

STATE OF MICHIGAN  
DEPARTMENT OF ATTORNEY GENERAL



COPY

P.O. Box 30755  
LANSING, MICHIGAN 48909

DANA NESSEL  
ATTORNEY GENERAL

September 3, 2019

Macomb County Probate Court  
Attn: Probate Register  
40 N Main  
Mt. Clemens, MI 48043

Re: *Mitchell, Robert Lee (2018-228964-CA)*  
*Delbridge, Barbara Ann (2018-228962-CA)*

Enclosed please find the Attorney General's Notice of Intervention and Objections to Caring Hearts of Michigan, Inc. Final Account of Fiduciary, Appearances, and Proofs of Service for the each of the above cases. Also enclosed are filing fees for both.

Thank you. Feel free to contact me with any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael E. Moody", written over a horizontal line.

Michael E. Moody  
State Public Administrator  
Public Administration  
(517) 335-7627

Encs.

cc: Timothy P. Flynn, Attorney for Marcie Mitchell  
Joseph Buttiglieri and Edward Nahhat, Attorneys for Caring Hearts  
Frank Cusumano, Jr., Attorney for Anita Little  
Martin Brosnan

STATE OF MICHIGAN  
PROBATE COURT  
COUNTY OF MACOMB

IN THE MATTER OF  
ROBERT LEE MITCHELL

CASE NO. 2018-228964-CA  
2018-228962-CA

HON. JAMES M. BIERNAT

IN THE MATTER OF  
BARBARA DELBRIDGE

Clarkston Legal, PLC  
Timothy P. Flynn (P42201)  
Attorneys for Marcie Mitchell  
6637 Highland Road  
Waterford, Michigan 48327  
(248) 886-6600

Kemp Klein  
Joseph Buttiglieri (P26410)  
Edward M. Nahhat (P44534)  
Attorneys for Caring Hearts  
of Michigan, Inc.  
201 East Big Beaver Road, Suite 600  
Troy, Michigan 48084  
(248) 528-1111

Michael E. Moody (P51985)  
State Public Administrator  
Michigan Department of Attorney General  
Public Administration Division  
P.O. Box 30755  
Lansing, Michigan 48909  
(517) 373-1123

Frank A. Cusumano, Jr. (P42781)  
Attorney for Anita Little  
16188 Jenny Drive  
Macomb, Michigan 48042  
(586) 453-4084

Martin Brosnan (P35835)  
29199 Ryan Road  
Warren, Michigan 48902  
(586) 573-8900

**PROOF OF SERVICE**

I, AMANDA CHURCHILL, state that on September 3, 2019 served a copy of the Attorney General's Notice of Intervention and Objections to Caring Hearts of Michigan, Inc. Final Account of Fiduciary to the above attorneys of record, via email and first-class mail.

  
AMANDA CHURCHILL

STATE OF MICHIGAN  
PROBATE COURT  
COUNTY OF MACOMB

IN THE MATTER OF  
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CASE NO. 2018-228964-CA  
2018-228962-CA

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**ATTORNEY GENERAL'S NOTICE OF INTERVENTION AND OBJECTIONS  
TO CARING HEARTS OF MICHIGAN, INC. FINAL ACCOUNT OF  
FIDUCIARY**

NOW COMES Attorney General Dana Nessel, by and through her attorney, intervenes and objects to Caring Hearts of Michigan, Inc. ("Caring Hearts") Final Account of Fiduciary and states as follows:

1. The Attorney General for the State of Michigan is authorized to intervene in and appear on behalf of the People of Michigan in any case in which the People may have an interest. MCL 14.28 (See also, *Michigan State Chiropractic Ass'n v Kelly*, 79 Mich App 789, 792 (1977) (stating that the Attorney General "has statutory and common law authority to act on behalf of the people of the State of Michigan in any case or matter, such authority being liberally construed."))
2. The Attorney General finds that it is incumbent on the courts to ensure that the State's guardianship system is providing properly for the vulnerable, and that court-appointed conservators fulfill the fiduciary responsibilities to those in their custody.
3. Accordingly, the Attorney General, in her judgement, has determined that the interests of the People of the State of Michigan require her to intervene in this proceeding where there appears to be a clear violation of the statutes addressing fiduciary self-dealing.
4. From November 28, 2108 to June 7, 2019, Caring Hearts was appointed Guardian and Conservator for Robert Lee Mitchell and Barbara Delbridge over the petition of Mr. Mitchell's daughter and Ms. Delbridge's stepdaughter.

