

Prof. Donna Harkness  
Cecil C. Humphreys School of Law  
University of Memphis  
Elder Law Clinic

## **Conservatorship Issues**

### ***In the Matter of Conservatorship of Alice Anderson***

Alice Carson Anderson has come to the clinic because her niece has filed a petition to be her conservator. Ms. Anderson was born June 12, 1924 and had eleven brothers and sisters. She only completed the eighth grade. One sister and two of the brothers have died, but all the others are still living. Barbara Carson, the niece, who filed the petition is the daughter of her younger brother, Marvin. In 1949, Ms. Anderson married Starron Anderson, a contractor. They had one child, a son, who died of rheumatic fever at age ten. Alice and Starron were married until he died in April, 2004. During that time, they acquired three rental properties, as well as owning their own home, had over \$200,000 in a certificate of deposit and approximately \$25,000 in a joint bank account. Starron also had a mammoth collection of rare coins, worth \$18,000, which he kept in a hiding place under the floorboards in the bedroom. On August 12, 2003, Starron fell off a ladder while trying to trim the bushes outside of their home. He broke two of his ribs and fractured his hip in the fall. Advised by the doctor that he might never return home, Starron called Alice's brother, Marvin, to discuss what could be done to preserve the family's assets. Marvin suggested that he and Alice cash out their CD and give it to Barbara. This was done and then, on August 18, 2003, Starron and Alice both executed durable powers of attorney for finances naming Barbara as their attorney in fact. Barbara immediately had quitclaim deeds prepared for the three rental properties, and, using the DPOA, deeded them over to herself.

In the meanwhile, Starron was transferred from the hospital to a skilled nursing facility and a few months later, his Medicare coverage ran out. Application was made for TennCare or Medicaid coverage of his nursing home care, which was approved. He remained in the nursing home until his death. After his death, Alice went looking for the old coin collection and was unable to find it. She confronted Barbara about it, and Barbara told her that she had taken the coins and “put them in a safe place.” She further told Alice that she didn’t think Alice needed to be living by herself anymore, and that the best thing for her to do would be to go in to a nursing home herself. Alice became very upset, and begged Barbara not to do that to her. Barbara said she would only refrain from doing so IF Alice agreed to leave her the house in her will. Barbara then had Alice write out the following document:

*My Will*

*In return for her agreement to take care of me, let me stay in my house, located at 4382 Cozy Lane, Memphis, TN, and not put me in a nursing home, I will give to my niece, Barbara Carson, my house and all the furnishings within it when I die. I also want her to have my 2001 Toyota Camry and all funds remaining in my bank account. .*

*Alice C. Anderson  
September 6, 2005.*

Things were ok for a little while after this will was executed, but then, over the holidays, Barbara went and had her name put on Alice’s bank account. Alice found out in March, 2006 when her sister Evangeline happened to see the bank statement lying on

the counter and saw both names on it. Looking at the bank account, it appeared that the balance had gone from \$25,000 to less than \$2,000 in three months. Frightened, Alice had Evangeline take her to the bank where she tried to close the account. The woman at the bank told her she would have to call Barbara, since Barbara's name was on the account as attorney in fact. Alice begged her not to call Barbara, but the lady apparently did anyway, and Barbara was very angry with Alice, and spent the whole night yelling at her and telling her she was going to put her in the nursing home.

Now Alice has been served with the attached conservatorship petition. She has also received some paperwork from the Tennessee Department of Human Services saying something about her transferring assets and defrauding the state in connection with her husband's receipt of TennCare benefits. Evangeline is with her and says that she doesn't know what has gotten into Barbara. Alice suffers from arthritis and hypertension, but is otherwise in good health physically. She has been under the care of Dr. Daniel Princeton, a general practitioner, for the past twenty years. Alice says that Dr. Princeton looked at the conservatorship papers and said that they were "a load of hooey" and that he'd be glad to vouch for her sanity. The hearing on the petition is set for September 15th.

What is your advice to Ms. Anderson?

