

IN THE CIRCUIT COURT OF PULASKI COUNTY, MISSOURI

IN THE MATTER OF:)	
SHIRLEY M. BUTLER)	Case No. 19PU-PR00129
INCAPACITATED AND DISABLED.)	
AND)	
)	
GREGORY LEE,)	
)	
PLAINTIFF,)	
vs.)	
)	Case No. 19PU-PR00129
KIMBERLY CLARK,)	
)	(Consolidated Cases)
DEFENDANT,)	
AND)	
)	
LORETTA ROUSE)	
)	
INTERVENOR.)	

VERIFIED MOTION FOR A NEW TRIAL ON THE FACTS AND LEGAL ISSUES FOR THE JUDGMENT ENTERED BY THE COURT JULY 28, 2023 AND TO SET ASIDE VACATE, REOPEN, CORRECT, AMEND, HOLD FOR NAUGHT OR RELIEVE GREG LEE AND SHIRLEY M. BUTLER FROM THE ORDER APPOINTING THE GUARDIAN AD LITEM AND CONSERVATOR AD LITEM FOR SHIRLEY M. BUTLER ENTERED OCTOBER 21, 2019 AND THE JUDGMENT AND ORDER OF INCAPACITY AND DISABILITY AND APPOINTMENT OF GUARDIAN AND CONSERVATOR ENTERED NOVEMBER 25, 2019 ALL BEING VOID FOR LACK OF JURISDICTION OVER SHIRLEY M. BUTLER AND VIOLATING HER CONSTITUTIONAL RIGHT TO DUE PROCESS

COMES NOW Gregory Lee, being first duly sworn upon his oath, and moves the court for a new trial on the Facts and Legal Issues for the Judgment entered by the Court July 28, 2023 or to Set Aside, vacate, reopen, correct, amend, hold for naught or relieve him and Shirley M. Butler from the judgment entered by the court July 28, 2023 and from the Order appointing the guardian ad litem and conservator ad litem entered October 21, 2019 and from the judgment and order of incapacity and disability and appointment of guardian and conservator entered November 25, 2019 because each of them are void for lack of jurisdiction over Shirley M. Butler and violating her constitutional right to due process, and, in support of this motion states, alleges and avers as follows:

A. The Order Appointing the Guardian ad litem and Conservator ad litem October 21, 2019

1. On August 29, 2019 a motion was filed to appoint Carrie B. Williamson (“Williamson”) as the attorney for Shirley M. Butler (“Shirley”) in the above captioned matter.

2. On August 29, 2019 a motion was filed to appoint Chris Pontecorvo (“Pontecorvo”) as a special process server to serve Shirley with, “all pleadings motions and notices associated with this case”.

3. On August 30, 2019 Judge Headrick signed the Order appointing Carrie B. Williamson as the attorney for Shirley M. Butler in the above captioned matter (a copy of the motion and Order are attached hereto marked exhibit 1 and incorporated herein by this reference as if fully set forth).

4. On August 30, 2019 Judge Headrick signed the Order appointing appoint Chris Pontecorvo (“Pontecorvo”) as a special process server to serve Shirley with, “all pleadings motions and notices associated with this case” (a copy of the motion and Order are attached hereto marked exhibit 2 and incorporated herein by this reference as if fully set forth).

5. The summons for Shirley was issued September 4, 2019 and Chris Pontecorvo made his return of service on the summons that was filed with the court on September 10, 2019 (a copy of the summons with the return of service thereon is attached hereto marked exhibit 3 and incorporated herein by this reference as if fully set forth).

6. On September 5, 2019 a second Order was signed by the judge appointing Carrie B. Williamson as the attorney for Shirley M. Butler in the above captioned matter (a copy of the second Order is attached hereto marked exhibit 4 and incorporated herein by this reference as if fully set forth).

7. On September 20, 2019 Judge Long was assigned to the case and he entered an Order setting this case for hearing on November 25, 2019 with notice thereof mailed to the attorneys of record pursuant to Rule 74.03.

