  
4 see a neuropsychologist for further review in order to  
5 determine her competency to make decisions on her  
6 behalf regarding changing her will and legal  
7 decisions." Do you see that?

8 A Yes.

9 Q Okay. "I have insisted I begin with the patient  
10 and her son that I am unable to issue this statement  
11 without her having neuropsychological testing and that  
12 they may need to determine whether or not she is  
13 competent to make these legal decisions."

14 You were advised by Dr. Kuhar -- you  
15 were advised in September of 2020, according to her  
16 medical record, that your mother needed to have  
17 neuropsychological testing done, weren't you?

18 A I've never seen this letter until now.

19 Q That's not my question. You were advised by  
20 Dr. Kuhar that that kind of testing needed to be done.  
21 Regardless of whether or not you've seen this record.  
22 That's what she told, isn't it?

23 A Again, the times I was with my mother at  
24 Dr. Kuhar's office --  
25

1  
2 Q I'm not asking about other times. I'm asking  
3 about this time. On September 17, 2020, you were aware  
4 and were told by Dr. Kuhar that your mother needed  
5 neuropsychological testing to determine capacity as of  
6 that date because of her concerns --

7 A That message --

8 Q -- correct?

9 A That message, I do not recall that was ever said  
10 to me. Again, we would go there for just a regular  
11 physical checkup and, if she had an ache or a pain or  
12 something, for that matter.

13 THE COURT: Okay. So your answer is you  
14 don't recall that being said to you?

15 THE WITNESS: Yes.

16 THE COURT: Okay.

17 BY MR. JASKOWIAK:

18 Q Can we agree, though, that your mother has  
19 exhibited forgetfulness for some period of years that  
20 even you noted; correct?

21 A I would disagree with that. What do you mean by  
22 "years"?

23 Q Okay. Well, let's take a look if we can. If you  
24 can open the small binder to Exhibit P-3? [sic] And  
25 I'm going to read from you an email that you sent to

1 your sister on Christmas day, 2017, December 25, 2017.  
2 And after you say "Hi, Jill, thanks for your gift," you  
3 wrote "As you know, Mother now sometimes may forget a  
4 detail or not remember something that was told to her  
5 once or twice before even if it was a minute ago. She  
6 may not understand something and it might have to be  
7 re-told or explained to her. She knows she does not  
8 remember as well as years ago and she says so. She  
9 gets very embarrassed and frustrated by it. She will  
10 even insult herself because she cannot remember."  
11 That's what you wrote to your sister back in 2017;  
12 correct?

13 A Yes. But, again, we're talking about frequency,  
14 once a year, twice a year. Again, you have to talk  
15 about frequency when you go from five years ago, where  
16 there was no problem, to three years ago, where it  
17 happens once in six months or once in three months.  
18 You know, there is -- and then, again, you have to  
19 question or have to ask the severity. Was it something  
20 that, what's today, Tuesday? No, it's Saturday. Are  
21 you going to buy the Christmas tree this week? No, it  
22 will be a month from now. Something like that. But,  
23 again, we all forget. That's why we make notes.  
24 That's why Post-it sells Post-its.

1  
2 THE COURT: I'm going to stop you. You  
3 just have to answer the question that's asked of you.

4 THE WITNESS: Okay.

5 BY MR. JASKOWIAK:

6 Q So getting back to the year 2020, during that same  
7 time period when you had gone to Dr. Kuhar and she made  
8 the recommendation that's reflected in her note, you  
9 were going to various attorneys, as you've just  
10 answered to Her Honor, to try to get these documents --  
11 the testamentary documents, the power of attorney  
12 documents, and the trust -- redone; correct?

13 A Yes.

14 Q And among the various attorneys you went to, you  
15 went to an attorney by the name of Jack Hetherington;  
16 correct?

17 A I don't remember his name offhand.

18 Q Okay. There is check, though, from your mom's  
19 account to Jack Hetherington. Would that refresh your  
20 recollection? I don't really want to have to go  
21 through the checks, but would you accept my  
22 representation that in P -- I'm sorry -- H-8, the  
23 checks, there is a check to Mr. Hetherington? Would  
24 you accept that representation?

25 A I cannot say for sure whether it was for a lawyer



1 or it could have been a repairman. I don't know.

2 THE COURT: Well, if the Court takes  
3 judicial notice that Jack Hetherington is an attorney,  
4 would you have paid an attorney for any reason other  
5 than legal assistance?  
6

7 THE WITNESS: Yes.

8 THE COURT: What would you pay an  
9 attorney for other than legal assistance?

10 THE WITNESS: Well, Your Honor, last  
11 year, as I said, in 2020, I had hired a bankruptcy  
12 lawyer. His name was Nahrgang. I hired him in  
13 February of last year.

14 THE COURT: Did you use your mother's  
15 money to hire your attorney?

16 THE WITNESS: The money came -- every  
17 year my mother gives each of us --

18 THE COURT: Yes or no? Did you use  
19 money from your mother's account to hire your attorney?

20 THE WITNESS: Your Honor, I cannot --

21 THE COURT: Just "yes" or "no."

22 THE WITNESS: I cannot answer it "yes"  
23 or "no." I --

24 THE COURT: Yes, you can. Did money  
25 come from Mom's account to pay an attorney to represent

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you? Yes or no?

THE WITNESS: Indirectly yes.

MR. JASKOWIAK: Your Honor, I'd like the Court to take notice of -- and I'm going to ask that it be admitted, to the extent it may not have already been -- H-8, Pages 9 and 10. There is two checks from Jane Herring's account to Matt Nahrgang law for \$2,500 each. And the next page is the check to Jack Hetherington on June 10th for \$1,500.

THE COURT: And which pages are these on H-8?

MR. JASKOWIAK: Page 9, 10, and 11.

THE COURT: Okay. Thank you. So moved. (Checks from Raymond James' Account (17) previously marked Jane T. Herring's Exhibit H-8 for identification was received in evidence.)

MR. JASKOWIAK: And there is another check for Matt Nahrgang on H-12 for \$3,335, and another check to Matt Nahrgang for \$1,000 on Page 13.

THE WITNESS: When you say pages, what are you talking about? H --

THE COURT: At the bottom of the exhibit H-8 -- we've been doing this for two days, sir -- it

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says 1 of 17, 2 of 17.

THE WITNESS: Okay. I've got it. I've got it.

BY MR. JASKOWIAK:

Q Now, Mr. Herring, the changes that were made by Mr. Fravel, can we agree that they benefit you and not your sister?

A I would --

Q Can we agree?

A No, I would not agree.

Q So if --

A When you say "benefit" --

THE COURT: Okay. Let Mr. Jaskowiak clarify.

BY MR. JASKOWIAK:

Q So if the distribution in the trust was adjusted from 50/50 to something more than 50/50 for you, that would benefit you, wouldn't it?

A Depending on that specific time, the fact that my sister had been getting financial gifts from my parents --

Q I'm not asking --

THE COURT: That's not the question. You're asked a specific question; answer the question.

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Whatever the sentence is it is, just answer the question.

Mr. Jaskowiak, can you repeat your question?

MR. JASKOWIAK: Sure.

BY MR. JASKOWIAK:

Q If the distribution that Mr. Fenstermacher talked about was 50/50 prior to that, and the Fravel changes in or around December of 2020 increase the percentages to you, that would benefit you; correct?

A Yes.

Q And that would be to your sister's detriment; correct?

A It was what my mother wanted.

THE COURT: That's not the question.

