

Minute Orders

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Action:

**HEARING ON ORDER TO SHOW CAUSE RE: T.R.O. (ELDER ABUSE) - SIGNED STEPHEN D. CUNNISON
08/01/2002 - 10:00 AM DEPT. 01**

PETITIONER IS/ARE TEMPORARY CTOR (PVT PROF CTOR: MELODIE Z. SCOTT)
NO PROOF OF PERSONAL SERVICE ON DEF: JANET PHELAN.
NO PROOF OF MAILING NOTICE OF OSC TO ELLEN WEINFURTNER (ATTY FOR DEF) OR GILBERT GUTIERREZ (ATTY FOR CTEE)
RESPONSE TO PETITON FOR PROTECTIVE ORDERS FILED 6/21/02
PETITIONER REQUESTS A PROTECTIVE ORDER TO RESTRAIN JANET PHELAN FROM AMALIE PHELAN
PETITIONER REQUESTS RESTRAINED PERSON STAY 100 YARDS FROM PROTECTED PERSONS: RESIDENCE, VEHICLES/PLACE
OF CAREGIVERS
PURSUANT TO (WI 15610(G)) DEFINITION OF ABUSE MEANS: PHYSICAL ABUSE, NEGLECT, INTIMIDATION,
CRUEL PUNISHMENT, FIDUCIARY ABUSE, ABANDONMENT, ISOLATION, OR OTHER TREATMENT WITH RESULTING
PHYSICAL HARM OR PAIN OR MENTAL SUFFERING.
PETITIONER ALLEGES VISITS BY DEFENDENT CAUSES CTEE GREAT STRESS AND MENTAL ANGUISH, & CAUSED DR TO
DISCONT CTEES CARE.
EXAMINED BY C. HATHAWAY ON 06/19/02
PRINT MINUTE ORDER
PRINT MINUTE ORDER
PRINT MINUTE ORDER

Jack Smith
7911 1/8 West Norton Ave.
Los Angeles, Ca 90046
Monday, October 07, 2002
Wednesday, October 16, 2002

Janet Phelan
2143 Locust Ave.
Long Beach, CA. 90806

Dear Ms. Phelan and any Others it May Concern;

I have been asked to recount the events as I witnessed them in the Riverside courthouse. To the best of my knowledge this letter will recount what I saw and heard on August 1st, 2002.

I went with Janet Phelan to witness the scheduled hearings in the Riverside Court on August 1st, 2002. Ms. Phelan and I had been informed that two hearings were going to be held that day.

The first hearing scheduled was a hearing on the permanent conservatorship of Amalie Phelan and whether Melodie Scott should be appointed as the permanent conservator. This hearing took place as scheduled.

We were also told by the clerk's office that a second hearing regarding a TR being brought against Janet Phelan was also scheduled for that same day half after the first hearing.

After a brief recess from the first hearing we waited for the second hearing to start, at some point we were informed that the second hearing was not going to take place at all that day. The bailiff asked us to leave and we did so. We were told that the court was now closed. The second hearing was not held, at least not in public so that Janet Phelan could not speak on her behalf.

I have been told that the hearing took place anyway in closed chambers away from public witnesses. I find this whole matter very strange indeed.

In closing all I know is that I was told the second hearing was scheduled. We also saw it scheduled on the computer screen at the clerk's office. I do not know why we were asked to leave, further I do not know why we were told the court was closed. Janet Phelan, should have had the right to speak in her own defense.

Sincerely
Jack Smith

Jack Smith 10-16-02

State of California
County Los Angeles
Subscribed and Sworn to before me
This 16th Day of October, 2002
Mary Public
Notary Public

*Notary seal
blacked per
legal advice*

Most the abandonment of this conservator, Amalie was accustomed to exercising her free will, going where she wished, when she wished, seeing whom she wished--in short, she was accustomed to having control over her own life. Now she lives under the thumb of a conservator and an attorney whom she regards as indifferent, even hostile, to her wishes. She has tried to dismiss the attorney but the judge ignored her letter requesting it. Now I fear Amalie is beginning to lose hope of ever being free again to make her own decisions.

The day after I saw her, I came across the following quote in a LA Times article from US Circuit Court Judge Robert M. Takasugi, whose entire tenure was part of the Japanese internment during WWII. Regarding his father who died at age 57, Takasugi said this: "I think he died, if anything, of the stress that was caused by feeling he was totally helpless." Feeling "totally helpless," I fear, is how Amalie is now feeling. And why wouldn't she?

