

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REPORTER'S RECORD
VOLUME 1 OF 1 VOLUME
TRIAL CAUSE NO. 456,059

IN RE: THE GUARDIANSHIP OF * IN PROBATE COURT
*
MURIEL LUBA MINTZ, * NUMBER TWO (2) OF
*
AN INCAPACITATED PERSON * HARRIS COUNTY, TEXAS

MOTION FOR IME

BE IT REMEMBERED that beginning on the 23rd day of May, 2017, came on to be heard outside the presence of a jury, in the above-entitled and -numbered cause; and the following proceedings were had before the Honorable Mike Wood, Judge Presiding, held in Houston, Harris County, Texas.

Proceedings reported by Computerized Stenotype Machine, Reporter's Record produced by Computer-Assisted Transcription.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

Attorney ad Litem for Muriel Luba Mintz:
Law Offices of Teresa K. Pitre
Teresa K. Pitre
State Bar No. 24034044
12808 W. Airport, Suite 255C
Sugar Land, Texas 77478
Telephone: (281) 972-9676
Facsimile: (512) 582-8495

Attorneys for Donald M. Mintz:
Ostrom Morris, PLLC
Stacy L. Kelly
State Bar No. 24010153
6363 Woodway, Suite 300
Houston, Texas 77057
Telephone: (713) 863-8891
Facsimile: (713) 863-1051

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

<u>May 23rd, 2017</u>	<u>Page</u>	<u>Vol.</u>
Appearances.	2	1
Proceedings.	4	1
Proceedings Concluded.	7	1
Reporter's Certificate	8	1

1 THE COURT: This is cause number -- what
2 cause number?

3 COURT REPORTER: 456,059.

4 THE COURT: There you go. I'm glad somebody
5 is paying attention.

6 MS. KELLY: You go, girl.

7 THE COURT: You know when it's -- I click on
8 the one part of the electronic file and the cause number
9 is not there. Yeah, 456,355 -- no, that's wrong --
10 456,059.

11 Okay. So this is an IME?

12 MS. KELLY: Yes, Your Honor.

13 MS. PITRE: Yes.

14 THE COURT: Do you have an agreement on who
15 you want or --

16 MS. KELLY: I mean, I would be okay with
17 Kunik or Poa.

18 THE COURT: How old is the proposed ward?

19 MS. KELLY: She's 92.

20 THE COURT: That will work. Do you have an
21 order?

22 MS. KELLY: I don't think she's in agreement
23 with Kunik.

24 MS. PITRE: No, not Kunik. The proposed
25 ward's daughter has an issue with him. I don't know what

1 it is. But she asked if we could have someone different.

2 THE COURT: Okay. Dr. Poa?

3 MS. KELLY: That's fine with me.

4 MS. PITRE: Sure.

5 THE COURT: Okay. Isn't it Edward Poa?

6 GUARDIANSHIP COORDINATOR: Yes.

7 Did you tell him about Brazoria County?

8 MS. KELLY: Well, I was speaking with
9 Marilyn, Your Honor. When we filed this application for
10 guardianship, Ms. Mintz was a resident of Clarewood. And
11 her daughter, Barbara, had taken her to Brazoria County
12 and then moved everything out of Clarewood. And she has a
13 power of attorney but so does my client, her brother.
14 They have dual power of attorney. And so she's been very
15 uncooperative. My client hasn't seen his mother in almost
16 three months.

17 We had a service issue because I brought it
18 in Harris County. Harris County Sheriffs can't go to
19 Brazoria County. She wouldn't bring her here. But I
20 did -- the ad litem did accept service from a constable
21 this morning on behalf of her client, and I've also had
22 her personally served.

23 THE COURT: You really can't do that, you
24 know.

25 MS. KELLY: So I don't know what to do, but

1 she's holding her hostage in Brazoria County.

2 MS. PITRE: I thought she was going to be
3 here.

4 GUARDIANSHIP COORDINATOR: The ward has been
5 served with an IME already but in Harris County.

6 MS. KELLY: Yes. And Barbara, the daughter
7 who has control of her, has filed her own application. So
8 she's before this Court. And she had told the ad litem
9 yesterday that she would bring her mother here today.
10 That's why I had the constable. But then she said her
11 mother fell and they were in the hospital all night and
12 got back late. I don't know how accurate that is. It may
13 very well be accurate. But I can tell you for three
14 months my client has been trying to see his mother; and
15 this woman, Barbara, is doing everything in her power to
16 stop this process.

17 THE COURT: Well, I would suggest you file a
18 motion to get her to appear and show cause --

19 MS. KELLY: Yeah.

20 THE COURT: -- why she shouldn't have to do
21 that.

22 MS. KELLY: Okay.

23 THE COURT: But I'll sign the IME because
24 she was served here before she was taken to Brazoria
25 County.

1 MS. KELLY: Yes.

2 THE COURT: The reason you can't accept
3 service is because you can't get consent from your client
4 who is potentially incapacitated.

5 MS. PITRE: If she's capacitated, it makes
6 sense.

7 MS. KELLY: Right.

8 THE COURT: And the attorney ad litem has to
9 just cross your arms and say, Prove it. It's got to be
10 consistent with the compliance of law.

11 MS. PITRE: Got you.

12 THE COURT: The reason I'm going to go ahead
13 and sign it is because she was served; and I'll say before
14 a month from today, roughly, around June 23rd. I suspect
15 he'll do it before then. And then we need to do something
16 about that. All right. Thank y'all.

17 (End of proceedings.)

18

19

20

21

22

23

24

25

1 THE STATE OF TEXAS)

2 COUNTY OF HARRIS)

3 I, TINA K. WHITE, Official Court Reporter in
4 and for Probate Court No. 2 of Harris County, State of
5 Texas, do hereby certify that the above and foregoing
6 contains a true and correct transcription of all portions
7 of evidence and other proceedings requested in writing by
8 counsel for the parties to be included in this volume of
9 the Reporter's Record, in the above-styled and numbered
10 cause, all of which occurred in open court or in chambers
11 and were reported by me.

12 I further certify that this Reporter's Record
13 of the proceedings truly and correctly reflects the
14 exhibits, if any, admitted, tendered in an offer of proof
15 or offered into evidence.

16 I further certify that the total cost for the
17 preparation of this Reporter's Record is \$_____ and
18 was paid by _____.

19 WITNESSED MY OFFICIAL HAND this the 28th day
20 of December, 2017.

21
22 /s/ Tina K. White
23 Tina K. White, CSR, RPR
24 Official Court Reporter
25 Probate Court No. 2
Certificate No. 5488
Expires: December 31, 2018
201 Caroline, Suite 680
Houston, TX 77002
832-927-1440