

THE STATE OF NEW HAMPSHIRE

MERRIMACK COUNTY

6th CIRCUIT PROBATE DIVISION

IN RE: Guardianship of Toru

Docket #317-2010-GI-00337

IN RE: Special Needs Trust of Tori

Docket #317-2010-TU-00853

MOTION TO RECONSIDER

NOW COMES the Guardian and Trustee, Jeannette Marino.

IN FURTHERANCE of this Motion for Reconsideration of the Court's Order of August 11, 2014, the Guardian and Trustee state as follows:

1. "A motion for reconsideration allows a party to present points of law or fact that the Court has overlooked or misapprehended." Webster. v. Town of Candia, 146 N.H. 430, 444 (2001) (citing Smith v. Shepard, 144 N.H. 262, 264 (1999)). This motion presents facts and law this Court misapprehended and overlooked.
2. The June 19, 2014 Notice of Hearing (for the hearing held on July 18, 2014) fails to list the removal of the trustee as an issue to be addressed at the hearing. To remove the Trustee in this case as a result of a hearing, when the Trustee had no notice or time to prepare a response or defense to such action is unfair or violates basic due process rights of a party to a judicial proceeding under the State of New Hampshire and the United States Constitutions, i.e., notice and

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the opportunity to heard on an issue. Yet, the Court's order of August 11, 2014 removes Ms. Marino as Trustee. This was plain error.

3. There has never been any evidence presented that the Guardian and Trustee's fees were excessive or unreasonable. The issue of the Guardian and Trustee's fees apparently were first raised by the Court in an Order dated November 4, 2013 (O'Neill, J.) in response to the Guardian's Third Account. The Court scheduled a hearing on the reasonableness of the Guardian's fees for February 7, 2014. At the February 7, 2014 hearing it is believed the Court was made aware of the underlying facts that led to the Guardian and Trustees' creation of Ms.

Special Needs Trust, the Delaware and California dynasty trusts she benefits from, the significant benefits she receives and will continue to receive from these trusts, the complicated nature of these dynasty trusts, and the Guardian and Trustee's application and efforts to obtain public benefits for Ms. _____, Ms. _____ complicated personality and her many physical and mental issues, as being the cause for higher than normal time charges, than what may be considered normal for an indigent person. Notable, although Ms. _____; qualifies for public benefits, she is relatively wealthy. It is also believed the Court heard from Ms. Marino's attorney about the efforts he made to work with the State (DHHS), the documents provided to the State, and his efforts and many communications with the State to explain Ms. _____ dynasty trust benefits she received. As a result of this hearing, the Court provided the "State shall have 60 days to submit further data regarding the guardian and trustee fees issue relevant to this case. A further hearing to be scheduled if appropriate." Order, dated February 7, 2014 (Michael, J.). The State failed to submit any further data to the Court on the Guardian and Trustee fee issue.

4. Based on the foregoing, there is no basis for the Court to believe or find that the Guardian and Trustee's fees in these matters were unreasonable or excessive.

WHEREFORE, the Guardian and Trustee, respectfully request this Honorable Court:

- A. Reconsider the Order dated August 11, 2014, and reinstate Ms. Marino as the Trustee of Ms. [redacted] Special Needs Trust;
- B. Approve the Guardian and Trustee's fees in this matter.
- C. For such other and further relief as is just and equitable.

This pleading was prepared with the assistance of a New Hampshire attorney.

Case Name: Special Needs Tr of Tori

Case Number: 317-2010-TU-00853

PETITION/MOTION

1. The petitioner(s) asks that the court grant the following:

- 1. See attached request for relief; and
- 2. Further and just relief.

I certify that on this date I provided this document(s) to the parties who have filed an appearance for this case or who are otherwise interested parties by: Hand-delivery OR US Mail OR Email (E-mail only by prior agreement of the parties based on Circuit Court Administrative Order).

9/2/14
Date

[Signature]
Petitioner Signature
(must be signed in presence of notarial officer)

Date

Petitioner Signature
(must be signed in presence of notarial officer)

State of NH, County of Merrimack

This instrument was acknowledged before me on 9/2/14 by Jeanette H. Waino
Date Petitioner(s)

NICOLE L. FRESQUE
Notary Public - New Hampshire
My Commission Expires April 13, 2016
Affix Seal, if any

[Signature]
Signature of Notarial Officer (Title)

ORDER

- Petition/motion is granted.
- Petition/motion is denied.

Date

Judge