BY MR. JASKOWIAK:

Q That's not my question. It would be to your sister's detriment; correct?

THE COURT: The Court will take judicial notice that --

MR. JASKOWIAK: Thank you.

THE COURT: -- if the split was 50/50, if Arthur gets more, Jill gets less.

BY MR. JASKOWIAK:

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Q And the changes that were made, originally I was led to believe that the Fravel fee was \$2,130. It was significantly more than that, wasn't it?

A If I recall it was about 7,000. If I remember correctly.

Q Okay.

A For all the documents.

Q All the documents. And there was one document that in all the discussions that I had with you that you never told me about, and that was a new deed. There was a new deed actually done for your mother's house as well, wasn't there?

A Something about a deed was changed, based on Mr. Fravel said that there was a problem with the deed the way it was set up by Mr. Fenstermacher.

THE COURT: We're on H-11.

(Recorder of Deeds documents marked Jill T. Herring's Exhibit H-11 for identification.)

MR. JASKOWIAK: Your Honor, I would like the Court to take judicial notice of a copy of the deed that was procured from the Montgomery County Recorder of Deeds dated February 8, 2021.

THE COURT: Okay. This is a certified

1  
2 copy; therefore, admissible on its face and will be  
3 admitted into evidence.

4 (Jill T. Herring's Exhibit H-11 received  
5 in evidence.)

6 MR. JASKOWIAK: And also, Your Honor,  
7 Page 1 of this notes that this change was done by  
8 Robert E. Fravel of Dublin, Pennsylvania, the same  
9 individual that Mr. Herring had noted before.

10 BY MR. JASKOWIAK:

11 Q You also, among the other attorneys that you went  
12 to, you went to Rubin, Glickman, Steinberg, that was  
13 another firm that refused to prepare documents for your  
14 mother; correct?

15 A I cannot say offhand. I don't recall.

16 Q And none of those appointments for any of the  
17 lawyers were appointments that your mother tried to set  
18 up, you were the only one who was trying to set up  
19 appointments; correct?

20 A She asked me if I would do it.

21 Q I'm not asking that. You tried to set up the  
22 appointments; correct?

23 A Yes, I did.

24 Q Okay. Your mother did not call and speak to  
25 somebody at Rubin, Glickman or someone at Fravel; you

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set up the appointments, each and every one of them.  
Correct?

A Yes.

Q Thank you. You had said that your mom has not been vaccinated, you said that you have not been vaccinated. When you're at home with your mother do you wear a mask around the house all the time?

A No.

Q And you are out and about doing shopping -- by your testimony doing shopping for your mother and other things. You go out in public much more than your mother does?

A Yes.

Q Are you at all concerned that because your mother is not vaccinated that you could unwittingly bring this deadly virus back to your mother and infect her?

A No.

Can I give an explanation, Your Honor?

THE COURT: Nope.

THE WITNESS: Okay.

THE COURT: You have to answer the question that's been asked of you.

BY MR. JASKOWIAK:

Q I don't want to dwell too much on it, but if you

1  
2 recall at the last hearing we had discussion at the  
3 very end of the hearing about the Court's order  
4 allowing Jill to have access to your mom. Do you  
5 recall that?

6 A I'm sorry.

7 Q Do you recall that there was a discussion at the  
8 time of the last hearing about your sister having  
9 access to your mother, to be able to see your mother?

10 A Yes.

11 Q Okay. And there was a discussion -- and I don't  
12 know that your explanation was on the record or not --  
13 but can we agree that I had called you and told you I  
14 wanted to come the next day to be able to be there  
15 while your sister was able to see your mother and that  
16 you would have to leave. Do you recall we had that  
17 discussion?

18 A Yes.

19 Q Okay. And would you agree that we spoke somewhere  
20 between 12 to 15 minutes and you were objecting  
21 strenuously during that exchange to not just that, but  
22 to the proceedings in general?

23 A Yes.

24 Q And all the while when we were talking that  
25 conversation took place in your mother's presence?



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A No.

Q You don't --

A What was the question?

Q I said you would agree that that conversation took place in your mother's presence?

A No.

Q Okay. You would agree that you handed the phone to your mother at the end of our conversation and told me that "My mother wants to say something"?

A I stated that -- my voice was rather raised because I thought it was such a stupid idea to have visitation after what my sister had been doing to my mother and tried to do. And my mother was in another room and she heard my voice and she came in and she basically heard me say your name and I basically mouthed that her daughter wanted to have visitation rights with her. And my mother shook her head. And I said, "Well, this is your lawyer." And I gave her the phone.

Q If this Court were to consider you as guardian of the person of your mother, do you think the Court should be concerned as to whether or not you are willing to abide by its stated message that your sister should have involvement in your mother's life?

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A I would leave that up to my mother to decide. My emails, which I was not able to introduce, clearly show very lengthy emails by me to my sister for the last two years or so where I try to get along with her.

Q So --

A Just like I tried to get the taxes done on time.

Q So if this Court were to say to you you could be the guardian but you have to allow access to your sister, we can't be assured that you would actually allow access? Is that a fair statement?

A I would always allow access if my mother wants it.

(Motion to Demand Removal of Judge Brannon as Incompetant [sic] filed by Arthur Herring, III on June 21, 2019 in the United States District Court, Southern District of Florida marked Petitioner's Exhibit P-25 for identification.)

BY MR. JASKOWIAK:

Q And I want to direct your attention to P-25, which is in the large binder. You previously had a disagreement with a federal judge in the Florida matter -- and I don't want to get into all the details of the Florida litigation, because that's really

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immaterial. But Page --

A Where are you?

Q P-25. You filed --

A Which book are we talking about?

THE COURT: The big binder.

BY MR. JASKOWIAK:

Q The large book.

A This one?

Q Yes. The very last exhibit, sir. We can agree -- and, again, the details of the litigation don't matter. But you filed a motion to remove a federal judge because you were dissatisfied with the rulings that judge had made; correct?

A Yes.

Q Okay. And in your motion, which was titled, quote, "Motion to Demand Removal of Judge Brannon as Incompetent," you stated at the very end -- and I would direct your attention to Page 3 of 7 of that exhibit, the paragraph right before the very last paragraph. You said, quote, "I am stating for the record I will not obey any of" -- you didn't call him judge, you said "Mr. Brannon's rulings of what I can and can't do or speak. I do not and will not give up any of my constitutional rights." That's what you said in your

1 motion that you filed with Federal Court in that  
2 litigation that occurred in Florida; correct?

3  
4 A Yes.

5 Q And so, basically, you put that court on notice  
6 that you were going to flout any rulings that it might  
7 make that you did not agree with; correct?

8 A If it violated my constitutional rights I was not  
9 going to agree to it.

10 MR. JASKOWIAK: I have no further  
11 questions, Your Honor.

12 THE COURT: Ms. Camp, do you have any  
13 cross-examination?

14 MS. CAMP: Just a few.

15 THE COURT: Okay.

16 CROSS-EXAMINATION

17 BY MS. CAMP:

18 Q Mr. Herring, I'm going to bounce around a little  
19 bit since we've covered quite a few topics over the  
20 last rounds of questioning.

21 I'd like to go back to the attorney you  
22 hired in connection with your bankruptcy. Is it Matt  
23 Nahrgang? Is that correct?

24 A Yes.

25 Q Okay. And you had previously testified that you

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indirectly had him paid, is that correct, from your mother's accounts?

A I'm sorry. What was the question again?

Q With respect to how Mr. Nahrgang was paid, you had testified that he was indirectly paid from your mother's accounts; is that correct?