8. On September 24, 2019 the court entered the identical order with notice mailed to the parties pursuant to Rule 74.03.

9. On September 25, 2019 a deputy court clerk mailed the Notice of Hearing to occur on November 25, 2019 to:

Gregory Lee, Petitioner, P. O. Box 1278, Dixon, MO 65459

Kimberly Clark, 329 Country Club Dr., Marshfield, MO 65706

Loretta Rouse, Public Administrator, 301 Rte 66 #207, Waynesville, MO 65583

Carrie B. Williamson, Guardian Ad Litem, 243 VFW Memorial Dr., St. Robert, MO 65584

Patricia J. Shilling, Attorney for Petitioner, 302 E. Church St., Ozark, MO 65721

Dr. Michael M. Whetstone, Ph.D., Mercy Clinic Whiteside, 2115 S. Fremont, Springfield, MO 65804

Dr. Lirong Zhu, M.D., 1605 Martin Springs Dr. #310, Rolla, MO 65401

Dr. Saima Jabeen, M.D., Mercy Clinic St. Robert, 608 City Route 66, St. Robert, MO 65584 (a copy of which is attached hereto marked exhibit 5 and incorporated herein by this reference).

8. On October 15, 2019 Williamson, the court appointed attorney, for Shirley filed:
- a. a Motion for Emergency Appointment of Guardian ad Litem and Conservator ad Litem
 - b. a Motion to Shorten the Time required for hearing the Motion; and
 - c. a Notice of Hearing for the Motion on October 21, 2019 (exhibits 6, 7 & 8 attached hereto and incorporated herein by this reference).

The certificate of service on the Notice of hearing (exhibit 8) said it was served, “electronically upon each party/attorney participating in the Missouri Electronic Filing System and upon each party/attorney listed below”, but no one was listed below. There is no evidence Shirley participated in the Missouri Electronic Filing System. Nothing in the record suggests Shirley was ever served with the Motion or Notice of Hearing for Emergency Appointment of Guardian ad Litem and Conservator ad Litem.

Personal service of the petition and notice to the alleged incompetent is mandatory under the guidelines set forth in section 475.075. *In re Myles*, 273 S.W.3d 83, 85 (Mo.App.E.D.2008) (citing *Scott*, 882 S.W.2d at 297); *Werner v. Wright*, 737 S.W.2d 761, 764 (Mo.App.W.D.1987). “Where there is no service whatever, the court acquires no jurisdiction, and its judgment is void.” *Scott*, 882 S.W.2d at 297. ***Born v. Banas*, 450 S.W.3d 503, 505-06 (Mo.App. E.D. 2014).**

This applies to both petitions and notice for a permanent guardian and conservator, and, the appointment of emergency guardians ad litem and conservators ad litem. *Id.*; § 475.075. 2&15, *RSMo*. The court never acquired personal jurisdiction over Shirley for the hearing on October 21, 2019 and to appoint the guardian ad litem and conservator ad litem. The Order appointing the guardian ad litem and conservator ad litem entered October 21, 2019 is void.

9. Whether or not a hearing occurred on October 21, 2019 is unknown because the undersigned requested a transcript of the hearing (exhibit 9 attached hereto and incorporated herein by this reference) and the clerk of the court entered on case.net July 27, 2023, “No sound recording on 10-21-19, attorney notified.” (Exhibit 10 attached hereto and incorporated herein by this reference).

10. Rule 81.12(a) provides that “[t]he record on appeal shall contain all of the record, proceedings and evidence necessary to the determination of all questions to be presented ... to the

appellate court for decision." "The appropriate remedy when 'the record on appeal is inadequate through no fault of the parties' is to reverse and remand the case to the trial court." *Goodman v. Goodman*, 165 S.W.3d 499, 501–02 (Mo.App.E.D.2005) (quoting *Oyler v. Director of Revenue*, 10 S.W.3d 226, 228 (Mo.App.W.D.2000)); *see also Lyytinen v. Lyytinen*, 244 S.W.3d 798, 800 (Mo.App.S.D.2008); *A.J.M. v. Greene Cnty. Juvenile Office*, 158 S.W.3d 878, 879 (Mo.App.S.D.2005); *Jackson v. Dir. of Revenue*, 60 S.W.3d 707, 708 (Mo.App. S.D. 2001). ***C.J.D. v. Greene Cnty. Juvenile Office, 479 S.W.3d 648, 649 (Mo.App. S.D. 2016)***. The clerk of the court did not explain why a sound recording of the proceeding on October 21, 2019 does not exist. It does not appear to be the fault of any of the parties. The court must reverse and remand the appointment of the guardian ad litem and conservator ad litem on October 21, 2019.

