

IN THE CIRCUIT COURT OF RANDOLPH COUNTY, WEST VIRGINIA

THOMAS M. HAMMER, ROBERT B. HAMMER,
TERESA C. HAMMER LANG, MARK J. HAMMER and
SHARON M. HELMS,

Plaintiffs,

v.

CIVIL ACTION NO. 10-C- 103

GUY ST. CLAIR HAMMER, II and
ROBIN W. HAMMER,

Defendants.

ORDER

On the 27th day of October, 2010, came plaintiffs, by counsel David H. Wilmoth, and came defendants, each in person and *pro se*, and came also Steven B. Nanners, Esq., the court appointed guardian *ad litem* for Ethel M. Hammer.

THEREAFTER the Court heard the presentation of the guardian *ad litem*, and reviewed the report provided, and directed that the same be and hereby is to be filed and made a part of the record in this matter.

THEREAFTER the Court heard the arguments of counsel and the parties as to the issue in controversy, i.e., the validity of two separate power of attorney appointments executed by Ethel M. Hammer; the first dated November 27, 2002, which appointed Thomas M. Hammer and Sharon M. Helms, jointly; and the other, dated September 22, 2008, which appointed the defendants and other children of Ms. Hammer and provided that three of the five appointed agents had the authority to void or rescind any action taken. After considering these arguments, the Court directed by correspondence dated October 27, 2010, that each party would have until

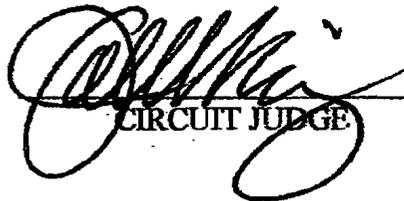
November 20, 2010 to submit a memorandum in support of their respective positions.

Thereafter, the Court received and reviewed the final arguments presented by the parties, and upon review of which the Court by correspondence dated November 22, 2010, directed the undersigned counsel to prepare an order reflecting the initial decision rendered by the Court in regard to this matter. In consideration of all of which the Court does hereby

ORDER that Declaratory Judgment be and hereby is GRANTED in favor of plaintiffs in this matter, and the power of attorney executed by Ethel M. Hammer, dated November 27, 2002, and of record in the office of the Clerk of the County Commission of Randolph County, West Virginia, in POA Book 20 at page 340, be and hereby is determined to be the only valid expression of the intent of Ethel M. Hammer as to the individual(s) she desired to act on her behalf. This Court does further ORDER that the power of attorney executed by Ethel M. Hammer dated September 22, 2008, and of record in the aforesaid Clerk's Office in POA Book 20 at page 700 be and hereby is declared to be VOID in all respects, and of no force or effect, as the guardian *ad litem* determined in the course of his investigation that Ethel M. Hammer was not competent to execute that document at the time it was purportedly prepared and executed, and further due to the fact that the power of attorney dated September 22, 2008, is not a valid expression of Mrs. Hammer's intent, as it appoints at least five individuals as her agents, any two of whom could act, but contains a provision that any three of whom would retain veto power or power to rescind any action taken by any two of the appointed agents. Such an arrangement is unworkable and unreliable to third parties who may be called upon to rely on such a document. This Court does further ORDER that the attorneys in fact appointed by the 2002 power of attorney shall have full and complete authority to control the issue of care taking and maintaining the assets of Mrs. Hammer, which would include the presence or removal of all

surveillance equipment currently located in Mrs. Hammer's residence and placed there by one or both of the defendants. This Court does further ORDER that the cross motions for sanctions filed by the parties shall be and hereby are DENIED. The Court does further find that it appears that defendants have provided competent care for Mrs. Hammer, and would urge plaintiffs to consider allowing them to remain as care-givers to Mrs. Hammer after the entry of this Order. This Court does further ORDER that the guardian *ad litem* fee in this matter shall be \$750.00, which shall be paid by each party in the amount of \$110.00 each, and further which shall be paid in full within 30 days of the entry of this Order, and any party failing to pay shall have their portion paid by the estate of Mrs. Hammer and the estate shall have a claim against the non-paying party for reimbursement. There being nothing further, this matter is to be ENDED and removed from the active docket of this Court, and the Clerk is directed to forward a certified copy of this Order to counsel of record, the guardian *ad litem*, and to the parties, at their respective addresses, and plaintiffs shall place a certified copy of record in the aforesaid Clerk's Office.

ENTER this 14th day of December, 2010.


