



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

In the Matter of Alberta Veazey,

An alleged disabled person

C.M. No. 15916-S

REPORT OF THE ATTORNEY AD LITEM

On May 25, 2011, the undersigned attorney was appointed by the Court as attorney *ad litem* for Alberta Veazey ("Alberta")¹, an alleged disabled person. Alberta's son Joseph J. Beckett ("Jack") has petitioned this Court to be appointed as the Guardian of the Person and Property of Alberta. This is the report of the attorney *ad litem*.

On May 26, 2011, I spoke with Jack's attorney Bob Thomas about the Petition. Mr. Thomas briefed me about the situation; specifically regarding issues about Alberta's mental condition and her finances. Alberta is an 89 year old widow who suffers from dementia. She currently resides at the Brandywine Assisted Living Facility in Rehoboth Beach ("Brandywine") but owns a house in Lewes, Delaware. According to Mr. Thomas, there are significant concerns about Alberta's assets. Jack believes that Alberta has a significant amount of liquid assets but is unable to locate those assets. Evidently, her son Donald Veazey ("Don") has been handling her finances for quite some time and assisted Alberta in establishing the Veazey Family Gifting Trust ("the Trust") and the E. Alberta Veazey Family LLC, a Virginia Limited Liability Company ("the LLC"). Jack has some questions about the establishment of the Trust and LLC and its funding. For purposes of this report, I will first address Alberta's physical and mental condition and then I will address her finances.

¹ For clarification purposes, I will use the parties' first names.

Alberta's Physical and Mental Condition:

On June 2, 2011, I spoke with Jack regarding the Petition and his mother's condition. He has been assisting his mother since his stepfather, Sam Veazey ("Sam"), died in 2004. Over time, Alberta's condition deteriorated to the point where she was unable to properly care for herself. Even though she was a woman who took great pride in her appearance, she started to exhibit poor hygiene. She also demonstrated odd behaviors such as washing her adult diapers in hopes that she could reuse them. Jack also had to cut off the stove because he was afraid that she would burn down the house. In an effort to allow Alberta to safely remain in her home, Jack hired workers to care for Alberta but she fired them all. Alberta also became more reclusive and less willing to leave her home.

In November 2010, Alberta suffered a gall bladder attack and was sent to Johns Hopkins Hospital, where she was hospitalized for a month. When she returned from the hospital, she was sent to Brandywine. She often complains about being placed in Brandywine and does not want to live there.

Jack advised me that Alberta has good days and bad days but she has trouble with her memory. For example, she forgets to take her medications. He believes that she needs a guardian because she is incapable of handling her own affairs and is in danger of injuring herself.

On June 3, 2011, I spoke with Dr. Fabricio Alarcan about his physician's affidavit. He confirmed to me that Alberta is his patient and that she suffers from dementia and depressed. He noted that she is confused at time but that her condition is not consistent. Sometimes she is fine and other times she is not. He said that she is in

continuous decline and that her condition is likely irreversible; though she is otherwise in good health for her age. He suspects that she has Alzheimer's Disease.

Later that day I spoke with Don about the Petition. He informed me that he supports the Petition because he believes his mother needs a guardian. She cannot take care of herself and needs full-time supervision. She has difficulty following simple instructions; such as taking her medications. While Don believes that his mother could handle some basic functions, the disease has rendered Alberta much like a child. He noted that her negative personality traits are now magnified. For example, she now throws frequent temper tantrums when she does not get her way. She also fails to recognize the severity of her condition. She complains about being placed in the assisted living facility and scared off five different in-home care givers prior to being placed in the facility. He believes that Jack will serve his mother well and supports his appointment as guardian.

On June 6, 2011, I spoke with Alberta's son Bob Beckett ("Bob"), who lives in San Francisco, California. Bob advised me that he had no opposition to Jack being named as his mother's guardian and acknowledged that the job carries a significant burden. In fact, he has "absolutely no concern" about Jack's ability to serve as Alberta's guardian.