A In a sense, yes.

Q Okay.

A Can I explain or is it --

Q No.

A -- just a --

Q Nope.

A -- yes or no?

Q I'm going to stop you right there. I'd like to point you to P-17.

THE COURT: Okay. So that's in the big binder.

(Reply to Motion by Matt Nahrgang for Expedited Withdrawal as Counsel for Arthur Herring, III filed on September 29, 2020 in the United States Bankruptcy Court, Eastern District of Pennsylvania marked Petitioner's Exhibit P-17 for identification.)

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BY MS. CAMP:

Q In the big binder. I guess we'll clarify things. All right. So this is a motion that you had filed -- or a reply to motion by Mr. Nahrgang to withdraw as your counsel; is that correct?

A Yes.

Q Okay. When you flip to the second page, I'm going to read Paragraphs 37 through 40. "In March 2020 Nahrgang was paid \$1,000 for consultations and work. In April 2020 Nahrgang was paid \$3,335 for more work. In early June 2020 Nahrgang said he wanted 5,000 more to complete all work needed for the rest of the case. I paid him \$2,500 several days later and \$2,500 a week or so after that. I have paid Nahrgang a total of about \$10,000 for my case. All money paid to Nahrgang came directly from my elderly mother." Is that still accurate?

A Yes.

Q Okay. And we've already discussed your bankruptcy situation and you mentioned the Melody Lakes issues. You had testified that you only had one judgment against you; is that correct? Mr. Herring.

A Yeah. I'm writing a note. Repeat the question, please.

1  
2 Q Sure. You had previously testified that you had  
3 only had one judgment against you in connection with  
4 the bankruptcy; is that correct?

5 A Could you be more specific?

6 Q Do you have any other judgments against you  
7 currently?

8 A No.

9 (Melody Lakes Management, LLC v. Arthur  
10 Herring, III - Magisterial District  
11 Judge 07-2-05 Landlord/Tenant Docket No.  
12 MJ-07205-LT-0000043-2021 marked  
13 Petitioner's Exhibit P-22 for  
14 identification.)

15 BY MS. CAMP:

16 Q No. Okay. Can you flip to P-22, please? So this  
17 is the landlord/tenant docket in the matter of Melody  
18 Lakes Management, LLC v. Arthur Herring, III. Does  
19 this refresh your recollection at all?

20 A Yes.

21 Q Okay. So I'm going to ask you again. Do you have  
22 any other judgments that are currently outstanding  
23 against you?

24 A If you're --

25 THE WITNESS: The question is confusing,

1  
2 Your Honor. The fact that -- is she asking this  
3 judgment, in which case they're going to keep --

4 THE COURT: Sir --

5 THE WITNESS: -- the house so --

6 THE COURT: Sir --

7 THE WITNESS: -- to me that's basically  
8 negating it.

9 THE COURT: You have a judgment in a  
10 amount of \$800,000 against you you've already testified  
11 to.

12 MR. HERRING: And that was dismissed in  
13 the bankruptcy.

14 THE COURT: You had a judgment. Whether  
15 it was dismissed or not, a judgment was issued against  
16 you. And whether or not you are in good financial  
17 standing and have consistently been in good financial  
18 is relevant to this court.

19 If I look at P-22 it says net judgment  
20 \$11,547.55 against you. Do you disagree that a  
21 judgment was entered against you by Melody Lakes  
22 Management?

23 THE WITNESS: No.

24 THE COURT: Okay. All right.

25 BY MS. CAMP:



1  
2 Q So you've testified that you're at least currently  
3 still living in your mother's home. Do you contribute  
4 at all financially to the household expenses?

5 A Oh, yeah.

6 Q How do you contribute financially?

7 A I buy most of the food. Sometimes I pay for the  
8 gas for the car. Sometimes I pay for minor repairs to  
9 the car even though it's my mother's car. I buy things  
10 for the house as far as to repair something.

11 Q These expenses, do you use your mother's funds to  
12 pay for these items?

13 A I would say not normally. Once in a while my  
14 mother will give her debit card to me and tell me to  
15 use it to buy gas for my car or to buy -- you know, to  
16 pay for something if I'm buying it for the house.

17 Q What are your sources of income right now?

18 A Basically savings, the savings I have, and mostly  
19 from social security.

20 Q Okay. And because you live with your mother, have  
21 you ever owned any firearms?

22 A That's irrelevant. I'm not going --

23 THE COURT: Not, it's not irrelevant.  
24 And you could object, but the objection is overruled.  
25 It is relevant. Have you ever owned any firearms?

1  
2 THE WITNESS: I see no reason to answer  
3 that question, Your Honor.

4 THE COURT: Except it's relevant if you  
5 want to be guardian. So if you don't want to answer it  
6 we're done.

7 THE WITNESS: Yes.

8 THE COURT: Okay. Do you currently own  
9 a firearm?

10 THE WITNESS: Yes.

11 THE COURT: Is the firearm in the home  
12 with your mother?

13 THE WITNESS: Yes.

14 THE COURT: If I appoint you as guardian  
15 are you willing to remove the firearm from your home?

16 THE WITNESS: I'm not going to answer  
17 that question. That clearly violates my constitutional  
18 rights as far as removing when I have nothing to  
19 indicate that I should not have a firearm legally.

20 THE COURT: So you are telling me that  
21 if I find that your mother is incapacitated and can't  
22 make her own decisions, you will continue to have a  
23 firearm at home with an incapacitated person? Is that  
24 your position?

25 THE WITNESS: I have a permit to

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carry --

THE COURT: Yes or no?

THE WITNESS: -- concealed.

THE COURT: Yes or no? Will you  
continue to have a firearm in a home with an  
incapacitated person?

THE WITNESS: If it's for my mother's  
welfare --

THE COURT: Yes or no?

THE WITNESS: If it's for my mother's  
welfare, yes, I would give up the guns. Okay. So if  
somebody breaks into the house, what happens then?

THE COURT: How many times in the past  
67 years, sir, that you've been alive has anyone broken  
into your home?

THE WITNESS: Twice.

THE COURT: And did you shoot them?

THE WITNESS: No.

THE COURT: Okay. Ms. Camp, continue.

MS. CAMP: Your Honor, I have no further  
questions.

THE COURT: Okay.

MS. CAMP: I would like to move into  
evidence --

1  
2 THE COURT: Yes, let me do that. We  
3 have outstanding in Petitioner's Exhibits 17 and 22.  
4 Is there anything I'm missing?

5 MS. CAMP: 17, 22, and then I believe we  
6 still had H-6, Dr. Ken Carroll's report. I can't  
7 recall if that was moved in or not.

8 THE COURT: No one has used that yet.

9 MR. HERRING: What are we looking at,  
10 Your Honor?

11 THE COURT: Dr. Carroll's report has not  
12 been addressed by anyone in court. Page 6 of  
13 Dr. Kuhar's report is H-10. I'm sorry, that wasn't  
14 Page 6. I didn't have Dr. Carroll's report. I have  
15 H-10, which was Dr. Kuhar's report. Or --

16 MR. JASKOWIAK: Yeah, we had Dr. Kuhar's  
17 notation. I did not question him about Dr. Carroll's  
18 report, Your Honor.

19 THE COURT: Either did I.

20 Is there something else you need to  
21 address right now, Ms. Camp?

22 MS. CAMP: Can I ask him questions about  
23 Dr. --

24 THE COURT: You may.

25 MS. CAMP: -- Carroll's report? All

1 right.

