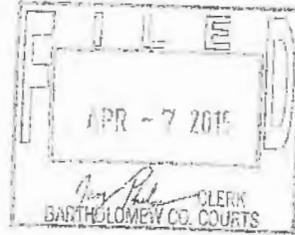


STATE OF INDIANA) IN THE BARTHOLOMEW CIRCUIT COURT
) SS:
COUNTY OF BARTHOLOMEW) CAUSE NO.: 03C01-1406-ES-2796

IN THE MATTER OF THE SUPERVISED
ESTATE OF CARY A. OWSLEY,
DECEASED.

LISA A. OWSLEY,
Personal Representative.

CHERYL OWSLEY JACKSON,
"Petitioner".



ORDER

MS. JACKSON'S STANDING TO BRING HER PETITION

1. The underlying disputes revolve around the death of Cary A. Owsley, who died of a single gunshot wound to his chest on April 7, 2013. Cary was married to Lisa A. Owsley at the time of his death. They had been married since 2010, but had no children together. Cary has one surviving son, Logan A. Owsley, who is an adult. His sister, Cheryl Owsley Jackson, also survives him, as does his mother, Rosemary Pennybaker.

2. Prior to this estate being opened in June of 2014, there have been two other cases dealing with the death of Cary Owsley. Both were in this Court and have been closed. Neither of the parties has asked the Court to take judicial notice of those cases. The first dealt with the exhumation of the body of Cary Owsley. The exhumation and autopsy of Cary Owsley was ordered by this Court. The autopsy took place in March of 2014 (as was noted in the expedited hearing in this case). The second case was when Ms. Jackson requested that she be appointed Personal Representative in an *Unsupervised Estate* for Cary Owsley. This request was denied twice because she had not followed the requirements of Indiana Law concerning her requested

appointment. These requirements were specifically noted in the Court's order denying her request.

3. The current case was begun when Mrs. Owsley filed a request, as the widow of Cary Owsley, to act as personal representative of Cary Owsley's intestate estate in a *Supervised Estate*. This petition was granted on June 27, 2014.

4. On March 9, 2015, Ms. Jackson filed in this case a Verified Petition to Remove Personal Representative or In the Alternative, Appoint a Special Administrator and Request For Expedited Hearing Before April 6, 2015. Ms. Jackson is not a party to this case and did not show in her Petition that she has standing to be added as a party in this case. Ms. Jackson did not file a Petition to Intervene seeking to be made a party in this action under Indiana Trial Rule 24.

Trial Rule 24(B) and 24(C) state:

“24(B) Upon timely filing of his motion anyone may be permitted to intervene in an action:

- (1) When a statute confers a conditional right to intervene; or
- (2) When an applicant's claim or defense and the main action have a question of law or fact in common. ...

24(C) A person desiring to intervene **shall** serve a motion to intervene upon the parties as provided in Rule 5. The motion **shall** state the grounds therefore and set forth or include by reference the claim, defense or matter for which intervention is sought. ... The court's determination upon a motion to intervene shall be interlocutory. ...” (emphasis added)

Since Ms. Jackson did not file a Motion to Intervene, she does not have standing to proceed in this cause as a party. Therefore, her Petititon is denied at this time. If she wishes to file a Petition to Intervene and follow the Indiana Trial Rules, then the Court will consider such a motion.

**COURT'S ADDITIONAL CONCERNS REGARDING THE PETITION
FILED BY MS. JACKSON**

The Court notes the following further matters as it relates to Ms. Jackson's requests in her Verified Petition to Remove Personal Representative, or in the Alternative, Appoint a Special Administrator and Request For Expedited Hearing Before April 6, 2015 as well as other matters brought up at the hearing on her Petition.

5. In Paragraph 4 of her Petition, Ms. Jackson indicates: "Andre Logan Owsley ("Logan") is Cary's one and only child... It should be noted that both Ms. Jackson, as Logan's aunt in her original petitions to be appointed as Personal Representative for Cary Owsley and in this Petition to Remove Mrs. Owsley as Personal Representative; and Mrs. Owsley in her Petition to be Appointed Personal Representative have listed Cary's son as Andre Logan ("Logan") Owsley. Cary Owsley's son is actually named Logan Andre Owsley. He so testified at the hearing. Even Logan's attorney on April 3, 2015 just prior to the hearing, in filing his Appearance on behalf of Logan, lists Logan as Andre Logan Owsley.

6. The other aspect of Paragraph 4 in Ms. Jackson's Petition indicates that Logan "*consents and joins in this Petition.*" However, nowhere attached to Ms. Jackson's petition has Logan executed a consent to Ms. Jackson's Petition. Trent McCain filed this Petition on behalf of Ms. Jackson and entered his Appearance on behalf of Ms. Jackson *only*. He did not enter an Appearance on behalf of Logan. There has been no consent filed by Logan and no Power of Attorney filed giving Ms. Jackson authority on behalf of Logan.

7. At the hearing on April 3, 2015 concerning Ms. Jackson's Petition in this case, Exhibit B was introduced. On March 13, 2014, Ms. Jackson filed a Petition For Appointment of a Personal Representative and For Unsupervised Administration. Therein, Ms. Jackson requested that she be appointed Personal Representative of Cary Owsley's estate. She filed the

cause requesting that the estate be *unsupervised*.

8. On March 27, 2014, the Court denied her Petition indicating that Mrs. Owsley had not been served and Mrs. Owsley had not consented to Ms. Jackson acting as Personal Representative in an *unsupervised estate*.