5. Caring Hearts is a guardian agency owned by Catherine Kirk. (November 28, 2018 Hearing, pp 17, 26.)

6. Catherine Kirk also has ownership interest in Executive Care which is the 24-hour in-home care company that provided Ms. Mitchell and Ms. Delbridge in-home care. (May 15, 2019 Petition for Sanctions and Restraining Order to Enjoin Family members and Other Interested Parties from Interfering with Care and Treatment of Ward, p 5.)

7. Catherine Kirk's husband is a partner in the law firm representing Caring Hearts and Executive Care. (November 28, 2018 Hearing, p 17; May 15, 2019 Petition for Sanctions and Restraining Order to Enjoin Family members and Other Interested Parties from Interfering with Care and Treatment of Ward.)

8. Caring Hearts' Final Account includes charges from Caring Hearts, Executive Care, and Kirk, Huth, Lange and Badalamenti, PLC. for the time frame from November 28, 2018 to June 7, 2019.

9. MCL 700.5313(1) provides that the "Court shall not appoint as guardian an agency, public or private, that financially benefits from directly providing housing, medical, mental health, or social services to the legally incapacitated individual." The intention behind this provision is to prevent conflicts of interest. Michigan Probate Sourcebook, March 2018 Update, p 409. The Court of Appeals, in *In re Guardianship of Redd*, 321 Mich App 398, 407 (2017), further explained that the Estates and Protected Individuals Code "prohibits certain financial self-dealing by the guardian with respect to the ward."

10. MCL 700.5421 similarly provides conflict of interest prohibitions for conservators. Section 5421 provides, in part, as follows:

(1) A sale, encumbrance, or other transaction involving the investment or management of estate property in which the conservator has a substantial beneficial interest or that is otherwise affected by a substantial conflict between the conservator's fiduciary and personal interests, is voidable unless any of the following are true:

(a) The transaction is approved by the court after notice as directed by the court.

(b) The transaction involves a contract entered into or claim acquired by the conservator before the person became or contemplated becoming conservator.

(c) The transaction is otherwise permitted by statute.

(2) A sale, encumbrance, or other transaction involving the investment or management of estate property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the conservator with any of the following:

(a) The conservator's spouse.

(b) The conservator's descendant, sibling, or parent or the spouse of the conservator's descendant, sibling, or parent.

(c) An agent or attorney of the conservator.

(d) A corporation or other person or enterprise in which the conservator, or a person that owns a significant interest in the conservator, has an interest that might affect the conservator's best judgment.

11. Thus, financial transactions of a conservator with the protected individual's estate are voidable if the conservator has a substantial beneficial interest in the transaction or the transaction is affected by a substantial conflict between the protected individual and the conservator.

12. In fact, Section 5421(2) specifically provides that a financial transaction involving the protected individual's estate entered into by the conservator and the conservator's spouse or the conservator and an entity or person that the conservator has an interest in are presumed to be affected by a conflict between personal and fiduciary interests, and thus voidable.

13. Here, Caring Hearts, the guardian and conservator, hired Executor Care to provide in-home care to Mr. Mitchell and Ms. Delbridge. Both Caring Hearts and Executive Care, however, are owned by Cathy Kirk who also hired her husband's law firm to provide legal counsel.

14. Accordingly, all of these financial transactions set forth in Caring Hearts' Final Account are presumed to be affected by a conflict between personal and fiduciary interests, and therefore voidable.

15. None of the exceptions provided in Section 5421 apply in this case, and thus the Court must find that fees incurred from the use of companies that have common ownership and the use of a spouse's law firm are voided to protect Mr. Mitchell and Ms. Delbridge from the guardian/conservator's self-dealing and breach of fiduciary duties.

