

IN THE WEST VIRGINIA SUPREME COURT OF APPEALS

In re: **SHELDA JEAN ROBINETTE**

No. 32668

No. 04-G-2

TYPE OF PLEADING:

PETITIONER'S REPLY BRIEF

FILED ON BEHALF OF:

**Kathy R. Robinette,
Petitioner**

Timothy N. Logan, Esquire
WV ID No. 5421

IN THE WEST VIRGINIA SUPREME COURT OF APPEALS

In re: SHELDA JEAN ROBINETTE

No. 32668

No. 04-G-2

PETITIONER'S REPLY BRIEF

In light of **Respondents' and Appellees' Brief** submitted by counsel for Carla Robinette and **Report Response and Recommendations of the Guardian Ad Litem for Protected Person Shelda Jean Robinette** submitted by Christopher W. Cooper, Esquire, Appellant Kathy Robinette files this Reply Brief to clarify the issues before this Honorable Court.

While Appellant asserts that the first Assignment of Error asserted in **Petitioner's Brief in Support of Petition for Appeal** is meritorious, it is apparent that the primary Assignment of Error is the full faith and credit issue set forth in the second Assignment of Error. The Tucker County Circuit Court's failure to acknowledge the Court of Common Pleas of Cuyahoga County, Ohio's order declaring Shelda Jean Robinette incompetent and appointing a guardian of the person and guardian of the estate (conservator) before proceeding in the action below filed by Carla Jean Robinette is reversible error.

Appellee Carla Jean Robinette asserts in her brief that the evidence below shows that Shelda Jean Robinette was a resident of West Virginia and that the Ohio court did not have

jurisdiction to create an incompetent estate on behalf of Shelda Jean Robinette. However, this is not the court to litigate that issue. The Ohio order, attached to Petitioner's Brief as Exhibit C, makes a finding of fact that Shelda Jean Robinette was a resident of Cuyahoga County. While Petitioner can present evidence in support of this finding, said inquiry is not for this court. If Carla Jean Robinette wishes to challenge the Cuyahoga County Court's Order on jurisdictional grounds, she must go to Ohio to do so under the conflicts of law doctrine of *lex loci delicti*. See *State ex rel. Ravitz v. Fox*, 166 W.Va. 194, 273 S.E.2d 370 (1980) and the argument set forth in Petitioner's Brief.

Although Petitioner does not believe the residency of Shelda Jean Robinette should be litigated in this appeal, counsel does wish to point out that counsel for Respondent Carla Robinette makes broad statements regarding Shelda's residency, such as on page 14 of said brief:

The Court expressly found that the said Shelda Jean Robinette was a resident of Tucker County, and the evidence before the Court indicated that she had been a resident all of her lifetime, owning property in Tucker County, voting in Tucker County, having a West Virginia driver's license, and all other matters indicating domicile and residence in the State of West Virginia.

However, counsel for Respondent fails to cite where such evidence is recited in the record. Counsel for Petitioner has unsuccessfully scanned the record for any support for such broad statements that such evidence exists. Hence, all such assertions should be disregarded by this Honorable Court.

Respondent also asserts in her brief on page 15, that Petitioner did not appeal the

August 23, 2004 Order and that this Petition for Appeal was not timely filed. However, Petitioner properly filed her Petition for Revocation on or about September 20, 2004. W.Va. Code § 44A-4-6 does not specify a time frame in which said petition should be filed. Moreover, the herein appeal of the Tucker County Circuit Court's Order dated November 30, 2004 was mailed to this Court on December 16, 2004. This appeal is timely.

The Report Response and Recommendations of the Guardian Ad Litem asserts that Shelda Jean Robinette had been a resident of Tucker County in the period of time immediately preceding the guardianship proceeding there. Once again, the issue is not whether Shelda Jean Robinette was a resident of Tucker County, West Virginia. Petitioner asserts that based upon the conflicts of law doctrine of *lex loci delicti* and *State ex rel. Ravitz v. Fox*, 166 W.Va. 194, 273 S.E.2d 370 (1980), the Tucker County Circuit Court did **not** have jurisdiction of a guardianship proceeding for Shelda Jean Robinette until such time that the Cuyahoga County Court of Common Pleas of Ohio transfers the matter to the Tucker County Circuit Court.