I told Amalie I met her attorney Gutierrez at the courthouse. "I've been trying to unload him," she said. A bit later, his name came up again and she said, "I've been trying to shake him; I can't get rid of him. He's like a shark. I've never known anyone before who insisted on being employed by someone who's been trying to remove such a relationship. I have no trust in whatever position he assumes. I don't think that he has any basic interest in assisting me. I think it depends on the way he perceives it for his own interests."

I asked if she wanted Janet to try to find an attorney for her and see if she could get the judge to appoint him to replace Gutierrez. She said, "If she could, that would be wonderful."

About her condition, she said "I'm not as pulled together and as motivated as I used to be. I was once ready to jump bodies." She said she thinks she might be up to going to court on the 18th.

I then read to her the two-page description of our last conversation, page 46: "Interview with Amalie Phelan." Whenever I quoted her in the document, I paused and asked if that was correct; she said "yes" in each instance. When I finished, I handed it to her; she scanned down each page. I said, "If this is accurate would you be willing to write that on the last page?" She said, "It is accurate; I am willing." I placed my signature of the document on top of a yellow legal pad on my lap and moving the pen carefully, she wrote this at the bottom of the last page: "I have read these 2 pages and they are accurate. Amalie M. Phelan, June 28/02"

Sincerely,

Patricia Lambert

Patricia Lambert

June 25, 2002

INTERVIEW WITH AMALIE PHELAN

My name is Patricia Lavabell. I'm an old friend of the Phelan family.

Today I drove to Antaresa Villa Convalescence & Rehabilitation Care Center, at 1675 Barlow Rd., Redlands, California (telephone # 609-793-1882), and spoke at length with Amalie Phelan in her room (312A). I had called her earlier and told her I was nearby and wanted to see her, if that was okay. She said, with great animation, "Oh, that's wonderful." I arrived at 3:20 pm and left at 4:20 pm.

When I got there, she was asleep--or dozed but, fully-clothed, on top of the bedspread. I tipped over to greet her roommate with a wave, she informed me in a whisper, pointing Amalie's direction, "She never has any visitors." I whispered back, "Well, I'm here."

I started to sit down and wait for Amalie to wake up. But she opened her eyes, saw me, smiled, and sat right up. We hugged and I sat down on her bed. I was surprised at how unchanged and how well she looked: Her hair appeared recently done, her color looked good, and her eyes were clear, wide and alert. She was dressed nicely in pants and a top and a great pair of slacks, comfortable-looking shoes, which I commented on. During our conversation, it was obvious to me that Amalie is beginning to forget things; her short-term memory is lagging. She is quite aware of it and told me so.

I showed her a picture of me (taken during an interview conducted when the Howard Hughes book was a bestseller, a print of which once hung in her house). She handled the photograph, smiling, and I said I was going to get her a copy of it to have in her room. "Oh," she said, "That would be so nice."

Then I asked her if she had ever seen a copy of the restraining order against Janet or the Declaration supporting it, or if anyone had ever read that Declaration to her over the telephone. She replied "No."

I told her I was going to be at the hearing tomorrow, and I wanted to try and give her a voice in the courtroom, if I could. She said "wonderful."

I asked her if she could read okay. She said she could. I asked if she could read small print. She said she thought so. I told her I wanted to give her a two-page document to read and after she read it I wanted her to comment on the contents and I would write down what she said and try to get her remarks entered into the record tomorrow. I said the document was the Declaration of Melody Scott in support of the restraining order against Janet. I asked if she was willing to do this. She said "I am."

I handed the Declaration to her, and then I sat at the end of the bed watching her reaction. In the course of reading it, she gasped several times; twice she stopped and looked at me. In the first instance, she said: "This makes me

Cont: B2460

fighting sand." The second time, she just shook her head from side to side. When she finished, I asked her if there was anything she wanted to tell the court about what she had read. She thought awhile, and then she said the following, speaking softly, and choosing her words with the same care and precision that I remembered from earlier times.

"It is untrue that Janet causes me distress or confusion. I have no trouble interacting with her, and over the years that we have discussed things, I have learned to trust her ideas, her views, and her behavior. I feel that she is totally dedicated to my well-being and welfare. Assertions to the contrary are utterly false.