11. The appointment of the public administrator as guardian ad litem and conservator ad litem was based solely on the Motion filed by Carrie B. Williamson, attorney for Respondent, Shirley Mae Butler. There apparently was no hearing. A guardian ad litem and/or conservator ad litem requires a hearing before either or both can be appointed. **§ 475.075. 15, RSMo**. The lack of a hearing violates Shirley's constitutional right to procedural due process and requires the appointment of the Pulaski County Public Administrator as the guardian ad litem and conservator ad litem be set aside and/or vacated to relieve Shirley from the violation of her constitutional rights.

12. Shirley had a statutory right to the assistance of counsel in the guardianship and conservatorship proceeding. **§ 475.075. 10(1), RSMo**. The statutory right to counsel implies effective assistance of counsel. ***M.R.S. v. Greene Cnty. Juvenile Office (In re Interest of J.P.B.)*, 509 S.W.3d 84, 97 (Mo. banc 2017); *Juvenile Officer v. T.B. (In re Interest of A.R.B.)*, 586 S.W.3d 846, 861 (Mo.App. W.D. 2019)**. The test of whether the attorney provided effective assistance to the client is, did

the client receive a meaningful hearing based on the record. *Id.*; *In re W.J.S.M.*, 231 S.W.3d 278, 283-84 (Mo.App. E.D. 2007). Otherwise the statutory right to counsel would become an "empty formality". *J.C., Jr., In Interest of*, 781 S.W.2d 226, 228 (Mo.App. W.D. 1989). Shirley did not receive a hearing on the record (see exhibit 10). The only information presented to the court, on which the court could possibly rely to appointed the Pulaski County Public Administrator as the guardian ad litem and conservator ad litem for Shirley, was the motion for Emergency Appointment of Guardian ad Litem and Conservator ad Litem ("Motion") filed by Shirley's own attorney, Williamson. The Motion stated in paragraph 1:

Respondent suffers from Alzheimer's disease and presents symptoms of significant memory loss and confusion. Respondent condition and her current circumstances also cause her to experience depression and anxiety.

Williamson, as Shirley's attorney should have objected to paragraph 1 as hearsay and a conclusion. She didn't object because she made the statements.

Paragraph 3 of the Motion states,

The undersigned has been informed that Respondent's son, Gregory Lee, the Petitioner in the Petition for Appointment of Guardian and Conservator has had telephone calls and visits with Respondent, after which Respondent has become extremely distressed to the extent her caregivers become concerned that Respondent will harm herself.

The entire paragraph is hearsay to which Williamson should have objected, but didn't because it is her statement.

Paragraphs 6 - 12 of the Motion state,

6. Respondent was placed in her current care facility by her daughter Kimberly Clark, pursuant to a power of attorney signed by Respondent in January 2019.

7. Mr. Lee and Ms. Clark are Respondent's only two children.

8. The undersigned believes that Mr. Lee and Ms. Clark are in a dispute as to what actions should be taken regarding Respondent and as to what decision should be made for Respondent's wellbeing.

9. The undersigned further believes that matters related to Mr. Lee's and Ms. Clark's dispute have been discussed with Respondent in a manner that causes her to become upset and these discussions are detrimental and harmful to Respondent's wellbeing.

10. Respondent is caught in the middle of her children's dispute. Respondent loves both of her children and is unable to cope with the disagreement and dispute between the children.

11. Hopedale Cottage is also caught in the middle of the dispute between Ms. Clark and Mr. Lee.

12. Because of the nature of the dispute between Respondent's two children, it is the undersigned's position that there is a need for an emergency appointment of a third party guardian ad litem and conservator ad litem, to make decisions for Respondent until such time as a full hearing can be had in this matter.