**IN THE PROBATE COURT OF SHELBY COUNTY, TENNESSEE**

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**IN RE: CONSERVATORSHIP**

**OF ALICE CARSON ANDERSON,**

**Barbara Carson,**

**No. \_\_\_\_\_**

**Petitioner**

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**PETITION FOR APPOINTMENT OF CONSERVATOR**

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**TO THE HONORABLE JUDGES OF THE PROBATE COURT OF SHELBY  
COUNTY, TENNESSEE:**

Petitioner, Barbara Carson, files this petition for appointment of a conservator of the person and property of Alice Carson Anderson. In support of said petition, Petitioner would show the Court as follows:

1. That Respondent, Alice Carson Anderson, whose date of birth is June 12, 1924, is a resident of Shelby County, Tennessee. Her mailing address is 4382 Cozy Lane, Memphis, Tennessee.

2. Upon information and belief, Petitioner maintains that Respondent suffers from Alzheimer's disease, arthritis and high blood pressure, as more particularly stated in the doctor's certificate attached hereto. These conditions render her incapable of managing her own affairs and making her own personal decisions.

3. That Petitioner, Barbara Carson, is 42 years of age and her mailing address is 39281 Billowing Creek Road, Bartlett, Tennessee. Petitioner is Respondent's niece and

is the proposed conservator.

4. Respondent's husband, Starron Anderson, died April 8, 2004. Respondent has no living children. Respondent's closest living relative besides Petitioner is Marvin Carter, 763 Dexter Avenue, Memphis, Tennessee.

5. Respondent is presently living alone in her home, but is becoming increasingly forgetful and a danger to herself. Respondent appointed Petitioner to act as her attorney in fact pursuant to a durable power of attorney on August 18, 2003. On March 28<sup>th</sup>, 2006, she attempted to go to the offices of First Memphis Bank & Trust to close the bank account that Petitioner had opened pursuant to her authority as attorney in fact, shouting and screaming at the bank tellers that she had never "done any such thing" even when confronted with the actual document. Respondent does not open her mail and leaves bills unpaid unless Petitioner is there to handle such things for her. After the incident referred to at the bank, Petitioner tried to reason with Respondent to no avail, and a week later, Respondent had the locks changed on the house, her phone changed to an unlisted number and had opened a new bank account for receipt of her Social Security check. Petitioner has already been called by MLGW saying the utilities are about to be cut off at 4382 Cozy Lane due to nonpayment.

6. Respondent has no regular treating physician as such. She has not been examined by Dr. Daniel Princeton, who is a general practitioner, in over a year. Petitioner took her to be examined by Dr. Rachael Raintree, whose sworn medical examination report is attached.

7. Respondent has no assets other than her home, the personal property located within it, her vehicle and the funds located in the bank accounts referred to above.

8. Respondent receives \$795.00 per month in Social Security benefits.

9. Respondent has the following expenses:

a. MLGW	\$200.00 per month		
b. Telephone	40.00	“	“
c. Food	100.00	“	“
d. Homeowner's Ins., Taxes	50.00	“	“
e. Auto Ins./Gas/Main.	50.00	“	“
f. Medical	30.00	“	“
g. Clothing	25.00	“	“

10. Petitioner is requesting that all rights be removed from the respondent and transferred to Petitioner, including, but not limited to, the right to vote, dispose of property, execute instruments, make purchases, enter into contractual relationships, hold a valid Tennessee driver's license, give or refuse consent to medical treatment, etc.

11. Up until the altercation at the bank referred to above, Petitioner has been caring for Respondent pursuant to the power of attorney. Respondent's assets are limited and financial decisions are basically confined to paying the bills and trying to stretch Respondent's limited funds by frugal management. There is no need, however, for an elaborate property management plan, and petitioner therefore requests waiver of the necessity for any plan of investment or management other than what Petitioner has already been doing.

12. As Respondent's niece, and as the person Respondent chose to name as her attorney in fact, Petitioner is the person best suited to serve as the Respondent's conservator.

