

IN THE PROBATE COURT OF SHELBY COUNTY, TENNESSEE

IN THE MATTER OF:

**THE CONSERVATORSHIP OF
ARCHIE DEWAYNE FOSTER,**

**NO: PR-26918
Division I**

Respondent.

REPORT AND RECOMMENDATION OF THE GUARDIAN AD LITEM

TO THE HONORABLE JUDGE KATHLEEN N. GOMES OF THE PROBATE COURT OF SHELBY COUNTY, TENNESSEE:

COMES NOW your Guardian ad Litem, Lynn W. Thompson ("Guardian"), and files this Report and Recommendation and would respectfully show and state unto this Court as follows:

Your Guardian was appointed on August 16, 2023, by the Court to impartially investigate all facts and circumstances concerning the Petition for Appointment of Conservator of the Person and Estate in cause No. PR-26918 in Division I of the Probate Court of Shelby County, Tennessee, and to make her report to this Court. Your Guardian was appointed to serve as an agent of the Court and not to serve as an advocate for the Respondent or any other party.

Your Guardian neither admits, nor denies, the statements and allegations contained in the Petition or Counter Petition but submits the best interests of Respondent to the protection of this Court.

PROCEDURAL HISTORY

1. On August 15, 2023, the Petition for Appointment of Conservator and for Temporary Injunction (“Petition”) was filed by Gene Neil Foster, brother of the Respondent, Archie Dewayne Foster (Respondent”). The Petition asserts that the Respondent was an individual who by reason of advanced age and mental infirmity was unable to manage his own affairs and met the criteria of a “disabled person” as defined by Tenn. Code Ann. § 34-11-101(a). The Petition seeks the appointment of a conservator of the person and estate for the Respondent.
2. The Petition stated that the Respondent had been recently unduly influenced to transfer his real property to a caregiver as well as a vehicle, and also sought injunctive relief enjoining the transfer of any additional property.
3. Notice of initial Hearing and a copy of the Petition were properly served on the Respondent; Morris Foster, brother of the Respondent; Ebony Sutton, the Respondent’s caregiver; and the Quince Nursing and Rehabilitation facility through the director, Julie Cottrell. Affidavits of Service of Process were filed with the Court for all served individuals and the Quince Nursing and Rehabilitation facility.
4. The Guardian ad Litem was appointed by Court Order on August 16, 2023, and at that time, the Court held the request for injunctive relief in abeyance pending an initial investigation by the Guardian ad Litem and report at the scheduled August 31 hearing.
5. On August 29, 2023, the Guardian ad Litem filed a preliminary Report and a Petition for Injunctive Relief. The matter was set for hearing on August 31, 2023, and Ebony Sutton was served with notice of the August 31, 2023 hearing.

6. Also on August 29, 2023, an order was entered by the Court requiring that the Petitioner, Gene Foster and his counsel, Gary Jewell, be permitted to visit that Respondent at the Quince Nursing and Rehabilitation facility.

7. On August 30, 2023, a Notice of Filing Physicians Affidavit, and the Affidavit of Dr. Mohamad I. Abutineh was filed with the Court, and copies provided to counsel and Ebony Sutton.

8. A hearing was held in this matter on August 31, 2023, and present were the Guardian ad Litem, the Petitioner, Gene Foster and his counsel, and Ebony Sutton and her counsel. Upon the Guardian ad Litem's Preliminary Report and Petition for Injunctive Relief, statements of Gary Jewell, counsel for the Petitioner, Gene Foster, Carlee McCullough, counsel for Ebony Sutton, and the Guardian ad Litem, the Sworn Medical Report of Dr. Mohamad I. Abutineh, M. D, the financial records from First Horizon Bank the Court entered an Order Appointing a Temporary Conservator of the Person and Temporary Injunction on September 1, 2023, finding that there exists a significant risk of additional and immediate irreparable harm, loss and damage to Archie DeWayne Foster's person and property. The Court found that it was necessary and in the best interest of the Respondent that a Temporary Conservator of the Person be appointed and that, pursuant to Rule 65.04 of the Tennessee Rules of Civil Procedure a Temporary Injunction be entered to protect the person and property of the Respondent pending final resolution of the Petition to Appoint Conservator for Archie Dewayne Foster.