The standard to appoint a guardian ad litem and/or conservator ad litem is,

If it is alleged in a petition that ... an emergency exists that **presents a substantial risk that serious physical harm will occur to the respondent's person or irreparable**

damage will occur to the respondent's property because of the respondent's failure or inability to provide for the respondent's essential human needs or to protect the respondent's property, the court may, with notice to such person's attorney, as provided in subsection 4 of this section, and **service of notice** upon such person as provided in subsection 2 of this section, and, with or without notice to other persons interested in the proceeding, **after hearing**, appoint an emergency guardian ad litem or conservator ad litem ... § 475.075. 15, *RSMo.*

Nothing in the Motion suggests there exists **a substantial risk that serious physical harm will occur to the respondent's person or irreparable damage will occur to the respondent's property because of the respondent's failure or inability to provide for the respondent's essential human needs or to protect the respondent's property**. There was no notice to Shirley of the hearing on October 21, 2019 for the Motion.

13. Ineffective assistance of counsel occurs when:

J.M.B., In Interest of, 939 S.W.2d 53, 56 (Mo. App. E.D. 1997)	Shirley M. Butler
<p>a. remaining silent without requesting a continuance or even a short recess in order to try to contact the client who wasn't present;</p> <p>b. Failing to make one objection during the direct examination of the only witness against the client Counsel's cross examination did not exceed a dozen questions; only three of these concerned the voluntariness of mother's consent, which was a crucial issue at the hearing;</p> <p>c. Offered no evidence, explanation or</p>	<p>a. Shirley did not receive notice of the Motion or hearing if there was one, Williamson set them up and did not have Shirley present;</p> <p>b. Williamson' Motion provided all of the statements that resulted in the guardian ad litem and conservator ad litem, they were objectionable on the basis of hearsay, conclusion, so she did not object to them, nor did she cross-examine herself to or object to the lack of a hearing or lack of evidence establishing any of the statutory criteria</p>

<p>argument on behalf his client.;</p> <p>d. Agreed his client’s parental rights should be terminated without revealing the grounds for his opinion.</p>	<p>or notice;</p> <p>c. Williamson provided the motion and all statements resulting in the appointment of a guardian ad litem and conservator ad litem.</p>
<p>J.C., Jr., In Interest of, 781 S.W.2d 226 (Mo. App. 1989)</p>	<p style="text-align: center;">Shirley M. Butler</p>
<p>a. There was no oral testimony at the hearing.</p> <p>b. the attorney was entirely passive.</p> <p>i. he stipulated to the wholesale admission of all reports and records despite the fact that there were many objections that could have been made to the reports and records;</p> <p>ii. He waived the right to cross-examine the authors of the reports;</p> <p>iii. called no witnesses despite the fact that there were two witnesses there on the parties' behalf that expected to testify;</p> <p>iv. Neither of the parents testified, and, they were not present in the courtroom, but were in the courthouse;</p> <p>v. He offered no medical reports or other evidence on behalf of the natural parents. The transcript of the hearing regarding termination consists of only eight pages. Regarding the attorney's fee, the attorney testified that he had spent only eight and a half hours on the case from start to finish. There was no active representation.</p>	<p>a. Shirley did not receive notice of the Motion or hearing if there was one, there was no oral testimony, Williamson set the hearing up and did not have Shirley present;</p> <p>b. Williamson’ Motion provided all of the statements that resulted in the guardian ad litem and conservator ad litem, they were objectionable on the basis of hearsay, conclusion, so she did not object to them, nor did she cross-examine herself to or object to the lack of a hearing or lack of evidence establishing any of the statutory criteria or notice;</p> <p>c. Williamson provided the motion and all statements resulting in the appointment of a guardian ad litem and conservator ad litem.</p> <p>d. There was active representation by Williamson, however, it was against her own client Shirley.</p>

Shirley did not receive a meaningful hearing on the record, making her assistance of counsel ineffective. The Order appointing the public administrator of Pulaski county as guardian ad litem and conservator ad litem should be set aside.

B. The Order of incapacity and disability and appointment of guardian and conservator entered November 25, 2019:

14. On November 19, 2019 Williamson filed, "Report of Respondent's Counsel" (exhibit 11 attached hereto and incorporated herein by this reference). Respondent being Shirley. The report states,

2. At the visit on November 8, 2019 and during the prior visits, counsel for Ms.

Butler specifically advised Ms. Butler:

- a. She has the right to be represented by an attorney, including an attorney retained by her or by the undersigned court appointed attorney;
- b. She has the right to have a jury trial on the petitions for guardianship and conservatorship filed in the above and foregoing cause;
- c. She has the right to present evidence in her behalf;
- d. She and her attorney have the right to cross-examine witnesses who testify against her;
- e. She has the right to remain silent;
- f. She has the right to have the hearing open or closed to the public;
- g. She has the right to a hearing conducted in accordance with the rules of evidence in civil proceedings, except as modified by Missouri Revised Statutes Chapter 475; and

- h. She has the right to be present at the hearing.

