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IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause No. DA 21-0011

IN THE MATTER OF THE CONSERVATORSHIP OF

H.D.K., a Protected Person;

T.K.,

Appellant,

v.

H.D.K, and S.H.

Appellees.

**T.K.'S PETITION FOR REHEARING REGARDING THE COURT'S
OCTOBER 5 OPINION**

Comes now, the Appellant, pursuant to M.R. App. P. 20(1)(a)(i-iii), and petitions for rehearing because the Supreme Court Opinion affirming the Trial Court's Findings of Fact and Conclusions of Law, dated and filed October 5, 2021,

overlooked facts material to the Court's decision, overlooked some questions presented by counsel that would have proven decisive to the case or conflicted with a statute or controlling decision not addressed by the Supreme Court.

I. The Court overlooked Facts Material to the Court's Decision.

i. Although this Court discussed at length the issue of the 60/40 estate plan it concluded was H.D.K.'s intent and the error made by Dirk Williams regarding the funding of Victor Properties, both the Trial Court and this Court overlooked the fact that Tony has a present interest in three of the properties the trial court has ordered to be transferred to Sofeea under Victor Koures Properties, LLC. Appellant's Reply Brief, pp. 18-20, Aug. 13, 2021; *See* CR, 72, Order II; *See also* CR, 50, Exhibits 21.5, 21.22, 21.42, and 22. As such, the three properties in question were never completely owned by H.D.K, and therefore, never hers to transfer.

The referenced deeds were available for the trial court and this Court's review. Prior to the trial court's final order, Tony had no reason to believe any court would abridge his fundamental property rights. However, Tony's fundamental right to property is factually on the record and is now in jeopardy due to not being addressed. Appellant respectfully requests this Court to reconsider the overlooked property deeds pertaining to 535 S. 2nd St. W, Cramer Creek, and 923 Simons. Appellant asserts that in overlooking the aforementioned deeds this Court

should be “convinced by [its] review of the record that the district court made a mistake.” Montana Supreme Court Opinion, ¶ 17, citing to *In re Estate of Quirin*, 2015 MT 132, ¶ 10, 379 Mont. 173, 348 P.3d 658; *Also see In re Eldorado Coop Canal Co.*, 2016 MT 94, ¶ 17, 383 Mont. 205, 369 P.3d 1034 (citations omitted). Appellant additionally and respectfully requests this Court reverse and remand the trial court’s order pertaining to said properties for further instruction.

ii. Although this Court discussed the trial court’s denial of Appellant’s Motion to Strike Dirk Williams’s Report in conjunction with the trial court’s quashing of Appellant’s Subpoena Duces Tecum of Dirk Williams, it seems to conflate the two matters. In pertinent part,

In its order denying Tony’s motion to strike Williams’s Report, the District Court noted that it would not casually abrogate H.D.K.’s confidential relationship and constitutional right to privacy. We will not hold the District Court erred for failing to consider hypothetical arguments Tony would have made. The District Court did not abuse its discretion by quashing Tony’s subpoena for Williams’s file.

Montana Supreme Court Opinion, ¶ 31.

This Court further comments that “The District Court denied Tony’s motion to strike, finding Tony’s discontent with the Report was an invalid reason to strike the Report” *Id.* at p. 7. With respect to the Court, Appellant’s Motion to Strike Dirk Williams’s Report was not based on any theory of confidentiality, nor was it exclusively premised on Appellant’s conflict of interest or discontent with Dirk Williams and his report. In fact, Appellant asserted serious credibility issues in

both his Motion to Strike Dirk Williams's Report and his Reply to Response to Motion to Strike Dirk Williams's Report. ROA 49, pp. 7-11; ROA 59, pp. 3-7; *See also* Aff. of Andrew George, Oct. 6, 2020 (Movant's Exhibit A attached to ROA 59).

Dirk Williams's Report was heavily relied upon by the Trial Court in this case affecting both the Trial Court's FOFCOL and this Court's Opinion. Dirk Williams's credibility was placed squarely at issue through the facts referenced above but said facts were, nonetheless, overlooked by the Trial Court (*See* ROA 70) and this Court. In light of the overlooked fact of Dirk Williams's untruthfulness, especially regarding the Aff. of Andrew George directly controverting Dirk Williams's testimony, Appellant respectfully requests this Court reconsider the substantive nature of the evidence in this case using the following standards:

Substantial evidence is such evidence as will convince reasonable persons and on which such persons may not reasonably differ as to whether it establishes the prevailing party's case." *Nielson v. State Comp. Ins. Fund*, 2003 MT 95, ¶ 37, 315 Mont. 194, 69 P.3d 1136 (citations omitted). "A reviewing court may still find a factual finding is clearly erroneous even though there is evidence to support it." *Eldorado Coop*, 2016 MT 94, ¶ 18, 383 Mont. 205, 369 P.3d 1034 (citations omitted).