**WHEREFORE, PREMISES CONSIDERED, PETITIONER REQUESTS:**

1. That proper notice and process be served on Respondent, Alice Carson Anderson, in accordance with T.C.A. §34-1-108, and that notice be given by certified mail with return receipt requested to the closest relatives named in this Petition and to any other person having care and custody of the Respondent or with whom the Respondent is living, in accordance with T.C.A. §34-1-106;
2. That the Court waive appointment of a Guardian Ad Litem;
3. That the Court appoint Petitioner as Conservator of the property and person of Respondent, Alice Carson Anderson;
4. That Petitioner be excused from posting bond pursuant to T.C.A. §34-1-05(b)(6);
5. That the Petitioner have such other and further general relief to which she may be entitled.

Barbara Carson  
Barbara Carson, Petitioner

Cameron Davis  
Cameron Davis, Esq.  
Davis, Davis and Martin, PLLC  
Suite 3400, Aspen Bldg.  
7721 Twister Drive  
Memphis, TN  
(901) 678-2020  
Attorney for Petitioner

STATE OF TENNESSEE)

SS

COUNTY OF SHELBY )

I, Barbara Carson, being duly sworn, make oath that I am the Petitioner in the foregoing Petition for appointment of Conservator and that the facts stated therein are true to the best of my knowledge and belief and that the Petition is not made out of levity or by collusion with the Respondent.

Barbara Carson

Barbara Carson

Sworn to and subscribed before me this \_\_12th\_\_ day of \_ August\_\_\_\_\_,  
2006.

*April Mae Juniper*

NOTARY PUBLIC

My Commission Expires: \_\_August 31, 2008\_\_\_\_

**IN THE PROBATE COURT OF SHELBY COUNTY, TENNESSEE**

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**In re: CONSERVATORSHIP OF**

**ALICE CARSON ANDERSON**

**NO. \_\_\_\_\_**

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**STATE OF TENNESSEE)**

**ss**

**COUNTY OF SHELBY )**

**MEDICAL EXAMINATION REPORT**

Having been duly sworn, the affiant, Dr. Rachael Raintree, makes the following report of her medical examination of the Respondent under oath:

1. I am a duly licensed and practicing clinical psychologist and have been associated with the firm of Tennessee Psychological Associates for six years.
2. I examined Alice Carson Anderson, DOB 6/12/24, on April 2, 2006 and found her to be alert, but disoriented as to time and place.
3. Ms. Anderson was brought to the examination by her niece, Barbara Carson, who is petitioning to be Ms. Anderson's conservator. Ms. Carson advised me that her aunt is a high school graduate, in fair physical health, but deteriorating mentally. She described to me a harrowing incident at the bank, where Ms. Anderson apparently did not recall having given her niece power of attorney and then behaved very inappropriately, accosting and accusing the bank employees of stealing her money in "cahoots" with her niece.
4. I administered the Mini-Mental Status Exam, upon which she scored a 23, a lower than median score for someone with a high school education, even at her advanced age. She exhibited significant impairment in recall, attention and calculation and orientation, indicative of mild to moderate Alzheimer's disease.
5. In addition, Ms. Anderson was obviously nervous, irritable, and hostile; she expressed frustration with the entire process and stated this was "not her idea." Nevertheless, it is believed that the responses received were sufficient to establish an adequate picture of Ms. Anderson's present cognitive abilities for purposes of these proceedings.
6. In my opinion, based on my personal examination of Alice Carson Anderson and on the information provided by her niece, Ms. Anderson is a disabled person in need of the court's supervision and assistance by reason of her mild

to moderate Alzheimer's disease. I therefore recommend that a conservator be appointed.

*Rachael Raintree*

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Rachael Raintree, Ph.D  
Tennessee Psychological Associates

Sworn to and subscribed before me this 10<sup>th</sup> day of April, 2006.

Bartholomew Bristol  
Bartholomew Bristol  
Notary Public

My Commission Expires: 06/13/10