2 BY MS. CAMP:

3 Q So, Mr. Herring --

4 THE COURT: That did come out on direct  
5 examination based on the questions.

6 (Dr. Kenneth Carroll's Evaluation,  
7 5/24/21 marked Jane T. Herring's Exhibit  
8 H-6 for identification.)  
9

10 BY MS. CAMP:

11 Q So I'm going to flip -- the smaller binder, if you  
12 could flip to H-6, please? So is this the report that  
13 Dr. Carroll had issued May 24th that you've already  
14 testified to?

15 A Yes.

16 Q Okay. And the date of this report is May 24; is  
17 that correct? At the very top of the page on H-6  
18 there.

19 A Yes.

20 (Transcript of June 1, 2021 Conference  
21 via Zoom with the Honorable Gail  
22 Weilheimer marked Petitioner's Exhibit  
23 P-18 for identification.)

24 BY MS. CAMP:

25 Q Okay. I don't want to flip too much back and

1  
2 forth, but if you go to P-18, this is a transcript that  
3 we purchased in connection with the June 1 conference  
4 with the judge. I'm going to flip you to --

5 A What did you say, P-18?

6 Q P-18.

7 THE COURT: So that's in the big binder.

8 BY MS. CAMP:

9 Q We're going to go to Page 9, and we're going to go  
10 to Line 21. And I will read this into the record and  
11 you can follow along. "So, starting about a year  
12 ago" -- this is your statement, Mr. Herring -- "we were  
13 looking for different lawyers that dealt with elder  
14 law. And every one of them said they needed  
15 neuropsychological evaluation before they would make  
16 the changes in her legal documents. Every one we went  
17 to, every neuropsychologist we went to said they do not  
18 do those tests for legal reasons, only for people with  
19 medical reasons like stroke, Parkinson's, stuff like  
20 that. So the last nine months or so we haven't been  
21 able to find anybody that does it for legal reasons."  
22 Do you recall making that statement?

23 A Yes.

24 Q Okay. The date of Dr. Ken Carroll's report is May  
25 24, which was about a week before this conference took

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place; is that correct?

A That was the actual day, but it was scheduled maybe a month earlier as I recollect.

Q Okay. So your mother met with Dr. Carroll, there was an appointment with Dr. Carroll a month before May 24. So back in April; is that about right?

A Approximately. I don't --

Q Okay.

A -- have it in front of me exactly, whether it was a month, two months --

Q That's --

A -- a month and a half.

Q That's fine. It was before June 1. So you have then received a report from May 24. And then a week later we had a conference with the judge and you told the Court that you could not obtain a neuropsychological evaluation of your mother; is that correct?

A Where do you see this here?

Q Well, I'm looking at the date. So H-6, Dr. Carroll's report, is dated May 24. Our conference with the Court was on June 1, which is --

A Wait. Wait. Wait. I'm lost here. Okay. What books are we looking at? What pages?

1 THE COURT: Thank you, Mr. Jaskowiak.

2 MR. JASKOWIAK: This is the transcript,  
3 June 1, P-18. And she was referring to -- she started  
4 reading here into the next page. Okay. You can look  
5 at my book. It's all highlighted.

6 THE WITNESS: I'm sorry. I'm reading  
7 this, P -- what is it? P-18.

8 BY MS. CAMP:

9 Q P-18, the court conference transcript.

10 A Yeah.

11 MR. JASKOWIAK: Starting about here.

12 THE WITNESS: Okay.

13 BY MS. CAMP:

14 Q Where you told the Court for nine months you had  
15 been looking for a neuropsychologist to evaluate your  
16 mother and you could not find one to do it for legal  
17 reasons.

18 A Okay.

19 Q Did you forget at that time that a week before you  
20 had gotten a copy of Dr. Ken Carroll's report?

21 A Well, we were so disgusted with it we felt it was  
22 worthless.

23 THE COURT: That's not the question,  
24 sir. The question is whether or not you were honest  
25



1 with me in saying that you had an evaluation done when  
2 we had that conference. And you will agree with me you  
3 did not tell me about Dr. Carroll's evaluation at the  
4 time of our conference; is that correct?  
5

6 THE WITNESS: No. Because I didn't feel  
7 it was a legitimate evaluation.

8 THE COURT: So you decide which  
9 questions to answer honestly and which ones not to?

10 THE WITNESS: No, I don't think it's put  
11 that way, Your Honor. Like I said, I'm not a lawyer.  
12 The fact that what he -- what Carroll did as far as the  
13 evaluation, I thought it was just basically not even  
14 close to a professional evaluation.

15 THE COURT: I'm sorry, sir. What  
16 legalese is involved with the question "Have you had an  
17 evaluation conducted?" What don't you understand about  
18 that question? Do you understand the words of the  
19 question?

20 THE WITNESS: Yes, Your Honor. Maybe  
21 I --

22 THE COURT: Do you understand --

23 THE WITNESS: -- misspoke.

24 THE COURT: -- what I was asking you?

25 THE WITNESS: Maybe I misspoke in that I

1  
2 wasn't thinking thoroughly about exactly the question  
3 that was being asked. I interpreted with my opinion  
4 that I did not feel it was a legitimate evaluation and  
5 I did not consider it as such.

6 THE COURT: You didn't clarify for the  
7 Court we had an evaluation that we thought was faulty;  
8 right?

9 THE WITNESS: Your Honor, this was all  
10 new to me, Your Honor, talking --

11 THE COURT: Yes or no? Did you tell me  
12 "I had an evaluation that I thought was faulty for my  
13 mom"? Yes or no?

14 THE WITNESS: No.

15 THE COURT: Did you tell me, in fact,  
16 "We did not have an evaluation"? Right? You told me  
17 you had no evaluation conducted; right?

18 THE WITNESS: Yes.

19 THE COURT: And that was not true;  
20 correct?

21 THE WITNESS: Yes.

22 THE COURT: Ms. Camp, any further  
23 questions?

24 MS. CAMP: I have one final question.  
25 Well, really I'm just going to read it into the record.

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BY MS. CAMP:

Q On H-6, the fourth page, the final page,  
Dr. Carroll's conclusion, which you claim is faulty, he  
says -- and I'm looking at the third --

A Where are we?

Q H-6, the fourth page.

THE COURT: Smaller binder.

BY MS. CAMP:

Q Small binder. Dr. Carroll's report.

A Yeah. Okay.

Q We're going to start at the bolded section where  
it says Recommendations. "To ensure her health,  
safety, and financial security, I believe Jane Herring  
needs the guidance of a guardian of both her person and  
her estate. I do not believe she has the cognitive  
capacity to convey power of attorney, and I believe  
that it's very unlikely she had that ability six months  
ago." Is that the conclusion you are aware of when we  
had the June 1 conference with the Court?

A Yes.

MS. CAMP: Other than moving in the  
exhibits into evidence, Your Honor, I have no further  
questions.

THE COURT: Okay. So you're asking to

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move in H-6; is that correct?

MS. CAMP: H-6. I believe P-17, P-18, is the transcript, and P-22. I think that covers everything.

MR. JASKOWIAK: And I move to have in P-25, which I used, Your Honor, along with H-10 and H-11, H-10 being the Kuhar --

THE COURT: And how about H-8? You've only admitted certain documents, but more were used in the first day of testimony.

MR. JASKOWIAK: I thought we had had H-8 before, but I move H-8 in now, Your Honor, since we did reference it with Mr. Herring.

THE COURT: So moved.

(Petitioner's Exhibits P-17, P-18, P-22, and P-25 received in evidence.)

