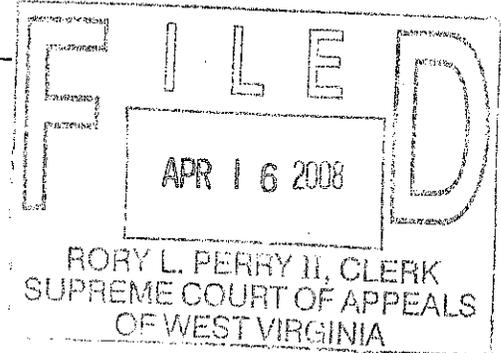


IN THE WEST VIRGINIA SUPREME COURT OF APPEALS

AT CHARLESTON

IN RE: **JEAN HOLLY DANDY**,
A Protected Person,
Respondent,
Respondent below,



Case Action No. _____
(Appeal from a **March 12, 2008**
Order of the Circuit Court of
Nicholas County, Case No. 05-G-13)

JAMES WILSON DOUGLAS,
Intervenor in Fact,
Petitioner,
Attorney for Donna Meadows,
the former Attorney-in-Fact, and now Guardian,
for Respondent below.

PETITION FOR APPEAL

Comes now the Petitioner, **JAMES WILSON DOUGLAS**, recently attorney for Donna Meadows, the former Attorney-in-Fact, and now Guardian, for **JEAN HOLLY DANDY**, a protected person, Respondent below, pursuant to Rule 4 of the Rules of Appellate Procedure of the West Virginia Supreme Court of Appeals, and in and for his Petition, does aver, depose and say, as follows:

STANDARDS OF REVIEW

Petitioner maintains that the appropriate standards of review for the issues presented hereinafter are *abuse of discretion* and *de novo*.

NATURE OF THE PROCEEDING AND RULING BELOW

Donna Meadows, was the former Attorney-in-Fact for JEAN HOLLY DANDY, her paternal grandmother. Ms. Dandy, a resident of the State of Kentucky in 2001, caused a local lawyer to draft a power of attorney nominating Ms. Meadows, her granddaughter, which document she executed on April 12, 2001 before a Kentucky notary in the State of Kentucky. After her mental health began to fail in late 2004 or early 2005, Ms. Meadows caused her grandmother, Ms. Dandy to be moved to West Virginia.

Thereafter, Ms. Dandy's son and Ms. Meadow's uncle, Ronald Bowers, filed a March 7, 2005 Petition (05-G-6) in Nicholas County under West Virginia Code §44A-2-2 for his appointment as a guardian and conservator for his mother, Ms. Dandy. The Petition was withdrawn and dismissed on or about July 7, 2005 due to noncompliance with the cited statute.

On or about July 15, 2005, Ronald Bowers, a resident of the State of Iowa, filed a *second* Petition, Case No. 05-G-13, in the Circuit Court of Nicholas County, West Virginia, again alleging pursuant to West Virginia Code §44A-2-2, that Ms. Dandy was a "protected person", as defined in the law; however, said

Petition, as later admitted by Bowers, and as corroborated by the record, was never served upon Ms. Dandy, which is required by West Virginia Code §44A-2-6 in order to establish jurisdiction of the cause.

Although this omission was brought to the attention of the Circuit Court below, hearings were nevertheless scheduled by the Circuit Court. Ms. Meadows sought a Writ of Prohibition on September 12, 2005 before this Honorable Court with respect to the service issue; however, the same was denied on September 15, 2005. Following multiple hearings, the Circuit Court of Nicholas County concluded that Ms. Dandy was a protected person, as defined by West Virginia Code §44-1-4(13), as demonstrated by its December 15, 2005 Findings and Conclusions of Circuit Court on said second Petition (05-G-13).

The case then proceed to extended litigation on May 22 and 23, 2006, concerning the sole issue of whom should be appointed as the Conservator and/or Guardian; to-wit: Mr. Bowers, Ms. Meadows, the Sheriff of Nicholas County, as provided in the statute, or some third party or parties.

At the conclusion of all of the evidence over the aforesaid two (2) day period, Ms. Meadows, who was represented throughout these two proceedings by Petitioner James Wilson Douglas, Esq., of Sutton, West Virginia, succeeded in preventing Ron Bowers from being appointed to either office, and an Order designating Ms. Meadows as Guardian (and the Sheriff of Nicholas County as

Conservator) was entered on July 6, 2006. Cammie Chapman, Esq., of Summersville, West Virginia, was appointed and served as Ms. Dandy's Guardian *ad Litem* in the trial of both Petitions alluded to hereinabove.

Notwithstanding the conclusion of the Conservator/Guardianship proceedings that culminated in the aforesaid appointments, the trial court below, as a part of its July 6, 2006 Order of appointment, directed Ms. Meadows and the Petitioner Douglas to supply to the Court *and the Guardian ad Litem* records, receipts and other justifications of the Attorney-in-Fact's expenditures, and Petitioner's attorney fee billing and expense records to Ms. Meadows for his representation in actions 05-G-6, 05-G-13 and the Petition for a Writ of Prohibition to the West Virginia Supreme Court of Appeals. The trial court below also requested the Guardian *ad Litem* to provide it a report on this anticlimactic issue. Although the Attorney-in-Fact and the Petitioner counsel preserved their objections, both Ms. Meadows and Petitioner Douglas complied on July 28, 2006 and on July 31, 2006, respectively.

