

DATE: Tuesday, February 1, 2021

TO: Representative Mark Sanford, Mr. Chairman and Members of the Committee

FROM: Kathy (Kruger) Hann

SUBJECT: Support for HOUSE BILL NO. 1363 - Relating To Ante-Mortem Probate Of Wills

Dear Mr. Chairman and Representatives of the Committee,

I am writing to give my full support on House Bill No. 1363, which would give a testator's legal guardian, conservator, or power of attorney the ability to institute a proceeding under chapter 32-33 for a judgment declaring the validity or invalidity of the testator's will.

I, along with my younger brother, Michael Kruger, currently serve as court-appointed co-guardians and co-conservators for our mother, Jean S. Kruger, a life-long resident of North Dakota. We are committed to protecting her well-being and being an advocate for her; she is incapacitated due to her medical diagnosis of Lewy body dementia (LBD).

Elder abuse is a public health problem. According to the World Health Organization (WHO), around 1 in 6 people age 60 years and older have experienced some form of abuse in community settings during the past year, whether physically, emotionally, or financially. Many prevention strategies can be implemented to prevent elder abuse, to take action against it, and to mitigate its consequences. This is why there is a vital need to develop policies that permit anti-mortem probate of wills if they meet a set of criteria for vulnerable adults.

My mother's neuropsych testing confirmed a diagnosis of Lewy body dementia (LBD). LBD significantly impacts the brain regions involved in thinking, memory, and motor control. LBD affects how information is processed with a presentation of neuropsychiatric symptoms such as hallucinations, behavioral problems, and difficulty with complex mental tasks.

Upon appointment of permanent co-guardianship and co-conservatorship on October 7, 2015, we discovered our younger sister, Ann Marie Kruger, brought our mother to an attorney during the midst of a lengthy medical evaluation process determining mental capacity; a power of attorney and will were created listing our younger sister as the primary beneficiary. This information was concealed at the subsequent medical appointments and at the initial emergency guardianship hearing on July 21, 2015.

Under current North Dakota state law, the court cites lack of jurisdiction; there is no opportunity to request a judgement on the validity or invalidity of the testator's will while the testator is alive and they are declared incapacitated. The reality is due to the current law needing to wait until after the testator passes, there may not be witnesses for testimony if they are deceased or incapacitated themselves.

The intent of the will generated in June 2015, is not consistent with the character of either of our parents. Our father, Frank C. Kruger, died in 2011. His hand-written holographic will was submitted by our mother, acting as his personal representative, to the court. The court validated our father's intent to leave his personal possessions to "care for our family". Our family consisted of two parents and three children. Among the multiple financial assets of the estate of our mother in question involves four quarters of farmland with an estimated value of nearly two million dollars in Cavalier County, North Dakota. Our younger sister, Ann Marie Kruger, positioned herself through undue influence as the primary beneficiary to inherit the financial legacy of her father, a man whose funeral she did not even attend.

In closing, I humbly ask the committee to help protect the most vulnerable by passing the progressive legislation of House Bill No. 1363. Thank you for this opportunity to testify and for your consideration.

Sincerely,
Kathy (Kruger) Hann