(Jane T. Herring's Exhibits H-6 and H-10 received in evidence.)

THE COURT: So, Mr. Herring, you will now be given a few minutes to clarify any answers that you gave that you wanted to expand upon which was not permitted during cross-examination. So if there is anything you want to clarify or expand upon at this time you are welcome to in redirect.

REDIRECT TESTIMONY

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2  
3 THE WITNESS: Okay. This document about  
4 the deed, what relevance is that? I don't understand.

5 THE COURT: You can't ask them  
6 questions. You can just clarify anything. I don't  
7 answer your questions. So it's just if you want to  
8 clarify.

9 THE WITNESS: Well, it was introduced by  
10 Mr. Jaskowiak, and I haven't had a chance to read it.  
11 I don't understand why it was submitted.

12 THE COURT: I'm not going to answer  
13 that, sir. So if you have anything else you wish to  
14 say you're welcome to.

15 THE WITNESS: Well, it was introduced  
16 for a reason, Your Honor. It can't be explained why it  
17 was introduced?

18 THE COURT: Sir, it's your job to  
19 testify now if there is anything else you wish to say.  
20 There were a number of times when each counsel was  
21 asking you questions when you said, "Can I expand on  
22 that, Can I answer that fuller?" And it was not the  
23 appropriate time then and now is your opportunity if  
24 you wish to say anything else.

25 THE WITNESS: Well, I'd like to say the

1  
2 reason why I don't have an attorney here today is  
3 because I had to fire him because --

4 THE COURT: That's not --

5 THE WITNESS: -- fire her because --

6 THE COURT: -- relevant.

7 THE WITNESS: -- I didn't have any more  
8 money left to spend.

9 THE COURT: That's not relevant, sir.

10 THE WITNESS: Well, I --

11 THE COURT: You had an attorney; you  
12 dismissed your attorney and you're proceeding pro se.

13 THE WITNESS: Because I didn't have any  
14 more money to pay her. Now, I don't remember anything  
15 in the law that says people are supposed to have money  
16 in a bank account in case they ever need a lawyer when  
17 it's dropped right in front of their lap like this was.  
18 Now, again, you know, the courts are for the people.  
19 The law is for the people. If the people don't have  
20 any money they're not denied justice and they're not  
21 denied an interpreter if they don't understand the  
22 language.

23 Now, as far as Hetherington, I do not  
24 recollect that name offhand. I do not know who he was.  
25 As far as elder law lawyers, we were told that would be

1  
2 the best one to go to in order for an elderly person to  
3 make changes. That's why we concentrated just on the  
4 elderly lawyers.

5 As far as money paid to Nahrgang, as the  
6 Court knows, every year my mother gives \$14,000 to each  
7 child. Because of my bankruptcy and because of the  
8 lawsuit, I was not able to keep a bank account or else  
9 it would be seized. So, therefore, if I needed money  
10 to pay for a lawyer or pay for a car repair, my mother  
11 would deduct that money from the 14,000 in order to  
12 make those payments.

13 Now, as far as this Melody Lakes  
14 situation, the -- like I said, I consider the slate  
15 clean on that; they're getting my house, worth about  
16 \$25,000. I owed them 11,000; but for my mother's  
17 benefit, I decided to use the money to hire my own  
18 lawyer to make sure she was protected because I did not  
19 know what -- I did not know what capacity her lawyer  
20 was going to give or know about this type of situation.  
21 So that is why I wanted to make sure my mother had as  
22 much protection as possible.

23 As far as this Kuhar report, I have  
24 never seen this before and I do not know what she had  
25 said, Dr. Kuhar, because, again, like I said, she never

1  
2 made any of those comments to my mother and I when we  
3 were there.

4 As far as bringing up this judge from  
5 Florida, yes, it was clear throughout the case that  
6 this judge was denying me the right to submit documents  
7 and ignoring documents that were proven false by me by  
8 the plaintiff, NITV. NITV has been known, for the last  
9 30 years, as being a scam. They were documented on ABC  
10 News in 2005 because of the information I had given ABC  
11 News a year earlier, which exposed the scam. Two years  
12 ago I contacted the Attorney General's Office in  
13 Florida and because of my information they opened up a  
14 criminal investigation on the topic.

15 THE COURT: Sir, that's not relevant to  
16 this proceeding.

17 THE WITNESS: Well, it was brought up  
18 about Mr. --

19 THE COURT: It was brought up, your  
20 comments that you would not follow a Court's ruling.  
21 That's why it was brought up. So the relevance is  
22 whether or not you would follow a court order, not the  
23 background of the case. The Court issued an order and  
24 you responded saying you wouldn't follow it. That's  
25 what was relevant.



1  
2 THE WITNESS: If it violated my  
3 constitutional rights I have a duty not to follow it.  
4 This is what cases are all the time. I have a  
5 constitutional right of freedom of speech and that  
6 judge was denying me that right. And if you can see by  
7 my motion, it wasn't a one- or two-sentence statement;  
8 it was three pages where I made many, many, many  
9 statements about the company suing me, about the  
10 lawsuit was made up and filed deliberately only to  
11 basically --

12 THE COURT: Okay. Sir, the underlying  
13 case is not relevant here.

14 THE WITNESS: Well, it was brought --

15 THE COURT: It's not relevant here.

16 THE WITNESS: I don't understand how  
17 it --

18 THE COURT: I've made a ruling.

19 THE WITNESS: -- my motion to the  
20 judge --

21 THE COURT: I have made a ruling.  
22 Please move on to something that's relevant to this  
23 proceeding. Is there anything else you wish to say to  
24 supplement the questions that were asked of you?

25 THE WITNESS: Well, as far as Ken

1  
2 Carroll's report, am I allowed to comment on that?

3 THE COURT: Dr. Carroll's report has  
4 been admitted into evidence. You can comment on that.  
5 But this is not time to repeat what you've already  
6 said. It's if there is anything new you wish to add  
7 that you haven't already said.

8 THE WITNESS: Yes. I have emails from  
9 Dr. Carroll which clearly show that this person was not  
10 an ethical --

11 MR. JASKOWIAK: Objection, Your Honor.

12 THE COURT: Sustained. That's not --  
13 and the Court will say for the record that I regularly  
14 use Ken Carroll as an expert and find him to be  
15 reliable and thorough. And there has been no evidence  
16 to the contrary presented as part of this hearing.

17 THE WITNESS: Well, I'd like to  
18 introduce the emails that show it.

19 THE COURT: You can't just introduce  
20 emails. That's not how court works. That would be  
21 hearsay.

22 THE WITNESS: Well, since we're using  
23 Carroll's report, the fact that he says he does not  
24 believe -- "I do not believe" -- and "the statements  
25 and conclusions offered are made within a reasonable

1 degree of scientific certainty." That's guessing.  
2 He's saying he's guessing. He thinks. In other words,  
3 CYA. The fact that if he was sued for any reason all  
4 he can say is, well, it was my opinion. And  
5 everybody's entitled to their opinion.  
6

7 The fact that he claims at the top --  
8 let's see. "I do not believe she had the cognitive  
9 capacity to convey power of attorney and I believe it  
10 was very unlikely that she had that ability six months  
11 ago." Nobody can go back in time. Nobody can predict  
12 the future. And for him simply to say "I do not  
13 believe," spending only one hour. And, if you recall,  
14 with Mr. Ledakis I said, "Who gives the best  
15 evaluation, the person that gives one hour, three  
16 hours, or seven hours?" And he said it depends upon  
17 the information they want to get. And I asked him,  
18 "Are there any standards for such an evaluation in the  
19 industry?" He said no. So what's the difference if  
20 somebody spends one hour or five minutes with somebody?  
21 Now, Your Honor, again, psychology is not a science.  
22 People can have --

23 THE COURT: That's actually not true.

24 MR. HERRING: Well, science is knowledge  
25 verified as I understand the definition.

1  
2 THE COURT: Psychology is a science.  
3 There is psychological testing that is scientifically  
4 verified and vetted, as were the tests that were  
5 testified to by Dr. Ledakis.