Subsequent thereto, the Guardian *ad Litem* filed a report and recommendation on October 4, 2006, which was the subject of a hearing on December 18, 2006, wherein the trial court requested briefs from the Guardian *ad Litem* and Ms. Meadows and Petitioner Douglas on the issue of expense, compensation and attorney fees. No evidence was taken on any aspect of said

issues, and Ms. Meadows and the Petitioner counsel again objected to the continuing use of the Guardian *ad Litem* subsequent to the determination of protected person status on December 15, 2005.

The Circuit Court of Nicholas County made its ruling by a Final Order Concerning Attorney's Fees and Compensation of Attorney-in-Fact, entered on or about October 10, 2007; however, none of the Parties were advised of the Circuit Court's decision until February 28, 2008 when the Parties were provided a copy of the aforesaid October 10, 2007 Final Order Concerning Attorney's Fees and Compensation of Attorney-in-Fact via facsimile by the Circuit Clerk of Nicholas County, West Virginia.

In order that the Parties could seek appellate review, the Court below reissued its October 10, 2007 Final Order Concerning Attorney's Fees and Compensation of Attorney-in-Fact ruling by supplemental Order dated March 12, 2008 Agreed Order Reissuing Final Order, *Nunc Pro Tunc*, from whence this appeal is taken.

STATEMENT OF THE FACTS OF THE CASE

While fully competent, Jean Dandy, a resident of the Commonwealth of Kentucky, caused a Kentucky lawyer to draft a 2001 power of attorney in favor of her grand-daughter, Donna Meadows, with whom she had enjoyed a historically close relationship. The subject power of attorney was executed by Ms. Dandy

before a Kentucky notary in the State of Kentucky on April 12, 2001. See Exhibit "A" attached hereto and incorporated herein by and for reference.

In late 2004 or early 2005, Ms. Dandy began to experience an incipient and increasing impairment of her faculties, and as a result, Ms. Meadows caused Ms. Dandy, her grand-mother, to be relocated to Nicholas County, West Virginia, which was Ms. Meadows permanent residence, in order to personally oversee her care.

Ms. Dandy's son, Ronald Bowers, who various third party witnesses described as a man of dubious character and not-so-hidden agendas regarding his mother's assets, filed a March 7, 2005 Petition (05-G-6) in Nicholas County under West Virginia Code §44A-2-2 for his appointment as a guardian and conservator for his ailing mother's body and estate, alleging that Ms. Dandy, born October 9, 1919, was incapacitated. After some limited hearings thereon, the Petition was withdrawn and dismissed on or about July 7, 2005 due to procedural and substantive irregularities therewith.

Within eight (8) days, or on or about July 15, 2005, Ronald Bowers filed a second Petition, Case No. 05-G-13, in the Circuit Court of Nicholas County, West Virginia, again alleging pursuant to West Virginia Code §44A-2-2, that Ms. Dandy was a "protected person", as defined in the law; however, said Petition, as later admitted by Bowers, and as corroborated by the record, did not

have appended thereto an evaluation report, as required by West Virginia Code §44A-2-3. Moreover, this second Petition, to the current time, has never been served upon Ms. Dandy, which is required by West Virginia Code §44A-2-6, in order to establish jurisdiction of the cause.

Approximately five (5) hearings were held before the Circuit Court of Nicholas County on said Petition, culminating in the December 15, 2005 Findings and Conclusion of the Circuit Court that indeed Ms. Dandy was a protected person, as defined by West Virginia Code §44-1-4(13).

Although the 2005-2006 mental status of Ms. Dandy was never a real issue, the person to be appointed Guardian and Conservator, as well as, the previous (April 12, 2001) Kentucky surrogate nomination of Ms. Meadows by Ms. Dandy, as given preference by West Virginia Code §§44A-1-3, 44A-2-8 and 44A-2-10, were the real points of contention consuming a majority of litigation time on May 22 and 23, 2006.¹ Ms. Meadows prevailed on this point, and an Order appointing Ms. Meadows as Guardian (and the Sheriff of Nicholas County as Conservator) was entered on July 6, 2006.

Ms. Meadows was successfully represented throughout these two proceedings by James Wilson Douglas, Esq., of Sutton, West Virginia; and

¹Although Ms. Meadows mainly desired to be appointed Guardian, and she would have accepted a conservator appointment, her primary thrust was to prevent the roguish Ronald Bowers from serving in either capacity.

Cammie Chapman, Esq., served as Ms. Dandy's Guardian *ad Litem* in the trial of both Petitions aforesaid.

As a part of the July 6, 2006 Order of appointment, the Court had directed Ms. Meadows to supply to the Court and the Guardian *ad Litem* records, receipts and other justifications for her compensation as the Attorney-in-Fact; and Mr. Douglas was likewise directed to submit billing and expense records for his representation of Ms. Meadows in actions 05-G-6, 05-G-13 and the Petition for a Writ of Prohibition to the West Virginia Supreme Court of Appeals on the non-service of Ms. Dandy in 05-G-13. Ms. Meadows did so on July 28, 2006, and Mr. Douglas complied on July 31, 2006.