9. The Petitioner, Gene Foster, brother of the Respondent, was appointed as Temporary Conservator of the Person of the Respondent and declared that all existing powers of attorney executed by the Respondent were void pending further Order of the Court. The Order specifically granted to Gene Foster the authority to apply for benefits, public and private, for

which the Respondent may be eligible, including but not limited to the application for long-term care under the TennCare/Medicare program, which shall include the authority to establish a Qualified Income Trust or any other financial payment arrangement necessary to enable the financial structure required for TennCare/Medicare eligibility, and to acquire any of the Respondent's financial records necessary to provide to TennCare/Medicare and have the Respondents retirement benefits re-directed to a Qualified Income Trust if required by TennCare/Medicare in order to receive long-term care benefits.

10. The Injunction prohibited Ebony Sutton from removing any funds from the Respondent's bank accounts, selling any property held in the Respondent's name, or in her own name that was originally owned by the Respondent, purchased by the Respondent, or transferred to Ebony Sutton by the Respondent. Additionally, the Court required that Ebony Sutton and her family move out of the Respondent's home within fourteen (14) days and that no property of the Respondent's be removed from the Home. The order also directed that Ebony Sutton turn over the Respondent's wallet, check book, driver's license, credit cards and keys to vehicles to the Guardian ad Litem; and, that Attorney Carlee McCullough, with the assistance of her client, Ebony Sutton, prepare an accounting of funds withdrawn from the Respondent's First Horizon accounts from August of 2022 through present.

11. The Temporary Injunction enjoined First Horizon Bank from disbursing any assets held by their organization owned in whole or in part by Archie Foster pending further order of this Court, except those automatic disbursements that are necessary to protect the person or property of Archie Foster as identified by the Guardian ad Litem. And finally, Quince Nursing and Rehabilitation Center was enjoined from releasing Archie Foster from its care

pending further order of this Court, and specifically prohibits that Archie Foster be released to the care of Ebony Sutton.

12. On September 15, upon oral motion of the Guardian ad Litem, the Court entered an order granting the Guardian ad Litem authority to change the method of payment of the Respondent's utility and insurance bills to direct withdrawal from Respondent's bank account pending final resolution of the Petition to Appoint Conservator.

HISTORY

Archie Dewayne Foster was born on November 20, 1933, and will be 90 years old this year. He was a truck driver for many years and receives a pension from the Teamster's Union. He was married to Lajune Foster, and together they moved to Memphis from Oklahoma and purchased a home together in 1975 at 2800 Curtis St., Memphis, TN 38118. Lajune died on July 28, 1999. Respondent then married to Mary Elizabeth Foster, and they remained married until her death in 2016. In 2010, the Respondent executed a Warranty Deed transferring the real property that he and his first wife purchased, to himself and Mary Elizabeth Foster. He has no known children, living or deceased. The Respondent has two brothers, the Petitioner Gene Neil Foster of Muskogee Oklahoma, who is 77 years old, and Morris Foster, who is 93 years of age and resides in Fort Worth, Texas.

For all practical purposes, it appears that Respondent worked hard and lived a comfortable life. He has no known records of bankruptcy, judgments or liens, criminal arrest or foreclosures. He has a penchant for Cadillacs and owned several during his life.

The Respondent lived independently after Mary Elizabeth's death in 2016, and was able to take care of his medical and financial matters until approximately 2021. The Respondent has

been hospitalized approximately five (5) times since early 2021 with reported conditions of prostate cancer, arthritis, depression, hypertension, acute kidney injury, and back surgery.