Appellant's Opening Brief, p. 22, April 26, 2021(citations in body).

Appellant further requests the Court to reverse the Trial Court's order and remand this case with instructions for further review of the evidence.

iii. This Court stated, “H.D.K. reiterated that allocation [referring to the 60/40 Plan] in her testimony at the in-chambers examination.” Supreme Court Opinion, ¶ 37. This is a factual error. H.D.K. did not reiterate any certain allocation during the in-chambers examination. In fact, H.D.K.’s testimony “for distributing the properties was as divergent as the lists.” *See* Appellant’s Opening Brief, pp. 10-11; *See also* Tr. 9/23/20 (chambers), 13:10-15, 13:23-14:1, 14:3-15, 14:20-15:24. As such, Appellant respectfully requests this Court reconsider its position that “Tony has presented minimal conflicting evidence” Montana Supreme Court Opinion, ¶ 38.

In fact, H.D.K. was nothing but inconsistent regarding the distribution of her estate. Other than her indecisive and self-controverting testimony, there were at least four different lists of purported divisions of property admitted into evidence. *See* Appellant’s Opening Brief, p. 13 (including citations to each). Although Dirk Williams stated H.D.K.’s intention was to distribute her estate in 60/40 fashion, he recommended to the Trial Court a division of “62% to T.K. and 38% to S.K.H.” *See Id.* at pp. 8-9; FOF 31; COL J; Order, ¶ III.

Appellant has indeed presented substantial conflicting evidence.

IV. This Court stated, “Tony testified that, in June 2019, he had his son direct H.D.K. to fill out a “proposed deal” wherein Sofeea would receive only the following properties:” Montana Supreme Court Opinion, ¶ 14. This statement

does not accurately reflect the transcript and is a factual error. To the contrary, Appellant testified,

I only stepped into the room, I came into the kitchen that day as they were signing off on this thing, and, maybe, a little bit towards the bottom here. And I did observe a little bit of this, but I did not participate in the making of this document. I didn't even know that it was going to be made until I got to my mother's house. But it is in my mother's writing. I saw my mother do this. My son was in front of her at the kitchen table doing this. And, again, what she does is delineate a proposed deal, "Original trust, Tony inherits all other property."

Tr. Oct. 6, 2020, 19:24-25; 20:1-10.

The overlooked factual corroboration of Appellant's testimony is reflected in the Affidavit of Demetri Koures filed with the Court as ROA 60. Demetri states, under penalty of perjury, that the resulting property division list referenced above was not the original intention of why he sat down with H.D.K. "This note initially was to be about events and not properties." ROA 60, ¶ 10, Oct. 23, 2020. Demetri further states, My parents were not aware that I had asked my grandmother to do this and only learned when they arrived. They did not participate in any manner whatsoever. *Id.*

II. The Court overlooked some question presented by counsel that would have proven decisive to the case.

i. This Court states in part that it "decline[s] to address [Appellant's] due process argument further" because Appellant "failed to file his proposed

findings of fact and conclusions of law with the District Court.” Montana Supreme Court Opinion, ¶ 21. Although Appellant concedes this Court did not have access to his proposed FOFCOL while reviewing this case, after investigation Appellant has since discovered that his proposed FOFCOL was timely filed with the District Court but, by mistake, was not assigned an ROA number or properly sent to the Montana Supreme Court. *See* Aff. of Shirley E. Faust, Clerk of Court for Montana Fourth Judicial District Court, Missoula County; *See also* Findings of Fact, Conclusions of Law, and Order, Tony Koures, (both documents attached herein). As such, Appellant respectfully requests this Court reconsider his due process claims, both procedural and substantive, after accepting his remediation of the file in light of the fact that he complied with the Trial Court’s request for his proposed FOFCOL, and therefore, should not be charged with the error.

III. The Court’s decision regarding due process conflicted with a statute or controlling decision not addressed by the supreme court.

i. This Court states Tony did not raise his due process argument to the District Court. Appellant argues he did raise his due process rights with the Trial Court by filing the property deeds discussed previously in section **I.(i.)** of this brief. To reiterate, the deeds showing Tony’s current property interest were filed as exhibits on the record with the Trial Court. These deeds were also on the record for this Court to review and delineated in detail in Appellant’s Reply Brief. *See*

Appellant’s Reply Brief, pp. 18-20, Aug. 13, 2021; *See* CR, 72, Order II; *See also* CR, 50, Exhibits 21.5, 21.22, 21.42, and 22.

Appellant argued in his opening brief that “The question whether the District Court denied procedural due process to T.K. is a constitutional law issue, subject to plenary review.” Appellant’s Opening Brief, p.22; Citing to *In re Engel*, 2008 MT 215, ¶ 4, 344 Mont. 219, 194 P.3d 613 (citation omitted). Under this standard of review, this Court should not give the Trial Court deference in matters of due process.