Although Ms. Meadows and Mr. Douglas objected not only to Ms. Chapman's continuance in her fiduciary capacity after a finding of basic incompetency of the Respondent, but also, her apparent transformation from a Guardian *ad Litem* to a *de facto* investigative commissioner, to whom the learned Judge below had abdicated his judicial authority to pass on the propriety of the Meadows and Douglas submissions, Ms. Chapman issued a report and recommendation on October 4, 2006.

A hearing on the Meadows and Douglas submissions and the Chapman report was held before the Court on December 18, 2006, where argument was made and briefs were assigned to be completed by February 15,

2007. Preserving their objections to this entire post incompetency proceedings using the Guardian *ad Litem*, Ms. Meadows and her attorney, the Petitioner herein, met the subject deadlines.

The trial court below filed its non-published October 10, 2007 Final Order Concerning Attorney's Fees and Compensation of Attorney-in-Fact, and reissued the same on March 12, 2008 Agreed Order Reissuing Final Order, *Nunc Pro Tunc*, directing that the Petitioner, as an attorney hired by Ms. Meadows and not a party to the underlying action, should refund \$10,000.00 of the fees paid him by Meadows unto the Respondent, who had not been his client. Hence, Petitioner attorney advances his appeal.

ISSUES PRESENTED

1. Are the powers and authority of a Guardian *ad Litem* defined and limited by West Virginia Code §44A-2-7 under which the Guardian *ad Litem* is appointed to represent an alleged protected person?
2. Do the duties and authority of a Guardian *ad Litem*, appointed pursuant to West Virginia Code §44A-2-7 to represent an alleged protected person, end when the Guardian and Conservator is appointed and the appeal period has expired?
3. Utilizing the funds of her principal, may an attorney-in-fact employ legal counsel of her choosing for the purposes of: a) protecting the person

or the property of the principal, or b) litigating the issue of who will be chosen as the principal's conservator or guardian?

4. Does a circuit court exceed its authority in ordering an attorney to refund a portion of his fees to one other than his non-complaining client?

5. Does a circuit court who orders an attorney to refund a portion of his fees to one other than his client, violate the attorney's and his client's right to contract, as guaranteed to him by the United States Constitution?

ARGUMENT

I and II

The West Virginia Guardianship and Conservatorship Act (Acts of the Legislature 1998), superceded the previous procedures for appointment of committees for those persons alleged to be mentally incompetent. West Virginia Code §44A-1-1 et seq. Now, an alleged mentally incompetent individual is a "protected person", as defined by West Virginia Code §44A-1-4(13).²

Counsel for an alleged "protected person" in a conservator and guardianship proceeding is appointed pursuant to West Virginia Code §44A-2-7,

²(13) "Protected person" means an adult individual, eighteen years of age or older, who has been found by a court, because of mental impairment, to be unable to receive and evaluate information effectively or to respond to people, events, and environments to such an extent that the individual lacks the capacity: (A) To meet the essential requirements for his or her health, care, safety, habilitation, or therapeutic needs without the assistance or protection of a guardian; or (B) to manage property or financial affairs or to provide for his or her support or for the support of legal dependents without the assistance or protection of a conservator. A finding that the individual displays poor judgment, alone, is not sufficient evidence that the individual is a protected person within the meaning of this subsection. "Protected person" also means a person whom a court has determined is a missing person.

which statute prescribes but also limits the powers, duties and authority of the Guardian *ad Litem*³. The foregoing provision replaced former West Virginia Code §27-11-1(b).

Once an individual is judicially determined to be a “protected person”; i.e., mentally incompetent; and a conservator and/or a guardian is duly appointed, the duties and the statutory authority of the appointed counsel, or the Guardian *ad Litem* during the incompetency proceeding, terminates as a matter of law. *Sowa v. Huffman, et al.*, 191 WV 105, 443 SE2d 262 (1994).

³§44A-2-7. Appointment of counsel.

(a) The court shall appoint legal counsel for the alleged protected person. In appointing legal counsel, the court shall consider any known preferences of the alleged protected person.

(b) Legal counsel shall have the following major areas of concern: (1) Whether or not a guardian is needed; (2) limitation of the role of the guardian to the protected person's specific needs -- e.g., personal supervisor, business affairs, medical consent only; (3) if needed, assure that the person or entity with the greatest interest in the protected person is appointed; (4) if needed, assure the adequacy of the bond; and (5) if needed, assure consideration of proper placement.

(c) In responsibly pursuing the major areas of concern set forth in subsection (b) of this section, counsel may perform any or all of the following: (1) Promptly notify the individual and any caretaker of the appointment of counsel; (2) contact any caretaker, review the file and all other relevant information; (3) maintain contact with the client throughout the case and assure that the client is receiving services as are appropriate to the client's needs; (4) contact persons who have or may have knowledge of the client; (5) interview all possible witnesses; (6) pursue discovery of evidence, formal and informal; (7) file appropriate motions; (8) obtain independent psychological examinations, medical examinations, home studies, as needed; (9) advise the client on the ramifications of the proceeding and inquire into the specific interests and desires of the individual; (10) subpoena witnesses to the hearing; (11) prepare testimony for cross-examination of witnesses to assure relevant material is introduced; (12) review all medical reports; (13) apprise the decision maker of the individual's desires; (14) produce evidence on all relevant issues; (15) interpose objections to inadmissible testimony and otherwise zealously represent the interests and desires of the client; (16) raise appropriate questions to all nominations for guardian and the adequacy of the bond; (17) take all steps to limit the scope of guardianship to the individual's actual needs, and make all arguments to limit the amount of the intervention; (18) ensure that the court considers all issues as to the propriety of the individual's current or intended placement and that the limitations are set forth in the order; (19) inform the client of the right to appeal, and file an appeal to an order when appropriate; and (20) file a motion for modification of an order or a petition for a writ of habeas corpus if a change of circumstances occurs which warrants a modification or termination.