In 2022, following a hospitalization, the son of a good friend of the Respondent's, Preston Roberts (whom the Respondent call his nephew) came to Memphis from New Mexico to assist with the Respondent's care. During his time in Memphis, Mr. Roberts allegedly obtained a power of attorney for the Respondent's healthcare and finances and was the sole beneficiary under a Will signed by the Respondent at that time. No record of these documents has been located. It is believed that Mr. Roberts met Ebony Sutton, who at the time was a housekeeper at an East Memphis hotel, and engaged her to work as a caretaker for the Respondent. Mr. Roberts then returned to New Mexico, and according to the Respondent, took with him some of Respondent's assets in his bank account and quite a few of the Respondent's firearms. Ebony Sutton initially began working half days, four or five days a week for the Respondent. By the end of 2023, Ebony Sutton was working six days a week, seven or eight hours a day, for the Respondent, and in early 2023, Ebony Sutton and five of her children moved into the Respondent's home.

As was reported in the Petition for Conservatorship, on October 10, 2022, the Respondent allegedly executed a Quit Claim Deed, whereby he transferred to "Ebony Sutton all joint tenancy right, title and interest in" the real property located at the real property at 2800 Curtis St., Memphis, Tennessee. Quit Claim Deed attached as **Exhibit A.1**

¹ The Quit Claim Deed was prepared by Shelia Gray, who also served as the notary. The Guardian ad Litem attempted to contact Shelia Gray, but after an initial phone conference, Ms. Gray would not take the GAL's calls. According to a background search, Ms. Gray is a licensed real estate agent, certified Notary and Signing Agent for Harris Realty, has filed bankruptcy 5 times, been foreclosed upon 4 times, and has 5 outstanding judgment liens mostly from former landlords or HOA associations. Upon information and belief, Ebony Sutton worked for Shelia Gray at one time.

On January 4, 2023, the Respondent allegedly executed a General Durable Power of Attorney Effective Upon Execution, whereby he appointed Ebony Sutton as his attorney-in fact, and Tamica Barrett as the successor agent. This General Durable Power of Attorney revoked all previous powers of attorney, granted the agent control over all the Respondent's assets and real property, and access and authority to remove any property from his safety deposit box. January 4, 2023 General Durable Power of Attorney attached as **Exhibit B.**²

Respondent purchased a Nissan Rogue for Ebony Sutton's use in 2022, after her son wrecked her car. The Respondent subsequently financed the purchase of a second vehicle, a 2020 Chevrolet Camaro for Ebony Sutton in March of 2023. Financing contract with First South Credit Union attached as **Exhibit C.**³

On January 13, 2023, Ebony Sutton was added as an additional signer/joint tenants with right of survivorship (neither box was checked on the form) the Respondent's two checking accounts at First Horizon. January 13, 2023 signature cards attached as **Exhibit D.**⁴ She was not given access to the Respondent's safety deposit box, and the last access of the safety deposit box prior to the inventory taken by the Guardian ad Litem was by the Respondent on July 6, 2022. According to the Respondent that is when he removed \$20,000 from his safety deposit box to buy the Nissan Rogue for Ms. Sutton to use.

² The General Durable Power of Attorney was also prepared and notarized by Shelia Gray.

³ Financing documents provided by Laren Quinley at First South Financial Credit Union. Payments are not three months behind on the Camaro and it was listed for repossession, but First South has put that on hold pending the conservatorship proceedings. The Camaro is parked in the garage at the Respondent's home, as is his Cadillac.

⁴ Creighton Boyd, an officer at First Horizon Bank, Parkway Village Branch, provided the Respondent's bank records and access and assistance in taking the inventory of the contents of the Respondent's safety deposit box.

The Petitioner and brother of the Respondent, Gene Foster, visited the Respondent several times in 2022, and again in 2023, and increasingly became concerned with the control that Ebony Sutton had taken over the Respondent's person and property, which lead to the filing of the Petition for Conservatorship filed on August 15, 2023.