Writing for the dissent in *Kellogg v. Dearborn Information Services*, (2005), Justice Jim Rice states, “Found within the [Montana] Declaration of Rights, the right of property is a fundamental one, dictating that the standard of review applied to governmental action affecting this interest is ‘the most stringent standard, strict scrutiny.’ *Kellogg v. Dearborn Information Services*, 2005 MT 188, ¶ 22, 328 Mont. 83, ¶ 22, 119 P.3d 20; citing *MEIC v. Dept. of Environmental Quality*, 1999 MT 248, ¶ 60, 296 Mont. 207, ¶ 60 P.2d 1236 (citing *Wadsworth v. State* (1996), 275 Mont. 287, 302, 911 P.2d 1165, 1174).

Appellant’s present interest in the three pieces of real property he shares with H.D.K. is a fundamental right. The Trial Court issued its final order stating in part:

The Western Montana Chapter, as conservator for [H.D.K.], shall assist [H.D.K.] as needed in transferring the following properties to

Victor Koures Properties, LLC, with the intention that the same shall pass to Sofeea upon [H.D.K.'s death:

330 Tremont
612 S. 1st Street
400 Rollins
535 S. 2nd St. W.
800 Chestnut
Cramer Creek
923 Simons.

ROA 72, Order, ¶ II.

Appellant has a present interest of ownership in the three underlined properties.

The Trial Court's Order was not issued until the close of trial; therefore, Appellant did not have the opportunity to object to the Order and should not be prejudiced by his lack of objection. *See* Rule 46 of the Montana Rules of Civil Procedure, 2019. Given that Appellant's property rights are fundamental and deserve strict scrutiny analysis under both Montana State and Federal standards and Appellant did not have the opportunity to object to the Trial Court's final Order, Appellant respectfully requests this Court to remand this case to the Trial Court with further instruction. Regarding Appellant's present interest in real property, there is no equity issue between Appellant and H.D.K. before the Court and there is no money judgment to be satisfied. The Trial Court's Order, if left in place, would constitute a taking of private property for private use without just compensation, which defies Appellant's fundamental property rights even if considered under a


scheme of eminent domain. In short, “private property may not be taken without an owner’s consent for the private use of another. *Spratt v. Helena Power Transmission Company* (1908), 37 Mont. 60, 94 P. 6311; Section 70-30-101, MCA.

CONCLUSION

There have been a number of material facts overlooked by both the Trial Court and this Court as delineated above. Most importantly, the oversight of three property deeds proving Appellant’s current ownership interest has caused Appellant’s fundamental property rights to be placed in jeopardy. Next, the inadvertent error committed by the District Court Clerk caused this Court to abridge its analysis of Appellant’s due process rights in its Opinion. Finally, there are a number of exhibits noted above that were placed on the record related to the array of H.D.K.’s potential estate plans demonstrating substantial (not minimal) conflicting evidence of H.D.K.’s indecision regarding her estate plan and that a 60/40 split was not long standing. For the foregoing reasons, Appellant respectfully requests this Court to reconsider its Opinion and remand this case to the Trial Court with further instructions.

Respectfully submitted this 20th day of October, 2021.

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By: 
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CERTIFICATE OF COMPLIANCE

Pursuant to Rules 11 and 20 of the Montana Rules of Appellate Procedure, I certify that this pleading is printed in a proportionately spaced Times New Roman, 14-point font; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 2270 words, excluding certificate of service and certificate of compliance.

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9 **MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY**

10 IN THE MATTER OF THE
11 CONSERVATIONSHIP OF
12 H.D.K.,
13 A Protected Person.

Cause No.: DG-19-52
Hon. Shane Vannatta
Dept. 5

**AFFIDAVIT OF SHIRLEY E. FAUST,
CLERK OF COURT FOR
MONTANA FOURTH JUDICIAL
DISTRICT COURT, MISSOULA
COUNTY**

15
16 I, Shirley E. Faust, being first duly sworn, upon oath and under penalty
17 of perjury depose and say:

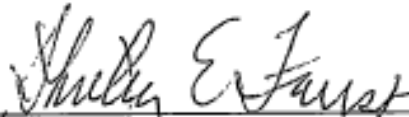
- 18 1. I am the Clerk of Court for Montana Fourth Judicial District Court,
19 Missoula County.
- 20 2. On Wednesday, October 28, 2020 at 5:02 p.m. via electronic mail
21 Elliott Dugger of Dugger Law Firm, PLLC attorney for Anthony Koures,
22 filed his proposed Findings of Fact, Conclusions of Law and Order with
23 this Court.
- 24 3. On Thursday, October 29, 2020 between 12:05 p.m. and 12:45
25 p.m. the proposed Findings of Fact, Conclusions of Law and Order filed
26 by Elliott Dugger, attorney for Anthony Koures, along with the proposed
27 Findings of Fact, Conclusions of law and Order filed by Julie Sirrs,

1 attorney for Sofeea Huffman and Trent Baker, attorney for H.D.K, were
2 processed and lodged with this Court.