(d) The protected person shall have the right to an independent expert of his or her choice to perform an evaluation and present evidence.

In the case at bar, not only did the lower court err by directing the Guardian *ad Litem* to continue after a guardian and a conservator had been appointed on December 15, 2005, but also, the lower court improperly assigned the Guardian *ad Litem* the non-statutory duty of determining the propriety of the expenses, charges and attorney fees by the former Attorney-in-Fact and her attorney, the Petitioner herein, respectively.

Finally, the trial court's abuse of discretion and violation of the *Sowa* rule is compounded by its concluding Paragraph 6. in the subject October 10, 2007 Final Order Concerning Attorney's Fees and Compensation of Attorney-in-Fact, wherein the Guardian *ad Litem* is further assigned the "police action" or "enforcer" role "... to continue serving as Ms. Dandy's Guardian *ad Litem* in this matter until she files a report with the Court indicating that all funds are returned, as herein ordered, to the Estate of Jean Dandy."

III

An agency, such as a power of attorney, is a legal relationship created by agreement of or a contract between the parties; i.e., the principal and the agent consent that the agency will or does exist. 5 Am Jur2d, Agency, §17. As a general proposition, the law of the jurisdiction where a specialized agency document, such as a power of attorney, is drafted, executed, made or established, controls when the application or construction of such document is brought into

issue. 5 Am Jur2d, Conflict of Laws, §§74 and 75. This concept of law is known as *lex loci contractus*. *Id.* at §75.

Similarly, the prevailing law and older school of thought is that the law of the place of the creation of the agency, defines the relationship of the principal and agent parties. 5 Am Jur2d, Agency, §8. Powers of attorney, then, are to be construed in accordance with the rules for the interpretation of agency instruments. 5 Am Jur2d, Agency, §30.

In the case *sub judice*, it is undisputed that the power of attorney executed by the principal, Jean Dandy, on April 12, 2001, was when she was undoubtedly competent and able to transact her affairs.⁴ It is equally uncontroverted that the April 12, 2001 document creating and establishing the power of attorney was drafted, executed and notarized in the State of Kentucky where the principal Dandy was a resident. See Exhibit "A" attached hereto and incorporated herein by and for reference. Therefore, consistent with the aforesaid general principles of agency and conflict of laws, Kentucky controls on all issues of construction application and interpretation. *Id.* To do otherwise would be to invite pandemonium and inconsistent results, given the fact that Ms. Dandy has

⁴This document was accepted by the Court as being the instrument whereby Jean Dandy had made the prior nomination of a surrogate (Donna Meadows), which was given preference under West Virginia Code §§44A-1-3, 44A-2-8 and 44A-2-10. See the July 6, 2006 Order Appointing Guardian, etc.

resided not only in Kentucky, but also, in Iowa, Texas and West Virginia around or since the time of the creation of the subject power of attorney.

If we are then to look to the Kentucky jurisdiction for predominant guidance in the interpretation, construction or application of law regarding the Dandy power of attorney, what is the general powers of the agent created thereby?

Kentucky, as most jurisdictions, states that an attorney-in-fact may act consistent with express grants of authority set forth in the power instrument.

Ingram v. Cates, 74 SW3d 783, 787-788 (2002). Here, Ms. Dandy in her April 12, 2001 document, *gave specific authority* to Ms. Meadows, her granddaughter agent, “*to retain counsel and attorneys on my behalf, to appear for me in all actions and proceedings to which I may be party in the courts of Kentucky or any other court in the United States ...*”. (Emphasis supplied). See Paragraph (m) of the April 12, 2001 Power of Attorney.

Moreover, no one can seriously dispute that Ms. Meadows acted in *utmost good faith* considering the physical demands upon her and the personal sacrifices made by her in this litigation, the detailed financial accounting and time records of her July 28, 2006 submission to and cooperation with the Guardian *ad Litem*, and her abiding and sincere apprehensions regarding the repeated and self-serving machinations of her uncle, Ronald Bowers.

Thus, Ms. Meadows was expressly permitted and even directed to

hire counsel of her choosing in these miscegenated actions in the State of West Virginia instituted by the rascal Ronald Bowers.

IV and V

The former Attorney-in-Fact, Ms. Meadows, under her authorization in the referenced power of attorney to employ counsel as discussed *supra.*, chose the undersigned attorney, the Petitioner before the bar, to represent what she believed to be Ms. Dandy's best interests in the two (2) conservatorship proceedings and the unsuccessful Petition for a Writ of Prohibition before this Court, which act is also within her and her petitioning attorney's Constitutional right to contract. See **United States Constitution**, §Article I, §10.