1. **CONSULTATION WITH THE RESPONDENT, ARCHIE DEWAYNE FOSTER.**

I met with the Respondent on five occasions, August 21 23, 25, and 28, and again on September 22 at the Quince Nursing and Rehabilitation Center. At the first meeting with Respondent, I served the Respondent with a copy of the Petition for Conservatorship, and, in accordance with Tenn. Code Ann. § 34-1-107, explained to the Respondent the substance of the Petition for Conservatorship, the nature of the Conservatorship proceedings; the identity of the proposed conservator, and, his right to oppose the Petition, as well as advised the Respondent of his rights as set forth in Tenn. Code Ann. § 34-3-106, more specifically:

- (1) On demand by respondent or the guardian ad litem, a hearing on the issue of disability;
- (2) Present evidence, including testimony or other evidence from a physician, psychologist or senior psychological examiner of the respondent's choosing, and confront, as a cross-examiner, witnesses;
- (3) Appeal the final decision on the petition with the assistance of an attorney ad litem or adversary counsel;
- (4) Attend any hearing;
- (5) Have an attorney ad litem appointed to advocate the interests of the respondent; and
- (6) Request a protective order placing under seal the respondent's health and financial information, including reports provided under § 34-3-105(c).

At our initial meeting, the Respondent was medically in a very compromised state. It was clear that the Respondent had a limited understanding of the legal parameters of the Conservatorship proceedings, but he stated that he did not want to hire an attorney, and while he had problems with his memory sometimes, he could take care of himself. The Respondent stated that he did not need Gene's (the Petitioner) help.

On subsequent visits, as the Respondent's medical condition improved, he was able to recall a general history of his life, the names of his wives and relatives, history of work and growing up in Oklahoma. He could not recall the amount of his income but knew that he had a pension from the Teamster's Union, income from some energy company and Social Security. The Respondent stated that his brother, Gene Foster, was his power of attorney, not Ebony Sutton.

The Respondent could not recall that he had executed a power of attorney to Ebony Sutton, had added Ebony Sutton as a signatory on his bank accounts or that he had executed a Quit Claim Deed transferring any interest in his home to Ebony Sutton. He did state that Ebony was always putting things in front of him to sign, but he was not sure what they were.

The Respondent did say that Ebony Sutton took good care of him, and while she never ask for him to pay for things for her, like the two cars he had purchased for her use, she would lay out the situation whereby she would not be able to continue to work for him without reliable transportation, or to purchase food and medical supplies for him without being able to use his credit cards. The Respondent stated that he let Ebony Sutton and her children move into his house because Ms. Sutton told him that she could not continue to take care of her children and take care of him 8 hours a day, seven days a week. The Respondent stated that he did not have

anyone else that he could rely on other than Ms. Sutton and he would be left to die if she "quit on him."

In my final meeting with the Respondent, he asked how much money Ebony Sutton had taken from him. When I informed him that he had less than \$1,000.00 left in his bank accounts, he asked me if he could hire me to "go after her and get every penny of his money back." He also stated that he wanted to get his red Cadillac back that Ms. Sutton sold without his knowledge or permission. He said that he was not able to take care of himself, that all of his friends had died, and his family lived far away. He said because of that, he had been forced to rely on some unreliable people and it cost him. The Respondent said that he was getting really good care at the Quince Nursing and Rehabilitation Center, and wanted to stay there and sell his house if he could. When asked whether he wanted to go back to Oklahoma, he said he didn't think so.

When asked about the nomination of a person to make medical and financial decisions for him if he was not able, the Respondent said as long as he could speak, he wanted to make his own medical decisions, but he was okay with Gene to do that as long as he promised not to prolong his life artificially. The Respondent thought it might be good to have a professional handle his money because he could not get to the bank anymore. He said that he felt that Mr. Boyd at First Horizon was a trustworthy person who he could count on to protect him.

2. **CONSULTATION WITH EBONY SUTTON.**

Your Guardian ad Litem met with Ebony Foster at the office of her attorney, Carlee McCullough, on September 21, 2023. I was informed that Ebony Sutton will not be filing a response to the Petition for Conservatorship of Archie D. Foster and does not object or oppose the appointment of a conservator.