6 THE WITNESS: Well, Your Honor, as I  
7 explained -- and I have it right here -- the fact with  
8 Mr. Ledakis and both --

9 THE COURT: It is "Dr. Ledakis." He has  
10 earned that right.

11 THE WITNESS: Doctor. The fact that  
12 they both gave the same MMSE test, mini-mental state  
13 exam, it's called. And they had -- depending on which  
14 one you downloaded from the internet, they had  
15 different scoring conclusions. Now, how do you have  
16 the same test but with one score it says the person  
17 is --

18 THE COURT: Sir, this is not related to  
19 your testimony. So my question to you is do you have  
20 anything you wish to say to supplement your testimony?

21 THE WITNESS: Well, I thought I was  
22 making points pertaining to what was being said. NITV  
23 was brought up because of the judge's statement or my  
24 motion. I was talking about Dr. Carroll, which was  
25 brought up here, as far as his report, stating that

1  
2 firsthand the person, in my clear opinion, was not  
3 doing an ethical test, spending only one hour and  
4 coming to all these different conclusions without any  
5 ability to know if my mother had still had common sense  
6 or if she still knew right from wrong. And none of his  
7 tests -- paper and pencil tests ever touched that  
8 subject. And I had asked Dr. Ledakis, "What  
9 independent studies validated your paper and pencil  
10 tests?" And he said, "Well, my peers use it, my fellow  
11 psychologists."

12 MS. CAMP: Objection. We're repeating  
13 testimony. If he'd like to make argument we can  
14 certainly move on to that phase.

15 THE COURT: We're just going to  
16 incorporate all of this into argument.

17 THE WITNESS: So, as I was saying, the  
18 fact that he replied that there weren't any, just his  
19 fellow psychologists used those tests. Well, that's  
20 not independent verification or validation of those  
21 paper and pencil tests.

22 Now, I've done lie detection for 41  
23 years.

24 THE COURT: That's not relevant here,  
25 sir.

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THE WITNESS: That's the first thing --

THE COURT: That's not relevant here.

Whatever you've done in lie detection is not relevant here.

THE WITNESS: Well, it pertains to --

THE COURT: It does not pertain. It is a different discipline, one that is often not accepted by the courts. And it is a different discipline and it is not relevant here. Is there anything further, Mr. Herring?

THE WITNESS: I guess not, Your Honor. I haven't been allowed to answer or --

THE COURT: That is not accurate, sir. I have given you the opportunity to supplement your answers, to follow up on the cross-examination to you, and you don't want to listen and do it. You can't get out of your own way to be able to follow the rules of court that I am clearly giving you. There are documents -- for example, AH-5 -- that are in no way admissible, but I helped you get them in by walking you through it because you can't get there on your own.

It is your last opportunity. Is there anything you wish to say to supplement your testimony for the times you said "Can I expand on that" and I

1 said not now. Is there anything else you wish to say?

2 THE WITNESS: No, Your Honor. No.

3 THE COURT: The Court will incorporate  
4 the relevant aspects of Mr. Herring's testimony as  
5 argument in this matter and consider that as part of  
6 the case in total.  
7

8 Mr. Jaskowiak, do you have any argument  
9 to make on behalf of your client Jane Herring?

10 MR. JASKOWIAK: Yes, Your Honor. It is  
11 unfortunate, but the testimony has been consistent that  
12 -- the testimony of Dr. Ledakis clearly says that she  
13 lacks decisional requisite and testamentary capacity  
14 and that she's incapacitated. And it saddens me,  
15 because I truly like Jane Herring and she's a wonderful  
16 human being.

17 The fact of the matter is that the  
18 report that, if you would believe Mr. Herring, that she  
19 herself obtained -- truly it was Arthur who obtained it  
20 from Dr. Ken Carroll -- actually supports that. And  
21 not only supports it saying that she lacks capacity,  
22 but that she did not have capacity for at least the  
23 last six months.

24 We have had testimony that eight to nine  
25 attorneys who were asked to intercede to prepare new

1  
2 documents said they could not do so unless there was  
3 testing done first. We have had testimony from  
4 Dr. Kuhar -- well, her report, not testimony -- that  
5 she had talked to Mr. Herring and Mrs. Herring and  
6 explained that they needed to have neuropsychological  
7 testing done. And, despite that, Mr. Herring proceeded  
8 to have documents changed of my client's that changed  
9 her long-standing wishes. And those wishes, I think,  
10 should be -- those prior wishes should be accepted and  
11 honored.

12 I believe that Mr. Herring has made  
13 these requests to benefit himself and the changes that  
14 were made are not consistent with her long-standing  
15 wishes for how her estate should be handled. I believe  
16 that if Your Honor does believe and accept  
17 Dr. Ledakis's testimony, as he clearly has stated, and  
18 Dr. Carroll's report, and Dr. Kuhar's own concerns and  
19 everyone else's concerns and finds her incapacitated,  
20 that I believe we should have a neutral guardian who is  
21 appointed who can help the two children of Mrs. Herring  
22 to find a way to be able to coexist for the remainder  
23 of my client's natural life. I think that is the  
24 honorable, decent, human thing to do, to put aside  
25 their personal differences. I've been assured by Jill



1 Herring and her counsel that they will do that. I  
2 would hope that Arthur Herring does that as well.

3 I also would ask this Court to consider  
4 if, in fact, my client is accepted as being legally  
5 incapacitated, that the documents that were done in  
6 November, December, and January -- including the deed,  
7 including the trust, including the power of attorney,  
8 including the will -- all be nullified and that we keep  
9 in place the documents that my client had done.

10 Unfortunately, my client has been -- if  
11 the testimony is to be accepted -- has been subjected  
12 to extreme undue influence, and that is documented not  
13 only medically, but by various attorneys who had raised  
14 those concerns -- some of whom weren't identified, but,  
15 by Mr. Herring's own acknowledgment, eight to nine of  
16 them had concerns about her ability to enter into those  
17 documents.

18 Everyone is entitled to their own  
19 opinion, perhaps, but not everyone is entitled to their  
20 own facts. And the facts are pretty clear in this  
21 case, sadly, and I think that Jane Herring's prior  
22 wishes ought to be respected and honored so that both  
23 children can find a way to go on and do what they need  
24 to do for their mother together. They need to be  
25

1 children rather than personal representatives, I think,  
2 at this point, Your Honor.

3  
4 And I am aware that Ms. Camp has  
5 submitted Dwayne Logie as a proposed guardian of the  
6 person and estate, and I'm fully supportive of that. I  
7 had the opportunity to speak to Mr. Logie, who assured  
8 me, knowing some of the complexities of the case, that  
9 to the extent that there is any need for anything  
10 additional medically, that he has somebody that he has  
11 worked with in a number of cases, DLK Managed Care  
12 Solutions, that can assist him in making sure that any  
13 medical decisions that are beyond even what a guardian  
14 might otherwise normally deal with, that Deborah Klock  
15 from DLK Managed Care Solutions would work with him.  
16 And I had the opportunity to confirm with her as well.  
17 So Mr. Logie has assured me that he would use her as  
18 needed for anything that may come up, whether it's care  
19 inside their home or doctor's appointments or medical  
20 decisions.