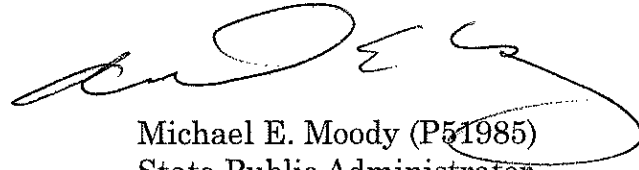


**CONCLUSION AND RELIEF REQUESTED**

For the reasons stated above, the Attorney General requests that the Court reject the final account for both Robert Lee Mitchell and Barbara Delbridge.

Respectfully submitted

Dana Nessel  
Attorney General

A handwritten signature in black ink, appearing to read "Michael E. Moody", is written over the typed name and title of the signatory.

Michael E. Moody (P51985)  
State Public Administrator  
Assistant Attorney General  
P.O. Box 30755  
Lansing, MI 48909  
(517) 335-7627

Dated: September 3, 2019

Approved, SCAO

<b>STATE OF MICHIGAN</b> JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE Macomb	<b>APPEARANCE</b>	<b>CASE NO.</b> 2018-228964-CA Hon. James M. Biernat
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Court address: 40 N Main, Mt. Clemens, MI 48043  
 Court telephone no.: 269-673-0250

Plaintiff(s)/Petitioner(s)	v	Defendant(s)/Respondent(s)
----------------------------	---	----------------------------

Probate In the matter of Robert Lee Mitchell

Juvenile In the matter of \_\_\_\_\_

TO: Clerk of the court/Register, all attorneys of record, and unrepresented parties: Specify names and addresses.

Macomb County Probate Court  
 40 N Main  
 Mt. Clemens, MI 48043

Frank A. Cusumano, Jr.  
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Michael Moody  
 MI Department of Attorney General  
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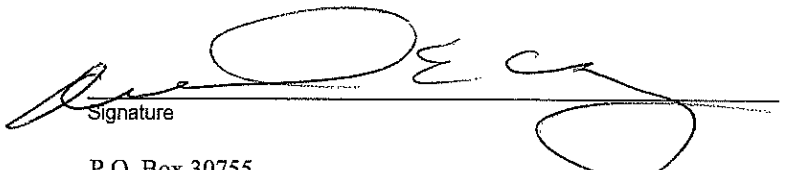
I appear on behalf of State of Michigan / State Public Administrator as

attorney  guardian ad litem and request copies of all papers filed in this case.

Court appointed  Retained by \_\_\_\_\_

I certify that I represent no other interest whatsoever of any party to this cause, except as follows:

09/03/2019  
 Date

  
 Signature

Michael E. Moody  
 Name (type or print) Bar no.  
 State Public Administrator / Department of Attorney General  
 Firm name

P.O. Box 30755  
 Address  
 Lansing, MI 48909  
 City, state, zip  
 517-335-7627  
 Telephone no.

STATE OF MICHIGAN  
PROBATE COURT  
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IN THE MATTER OF  
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\_\_\_\_\_/ HON. JAMES M. BIERNAT

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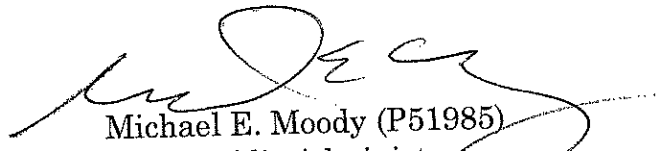
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Dated: September 3, 2019



Approved, SCAO

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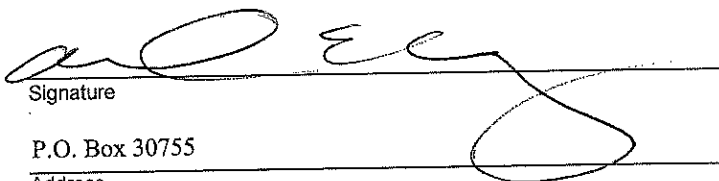
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