Ms. Sutton said that she was originally engaged by Preston Roberts to assist in the clean up of the Respondent's home before the Respondent came home from a hospitalization and stay at the Signature Rehabilitation facility in March of 2022. After the Respondent returned home from rehabilitation, Ms. Sutton stated that Preston Roberts told her that the Respondent needed home health care assistance because he still had a feeding tube in place that would need to be cleaned regularly. Ms. Sutton was engaged at a rate of \$25 per hour, but soon after, Preston Roberts terminated her services. Eventually, after Preston Roberts allegedly wrecked the Respondent's red Cadillac, he left town and left the Respondent unattended. Ms. Sutton then began working for the Respondent six days a week. Ms. Sutton said that she interacted with the Respondent's brother several times during his visits in 2022, but that they did not get along and she tried to stay away when Gene was in town. Ms. Sutton said it was the Respondent's idea for her to get a power of attorney over him so that she could take care of things if he was hospitalized again. Ms. Sutton stated that the power of attorney granted to Ms. Sutton by the Respondent was prepared by Shelia Gray and that the Respondent had met Shelia Gray when Preston Roberts contacted her about selling the Respondent's home. Ms. Sutton denied having worked for Ms. Gray or knowing her prior to her coming to the residence at the Respondent's request.

The Respondent was hospitalized in January of 2023, and upon his return Ms. Sutton stated she moved into the Respondent's home with her family at his request so she could better take care of him. She stated that it was the Respondent's idea to give her the home because he wanted her to be comfortable and to be able to properly take care of her children.

Ms. Sutton stated that the Respondent wanted to put her on his bank accounts so that Ms. Sutton could pay herself, so she went to the bank and got the papers (signature cards) and brought them back to the house and the Respondent signed them. She stated similarly that the Respondent wanted to change his Will, and so she helped him call attorney Ryan Rich and order a new will. Ms. Sutton said she picked up the Last Will and Testament from Ryan Rich's office and the Respondent signed it at his home. Ms. Sutton could not recall if Shelia Gray was the notary of the new Will, or if she had a copy of it.

Ms. Sutton said the Respondent gave her the red Cadillac, but it was too big for her, and she sold it, then the Respondent got a loan and bought her the Camero. She said the Respondent had given her \$22,000 to buy a Nissan Rouge in 2022, but that her son was driving it and she needed another car.

As to the removal of furnishings and a safe from the Respondent's home after she was instructed to move out by the Court, Ms. Sutton stated that she only took furniture that was hers, and that the Respondent's furniture remained in the house or was placed in the shed next to the house. She stated she did not remove the safe.

3. **REVIEW OF MEDICAL RECORDS.** Your Guardian ad Litem has reviewed the admission and treatment records from the Respondents hospitalization at Baptist Hospital East beginning on May 17, 2023, when he was admitted after Ebony Sutton took him to the

emergency room with concerns regarding the Respondent's mental status, decrease in mental and physical state, period of delirium and refusing to eat or drink for an extended period of time. The Respondent was treated at Baptist East for pneumonia, an infected open wound from tubing from a prior penile implant, anemia, hypertension and altered mental state. The Respondent's medical history includes diagnosis and treatment for prostate cancer, arthritis, depression, hypertension, acute kidney injury, and prior back surgery.

The Respondent was transferred to the Quince Nursing and Rehabilitation Center on May 30, 2023, for Physical, Speech and Language, and Occupational therapy. According to the Affidavit and medical records of Dr. Mohamad I. Abutineh, M. D, the Respondent suffers from a disability that renders him not fully capable of managing his healthcare, his finances or his property, and is susceptible to the influence of others, more likely to come under the dominion and control of others and more susceptible to extortion, and deception. The records reflect that the Respondent requires extensive assistance with ADL's, has periods of significant confusion, and long-term placement is likely recommended due to the level of care required. Ebony Sutton completed a "Scope of Treatment" form for the Respondent regarding cardiopulmonary resuscitation and artificially administered nutrition, a copy of which is attached as **Exhibit E**. Per the statements communicated to the GAL by the Respondent that he did not wish to be resuscitated, this form likely needs to be revised by the party given authority by the Court, or by the Respondent himself. Additional medical records will be provided to the Court in-camera.