3 4. On Thursday, October 29, 2020 at 12:51 p.m. the three (3) hard
4 copies of the proposed Findings of Facts, Conclusions of Law and Order
5 were placed in a file folder into the Hon. Shane Vannatta's mailbox in
6 the Clerk of Court office for his Judicial Assistant to pick-up and
7 incorporate the documents into the Court file.
8

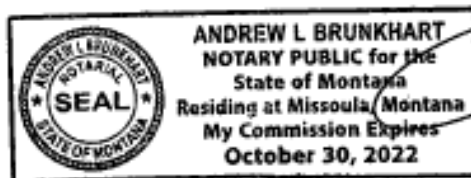
9 FURTHER AFFIANT SAYETH NOT.

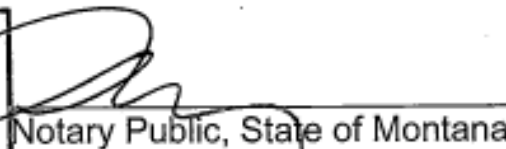
10 DATED this 19th day of October 2021.

11 
12 _____
13 Shirley E. Faust
14 Clerk of Court
15 Montana 4th Judicial District Court
16 Missoula County

17 State of Montana
18 County of Missoula

19 SIGNED AND SWORN TO before me this 19th day of October 2021, by
20 Shirley E. Faust.





Notary Public, State of Montana

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9 IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
10 STATE OF MONTANA, IN AND FOR THE COUNTY OF MISSOULA

11 IN THE MATTER OF THE
12 CONSERVATIONSHIP OF

13 HELEN D. KOURES,

14 A Protected Person.

Dept. 5

Cause No.: DG-19-52

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER**

FINDINGS OF FACT

- 18 1. The *Verified Petition for Appointment of Temporary Conservator;*
19 *Request for Hearing* was filed by the Petitioner, Sofeea Koures Huffman
20 (“Sofeea”) on July 17, 2019.
- 21 2. Helen D. Koures (“Helen”), the protected person in the above referenced
22 matter, is currently 84 years of age. Her mailing address on the petition
23 is c/o Mary Kay Williamson, 4201 Deveraux Place, Missoula, MT 59802.
24 But her actual mailing address is 307 South Sixth West, Missoula, MT
25 59801.

- 1 3. Conservators Karen Baker and Cindy Shott from the Western Montana
2 Chapter have been appointed as temporary conservators of Helen
3 Koures in this matter.
- 4 4. Helen has been represented by Trent Baker of Datsopoulos, MacDonald
5 & Lind throughout the pendency of these proceedings.
- 6 5. Sofeea has been represented by Julie Sirrs of Boone Karlberg during
7 the pendency of these proceedings.
- 8 6. Tony Koures (“Tony”) has been represented by Elliot Dugger of Dugger
9 Law Firm, PLLC.
- 10 7. Tony and Sofeea are Helen’s children.
- 11 8. Helen engaged the services of attorney Dirk Williams (“Dirk”) of Crowley
12 Fleck, PLLP, in 2009 to help her with her estate planning needs of
13 herself and her now-deceased husband, James A. Koures (“Jim”).
- 14 9. Jim has since passed away.
- 15 10. A hearing on conservatorship was held on September 18, 2020,
16 September 23, 2020 October 5, 2020, October 6, 2020, and October 14,
17 2020.
- 18 11. A hearing on conservatorship examination of Helen Koures was
19 also held on September 23, 2020, wherein the court conducted an in-
20 chambers examination of Helen, who was “gently” examined by counsel
21 regarding Helen’s capacity and general state of mind.
- 22 12. In the September 18, 2020, hearing on conservatorship, all parties
23 agreed that appointing the Western Montana Chapter as a temporary
24 conservator was in the best interests of Helen.
- 25 13. The scope for the remaining hearings on conservatorship (Sept.
26 23, Oct. 5, 6, and 14, 2020) was to determine Helen’s testamentary
27 capacity regarding her intentions of distributing her estate.

1 14. There is a separate civil tort matter pending concerning the
2 question of undue influence by Tony and Sofeea. The complaint in that
3 action was filed by Tony.

4 15. A neuropsychological evaluation of Helen was conducted on
5 August 8, 2019, by Loretta L. Bolyard, PhD, PC. The report has been
6 filed with this Court.

7 16. The evaluation included a diagnosis of Major Neurocognitive
8 Disorder, presumably related to Alzheimer's disease, vascular
9 dementia, or a mixed dementia involving both pathologies.

10 17. The evaluation also indicated that Helen is very vulnerable to
11 influence from others.