The report later states,

- 4. Counsel has communicated with Ms. Butler and received the following authorizations:
 - a. To announce to the court that Ms. Butler has not retained and does not intend to retain a separate attorney to represent her;
 - b. To waive and give up the right to jury trial and to instead have the issues determined by the judge only;
 - c. To request the hearing be closed to the public;
 - d. To announce to the court that Ms. Butler does not wish to be present at the hearing on this matter;
 - e. To make additional statements or requests to the court as follows:
 - i. Ms. Butler loves both of her children and she wishes to have a relationship with each of them;
 - ii. Ms. Butler acknowledges that her children have not been in agreement with one another regarding the decisions that need to be made for her and Ms. Butler sometimes feels that she is in the middle of the conflict;
 - iii. Ms. Butler misses her home and would prefer to reside in the Dixon, Missouri area;
 - iv. Ms. Butler's first wish is to live at home with her son, but if that is determined to not be in her best interest, Ms. Butler is interested in moving to the Dixon Nursing & Rehab center;

- v. Ms. Butler understands that, if she were to move to the Dixon Nursing & Rehab center, she would likely be required to share a room with another resident of the facility and Ms. Butler has expressed that this is an acceptable arrangement with her;
- vi. Ms. Butler has further expressed an interest in rooming with her aunt, who is currently a resident of the Dixon Nursing & Rehab center; and
- vii. Ms. Butler is concerned about the amount of money her children may be spending to litigate this case.

15. The respondent shall be served in person with the following: A copy of the petition; a written notice stating the time and place the proceeding will be heard by the court, the name and address of appointed counsel, and the names and addresses of the witnesses who may be called to testify in support of the petition; and with a copy of the respondent's rights as set forth in subsections 9 and 10 of this section. The notice shall be signed by the judge or clerk of the court and served in person on the respondent a reasonable time before the date set for the hearing. ... § 475.075.2, *RSMo*. The return of service (exhibit 3) does not state Shirley was served with:

- a. the notice stating the time and place the proceeding will be heard by the court;
- b. the name and address of appointed counsel;
- c. the names and addresses of the witnesses who may be called to testify in support of the petition; and
- d. the respondent's rights.

Personal service of the petition **and notice** (emphasis added) to the alleged incompetent is mandatory under the guidelines set forth in section 475.075. *In re Myles*, 273 S.W.3d

83, 85 (Mo.App.E.D.2008) (citing *Scott*, 882 S.W.2d at 297); *Werner v. Wright*, 737 S.W.2d 761, 764 (Mo.App.W.D.1987). “Where there is no service whatever, the court acquires no jurisdiction, and its judgment is void.” *Scott*, 882 S.W.2d at 297. ***Born v. Banas*, 450 S.W.3d 503, 505-06 (Mo.App. E.D. 2014).**

“Personal service of the petition **and notice** (emphasis added) upon the alleged incompetent is jurisdictional and mandatory." *Scott*, 882 S.W.2d at 297; *Werner v. Wright*, 737 S.W.2d 761, 764 (Mo.App. W.D.1987).” ***In re Myles*, 273 S.W.3d 83, 85 (Mo.App.E.D.2008)**. The return of service of the summons and Petition that was filed with the court on September 10, 2019 (exhibit 3) does not state the Notice of Hearing (exhibit 5) was served on Shirley. The Notice of Hearing (exhibit 5) was mailed out by the court clerk, not served on Shirley. Williamson explaining to Shirley the matters in the notice does not give the court personal jurisdiction over Shirley. The order of incapacity and disability and appointment of guardian and conservator entered November 25, 2019 is void for lack of service of the notice on Shirley. The court never acquired personal jurisdiction over Shirley.