Although the July 6, 2006 Order instructing the undersigned to submit his billing may have been unduly invasive of the attorney client privilege, and even violative of Ms. Meadows' and his Constitutionally protected right to contract, referred to hereinabove, the undersigned Petitioner complied by his submission of July 31, 2006 under protest. The Guardian *ad Litem* only questioned Mr. Douglas' absence of specific time charges for his failed pursuit of a Petition for a Writ of Prohibition to the West Virginia Supreme Court of Appeals, which the undersigned Petitioner explained to the court below as being on a flat fee basis that he historically charged other clients.

The attorney fees paid by Ms. Meadows to the undersigned Petitioner

were and are reasonable and even necessary, when one considers the following:

A. Ms. Dandy was presumed competent until such time as she was determined to be a “protected person” under West Virginia law, which was December 15, 2005. Therefore, only attorney fees paid *after* such finding should be subject to scrutiny, *which did not include* the unaccepted Petition for a Writ of Prohibition to the West Virginia Supreme Court of Appeals;

B. Although Ms. Dandy’s capacity in 2006 may not have been a predominate point of dispute, the selection of the person or entity as Guardian and Conservator, was the real, overriding and paramount issue, which was initiated by, and highly contested on behalf of, the insidious Ronald Bowers. Indeed, the Court cannot ignore the precipitating presence of Mr. Bowers in this protracted litigation, whose principal motivation in bringing two guardian actions, from his own testimony, was “to preserve the estate of his mother [Ms. Dandy]”⁵ from which he expected to inherit, as noted by the circuit court below in the **“Legal Contentions of the Parties”** section of the subject

⁵Mr. Bowers also testified under oath that one of his major concerns regarding his Mother’s funds was that “there will be nothing left [in her estate].”

October 10, 2007 Final Order Concerning Attorney's Fees and Compensation of Attorney-in-Fact;

- C. The first Bowers Petition (05-G-6) was improperly filed and started, thereby directly increasing attorney fees to meet and defend two (2) guardian actions;
- D. The second Bowers Petition (05-G-13) has yet to this day to be served on the "protected person", as required by statute⁶, which was the good faith object of the aforementioned Petition for a Writ of Prohibition, in that, such service was a pre-requisite of not only a finding that Ms. Dandy was a "protected person", but also, as a very weighty defense to the then possible appointment of the malevolent Mr. Bowers, which issue was not decided until May 23, 2006;
- E. The court below received an Exhibit on December 18, 2006, namely the resumé of the undersigned petitioning attorney for Ms. Meadows, which underscores the fact that actual time expenditures do not necessarily equal the quality of legal representation. Trial experience and academic background are

⁶West Virginia Code §44A-2-6. The notices required by West Virginia Code §44A-2-6 are expressly jurisdictional and, by statute, not subject to waiver. See West Virginia Code §44A-2-6 (b).

also major factors. Should this be termed to have been an oversimplification by the circuit court, then the circuit court below should have applied the analysis found in *Aetna Casualty & Sur. Co. v. Pitrolo*, 176 WV 190, 196, 342 S.E.2d 156, 162 (1986); to-wit: (1) whether the time and labor Ms. Meadows' attorney expended were appropriate for the case; (2) was there novelty in and difficulty of the questions involved (*e.g.*, in this case: conflict of laws and multiple powers of attorney); (3) the skill required to perform the foregoing legal services; (4) whether the attorney for Ms. Meadows had to give priority to the defense of the aforesaid actions, due to complexity thereof and inherent timelines of West Virginia Code 44A-2-1 *et seq.*, thereby precluding other employment by Ms. Meadows' petitioning attorney due to acceptance of the cases above; (5) whether the hourly rate and fee charged is reasonable under the circumstances and in line with customary fees in comparable cases before this Court in Nicholas County; (6) whether there were time limitations imposed by the circumstances of the case; (7) are the amounts potentially in controversy below, given the actual Dandy estate, greater than

the amount of attorney fees sought (8) were the results obtained in Ms. Meadows' favor, thereby automatically being in the best interests of her principal, Ms. Dandy; (9) the experience, reputation, and ability of Ms. Meadows' attorney in matters of family law within the legal community; (10) the undesirability of this case; (11) has Ms. Meadows' attorney maintained a professional relationship with Ms. Meadows since the beginning of this case in 2005; and (12) are the attorney fees paid by Ms. Meadows consistent with attorney fees incurred in a time expended versus amount realized ratio, when compared to similar civil cases, such as personal injury awards predicated upon a contingent fee structure. See also 57 A.L.R.3d 475 (1974) and *Banker v. Banker*, 196 WV 535, 474 S.E.2d 465 (1996). No such evidence was taken before the trial court below;

F. Ms. Meadows' major if not solitary objective in these two (2) cases had been achieved; *viz.*, she has prevailed in preventing the avaricious and mercenary Ronald Bowers from having any connection with the body or the funds of her grandmother, Jean Dandy, which undoubtedly inured to the benefit of the latter;