12 18. During the evaluation, Helen denied formulating any thoughts on
13 her own regarding a 60/40 split of her assets, and she denied completing
14 a beneficiary deed recently, and seemed genuinely concerned when the
15 document was shared with her by Dr. Bolyard.

16 19. Dr. Bolyard indicated that Helen's cognitive deficits render her
17 completely incapable of managing all aspects of her financial affairs and
18 other personal matters. Further, Helen's prognosis is considered poor
19 and she will require increasing levels of support across time to manage
20 all aspects of her activities of daily living.

21 20. Helen requires a full guardian and conservator to safeguard her
22 assets and preserve her best interests for the foreseeable future.

23 21. Helen's cognitive decline and thus capacity likely dates back at
24 least one year; thus, it is important to review any and all financial and
25 legal decisions made in at least the past year.

26 22. Ms. Baker with the Western Montana Chapter testified at the
27 September 18th hearing for Julie Sirrs.

1 23. As of now, the conservators have not produced an inventory of the
2 estate.

3 24. The conservators will be required to produce an inventory of
4 Helen's personal property.

5 **September 23, 2020 Hearing on Conservatorship Examination**

6 25. At the September 23, 2020 Hearing on Conservatorship
7 Examination of Helen Koures, Helen was able to name some of the
8 properties she owned, but she could not remember all of them. Helen
9 was unable to recall which bank account(s) the money from the rentals
10 was deposited into. Helen was unable to correctly list the banks which
11 currently hold her money and referenced a bank which does not exist in
12 Missoula at this time. She only referred to one account but has more.
13 She was not questioned about her bank the balances, or her liabilities
14 including those incurred during this case. Her liabilities include
15 significant balances on credit cards and a line of credit . She does not
16 remember those totals. Additionally, Helen was not asked how many
17 withdrawals she made after soon after her husband's passing. The total
18 withdrawn was well over \$100,000. The petitioner has verbally admitted
19 to taking \$84,000 that was destined to her daughter for her restaurant
20 and apartment.

21
22 26. When Sofeea visits Helen, she stays with and slept with Helen
23 before meetings with Trent Baker, mediation, all hearings including the
24 capacity hearing and the meeting with Visitor in this case.

25 27. Helen testified that she recognized her handwriting on the Letter
26 ("Letter") introduced by Sofeea Huffman as a letter which referenced a
27 list of properties to be distributed to Sofeea and Tony. She was not

1 asked whether she remembered the letter or what was in it before it was
2 handed to her.

3 28. Helen testified that the Letter and list reflected her opinions as they
4 were at the September 23, 2020 Hearing.

5 29. Helen indicated that the “V” meant “Victor,” because it was the
6 town she was from, and the “D” meant “Dara,” which is the Greek village
7 that Jim was from.

8 30. The Letter also stated that “I asked Sophie to get the list out a few
9 months ago to help me with it. She wrote everything down for me, and
10 now it is not the same list Pop and I made.”

11 31. Helen indicated that the property list in the Letter was made in
12 2018.

13 32. Helen was unable to recall whether she had engaged the services
14 of Dirk Williams to help her with her estate planning.

15 33. Helen testified that she has enough money to live on.

16 **September 23, 2020 Hearing on Conservatorship**

17 34. Dirk Williams testified pursuant to a subpoena from Mr. Baker
18 relating to the communications with Jim and Helen.

19 35. Dirk met with Helen approximately 20 times between 2008 and
20 2018.

21 36. Dirk indicated that the plan was to put roughly 60% of the value of
22 the rental property into Tony’s name and 40% of the rental property into
23 Sofeea’s name, with the remainder of the property to be divided on an
24 equal basis between Sofeea and Tony.

25 37. In his testimony, Dirk stated Helen provided him with a list of the
26 properties in the form of a hand-written note for Victor Properties and
27 Dara Properties.

1 38. Dirk testified that the first time he became concerned about
2 Helen's testamentary capacity was in a phone call in August of 2018.

3 39. Helen was also confused as to whether she wanted to continue
4 having Dirk as her attorney. But she had actually lawfully fired him in
5 July of 2018 based on his incompetence, misrepresentations and that
6 he had never finished the Trust.

7 40. Helen and Jim executed their Trust on August 20, 2014. The Trust
8 indicated that, after both Helen and Jim were deceased, the properties
9 they had allocated to Victor Properties should pass to Sofeea, and the
10 properties they had allocated to Dara Properties, LLC and 615 LLC,
11 should pass to Troy.

12 41. Dirk helped Helen and Jim establish two Montana limited liability
13 companies: Dara Properties, LLC, for the properties passing to Tony,
14 and Victor Koures Properties, LLC, for the properties passing to Sofeea.
15 He also created a third LLC, 615 as outlined by the Trust, and had Tony
16 and Helen sign all necessary documents but did not file them with the
17 state or the county.