The recommendation of Christopher W. Cooper, Esquire, Guardian Ad Litem, that the Tucker County Circuit Court retain jurisdiction and that Carla Jean Robinette should remain as the personal Guardian of Shelda Jean Robinette and to transfer the conservatorship responsibilities to Elizabeth A. Goodwin, Esquire, guardian of the person and guardian of the estate of Shelda Jean Robinette pursuant to the Ohio order, is without basis in law. To date, Elizabeth A. Goodwin has continued to serve in her capacity as guardian of the estate/conservator pursuant to the Ohio order and Carla Robinette has not had access to the

finances of Shelda Jean Robinette. The Tucker County Circuit Court cannot now sidestep that issue by simply appointing Ms. Goodwin as conservator in this proceeding. Ms. Goodwin resides and works in Cuyahoga County, Ohio. She is not subject to the jurisdiction of the Tucker County Circuit Court. It is incumbent upon Carla Robinette to petition the Court of Common Pleas of Cuyahoga County, Ohio to seek a transfer of jurisdiction. The Tucker County Circuit Court cannot simply wrest jurisdiction from a court in a sister state.

Finally, Mr. Cooper's alternate recommendation that the bond be increased to adequately protect Shelda Jean Robinette's assets is also without merit. Again, the Tucker County Circuit Court does not have jurisdiction of this matter in order to control the amount or type of bond required by a guardian or conservator of Shelda Jean Robinette.

Prayer for Relief

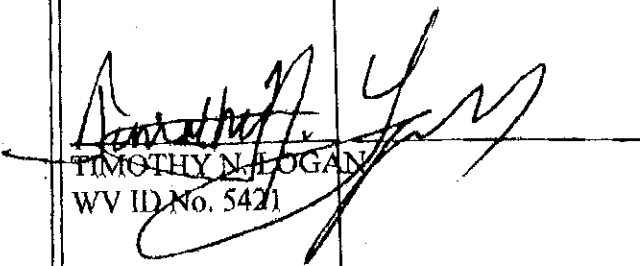
Based upon the foregoing, Appellant Kathy Robinette, by counsel, Timothy N. Logan, Esq., requests that this Honorable Court reverse the ruling of the Tucker County Circuit Court of November 30, 2004 that denied Appellant's Petition for Revocation and Petition for Modification on the following bases:

- a. That the existence of an Ohio order finding Shelda Jean Robinette incompetent and appointing Elizabeth Goodwin, Esq. guardian of her person and estate controls and bars any proceeding in West Virginia absent consideration of said Order under the conflicts of law doctrine of *lex loci delicti* and *State ex rel. Ravitz v. Fox*, 166 W.Va. 194, 273 S.E.2d 370 (1980); and, alternatively,

- b. That the Court's finding of competency of Shelda Jean Robinette dictates against a finding that she is a "protected person"; and
- c. That the Tucker County Circuit Court abused its discretion by permitting Carla Jean Robinette to file a cash bond of only Thirty Thousand Dollars (\$30,000.00) and by failing to require her to file the bond in a timely fashion.

In effect, Appellant seeks a revocation of the Tucker County Circuit Court's Order of August 23, 2004, finding Shelda Jean Robinette a "protected person" and appointing Carla Jean Robinette as guardian and conservator.

KATHY ROBINETTE
 Petitioner
 BY COUNSEL



TIMOTHY N. LOGAN
 WV ID No. 5421

IN THE WEST VIRGINIA SUPREME COURT OF APPEALS

In re: SHELDA JEAN ROBINETTE

No. 32668

No. 04-G-2

CERTIFICATE OF SERVICE

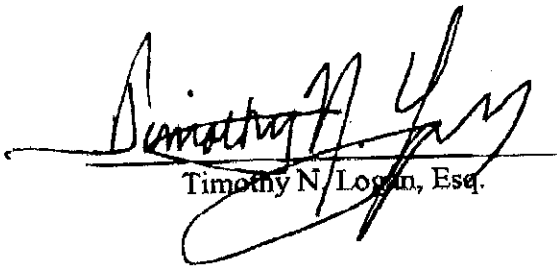
I, Timothy N. Logan, Esq., hereby certify that I served the foregoing **PETITIONER'S**
REPLY BRIEF upon the West Virginia Supreme Court of Appeals and the parties, this 26th day of
July, 2005, by facsimile transmission, to the following addresses:

Clerk of the West Virginia Supreme Court of Appeals
1900 Kanawha Boulevard
Building 1, Room E317
Charleston, WV 25305
Fax: 1-304-558-1212

Elizabeth A. Goodwin, Esq.
Goodwin, Bryan, Schill, LLP
22050 Mastick Road
Fairview Park, OH 44126
Fax: 440-686-9001

Carla Robinette
c/o James F. Cain, Esq.
P.O. Box 728
Elkins, WV 26241
Fax: 304-636-4886

Shelda Jean Robinette
c/o Christopher Cooper, Esq.
Cooper, Preston & Douglas, PLLC
333 Second Street, P.O. Box 365
Parsons, WV 26287
Fax: 304-478-4601


Timothy N. Logan, Esq.