CIRCUIT JUDGE

ENTERED

DEC 14 2010

Civil ORDER BOOK
NUMBER 87 PAGE _____
PHILIP D. RIGGLEMAN, CLERK
By: Chowell, Deputy

A TRUE COPY:
ATTEST:
PHILIP D. RIGGLEMAN
CLERK OF THE CIRCUIT COURT
BY Chowell

Wilmoth
Narrens
County Clerk
S. Hammer
L. Hammer

Prepared by:

David H. Wilmoth
Counsel for Plaintiffs
W. Va. State Bar No. 5942
P.O. Box 933
427 Kerens Ave.
Elkins, WV 26241
(304) 636-9425

CERTIFICATE OF SERVICE

I, David H. Wilmoth, counsel for Plaintiffs, Thomas M. Hammer, Robert B. Hammer, Teresa C. Hammer Lang, Mark J. Hammer and Sharon M. Helms, do hereby certify that on this date I served a true copy of **ORDER** upon Defendants, Guy St. Clair Hammer, II and Robin W. Hammer, Defendants, by depositing a true copy in the United States mail, postage prepaid, addressed to said defendants as follows:

Mr. Guy S. Hammer, II
Rt. 4 Box 274
Elkins, WV 26241

Mr. Robin W. Hammer
274 Country Club Road
Elkins, WV 26241

Dated this 6 day of December, 2010.



DAVID H. WILMOTH
W. Va. State Bar No. 5942
Counsel for Plaintiff
Post Office Box 933
427 Kerens Ave., Suite 3
Elkins, WV 26241
(304) 636-9425



TWENTIETH JUDICIAL CIRCUIT

JAYMIE GODWIN WILFONG, JUDGE

TAMATHA S. SNODGRASS, JUDICIAL SECRETARY
MARY C. WENDEKIER, LAW CLERK

RANDOLPH COUNTY COURTHOUSE
ELKINS, WEST VIRGINIA 26241
PHONE: 304-636-3815
FAX: 304-637-1124

November 22, 2010

David H. Wilmoth, Esq.
P.O. Box 933
Elkins, WV 26241

Robin W. Hammer ✓
Route 4, Box 274
Elkins, WV 26241

Guy S. Hammer, II
8902 Ewing Drive
Bethesda, MD 20817

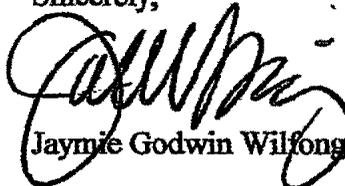
RE: Hammer v. Hammer, 10-C-103

Dear Counsel and Parties:

I have reviewed the memoranda submitted by Plaintiffs' counsel and the Defendants. My ruling stands as issued on October 27, 2010. Mr. Wilmoth, if you would please prepare an order to that effect at your earliest convenience, I will sign the same.

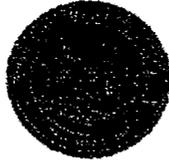
Thank you for your time and attention in this matter. If you have any questions, please contact my office.

Sincerely,



Jaymie Godwin Wilfong

JGW/mcw
CC: Circuit Clerk



TWENTIETH JUDICIAL CIRCUIT

JAYMIE GODWIN WILFONG, JUDGE

TAMATHA S. SNODGRASS, JUDICIAL SECRETARY
MARY C. WENDEKER, LAW CLERKRANDOLPH COUNTY COURTHOUSE
ELKINS, WEST VIRGINIA 26241
PHONE: 304-636-3815
FAX: 304-637-1124

October 27, 2010

David H. Wilmoth, Esq.
P.O. Box 933
Elkins, WV 26241Robin W. Hammer
Route 4, Box 274
Elkins, WV 26241Guy S. Hammer, II ✓
8902 Ewing Drive
Bethesda, MD 20817

RE: Hammer v. Hammer, 10-C-103

Dear Counsel and Parties:

As noted by Defendants at the hearing held on October 27, 2010, the declaratory judgment issue was not noticed for final decision. In light of the foregoing, the Court would like to afford the parties an opportunity to submit to the Court all arguments for final decision.

The parties may make all argument prior to final decision by November 20, 2010. Arguments should be submitted in writing, in the form of a memorandum, prior to such date. The Court will consider such arguments and issue a formal decision.

If you have any questions, please contact my office. Thank you for your time and attention in this matter.

Sincerely,

Jaymie Godwin Wilfong

JGW/mcw

CC: Circuit Clerk