4. **INVESTIGATION OF RESPONDENT'S ASSETS.**

Income:

A. Social Security	\$1,673.00
B. Fidelity Investment	\$ 246.53
C. Teamsters Annuity	\$ 349.50
D. Central States (retirement?)	<u>\$1,223.30</u>
	\$3,492.33

NOTE: Because the Respondent's income exceeds the maximum allowed under TennCare for long-term nursing home treatment, the Respondent, or Conservator will be required to establish a Qualified Income Trust and restricted payment directly to the nursing home to qualify for these benefits.

Inventory:

A. First Horizon Acct. # XXXX6827 in name of Archie Foster and Ebony Sutton	Balance 8/31/23: \$463.53
B. First Horizon Acct. # XXXX8996 in name of Archie Foster and Ebony Sutton	Balance 9/14/23: \$998.56
C. Safety Deposit Box (cash)	\$19,622.00
D. Cadillac – silver parked at residence.	Unknown
E. Nissan Rogue (in possession of Ebony Sutton Titled in the names of Archie Foster and Ebony Sutton, currently in the possession of Ebony Sutton	Unknown
F. Chevrolet Camero (likely to be repossessed)	
G. Residence, 2800 Curtis St., Memphis, TN Shelby County Assessor's appraised value No mortgage	\$131.500

Your Guardian ad Litem has reviewed the bank accounts (2) of the Respondent from August 2022 through August 2023 and determined that approximately \$140,500 has been paid directly to, or for the benefit of, Ebony Sutton during this twelve-month period.

	Beginning balance <u>August 10, 2022</u>	Ending balance <u>August 9, 2023</u>	Estimated Income for <u>12 months</u>
First Horizon Acct. # XXXX6827	\$93,834.71	\$463.53	\$ 6,500.00
First Horizon Acct. # XXXX8996	\$39,424.98	\$998.56	\$77,880.00

Bank statements have been provided to all counsel in this matter and can be provided to the Court in camera.

The Court instructed counsel for Ebony Sutton to provide an accounting of the funds spent from the accounts of the Respondent, but to date, it has not been filed or received by the Guardian.

Estate Planning Documents:

- A. As previously mentioned, in early 2022, Preston Roberts supposedly obtained a power of attorney for the Respondent's healthcare and finances and was the sole beneficiary under a Will signed by the Respondent at that time. No record of these documents has been located.
- B. On July 21, 2022, the Respondent executed estate planning documents prepared by Matthew Rhoads at the Bailey Law Firm, copies of which are attached as **Exhibit F**. The Durable General Power of Attorney appointed the Respondent's brother, Eugene Neil Foster, of Muskogee, Oklahoma as the agent for the Respondent, and he was not available, then the Respondent's sister-in-law and

wife of Eugene Foster, Patricia Ann Foster, was nominated as successor. The Durable Power of Attorney became effective upon execution. In the Durable Power of Attorney there is a provision that states: in part, as follows:

Adult Guardianship of Conservatorship

In the event of the Principal's subsequent disability, incapacity or incompetency, the Principal specifically requests that no conservatorship of adult guardianship proceedings be commenced against the Principal.

If any conservatorship or adult guardianship proceedings are commenced against the Principal in any court, then the Principal authorized, directs and instructs the Attorney(s)-In-Fact, or the Conservatorship Defender, to petition the Court for the appointment of an attorney ad litem so that the attorney ad litem shall have the legal right to represent the Principal in the proceedings and to defend against and resist the appointment of a conservator or guardian of the Principal's person and/or property. The Conservatorship Defender shall be the attorney-at-law who prepared this Power of Attorney. The Attorney ad litem shall be the Conservatorship Defender, another attorney-at-law selected by the Conservatorship Defender or, if the Conservatorship Defender declines to serve as the attorney ad litem or fails to select another attorney at law to serve as attorney ad litem, another attorney-at-law selected by the Attorney(s)-In-Fact. The Attorney(s)-in-Fact are authorized to pay the fees of the Conservatorship Defender and the attorney ad litem from the Principal's assets and income.