18 42. Dirk made a mistake in creating the Victor Properties, LLC,
19 because the name he tried to register it under, Victor Properties, LLC,
20 was already taken. It was deeded to an unknown out-of-state third party.
21 The registered agent is an attorney began employment with Crowley
22 Fleck months after Victor Properties was registered. Dirk, therefore,
23 created a third LLC, Victor Koures Properties, and prepared to fund it in
24 the exact same manner as the first Victor Properties. However, he did
25 not take the signed deeds and file them with the county. He told Tony
26 Koures that "the guy" that registered Victor Properties beat him to it by
27

1 “one half to one day” when it had actually been registered seven months
2 prior.

3 43. Dirk testified that he did not offer Helen a refund for this mistake
4 or make a comment to anyone about issuing a refund.

5 44. However, Andrew A. George provided an affidavit, signed October
6 6, 2020, stating that he had a conversation with Dirk discussing that
7 Dirk’s firm had agreed to refund their fees for their previous estate
8 planning for Helen and Jim.

9 45. Dirk’s testimony on October 23, 2020, is therefore untrue and
10 unreliable, including and especially testimony relating to any
11 accusations of Tony and undue influence.

12 **October 5, 2020 Hearing on Conservatorship**

13 46. Helen was gone with for eight months with Sofeea beginning
14 October 13, 2018.

15 47. Prior to that time, Helen made several withdrawals totaling
16 \$84,000 to Sofeea and Amalia and took out a Line of Credit of \$25,000.
17 However, Sofeea has since admitted to taking additional money. At this
18 point, it remains unclear how much Sofeea has taken as there are still
19 outstanding checks, withdrawals and transfers that remain unidentified.
20 During the trip, and others, her credit cards were also utilized until the
21 totals neared \$25,000.

22 48. Also, during that time, Helen wrote a letter dated December 6,
23 2018 while she was under Sofeea Huffman’s control. It is written in her
24 handwriting but goes against both Jim and Helen’s original testamentary
25 intent as indicated by the 2015 funding of Victor Properties, Victor
26 Koures Properties and Dara Properties . The letter is inconsistent with
27 two identical spreadsheets prepared by Dirk Williams’s office,

1 significantly one dated the August 15, 2014, that she filled out herself
2 with the possible assistance of James Koures.

3 49. Helen executed a holographic will dated February 8, 2019. It
4 provides a completely different allocation than any other document.

5 50. It is believed Sofeea was staying with Helen in Missoula at that
6 time, and often shares a bed with Helen. The habit of sleeping with
7 Helen and completely dominating her time began around 2018 which
8 coincides with Sofeea and Amalia taking Helen to Dirk Williams's office
9 to re-engage his services.

10 51. The day before Helen's granddaughter took Helen to Seattle for
11 the long, unannounced visit, she signed a The holographic will revised
12 the power of attorney so that it was 50% to Tony and 50% to Sofeea
13 with respect to control over Helen's finances.

14
15 **October 6, 2020 Hearing on Conservatorship**

16
17 52. After Jim died, Helen was under considerable emotional and
18 mental stress that significantly affected her memory and cognitive
19 functioning. People, such as Amalia Huffman, Sofeea Huffman, and
20 Mary Kay Williamson, noticed Helen's decline in cognitive functioning by
21 saying she was "losing her mind" several times a day.

22 53. Before moving to Missoula in December of 2013, Tony was a
23 prosecutor in Spokane, Washington.

24 54. Tony's family moved to Missoula upon the request of Helen and
25 Jim because Tony was invited to be a business partner with Jim and
26 Helen. He obliged so he could not only do that but also care for them in
27 their advancing age.

1
2 55. Tony does not have an ownership interest in any of the properties,
3 because the Trust owns the properties. However, Tony invested
4 \$20,000 in 302 South Sixth West and \$75,000 which his parents
5 matched in 615 South First.

6 56. As an incentive to move to Missoula, Helen and Jim offered Tony
7 the title of the Hazel property into his name. However, that never
8 happened. Instead, Helen and Jim helped Tony with the foundation of
9 his home, which was approximately \$70,000.

10 57. Tony and his family began helping Helen and Jim with the
11 businesses upon their arrival.

12 58. Tony does not use any of rental proceeds for his own benefit,
13 except he does use proceeds, as promised by his parents, from the
14 Hazel properties which were deposited in a separate account set up by
15 Helen at US Bank. He did not ever use the full amount.

16 59. Tony's daughter assisted Helen with deposits and bills and
17 organized some bookkeeping because Helen was becoming too
18 disorganized and was unable to stay on top of the businesses.

19 60. In October of 2016, Helen began withdrawing money from at least
20 three bank accounts, U.S. Bank and Missoula Federal Credit Union, now
21 known as Clearwater Federal Credit Union. Moreover, credit card debt
22 in 2017 was approximately \$23,000. This total was accrued mainly while
23 Helen traveled to Washington and San Diego with Sofeea.