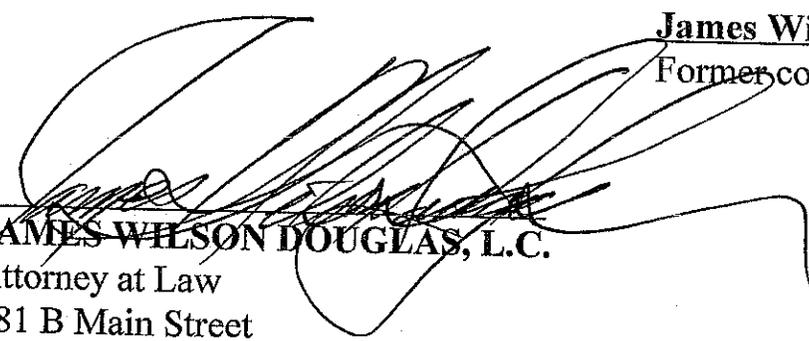
- G. The undersigned Petitioner's contract for legal representation was with Ms. Meadows, not Ms. Dandy; and,
- H. The Petitioner, as an attorney for Ms. Meadows, was never a Party to this cause of action.

PRAYER

WHEREFORE, Petitioner prays that this Honorable Court order this Petition filed; that the same be promptly accepted, properly docketed and duly considered; that upon the facts stated, the reasons given and the authority cited, the March 12, 2008 Agreed Order Reissuing Final Order, *Nunc Pro Tunc*, and the underlying, original October 10, 2007 Final Order Concerning Attorney's Fees and Compensation of Attorney-in-Fact from the Circuit Court of Nicholas County, West Virginia, the trial court below in the captioned proceedings, be **REVERSED**, set aside and held for naught, as the same pertains to the issues of refunds to the Dandy Estate by the Petitioner attorney and Ms. Meadows only; or in the alternative, that the same be **remanded with instructions**; that the October 10, 2007 Final Order Concerning Attorney's Fees and Compensation of Attorney-in-Fact, reissued and made final by the March 12, 2008 Agreed Order Reissuing Final Order, *Nunc Pro Tunc* of the Circuit Court of Nicholas County, be **STAYED** pending this Petition for Appeal; and that Petitioner be granted such other and further relief as this Court may deem equitable, proper and just, and in the

premises, meet, he will ever pray, etc.

James Wilson Douglas, *pro se*
Former counsel for Donna Meadows



JAMES WILSON DOUGLAS, L.C.

Attorney at Law

181 B Main Street

Post Office Box 425

Sutton, West Virginia 26601

W.V. State Bar # 1050

Pro se

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

THAT I, **JEAN DANDY**, of 233 Savannah Drive, Richmond, Madison County, Kentucky 40475, have made, constituted and appointed, and by these presents do make, constitute and appoint my granddaughter, **DONNA MEADOWS**, of HC 76, Box 240, Mt. Nebo, West Virginia, my true and lawful attorney for me and in my name, place and stead to:

- (a) ask, demand, sue for, collect and receive all sums of money, dividends, interest, payments on account of debts and legacies and all property now due or which may hereafter become due and owing to me, and give good and valid receipts and discharges for such payments,
- (b) to sell, assign and transfer stocks and bonds and securities standing in my name or belonging to me;
- (c) to buy and sell securities of all kinds in my name for my account and at such prices as shall seem good to her;
- (d) to sign, execute, acknowledge and deliver in my name all transfers and assignments of securities;
- (e) to borrow money and to pledge securities for such loans if in the judgment of my attorney such action should be necessary;
- (f) to consent in my name to reorganizations and mergers, and to the exchange of securities for new securities;
- (g) to manage real property;
- (h) to lease for any period, to sell, convey and mortgage realty on such terms and conditions as she deems proper, to foreclose mortgages and to take title to property in my name if she thinks proper, and to execute, acknowledge and deliver deeds of real property, mortgages, releases, satisfactions, and other instruments relating to realty which she considers necessary, as she deems necessary and proper;
- (i) to place and effect insurance;
- (j) to do business with banks and in particular where I maintain a checking account or other accounts and particularly to endorse all checks and drafts made payable to my order and collect the proceeds;
- (k) to sign in my name checks on all accounts standing in my name, and to withdraw funds from said accounts, to open accounts in my name or her name as my attorney in fact;
- (l) to make such payments and expenditures as may be necessary in connection with any of the foregoing matters or with the administration of my affairs;

(m) to retain counsel and attorneys on my behalf, to appear for me in all actions and proceedings to which I may be party in the courts of Kentucky or any other state in the United States, or in the United States Courts, to commence actions and proceedings in my name if necessary, to sign and verify in my name all complaints, petitions, answers and other pleadings of every description;

(n) to make and verify income tax returns, and to represent me in all income tax matters before any office of the Internal Revenue Service, within the limitations of the applicable Revenue Rulings and Procedures;

(o) to consent on my behalf for any and all medical care and/or treatment to be rendered by any physician, hospital, long-term care or other medical facility and to execute for me such admission documents, including assurance of payment for said services, as might be required for the rendering of such medical care and/or treatment for me;

hereby giving and granting to my said attorney full power and authority to do and perform all and every act and thing whatsoever necessary to be done in the premises, as fully to all intents and purposes as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney may do pursuant to this power.

This Power of Attorney shall not be affected by my disability.