Nevertheless, if any court appoints a conservator or adult guardian of the Principal's person and/or property, then the Principal specifically directs that the Attorney(s)-In-Fact be appointed and that any bond, accounting, appraisal or inventory requirement be waived as to the Attorney(s)-In-Fact.

- C. On January 4, 2023, the Respondent executed a General Durable Power of Attorney Effective Upon Execution to Ebony Sutton, which is attached as **Exhibit G**. This power of attorney was prepared and notarized by Shelia Gray. This document also has a reference to the appointment of a guardian or conservator and states that "in the

event that a court decides that it is necessary to appointed guardian or conservator, I hereby nominate Ebony Sutton.”

- D. On January 30, 2023, attorney Ryan Rich prepared two versions of a Last Will and Testament after speaking to Ebony Sutton and the Respondent over the phone, attached with a letter from Ryan Rich to the Respondent at **Exhibit H**. These documents were picked up from the office of Ryan Rich by Ebony Sutton. According to Ebony Sutton, the Respondent executed one of the two Last Will and Testaments, but she did not have a copy of the executed document.

CONCLUSIONS AND RECOMMENDATIONS.

From the medical records of Baptist Hospital and Quince Nursing and Rehabilitation, as well as from your Guardian’s personal observations, it is clear that Archie Dewayne Foster suffers from memory loss and dementia. Due to his impaired cognitive ability and susceptibility to the undue influence of others, Mr. Foster is not able to fully manage his medical needs, or manage his property, and requires the assistance of the Court through the appointment of a Conservator to protect his person and property.

A. Recommendations pursuant to T.C.A. § 34-1-107(d)(2)(D).

Pursuant to T.C.A. 34-3-103, the priority of persons to be considered for appointment, and the persons to be considered, in the order listed, are 1) the person or persons designated in a *writing* signed by the alleged disabled person; 2) the spouse of the disabled person; 3) any child of the disabled person; 4) closest relatives of the disabled person; 5) a district public guardian, and 6) other person or persons.

As previously stated in this report, and as evidenced by **Exhibits F and G**, those previously designated in a writing signed by the Respondent, both the Petitioner, Gene Foster, and Ebony Sutton have been designated in a writing signed by the Respondent. Due to the alleged misuse of Respondent's funds by Ebony Sutton, your Guardian believes she should be removed from consideration and the Petition appointed as Conservator of the Person of the Respondent. Because Gene Foster is not a resident of the State of Tennessee, it is recommended that an independent third party, potentially attorney Gary Jewell, be appointed as Conservator of the Estate.

B. Further Recommendations.

Your Guardian does not recommend that the Respondent attend the hearing in this matter.

3. That if the Court decides that the appointment of a Conservator of the Estate is warranted for the Respondent, that the Conservator of the Estate be required to submit a property management plan within the next forty-five (45) days.


4. That if the Court decides that the appointment of a Conservator of the Person is warranted for the Respondent, that a personal care plan be submitted within forty-five (45) days, and that the Petitioner, Glenna Morris be consulted, if feasible, in the planning.

Your Guardian ad Litem hereby expresses her appreciation to this Court for the opportunity to lend her services to the Court and the Respondent in this matter, and stands ready to answer any further questions the Court may have regarding the Petition or her Report, and Recommendation. As stated herein, your Guardian ad Litem defers to the discretion of the Court in all matters covered herein, and will be present for the hearing regarding the Petition for

Conservatorship in this Court on September 27, 2023, at 9:00 a.m., to answer any questions the Court has regarding the investigation in this case.

DATED this the 25th day of September, 2023.

Respectfully submitted,



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Guardian ad Litem

CERTIFICATE OF SERVICE

The undersigned hereby certifies that upon the receipt of a file-stamped copy of the foregoing from the Probate Clerk, a copy shall be sent via email transmission to:

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(901) 685-2408
Counsel for Gene Foster

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Lynn W. Thompson