24 61. The credit cards were being paid down with income from the
25 rental business. Tony's wife, Cyndy Koures, made a payment of \$4,700
26 in November of 2017; however, another \$3,100 was charged to the card
27 ending 2372 in the very next billing cycle. The balance is approximately

1 \$18,000 between the two credit cards, the second of which ends in 9163.
2 Charges incurred on card 9163 actually started in 2018 when Sofeea
3 was with Helen.

4 62. In October of 2017, Helen utilized a Line of Credit at US Bank for
5 \$25,000. This money was given to Amalia Huffman. The rental
6 business paid anywhere from \$1,000 per month on this debt (because it
7 was in arrears as Tony was not aware of it) and now the payments are
8 approximately \$350 a month. For only the last five months, the
9 Huffman's have paid the bill.

10 63. Soon after Jim passed, Helen had gone to at least two banks,
11 Clearwater Credit (then Missoula Federal Credit Union) and US Bank
12 and made multiple large withdrawals, unbeknownst to anyone in the
13 immediate family.

14 64. Sofeea Huffman admitted in writing that she and her daughter
15 Amalia took money from at least three bank accounts. She admitted to
16 taking \$6,440 from an unknown bank account. She admitted to taking
17 at least \$36,000 from MFCU and paid back only \$9,500 for a total of
18 \$26,500. However, she denied several other withdrawals totaling
19 \$24,000 out of Helen's bank accounts on the same document she
20 drafted.

21 65. However, since 2016, Helen's finances/accounts have been
22 approximately:

- 23 a. \$23,000 worth of credit card debt with continued charges and an
24 approximate balance of \$18,000, currently;
- 25 b. \$25,000 line of credit which was paid until 5 months ago with an
26 approximate balance of \$15,000, currently;

27

1 c. At least \$84,000 cash taken by Sofeea Huffman and Amalia
2 Huffman;

3 d. At least \$24,530 loss of income from 400 Rollins, not including all
4 the money paid for utilities.

5 66. Sofeea Huffman sent Tony by email (to his wife's email) a packet
6 of materials on January 4, 2019. The packet consisted of a five-page
7 letter in Helen's handwriting that told Tony about having to make her
8 decisions now about where her property should go, despite the fact she
9 made assignments of property in 2015 regarding all rental parcels and
10 one LLC was successfully funded pursuant to her allocation. There was
11 a new list of allocation as well as a detailed spreadsheet in Sofeea
12 Huffman's handwriting describing various properties and valuations.
13 The list was not consistent with my Helen and Jim's 2015 allocations
14 because it moved property from Tony to Sofeea Huffman.
15

16 Based on the forgoing findings of fact, the Court makes the following
17

18 **CONCLUSIONS OF LAW:**

- 19 1. The Court has jurisdiction over this matter.
20 2. Venue is proper in this Court.
21 3. Dirk William's testimony and report to the court is untrue and
22 unreliable and should be stricken from the record and should not be used to
23 determine intent, recommendations or analysis but should be referred to only
24 for innocuous facts or impeachment if necessary. It should be stricken
25 especially as it relates to any claim, assertion, analysis, or statement or
26 accusing Tony of undue influence since Dirk misrepresented and
27

1 manufactured facts about what Tony and his mother did and said. Neither
2 Dirk's testimony nor report provided evidence of undue influence.

3 4. Testamentary capacity requires that the testator be aware of three
4 elements: (1) the nature of the act to be performed; (2) the nature and
5 extent of the property to be disposed of; and (3) the objects of his or her
6 bounty. *In re Estate of Quirin*, 2015 MT 132, ¶ 14, 379 Mont. 173, 348
7 P.3d 658. Helen Koures does not have capacity because she clearly did
8 not know the nature and extent of the property to be disposed of.

9 5. Helen Koures does not have testamentary capacity for any
10 documents executed before at least 2017 based on Dr. Bolyard's report.

11 6. That there is no evidence of undue influence on behalf of Tony
12 Koures as opposed to evidence presented in multiple written materials
13 against Sofeea;

14 7. Helen is susceptible to influence by people and by other family
15 members, but was subject to undue influence by Amalia and Sofeea
16 Huffman that resulted in the rehiring of Dirk Williams, a revocation of
17 Tony's sole Power of Attorney, spreadsheets handwritten by Sofeea and
18 a letter handwritten by Helen reallocating assets on the same day
19 Sofeea claimed impending bankruptcy to Snohomish County officials, a
20 handwritten will dated February 8, 2019, with handwriting that looks like
21 Sofeea's, found stuffed under a mattress, and beneficiary deeds
22 executed three months later that are in conflict with the February will, all
23 enacted while under Sofeea Huffman's exclusive control either in Seattle
24 or Missoula. Helen has maintained consistently to Dr. Bolyard and Tony
25 and his family that the 60/40 split was untrue. Helen does not have
26 capacity; and all actions taken should be reviewed;

1 8. As a result of her mental status, and not based on the allegations
2 in the petition, Helen needs to have a permanent conservator subject to
3 modification pursuant to Mont. Code Ann. § 72–5–316 with powers
4 prescribed in § 72–5–321.