21 I would ask that if, in fact, she is  
22 incapacitated, Your Honor, that Mr. Logie be the one  
23 that is considered and he can make the appropriate  
24 decisions. He is, I believe, well respected by this  
25 Court already and is very experienced.

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THE COURT: Excuse me one second.

And, just to clarify, the legal documents that were changed that you were referencing from December of 2020 are the power of attorney, the will and trust modification, and the deed transfer? Am I missing anything?

MR. JASKOWIAK: There was a restatement of the trust, Your Honor, that was done. I think that was the way that it was phrased.

MS. CAMP: It was two amendments, Your Honor. One was on December 30, 2020, a second one on January 21, 2021. They were P-12 and P-13. I don't think we ended up moving them in, but ...

So one new power, one new will, two trust amendments.

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(Discussion off the record.)

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MR. JASKOWIAK: It is confusing, Your Honor, because of some mistakes that were apparently made in the scrivening by Mr. Fravel that seems to have generated a second document of some kind. But suffice it to say that I am objecting to any documents that Mr. Fravel prepared. As I said, I just recently

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learned about the new deed.

THE COURT: Okay. And, Ms. Camp, do you wish to make any argument at this time?

MS. CAMP: I'm not going to belabor things here. I mean, we have had extensive testimony from Dr. Ledakis, who was questioned by everybody. His testimony was consistent and he pretty clearly found that Mrs. Herring is a totally incapacitated person right now and that she suffered from this incapacity issues at least as of December 2020.

And we now just have Dr. Carroll's report which confirmed the same conclusions of a total finding of incapacity and lack of requisite and testamentary capacity to execute new documents in December 2020.

And so we continue to request the Court to find Mrs. Herring a totally incapacitated person, to appoint independent guardians for Mrs. Herring. We have incredible concerns should Arthur Herring be appointed as guardian of the person for a variety of reasons; perhaps, most importantly, Mr. Herring's continued belief that my client should not have to have a visit with his mother, the interference that has occurred over the last several weeks, despite this

1 Court's order to allow visitation.

2 So, given Mrs. Herring's advanced age,  
3 my client just wants to see her mom. And she wants to  
4 be able to do it without interference and to be able to  
5 enjoy the time that she has left and not have to worry  
6 about it.  
7

8 So, aside from that, obviously, we  
9 support the request that these 2020 and 2021 documents  
10 be declared void, ab initio preferably, and that the  
11 trust agreement, which I guess as amended and restated  
12 November 26, 2018, which was the most recent one  
13 prepared by Mr. Fenstermacher, that is viewed as the  
14 most current version of Mrs. Herring's trusts. It's,  
15 obviously, incredibly important, considering that trust  
16 is fully funded, as far as I know, with the exception  
17 of one small checking account, so all of her assets are  
18 in that trust. And the guardian of the estate is going  
19 to need to know who to coordinate as trustee of that  
20 trust in terms of managing those funds for  
21 Mrs. Herring's benefit.

22 THE COURT: Thank you, Mrs. Camp.

23 MR. HERRING: Am I allowed to respond,  
24 Your Honor?

25 THE COURT: You stated many things

1  
2 during your testimony that were not relevant to your  
3 testimony. So the Court considered that all as part of  
4 your argument. If there is something you have not  
5 previously said that you wish to say at this time you  
6 may. But we're not going to have you just repeat what  
7 you said before.

8 MR. HERRING: Well, as far as the  
9 remarks that were just made, I never refused to allow  
10 my sister to visit my mother. It was my mother's wish  
11 that did not want to see her after what she had been  
12 put through and what my sister had done for the last  
13 couple of years.

14 Now, I have no -- I do not own the  
15 house, I do not tell my mother who can come in or who  
16 cannot come in. So if my mother does not want somebody  
17 in her house, does not want to see her, then that is my  
18 mother's prerogative. And that is something  
19 Mr. Jaskowiak should have been emphasizing, the fact  
20 that my mother --

21 THE COURT: Okay. Sir, you've stated  
22 this previously. Is there anything else that's new at  
23 this time that you wish to state?

24 MR. HERRING: No. I just wanted to put  
25 it on record I did not refuse my sister to be allowed

1 in the house. It was my mother's decision.

2 THE COURT: Okay. All right. The Court  
3 has considered the evidence in this matter, the  
4 extensive testimony, all of the exhibits that have been  
5 admitted, and the argument of all parties, including  
6 the consistent arguments throughout this case from  
7 Mr. Herring, whether placed appropriately or not.  
8 This -- or timed appropriately or not, based on court  
9 proceedings.  
10

11 These cases are never easy because  
12 elderly people do not want to relinquish authority, and  
13 under normal circumstances, when children get along,  
14 you don't need a court's intervention. But these are  
15 not normal circumstances.

16 Jill Scott Herring appropriately  
17 petitioned the court for a guardian. There were  
18 appropriate concerns for Jill -- I'm going to use  
19 everyone's first names to make it easier -- for Jill  
20 that caused her to bring this to the Court's attention  
21 and ask for court intervention.

22 Jill also appropriately recognized that  
23 due to the ongoing conflict between her and her brother  
24 that she would not be the appropriate guardian in this  
25 case. That does not diminish her love for her mother

1  
2 or her interest. But she heard the Court, in my prior  
3 conference, concerned about what this conflict would do  
4 to Jane Herring and whether or not Jane Herring could  
5 be well cared-for if there was a conflict between the  
6 siblings.

7 Now, it is Arthur Herring's right to  
8 request to be the guardian, which he has done.

9 Mr. Herring does not believe his mother is  
10 incapacitated and is in need of a guardian. And this  
11 Court vehemently disagrees.

12 The way court works is evidence is  
13 presented and the Court considers the evidence  
14 presented. The evidence presented in this case is  
15 uncontroverted that Jane Herring is incapacitated and  
16 is in need of a guardian of the person and of the  
17 estate. The only contradictory evidence is Arthur's  
18 comments that his mom is 20 percent slower, she's doing  
19 fine, and that she can make all of her own decisions.

20 In contrast to that, we have the  
21 thorough report of Dr. Ledakis. We have the support --  
22 although, Mr. Herring was not honest with the Court  
23 about it -- we have the report of Dr. Ken Carroll, who  
24 finds incapacity. We have the notes from Ms. Jane  
25 Herring's longtime physician Dr. Kuhar, who has



1  
2 concerns about her capacity and wants a  
3 neuropsychological evaluation done and will not attest  
4 to her capacity for legal reasons. We have her  
5 longtime attorney, Mr. Fenstermacher, who has practiced  
6 in estate law for over 30 years, understands how to  
7 assess capacity from a layperson's perspective, and did  
8 not find that his longtime client had the capacity to  
9 change her legal documents and thought that she was  
10 subject to undue influence, which happens when someone  
11 lacks capacity. That was supplemented by the eight or  
12 nine lawyers that Arthur Herring took his mother to or  
13 consulted with who refused to change her legal  
14 documents without a neuropsychological exam because of  
15 her lack of capacity.

16           The fact that Mr. Fravel, knowing this,  
17 would change her documents gives the Court significant  
18 pause about his professionalism. And that will be,  
19 perhaps, addressed as a subsequent matter, not as part  
20 of this one. But knowing that multiple attorneys asked  
21 for a neuropsychological exam, to go forward and modify  
22 these documents is irresponsible. So the testimony  
23 presented is uncontroverted regarding her incapacity.