I also designate **DONNA MEADOWS** my health care surrogate to make any health care decisions for me when I no longer have decisional capacity.

In WITNESS WHEREOF, I have hereunto set my hand, this 12th day of April, 2001.

Jean Dandy
Jean Dandy

STATE OF KENTUCKY
SCT
COUNTY OF MADISON

Before me, a Notary Public in and for the county and state aforesaid, personally appeared **JEAN DANDY**, who signed and acknowledged the foregoing POWER OF ATTORNEY to be her free act and deed.

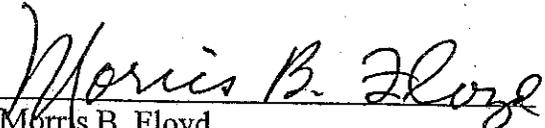
IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal on this the 12th day of April, 2001.

Morris B. Floyd
Notary Public, Kentucky State at Large

My Commission Expires: 9/28/03

PREPARED BY:

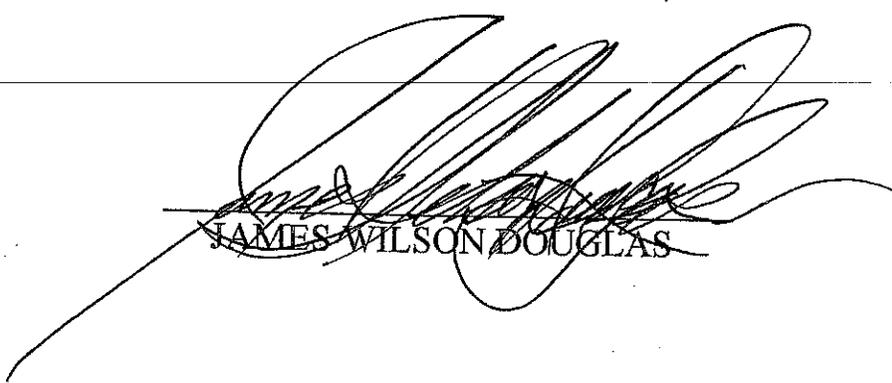
SWORD, FLOYD & MOODY, PLLC


Morris B. Floyd

ADDRESS: 218 West Main Street
P. O. Box 300
Richmond, Kentucky 40476-0300
Telephone: 859-623-3728

CERTIFICATE OF SERVICE

I, JAMES WILSON DOUGLAS, the undersigned attorney do hereby certify that true copies of the foregoing Petition for Appeal were deposited in the regular United States Mail, in envelopes properly stamped and addressed to James R. Milam, II, c/o Gregory A. Tucker, P.L.L.C., 719 Main Street, Summersville, West Virginia, 26651, and Cammie Chapman, Breckinridge, Davis, Sproles & Chapman, 509 Church Street, Summersville, West Virginia, 26651, on this 17th day of March, 2008.


JAMES WILSON DOUGLAS

IN THE WEST VIRGINIA SUPREME COURT OF APPEALS

AT CHARLESTON

IN RE: **JEAN HOLLY DANDY**,
A Protected Person,
Respondent,
Respondent below,

Case Action No. _____
(Appeal from a **March 12, 2008**
Order of the Circuit Court of
Nicholas County, Case No. 05-G-13)

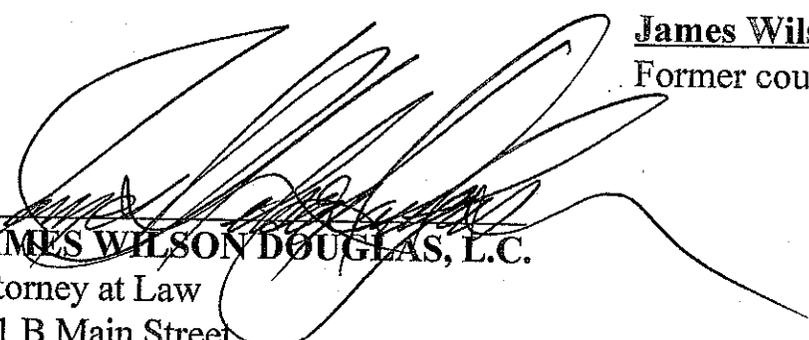
JAMES WILSON DOUGLAS,
Intervenor in Fact,
Petitioner,
Attorney for Donna Meadows,
the former Attorney-in-Fact, and now Guardian,
for Respondent below.

DESIGNATION OF RECORD

Comes now the Petitioner, **JAMES WILSON DOUGLAS**, recently attorney for Donna Meadows, the former Attorney-in-Fact, and now Guardian, for **JEAN HOLLY DANDY**, a protected person, Respondent below, pursuant to Rule 4 (c) of the Rules of Appellate Procedure for the West Virginia Supreme Court of Appeals, and designates the following portions of the record necessary to decide the matters arising in the attached Petition:

1. July 27, 2005 Order of Appointment of Counsel;
 2. September 15, 2005 Order of the West Virginia Supreme Court of Appeals denying Petition for a Writ of Prohibition;
 3. December 15, 2005 Finding and Conclusions of Circuit Court;
 4. May 22 and 23, 2006 Order Appointing Guardian and Conservator of Jean Dandy, a Protected Person, entered July 6, 2006;
 5. December 18, 2006 Order Regarding Report of Guardian ad Litem, entered December 28, 2006;
-
6. Final Order Concerning Attorney's Fees and Compensation of Attorney-in-Fact, entered October 10, 2007; and,
 7. March 12, 2008 Agreed Order Reissuing Final Order, *Nunc Pro Tunc*.