16. The right to a jury trial must be waived affirmatively, on the record, and in a fashion similar to waiver under Criminal Rule 27.01. **§ 475.075.8, RSMo.; *In re Link*, 713 S.W.2d 487, 495 (Mo. banc 1986)**. The person waiving a jury trial must do so on the record in the courtroom either in person or by video. **Rule 27.01**. Due process requires that the infirm person ... be fully advised of his rights and accorded each of them unless knowingly and understandingly waived. ***Link*, 494**. Shirley never went to the courthouse, in person or by video. While due process normally requires the presence of the affected individual at the capacity hearing, this right can also be waived, provided appropriate precautions are taken. ***Link*, 495**. An alleged incompetent's presence at the hearing must also be waived affirmatively. **§ 475.075**; The waiver must be made on the record and must also indicate whether the

right to be present has been waived because the person is mentally or physically incapable of attending, or whether the right has been waived for some other reason directly related to the individual's best interest. *Link, 495*. In the former case there must also be supporting medical evidence placed on the record. *Id.* If the attorney finds that the respondent is so impaired that the respondent cannot communicate or participate in the proceedings, the attorney shall consider all circumstances then prevailing and act with care to safeguard and advance the interests of the respondent. § 475.075.4, *RSMo*; Shirley's appointed attorney, Williamson simply filed a report of counsel (exhibit 11) waiving the right to a jury trial and for Shirley to not attend.

17. Williamson and the court obviously determined Shirley was competent to make the decisions to waive a jury, close the hearing to the public, not hire private counsel and not attend the hearing, but Williamson states in her report,

14. Based on the undersigned counsel's personal observations of Ms. Butler, a review of Ms. Butler's medical records, discussions with the Division of Senior Services, discussions with the Hopedale Cottage staff, discussions with Ms. Rouse, and discussions with Mr. Lee and Mrs. Clark, counsel for Ms. Butler believes that Ms. Butler is disabled and incapacitated, as those terms are defined by the Missouri Probate Code. Counsel for Ms. Butler further believes that it would be in the best interest of Ms. Butler for the court to issue letters of guardianship and conservatorship ...

16. The undersigned recommends that the court further order that Ms. Butler not be allowed to drive or vote and that Ms. Butler be allowed to marry only upon a motion to and an order of approval by the court.

18. Shirley had a statutory right to the assistance of counsel in the guardianship and conservatorship proceeding. § 475.075. 10(1), RSMo. The statutory right to counsel implies effective assistance of counsel. *M.R.S. v. Greene Cnty. Juvenile Office (In re Interest of J.P.B.)*, 509 S.W.3d 84, 97 (Mo. banc 2017); *Juvenile Officer v. T.B. (In re Interest of A.R.B.)*, 586 S.W.3d 846, 861 (Mo.App. W.D. 2019). The test of whether the attorney provided effective assistance to the client is, did the client receive a meaningful hearing based on the record. *Id.*; *In re W.J.S.M.*, 231 S.W.3d 278, 283-84 (Mo.App. E.D. 2007). Otherwise the statutory right to counsel would become an "empty formality". *J.C., Jr., In Interest of*, 781 S.W.2d 226, 228 (Mo.App. W.D. 1989).

19. Ineffective assistance of counsel occurs when:

J.M.B., In Interest of, 939 S.W.2d 53, 56 (Mo. App. E.D. 1997)	Shirley M. Butler
<p>a. remaining silent without requesting a continuance or even a short recess in order to try to contact the client who wasn't present;</p> <p>b. Failing to make one objection during the direct examination of the only witness against the client Counsel's cross examination did not exceed a dozen questions; only three of these concerned the voluntariness of mother's consent, which was a crucial issue at the hearing;</p> <p>c. Offered no evidence, explanation or argument on behalf his client;</p> <p>d. Agreed his client's parental rights should be terminated without revealing the grounds for his opinion.</p>	<p>a. Shirley was not present for the hearing on November 25, 2019, nor was her waiver to attend the hearing on the record as required by 475.075, RSMo and <i>In re Link</i>, 713 S.W.2d 487, 495 (Mo. banc 1986);</p> <p>b. Williamson's report of counsel gave an opinion of the ultimate issue in the case, against her client, Ms. Butler is disabled and incapacitated, as those terms are defined by the Missouri Probate Code. Counsel for Ms. Butler further believes that it would be in the best interest of Ms. Butler for the court to issue letters of guardianship and conservatorship (see <i>Rule 4-1.6</i>);</p> <p>c. Williamson provided all of the evidence (Neuropsychological Assessment) from which the</p>