Bob reiterated much of what Don advised me about Alberta's condition (i.e. she cannot remember to bathe, to take pills, or to pay her bills). He also expressed concerns about his mother's cognitive functioning, specifically related to her memory, and acknowledged that her condition is not likely to improve. He does not believe that Alberta is capable of living alone.

On June 10, 2011, I met with Alberta, Jack and Jack's significant other Kristin. I immediately found Alberta to be a feisty woman who was very conversational. I explained the guardianship process to her and that I was appointed as her attorney *ad litem*. In that role, I am charged with determining whether she is a disabled person and whether a guardianship would be in her best interests. I asked her if she wanted to meet privately and she said that she wanted Jack and Kristin in the room during our meeting.

Over the course of the following two hours, I discussed with Alberta about her life and her wishes. It became quite clear that, while she is friendly and conversational, her memory has sadly faded. At various points during the conversation, she would reference something and could not think of the words unless prompted by Kristin or Jack. She also had trouble remembering dates; especially recent history. For example, she mentioned that she had surgery but could not remember the purpose of the operation. She pointed to her side and only recalled that it was for her gall bladder surgery after Jack said so. She then thought the surgery was two or three years ago when, in fact, it occurred last November. She also was unable to ascertain how long she had been at the Brandywine facility.

Despite her inability to recall the aforementioned details, she was able to relay to me stories about her childhood and her business running a gift shop in Rehoboth many years ago. She was even able to recall what she had for breakfast. Unfortunately, I found her memory to be filled with gaps. She spoke a great length about her time running the gift shop but was unable to explain whether she owned it or simply worked there. She also was unable to remember that she worked at the Rusty Rudder after

leaving the gift shop. It was clear that certain memories were clearer than others. While it is likely that most individuals suffer from such memory gaps, she seemed to have no memory of rather important areas of her life. Without Jack and Kristin being in the room to fill in the gaps, I doubt that she would have been able to engage in a meaningful conversation.²

Perhaps my greatest concern was Alberta's lack of comprehension about her condition. Almost immediately she informed me that she did not want to stay at Brandywine and wanted to go home. I asked her about whether she cooked and she was evasive in her response. When I asked her about her medications, she said that she remembered to take them but thought that she could go a day or two without taking them. She was unable to recite to me the medications that she takes but she did state that she took a "memory pill" and an anti-anxiety drug. Jack and Kristin later advised me that Alberta was not cooking for herself and she failed to demonstrate proper hygiene when she was living alone. I asked Alberta about whether she would like in-home care and she was very negative towards that idea. Instead of embracing the fact that she was in need of care and supervision, Alberta insisted that she go home without giving a reasonable explanation for her decision.

Eventually, Alberta became quite hostile to me. She asked me if I thought she needed a guardian and I explained that I thought she did and gave her reasons for my opinion. She was quite upset and declared that she did not hire me to be her attorney and she wanted a new attorney. I told her that she was entitled to contact any attorney to see if they would be willing to represent her. She did not seem to comprehend that I

² There were other similar memory lapses as well. She was unable to remember if her cat was a male or female and struggled to remember the cat's name. She knew that one of her sons had passed away years ago but she thought he died around age 24. Jack advised me that his brother passed away in his 40s.

was appointed to look out for her best interests. She complained that I had not taken her to her doctor to have mental examination. When I explained to her that such practice is uncommon in such matters, she became quite angry. She also complained that I did not meet with her privately and did not explain my role to her when we met. Of course, I had both explained my role to her and asked if she wanted to meet alone when we were introduced. I think she simply forgot the earlier details of our long conversation. She then claimed that I was not looking out for her best interests and fired me.³

After meeting with Alberta, I met with Jack alone and he brought me back to see Alberta and she had calmed down. She made it clear that she wanted to return home and I told her that I would advise the Court about this wish but that it was not my decision to make; rather, that decision would belong to her guardian if one was appointed. She told me that she did not want to fire me and wished me well.