James Wilson Douglas, pro se
Former counsel for Donna Meadows



JAMES WILSON DOUGLAS, L.C.
Attorney at Law
181 B Main Street
Post Office Box 425
Sutton, West Virginia 26601
W.V. State Bar # 1050
Pro se

IN THE WEST VIRGINIA SUPREME COURT OF APPEALS

AT CHARLESTON

IN RE: **JEAN HOLLY DANDY**,
An Alleged Protected Person,
Respondent,
Respondent below,

Case Action No. _____
(Appeal from a **March 12, 2008**
Order of the Circuit Court of
Nicholas County, Case No. **05-G-13**)

JAMES WILSON DOUGLAS,
Intervenor in Fact,
Petitioner,
Attorney for Donna Meadows,
the former Attorney-in-Fact, and now Guardian,
for Respondent below.

MEMORANDUM OF PARTIES

JEAN HOLLY DANDY,

Respondent Protected Person

James Wilson Douglas, pro se
Former counsel for Donna Meadows

JAMES WILSON DOUGLAS, L.C.

Attorney at Law
181 B Main Street
Post Office Box 425
Sutton, West Virginia 26601
W.V. State Bar # 1050, *Pro se*

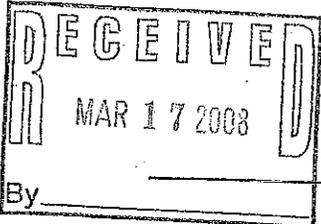
IN THE CIRCUIT COURT OF NICHOLAS COUNTY, WEST VIRGINIA

In Re:

JEAN DANDY, AN ALLEGED PROTECTED PERSON

Case No. 05-G-13

2008 MAR 12 PM 2:02



AGREED ORDER REISSUING FINAL ORDER, *NUNC PRO TUNC*

On this the 11th day of March, 2008, came the parties in the above-styled case regarding the Guardian's and her attorney's motion to reissue final order, *nunc pro tunc*, and motion for stay.

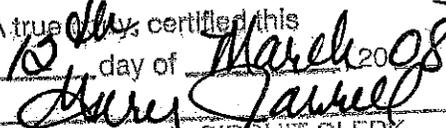
Based upon the fact that neither party received a copy of the Final Order Concerning Attorney's Fees and Compensation of Attorney-in-Fact entered on October 10, 2007 prior to February 28, 2008, the parties agree that the order should be reissued, *nunc pro tunc*.

Now, therefore, the Court does hereby **ORDER:**

1. The Guardian and her attorney's motion to reissue the final order, *nunc pro tunc*, is hereby granted. Upon the request of the moving party, the Court shall set a hearing for the motion for stay.
2. All relevant appeal time periods shall begin as of the date of this order.
3. The Court further directs the Circuit Clerk to provide certified copies of this order to James Wilson Douglas and Cammie L. Chapman.

Entered this 12th day of March, 2008.

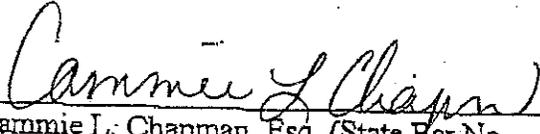

Gary L. Johnson, Judge

A true and correct copy certified this 13th day of March 2008

Gary Jarrel, CIRCUIT CLERK
Nicholas County Circuit Court
Summersville, WV 26651
By W. Trillie, Deputy

GUAR. ORDER BOOK 3 PAGE 351
ENTERED 3-12-08

Prepared by:

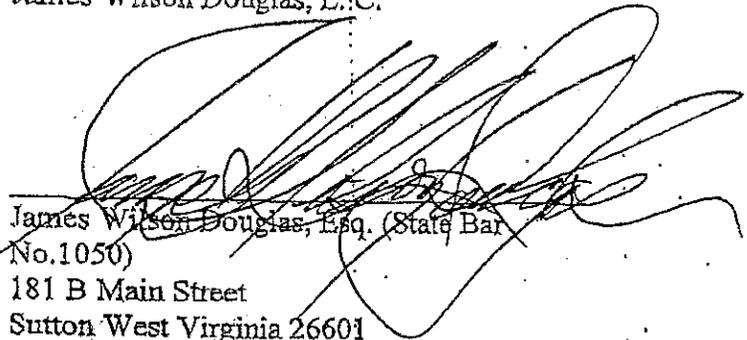
Breckinridge, Davis, Sproles & Chapman,
PLLC



Cammie L. Chapman, Esq. (State Bar No.
8523)
509 Church Street
Summersville, WV 26651
(304)872-2271

Approved by:

James Wilson Douglas, L.C.


James Wilson Douglas, Esq. (State Bar
No.1050)
181 B Main Street
Sutton West Virginia 26601
Counsel for Donna Meadows and in his own
right, *pro se*

GUAR. ORDER BOOK 3 PAGE 353
ENTERED 3-12-08