5 a. To inventory and account for the Protected Person’s property, both
6 real and personal, tangible, and intangible, and to take control and
7 possession of any liquid (cash or cash equivalent) accounts;

8 b. To pay all debts and expenses of the Protected Person as
9 reasonably incurred for the benefit and welfare of the Protected
10 Person;

11 c. To receive and account for money and tangible property
12 deliverable to the Protected Person and apply the money and
13 property for support, care, and comfort of the Protected Person,
14 conserving any excess for the Protected Person’s needs.

15 d. To pay taxes on and take all steps reasonably necessary for the
16 management, protection, and preservation of the Protected
17 Person’s estate.

18 e. To maintain an action to recover possession of property or to
19 determine the title of the property for the Protected Person.

20 f. To do all things necessary to effectuate the above-enumerated
21 powers.

22 **ORDER**

23 1. The parties shall cease making all accusations, assertions, claims, etc.
24 etc., of Tony Koures or his family’s undue influence upon Helen Koures;

25 2. A permanent conservator shall be appointed subject to modification
26 pursuant to Mont. Code Ann. § 72–5–316 with powers prescribed in §
27 72–5–321:

- 1 a. To inventory and account for the Protected Person's property, both
- 2 real and personal, tangible, and intangible, and to take control and
- 3 possession of any liquid (cash or cash equivalent) accounts;
- 4 b. To pay all debts and expenses of the Protected Person as
- 5 reasonably incurred for the benefit and welfare of the Protected
- 6 Person;
- 7 c. To receive and account for money and tangible property
- 8 deliverable to the Protected Person and apply the money and
- 9 property for support, care, and comfort of the Protected Person,
- 10 conserving any excess for the Protected Person's needs.
- 11 d. To pay taxes on and take all steps reasonably necessary for the
- 12 management, protection, and preservation of the Protected
- 13 Person's estate.
- 14 e. To maintain an action to recover possession of property or to
- 15 determine the title of the property for the Protected Person.
- 16 f. To do all things necessary to effectuate the above-enumerated
- 17 powers.
- 18
- 19 3. That Helen Koures does not have testamentary capacity and her intent
- 20 should be established not only from the funding of Dara Properties,
- 21 Victor Properties and the subsequent funding of Victor Koures
- 22 Properties but also from two identical spreadsheets prepared by Dirk
- 23 Williams's office, one dated the August 15, 2014, that she filled out
- 24 herself with the possible assistance of James Koures.
- 25 4. Before any real properties are sold, the Western Montana Chapter shall
- 26 first use its best efforts to maximize the income from the rental
- 27 properties.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 28th day of October 2020, true and correct
3 copies of the following list of documents were served upon the
4 following parties.

5 First class postage, prepaid _____
6 Email X
7 Personal Service _____

8 1. Findings of Fact; Conclusions of Law

9
10 Julie R. Sirrs
11 Boone Karlberg P.C.
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13 201 W Main St, #300
14 Missoula, MT 59802
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3 P.O. Box 17800
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7 melissa@westernmontanachapter.org
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9 By 
10 Elliott Dugger, Attorney for Tony Koures
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14
15
16
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21
22
23
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27

CERTIFICATE OF SERVICE

I hereby certify that I have filed a true and accurate copy of the foregoing **T.K.'S PETITION FOR REHEARING REGARDING THE COURT'S OCTOBER 5 OPINION, AND TWO SUPPORTING DOCUMENTS** (Aff. of Shirley E. Faust, Clerk of Court for Montana Fourth Judicial District Court, Missoula County with the Clerk of the Montana Supreme Court; Findings of Fact, Conclusions of Law, and Order, Tony Koures) and that I have served true and accurate copies of the same upon each attorney of record in the above-referenced District Court action, as follows:

Julie R. Sirrs
Boone Karlberg, P.C.
201 West Main, Suite 300
Missoula, MT 59802
Attorney for Appellee S.K.H.
Method of Service: eService

Trent N. Baker
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Attorney for Protected Person H.D.K.
Method of Service: eService

Cynthia H. Shott
PO Box 17800
Missoula, MT 59808
*Attorney for the Western Montana
Chapter for the Prevention of Elder
Abuse*
Method of Service: eService

DATED this 20th day of October 2021.

Dugger Law Firm, PLLC

By: 
Attorney for Appellant

CERTIFICATE OF SERVICE

I, John Elliott Dugger, hereby certify that I have served true and accurate copies of the foregoing Petition - Rehearing to the following on 10-20-2021:

Julie Rachel Sirrs (Attorney)
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Electronically signed by Julie Pooley on behalf of John Elliott Dugger
Dated: 10-20-2021