	<p>court was able to declare Shirley incapacitated and disabled and appoint a guardian and conservator (see Transcript of November 25, 2019 hearing - exhibit 12 attached hereto and incorporated herein by this reference).</p>
<p>J.C., Jr., In Interest of, 781 S.W.2d 226 (Mo. App. 1989)</p>	<p>Shirley M. Butler</p>
<p>a. There was no oral testimony at the hearing.</p> <p>b. the attorney was entirely passive.</p> <p>i. he stipulated to the wholesale admission of all reports and records despite the fact that there were many objections that could have been made to the reports and records;</p> <p>ii. He waived the right to cross-examine the authors of the reports;</p> <p>iii. called no witnesses despite the fact that there were two witnesses there on the parties' behalf that expected to testify;</p> <p>iv. Neither of the parents testified, and, they were not present in the courtroom, but were in the courthouse;</p> <p>v. He offered no medical reports or other evidence on behalf of the natural parents. The transcript of the hearing regarding termination consists of only eight pages. Regarding the attorney's fee, the attorney testified that he had spent only eight and a half hours on the case from start to finish. There was no active representation.</p>	<p>a. Williamson did not cross-examine (see exhibit 12) Loretta Rouse concerning her lack of education to testify as an expert witness on diagnosis of Alzheimer's and to state an opinion on the ultimate issues in the case;</p> <p>b. Williamson expressed an opinion on the ultimate issues in the case (exhibit 12) that was against her client, Shirley;</p> <p>c. Williamson requested (exhibit 12) the admission of the (Neuropsychological Assessment), the only evidence from which the court could declare Shirley incapacitated and disabled;</p> <p>d. There was active representation by Williamson, however, it was against her own client Shirley (exhibit 12);</p> <p>e. Shirley was not present (exhibit 12), and a jury was waived without any hearing to determine if Shirley was competent to make such decisions.</p>

20. Shirley did not receive a meaningful hearing based on the record. Shirley's own attorney advocated against Shirley to have Shirley declared incapacitated and disabled, violating

Shirley's right to due process. Shirley's attorney gave an opinion on the ultimate issues in the case, not being qualified as an expert to do so, by requesting the court declare Shirley incapacitated and disabled. No one even suggested the possibility that Shirley was only partially incapacitated and/or disabled and no inquiry was made into whether a full guardianship, full conservatorship and being kept in a facility were the least restrictive means of addressing any concerns for Shirley. Shirley was never served with the notice of hearing and rights. Shirley's waiver of a jury trial, retaining private counsel and to not be present for the trial was not questioned by the court to determine whether Shirley had the capacity to make these decisions and if so if they were of her own free will. The Order of incapacity and disability and appointment of guardian and conservator entered November 25, 2019 is void for violating Shirley's right to due process.

C. The Judgment Entered by the Court July 28, 2023

21. The court on May 10, 2023 entered an Interlocutory Judgment in the consolidated cases of 19PU-PR00129 and 21PU-CV00192 (exhibit 13 attached and incorporated herein by this reference).

22. The court on July 28, 2023 entered a Judgment in the consolidated cases of 19PU-PR00129 and 21PU-CV00192 (exhibit 14 attached and incorporated herein by this reference) that replaced its previous May 10, 2023 Interlocutory Judgment (exhibit 13).

23. Both the Interlocutory Judgment and July 28, 2023 begin by presuming Shirley Butler, is incapacitated and disabled and was found by a Court of competent jurisdiction to be incapacitated and disabled on or about 25 November 2019, in Cause No. 19PU-PR00129 and Loretta Rouse was appointed as the Guardian of the person and Conservator of the Estate for Shirley Butler:

a. Interlocutory Judgment

Shirley Butler is a resident of Pulaski County, Missouri, and has previously been found by a Court of competent jurisdiction to be incapacitated and disabled. That on or about 25 November 2019, in Cause No. 19PU-PR00129, a Court of competent jurisdiction found and adjudged that Shirley Butler was an incapacitated and disabled person, and appointed Loretta Rouse as the Guardian of the person and Conservator of the Estate.

b. July 28, 2023 Judgment

Shirley Butler is a resident of Pulaski County, Missouri, and has previously been found by a Court of competent jurisdiction to be incapacitated and disabled. That on or about 25 November 2019,

in Cause No. 19PU-PR00129, a Court of competent jurisdiction found and adjudged that Shirley Butler was an incapacitated and disabled person, and appointed Loretta Rouse as the Guardian of the person and Conservator of the Estate.