24           Now, there is no question that both of  
25 her children love her and that Mrs. Herring loves both

1  
2 of her children. And while Arthur wants to deny that  
3 she loves Jill or has some issue with Jill, that is not  
4 what the Court finds. The Court finds that Jane  
5 Herring has been isolated from her daughter. And we  
6 don't know what her true interest is, because Arthur  
7 Herring is imposing his position, being in that  
8 household, on her. I believe the testimony or the  
9 anecdote in cross-examination presented by Attorney  
10 Jaskowiak both at the conclusion of the last hearing  
11 and during cross-examination that Jane Herring was  
12 physically present and right there when Arthur turned  
13 over the phone, meaning she had to hear what he was  
14 saying. When someone has diminished capacity they are  
15 easily subject to undue influence, which is what the  
16 Court finds is occurring here.

17 So the question is who should be the  
18 guardian. And the Court finds, for the following  
19 reasons, that it cannot be Arthur Herring. I find that  
20 for the following reasons. Number one, his dishonesty.  
21 He was not honest with this Court in its initial  
22 contact in June of 2021 in that he didn't honestly tell  
23 the Court Dr. Carroll had done an assessment, that he  
24 decided to decide what he thinks is truthful and what's  
25 not. The fact that he is refusing to follow court's

1 orders, as evidenced by his comments to a federal  
2 judge; and that he will do what he thinks is in his  
3 constitutional rights and his best interest regardless  
4 of a court order, because somehow he knows best. His  
5 refusal to work with his sister. And while he says he  
6 sent his sister many emails, what was evident to the  
7 Court is he couldn't look at his sister, he couldn't  
8 use her name, he couldn't even say "my sister."

10 Arthur, you kept saying "the former  
11 plaintiff" or "the petitioner." The fact that you  
12 can't say her name or look at her means there is no way  
13 you can work together. And there is no way that you  
14 will consider her or inform her of any decisions that  
15 need to be made. And as a guardian, the guardian's  
16 obligation is to keep all family and interested parties  
17 informed of what's going on.

18 The Court has additional concerns about  
19 Arthur's financial insecurity, the two judgments  
20 against him -- regardless of whether or not the  
21 \$800,000 one was discharged -- which the Court finds  
22 questionable -- but even potentially let's say it was,  
23 there have been, in fact, two judgments against Arthur.  
24 He has declared bankruptcy. He does not currently have  
25 a home; he lives with his mother. He does not have a

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2 source of independent income besides his savings. He  
3 is using Mom's income for his own self-interests, and  
4 this is evident by the money -- he used her money to  
5 pay his bankruptcy attorney. The fact that after nine  
6 attorneys -- eight or nine attorneys refused to change  
7 his mother's legal documents, Arthur went to another  
8 one who eventually did it, and the documents were  
9 changed in a way that is completely to Arthur's  
10 benefit. This shows undue influence. It shows someone  
11 who is not going to consider what is best for their  
12 mother; it is someone who's considering what is best  
13 for themselves. For those reasons Arthur Herring is  
14 not an appropriate guardian for Jane Herring. The  
15 Court will appoint an independent guardian.

16 The Court recognizes that both Ms. Camp  
17 and Mr. Jaskowiak are requesting Dwayne Logie. I will  
18 give Arthur Herring until Tuesday at noon to send an  
19 email to my assistant Karen with any independent  
20 guardian he wishes to propose for the Court's  
21 consideration, after which the Court will appoint an  
22 independent guardian. The independent guardian will  
23 have full unrestricted access to Jane Herring.

24 Mr. Jaskowiak will continue to represent Jane Herring.

25 The Court also finds specifically that

1  
2 Jane Herring did not have the capacity to change her  
3 legal documents in December of 2020 for the reasons  
4 placed on the record about her incapacity, and  
5 specifically the retroactive evaluation by Dr. Ledakis,  
6 the evaluation from Dr. Ken Carroll in May of 2021, and  
7 the testimony regarding the multitude of lawyers who  
8 refused to change her documents in light of their  
9 concern for incapacity. And the Court will void the  
10 power of attorney, will modification, trust amendments,  
11 and the deed transfer that were entered into. The  
12 documents that will stand as the valid documents are  
13 the documents that were last prepared by  
14 Mr. Fenstermacher, which is the last will, which is  
15 P-5; and the last trust, which is P-6. The previously  
16 executed power of attorney, P-3, will be void with the  
17 appointment of the attorney.

18           So I hope, Mr. Herring, you can get to a  
19 point where you can allow your mother to have contact  
20 and not interrupt. The guardian will be in charge of  
21 this. Your mother is at the end of her life. She's  
22 had a good life. Let her see both of her children,  
23 don't whisper in her ear, and let her be able to live  
24 the rest of her life in peace. The independent  
25 guardian that the Court will appoint will be able to look

1  
2 out for her and her best interests and give her contact  
3 to all people who will be positive influences on her.  
4 So, with that, this court has concluded and we are  
5 adjourned.

6 MR. HERRING: Your Honor, I have a  
7 question.

8 THE COURT: What is your question?

9 MR. HERRING: My question is you've  
10 given me till Tuesday?

11 THE COURT: Tuesday.

12 MR. HERRING: That's just not -- where  
13 would I look? Where am I supposed to look?

14 THE COURT: Google. I have a list of  
15 people and I am comfortable appointing Mr. Logie. I'm  
16 giving you the opportunity to do some research if you  
17 want to appoint someone else for me to consider. All  
18 you need to do is propose a name to me. That's it.

19 (At 5:44 p.m., proceedings were  
20 concluded.)

21 - - -

22 (The following proceedings occurred at  
23 5:51 p.m.):

24 THE COURT: At the conclusion of this  
25 hearing it was brought to the attention of this Court

1  
2 that there is a concern as to whether or not Arthur  
3 Herring has taken a copy of Dr. Ledakis's report with  
4 him. That report was admitted into evidence and the  
5 Court is not objecting to Mr. Herring having a copy of  
6 that report at this time. But this Court is  
7 specifically ordering that that report is not to be  
8 shared in any way with Jane Herring, it is not to be  
9 reproduced in whole or in part in any way by any of the  
10 parties, and there will be no publishing of that report  
11 on the internet, in the newspaper, in any capacity in  
12 whole or in part, by scanning, photographing, or even  
13 reproducing by typing or writing it out.

14 Failure to comply with this order by any  
15 of the parties will be considered contempt of court and  
16 each of the parties will be subject to incarceration or  
17 a significant fine for violating this order.

18 Mr. Herring, do you understand my order?

19 MR. HERRING: Yeah.

20 THE COURT: Mr. Jaskowiak, do you  
21 understand my order?

22 MR. JASKOWIAK: Absolutely, Your Honor.

23 THE COURT: And, Ms. Camp, will you  
24 explain my order to your client?

25 MS. CAMP: Yes, Your Honor.

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THE COURT: Okay. We are now concluding.

MR. JASKOWIAK: Thank you, Your Honor.

MR. HERRING: Does anybody want to search my briefcase?

THE COURT: Mr. Herring, whether you have it now or have it at another time and you violate my order, you go to jail.

(At 5:52 p.m., proceedings were concluded.)

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C E R T I F I C A T E

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I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me in the above cause and that this is a correct transcript of the same.

Amy Boyer  
Official Court Reporter

- - -