"I really can't bear to think of having any impediment to Janet's relationship with me. We have been close for many years and I receive so much emotional support from her that I would really suffer without it."

I reminded her that she once told me that she spoke to Janet every day on the telephone, and I wondered if that was still the case. Anette replied, "Yes, it was and generally the case that Janet touched base with me on a daily basis, until recently of course."

I asked if there was anything else she wanted to tell the Court. She reflected a bit once more, and then she said:

"I want to tell the Court that I don't want anyone, Scott interfering in my affairs (long pause) That's so bold faced and simple, they should be able to understand that. I wish the Court would not make a mistake or make any impediment to my ongoing relationship with Janet. Most of all, I want to make it clear that I don't want Malady Scott to have any influence or control over my life."

I asked if she thought her attorney, Mr. Gaddis, should have shown her the Declaration she had just read. She replied, "I discussed him." I said, no he is still your attorney. She said, "I have tried to contact him. Why won't the judge do it?"

Before I left, Anette hugged me warmly, and said, "I thank you so much for your effort."

I promised I would see her again.

Signed: Patricia Lambert
Patricia Lambert
6720 Owensmouth Ave.
Woodland Hills, CA 91367

*I have read these
2 pages and they are
accurate.*
Jonathan M. Madson
June 2 8/02

Date: June 23, 2002

OFFICE OF JEFFREY P. LUSTMAN
2336 Santa Monica Boulevard, #437
Los Angeles, California 90046

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October 5, 2002

J. David Horspool, Esquire
25757 Redlands Blvd.
Redlands, CA 92373

Melodie Scott
25 E. State St.
Redlands, CA 92373

Gilbert Gutierrez, Esquire
4110 Brockton
Riverside, CA 92501

Mailing Address:
P.O. Box 34653, Los Angeles, CA 90035

State Bar No. 18114

In reply refer to:

The Honorable Stephen D. Crimian
Riverside Superior Court - Dept. 1
4050 Main St.
Riverside, CA 92501

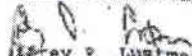
The Honorable Christian Thierbaek
Riverside Superior Court
4050 Main St.
Riverside, CA 92501

Re: Conservatorship of Analia Phelan
Case number 080974

To all above parties:

I have been contacted by Janet Phelan, daughter of Analia Phelan, regarding the above conservatorship case. In speaking with Janet, it appears that her mother's right to jury trial under section 1463 of the Probate Code has not been properly addressed. Both Janet and I have legitimate concern about whether there has been a failure to address both the legal and medical aspects about Analia's case. Analia Phelan may currently be taking medication that she does not need, and not getting medical attention that she does need.

A copy of Analia's demand for jury trial is attached. I am not formally presenting her, and you may certainly get her consent before responding to me, however her demand for jury trial is now in effect regardless. Please give her this trial. If you are refusing to honor the Probate Code, please get her permission for any of you to explain such refusal. Additionally, I would appreciate it if you could get her consent to let me know either way what your positions are. Thank you.


Jeffrey P. Lustman, Esquire
OFFICE OF JEFFREY P. LUSTMAN

Enclosures: jury trial demand
Probate Code (1/18/02)

cc: Janet Phelan

Declaration of Analle Phelan

Re: Conservatorship of Analle Phelan
Case number 080974

To all interested parties:

I am hereby requesting a trial by jury with regard to the above case. This Declaration is to be considered a demand in accordance with section 1863 of the Probate Code. A copy of that code section is attached.

Analle Phelan

Analle Phelan

10-25-74


date

ATTACHMENT 8
ORDER TO SHOW CAUSE
AND TEMPORARY RESTRAINING ORDER

The restrained person shall not contact the care facility where the protected person is residing, nor the protect person's physicians, nor the Conservator of the protected person for the purpose of harassing. The restrained person may only contact the Conservator of the protected person and inquire as to the protected person's health only.

Further, the restrained person shall not ^{make} ~~contact~~ the following ~~agencies for the purpose of making~~ false reports against the facility wherein the protected person is residing or against the protected person's physician; ^{to any of the following:} Federal Bureau of Investigation, Central Intelligent Agency, the Department of Justice, the local Police Department where the protected person resides, the Adult Protective Services located in the County where the protected person resides, the Ombudsman's Program where the protected person resides, the American Medical Association, and any and all Licensing Agencies for care facilities.

DATE: Oct 8, 2002



JUDGE OF THE SUPERIOR COURT