Ultimately, I found Alberta to be much like her family members and physician had described. She was feisty and conversational but her mind was not as sharp as it likely once was. Much like a blade of a knife that has dulled over time, her mind seems to have lost its edge. Her dementia also appears to have exacerbated her negative traits such as her occasional temper tantrums. Sadly, according to her physician, Alberta's condition is unlikely to improve.

Alberta's Assets and Finances:

During my investigation, I discussed with Don, Jack, and Bob my concerns about Alberta's assets. According to Jack, Alberta owns her home free and clear of all

³ This response did not surprise me as Don advised me that his mother would likely try to fire me at some point.

mortgages, liens, etc. It is believed that she also has ample liquid resources available for her care from a settlement related to Sam Veazey's death. Evidently, Sam suffered from medical problems related to mesothelioma. The Veazeys filed a lawsuit and received a hefty settlement. Because Sam was Don's father, Don was involved in the lawsuit. Jack and Bob, however, were not involved in the suit even though Sam was very close to them because they were Sam's stepsons. Jack advised me that the settlement proceeds were split four ways with Don, Jack, Bob, and Alberta each receiving over \$400,000.00. Alberta received $\frac{3}{4}$ of the settlement and distributed shares to Jack and Bob.

Even though Alberta received a great deal of money from the aforementioned settlement, it is unclear where that money went. According to Don, he consulted with a Virginia attorney named John Ryan to create a Trust and Limited Liability Company on his mother's behalf. He explained to me that the settlement proceeds were put into the Trust for Alberta's benefit. When she passes away, the remaining assets will go to her children.

Mr. Thomas provided a copy of the Trust and Limited Liability Agreement for my review. The documents were prepared under Virginia law and were executed on June 18, 2009. The Trust names Don as the Trustee and Jack as the back-up trustee. Article I, Paragraph I(1) of the Trust identifies Don, Jack, and Bob as the beneficiaries and distributions may be made to benefit them. The main asset in the Trust was a 100% interest in the LLC. The main asset of the LLC was Alberta's interest in her home in Sussex County, Delaware (presumably her residence on Postal Lane). What has troubled me about the Trust is that there is no provision that the assets be used for

Alberta's benefit. It appears as though she created the Trust so that she could pass the assets to her children while she was alive. I also note that the Trust is irrevocable. A copy of the Trust is attached hereto as Exhibit A. Likewise, the LLC Operating Agreement appears to be designed for the benefit of Alberta's children and not Alberta. The only members of the LLC are Don and the Trust.⁴ A copy of the LLC Operating Agreement is attached hereto as Exhibit B. On September 28, 2009, Alberta transferred her property located at 34439 Postal Lane in Lewes to the LLC via deed. This deed was also prepared by Virginia counsel. A copy of the deed is attached hereto as Exhibit C.

When I spoke with Don, I specifically asked him about his mother's finances, which he controlled (as acknowledged by all family members including Alberta). Don advised me that the Trust consisted of the following: 1) the house at Postal Lane, 2) a money market account with approximately \$10,000.00, 3) a checking account with approximately \$6,000.00, and 4) a stock brokerage account with approximately \$19,000.00. Alberta also owns a car, a truck, and 200 shares of Lowe's stock valued at approximately \$4,000.00. Don also believes that Alberta has a safety deposit box with gold valued at \$30,000.00, silver service set valued at \$6,000.00, and four coins valued at \$2,400.00. It was unclear what happened to the settlement proceeds she received from the mesothelioma suit.

The issue about locating Alberta's finances has been further complicated by Don's recent abdication of his responsibilities as Trustee, Power-of-Attorney, and Manager of the LLC. In April 2011, Mr. Ryan sent a letter to Jack on Don's behalf advising Jack of Don's resignation. A copy of this letter is attached hereto as Exhibit D.

⁴ Don was named as a "Non-Member Manager".