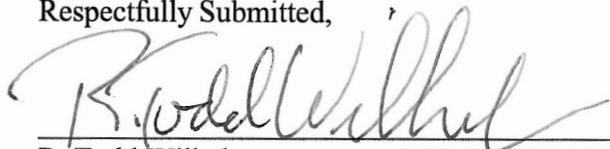
24. Absent the Judgment of incapacity and disability on November 25, 2019 being valid, Loretta Rouse does not have standing to pursue any claims, nor can any of the claims asserted against her result in a valid judgment, each such claim requiring Loretta Rouse to actually be the lawful guardian and conservator of Shirley Butler. She isn't.

25. As set forth above, the Judgment of incapacity and disability on November 25, 2019 is void for a number of reasons. The claims that require a valid Judgment of incapacity and disability on November 25, 2019 are moot because a missing element of them can not be supplied.

WHEREFORE, for the foregoing reasons the court should vacate, set aside, reopen, correct, amend, and/or hold for naught and/or relieve Greg Lee and Shirley M. Butler from:

1. the Judgment entered by the court July 28, 2023;
 2. the order appointing the guardian ad litem and conservator ad litem for Shirley M. Butler entered October 21, 2019; and
 3. the judgment and order of incapacity and disability and appointment of guardian and conservator for Shirley M. Butler entered November 25, 2019; and
- for such other and further relief as the court deems just and proper.

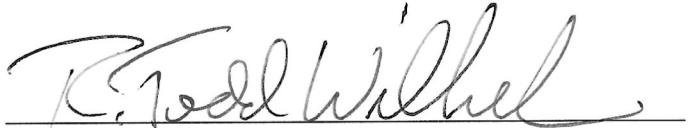
Respectfully Submitted,



R. Todd Wilhelm MO Bar No. 32270
433 East 72nd Street, Kansas City, Missouri 64131
Telephone No. (816) 255-9088
ToddWihelmus@gmail.com
ATTORNEY FOR GREG LEE AND SHIRLEY BUTLER

Certificate of Service

I certify on August 24, 2023 I served the foregoing Motion for New Trial and to set aside prior Orders and Judgments on John Young, 4560 S National Ave Suite A2 Springfield, MO 65810, attorney for Petitioner, James York, 135 Harwood Lebanon, MO 65536, attorney for Shirley M. Butler, Patrick Platter, 2144 E Republic RD Suite F302 PO Box 10327 Springfield, MO 65808, attorney for Kimberly Clark, John Farris, Box 10 A, 220 Marshall Drive Hidden Valley Plaza Saint Roberts, MO 65584 attorney for the guardian and conservator, pursuant to Rule 103.08, by uploading it to the electronic case file.

A handwritten signature in black ink, appearing to read "R. Todd Wilhelmus", written over a horizontal line.

R. Todd Wilhelmus, attorney for Greg Lee
and Shirley Butler

VERIFICATION

STATE OF MISSOURI

)

COUNTY OF Maries

) ss:

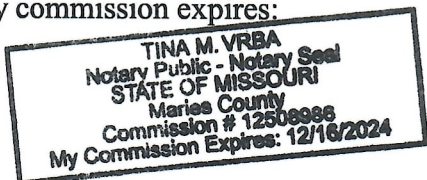
)

COMES NOW Gregory Lee, being first duly sworn upon his oath, and states that he read the foregoing Motion for a New Trial and to set aside previous Orders and Judgments of the court for being void because they violated Shirley M. Butler's constitutional right to due process, the statements of fact contained herein are true and correct to best of my knowledge and belief and made of my own free act and deed.

Gregory Lee
Gregory Lee

Sworn to and subscribed before me the 22nd day of August, 2023

my commission expires:



Tina Vrba
Notary Public