

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

From: Michael Kruger

Date: Tuesday, February 2, 2021

Subject: Support for HOUSE BILL NO. 1363, Relating to ante-mortem probate of wills,

I, along with my older sister, Kathy (Kruger) Hann are the current co-guardians/co-conservators for our mother, Jean Kruger. Neither my sister Kathy or myself receive payment for our services rendered to our mother from our roles as co-conservators/co-guardians. We are committed to ensuring her well being and being an advocate for her given her incapacity due to Lewy Body dementia.

We strongly support 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.

There is a need to develop policies that permit anti-mortem probate of wills if they meet a set of circumstances. The circumstances in our instance are as follows:

Our mother received a medical evaluation by Dr. Shaunta Guathum and testing on 5/29/15 for confusion and hallucinations. At a follow up medical evaluation 6/4/15, additional testing was ordered by the same treating physician for persistent symptoms; these tests included neuropsych testing and a head CT. The head CT was performed 6/5/15. The neuropsych testing was performed by Dr. Susan Thompson on 6/24/15 with recommendation for a guardianship and a diagnosis of Lewy Body dementia. A follow up medical evaluation 7/1/15 with the ordering physician advised a guardianship as recommended in the neuropsych testing.

Emergency guardianship/conservatorship was appointed 7/28/15 with permanent guardianship/conservatorship appointed 10/16/15. Following the appointments, we learned the following facts.

- On 6/9/15, our younger sister, Ann Marie Kruger, brought our mother to an attorney, Richard Olson, JD; a power of attorney was created 6/9/15. We learned this at the court date for permanent appointment from the attorney hired to represent our mother, Kirk Tingu, JD. He has never submitted a bill to be paid for his fees incurred in representing our mother.
- On 6/11/15, our sister returned to the same attorney with our mother and a will was created listing Ann Marie Kruger as the primary beneficiary of our mother's estate. We learned of this 11/4/15.
- Following the death of our father, Frank Kruger on 1/19/11, our sister received \$146,400.00 in direct cash checks from our mother from 2/4/11 to 7/16/15. Our sister has referred to this as a loan.
- The visitor's report from Lisa Boxrod, LSW dated 9/20/15 states, "It is my impression that Ms. Krueger is "coached" by Anne Marie. This is evidenced by her repeating herself that include statements Ann Marie makes."

This existence of this power of attorney and will was concealed at the medical appointments that occurred after these documents were created when specifically questioned by the medical professionals who examined our mother which led to the recommendation for a guardianship.

The neuropsychologist who has evaluated our mother and performed the testing has subsequently stated our mother would not have had the capacity to enter into a binding agreement, contract or other legal matter on June 9, 2015 just two weeks prior to her evaluation.

The power of attorney paperwork was invalidated through a legal process. Under current state law, the North Dakota court cites lack of jurisdiction and 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 intent of this generated will is not consistent with verbal statements from our parents that were made to us, nor is it consistent with the intent of our father's holographic will dated 4/6/1978 that was processed in probate 2/17/11 by our parent's local attorney, Scott Stewart, JD in their hometown of Langdon. The primary asset of the estate of our mother in question involves four quarters of farmland with an estimated value of \$1,735,965.00 as of 10/14/15 in Cavalier County, North Dakota.

Under current state law, we are required to wait until our mother's death to bring this matter to the court jurisdiction in probate. There is no ability for anyone to anticipate the length of time that will elapse from the declared date of incapacitation of the testator to the date of the testator's death. There is a very real possibility of not having the ability to call witnesses for testimony if they themselves are deceased or lack the capacity to testify given the passage of time. While there is a way to preserve testimony, this leads to an increased financial burden that not every individual can afford.

It is evident in our circumstance that the following occurred:

- A will was hastily created after a medical evaluation was started that assessed capacity.
- The attorney who drafted the will was not informed of the medical circumstances of the testator.
- The legal documents were concealed both to the medical professionals performing evaluations as well as the court at the initial emergency appointment.
- The primary beneficiary who was, at the time the will was created, the power of attorney and is the one who brought the testator to the attorney who generated a will that excluded the other heirs to her benefit.
- Impartial observers to the case have documented in court what is consistent with the definition of undue influence.
- Medical professionals who have directly evaluated the testator attest to the testator's incapacity within the timeframe of the will creation.

I urge the committee to pass House Bill No. 1363. As physician, I do not appreciate it when an individual has omitted information or frankly lied to me to obtain an outcome they desire when it becomes clear that secondary gain is their objective. I cannot image an attorney does either. Thank you for this opportunity to testify.

Sincerely,

Michael Kruger