When I spoke with Don, he admitted that he had been "overwhelmed" and was quite nervous about these issues. He also did not appear to have a solid comprehension of the specifics of the Trust and LLC agreement; something I found surprising since he was the person who evidently arranged for the consultation with Mr. Ryan.⁵

While I was surprised to hear that Don did not have a good understanding about the Trust and the LLC, I was disappointed to hear that he failed to adequately handle his mother's bills since she was moved to Brandywine. Evidently, Alberta has a long-term care insurance policy that will pay up to \$72,000.00 in costs associated with residence in a long-term care facility such as Brandywine. My understanding is that the policy will pay approximately \$3,000.00 per month. Don admitted to me that he started the process to receive these payments but did not follow through on completing it. Only recently has Jack stepped in to correspond with the insurance company. In the meantime, Jack has been paying out of his own funds the bills associated with Alberta's stay at Brandywine. It is my understanding that Alberta receives approximately \$2,000.00 per month from Social Security. Brandywine costs approximately \$6,000.00 per month so the insurance policy, if used, would greatly reduce the need to dip into Alberta's liquid assets.

There is also a question as to whether Bob owes his mother money for an outstanding debt. Mr. Ryan references this debt in his letter. I sense that there is some dispute as to whether a debt is actually owed and, if so, how much is owed. Nonetheless, I believe that the guardian, if appointed, should investigate this matter as well.

⁵ I attempted to reach Mr. Ryan but he did not return my call.

Given my concerns about the Trust and the LLC, I made it a point to discuss these concerns with Alberta in hopes that she would be able to shed some light about her affairs. She advised me that she relied on Don to handle her affairs and that he controlled her finances for some time. When I asked how much money she had, she said that was a private matter and refused to give me any information. I explained to her that Jack had been paying her bills of late with his own money and she seemed astonished. She made it quite clear that she thought she had the money to pay her bills and Jack should be paid back from those funds. I attempted to explain to her about my concerns with the Trust and the LLC but it was clear to me that she either did not understand it or did not want to engage in that discussion. Nonetheless, my impression is that she has not handled her finances for quite some time and has relied on Don to assist her.⁶

Ultimately, I think that whoever is appointed guardian of Alberta's property should make a thorough investigation about Alberta's finances and assets. The potential lack of assets available to pay for Alberta's care concerns me. If the guardian is unable to find out adequate information from this investigation, it is quite possible that an action for an accounting and other equitable relief may be necessary.

Jack's Gambling Conviction:

Lastly, I note that Jack has advised the Court in his Affidavit of Petitioner's History that he was convicted of a gambling felony. I spoke with Jack about this conviction and he advised me that was involved in betting on NFL games in the late

⁶ She also advised me that she has relied heavily on Jack and Kristin to assist her in taking care of her house and her person. They assist her with taking medications, going to see the doctor, and maintaining the residence. She expressed to me that she trusts Jack and wants him to continue to do these things for her.

1980s and was caught in a large sting. He advised me that he was a low man on the totem pole. He seemed surprised that I brought up the conviction during our conversation and said that he would be disappointed if the Court denied his Petition for Guardianship because of the conviction. I do note that he currently works as a driver's education teacher with several local schools and has done so for over a decade.

SUMMARY

In sum, I have no doubt that the disabled person is in need of a guardian of her person and property. From my conversations with the disabled person, her physician, and her family, it is clear that the disabled person has difficulty with her cognitive functioning and is unable to handle her own affairs. I am convinced that the disabled person is a "disabled person" within the meaning of Title 12, Section 3901 (2) of the Delaware Code and is in need of a guardian of her person and property.

I also find that the Petitioner is well-suited to serve as the disabled person's guardian. He cares deeply for the disabled person and has taken great steps to ensure that his mother receives proper care. He has paid for his mother's care at Brandywine out of his own funds and he tends to her needs as best he can. Neither of Alberta's other two sons live nearby and are able to easily care for her. More importantly, however, Alberta trusts Jack to make good decisions for her.

That being said, it is the opinion of the attorney *ad litem* that Petitioner Joseph J. Beckett should be appointed guardian of the person and property of Alberta Veazey.

I have attached an affidavit of fees hereto and will accept a fee deemed reasonable by this Honorable Court.

MOORE & RUTT, P.A.

By: /s/ James P. Sharp

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