9. On April 30, 2014, Ms. Jackson filed an Amended Petition For Appointment of a Personal Representative and For Unsupervised Administration. Once again, Ms. Jackson was seeking to be appointed as Personal Representative of Cary Owsley's estate for an unsupervised estate. She did indicate in her Amended Petition that "Andre Logan Owsley" consented to Ms. Jackson acting as Personal Representative. However, once again Ms. Jackson failed to serve Cary Owsley's widow, Lisa Owsley, with the Petition as had been previously noted by this Court; nor had she secured consent by Mrs. Owsley for Ms. Jackson to serve as Personal Representative in an *unsupervised estate*.

10. On May 9, 2014, this Court entered a detailed Order denying Ms. Jackson's Amended Petition setting forth in detail the specific laws Ms. Jackson had failed to comply with and the reasons for the Court denying her Petition for the second time. This Order denying Ms. Jackson's Amended Petition did not dismiss the case. The Court simply denied the Petition even though Ms. Jackson had not complied with the legal requirements as set forth by this Court in the initial Order denying her request. In fact, the Court specifically stated in this second Order "...in the event Petitioner Jackson files an additional request to be appointed as Personal Representative of Cary Owsley's estate, she is required to serve Lisa Owsley with the Petition..."

Exhibit "C" is attached hereto and made a part of this Order.

11. Ms. Jackson did not thereafter seek to be appointed Personal Representative of

Cary Owsley's estate either as a *supervised estate* or as an *unsupervised estate* under that case. It is absolutely unclear why Ms. Jackson failed to file an appropriate petition for *unsupervised administration* as is required by law and as noted in the Court's two orders. It is also unclear why Ms. Jackson declined to file a petition for *supervised administration* which would have required the Court to supervise her actions as Personal Representative.

12. On June 23, 2014 Mrs. Owsley filed a Petition for Appointment as Personal Representative and for Supervised Estate. She filed an Affidavit of Death and an Oath of Personal Representative.

13. The Court set bond in the amount of Twenty Five Thousand Dollars (\$25,000.00), noting that, Mrs. Owsley as widow and Logan as son, were the two heirs of Cary Owsley. The Clerk of the Court provided Notice of Supervised Administration to Logan and Mrs. Owsley.

14. Since being appointed, Mrs. Owsley has filed an Inventory, a Surety Bond, and an Affidavit for Transfer of Personal Property and Election of Surviving Spouse for Statutory Allowance.

15. On March 9, 2015, Ms. Jackson filed a Verified Petition to Remove Personal Representative Or In The Alternative, Appoint a Special Administrator and Request for Expedited Hearing Before April 6, 2015. Ms. Jackson's Petition is attached hereto and made a part of this Order.

16. In her Petition, Ms. Jackson asserted that the statute of limitations will expire on April 7, 2015 so she needed an expedited hearing.

17. This Court, in an effort to accommodate Ms. Jackson, set the matter for hearing on March 25, 2015 for two hours. Mr. McCain, on behalf of Ms. Jackson, and Mr. McNeely, on

behalf of Mrs. Owsley, requested a continuance of the hearing and agreed to have it heard on April 3, 2015 at 8:30 a.m. for two hours. The Court held the hearing at 8:30 a.m., but the hearing lasted until 12:05 p.m. This was Good Friday and the Courthouse closed at noon. So, at the end of the hearing, the Court had two business days left in which to produce an Order prior to the lapsing of the Statute of Limitations noted in Ms. Jackson's Petition. At the hearing, this Judge informed the parties that he had family obligations out of town starting that Friday afternoon through Easter Sunday and was not going to be able to work on this case over the weekend. Furthermore, this judge herniated a disc in his low back 2 ½ weeks ago and had an appointment scheduled with a neurosurgeon on Monday morning, April 6, 2015 in Indianapolis. The neurosurgeon referred this judge to have an epidural done that afternoon. The judge was instructed to lie on his back or sit in a reclining position for four hours after the injection. So, the parties were aware that the Court was pressed for time to get an Order produced in this short period¹. The Court specifically told counsel at the hearing that the Court was not pleased with this short turn-around time in which to produce said order and asked why the parties could not keep the initial hearing date of March 25, 2015 for the hearing. Mr. McCain indicated that his expert witness, Dr. William S. Smock, was unavailable to testify on March 25, 2015 so they needed to move the date. However, as the Court noted at the expedited hearing, Dr. Smock was not available to testify on April 3, 2015 either. Mr. McCain produced a deposition from Dr. Smock because Dr. Smock could not attend the hearing on April 3, 2015. (It is because of the short turn-around time that this order may have grammatical errors or may suffer from lack of editing.)

18. Mr. McCain indicated at the hearing that there is currently an emergency which

needs to be addressed because the investigative files concerning the death of Cary Owsley were forwarded to the FBI on March 6, 2015¹. Therefore, Ms. Jackson should be appointed pending the outcome of the FBI investigation. (The Court will deal with the FBI investigation in detail later in this Order.) Furthermore, Mr. McCain indicated that there is now another expert, Dr. William Smock, who has come forward with a recent report concerning the death of Mr. Owsley which report needs to be considered by the FBI, and which furthermore supports Ms. Jackson's contention that the circumstances around the death of Cary Owsley are suspicious. Therefore, with these two "recent" developments, the case needs to be resolved expeditiously. The Court will deal with the assertion that the information from Dr. Smock is recently developed.

19. In Paragraph 3 of her Petition, Ms. Jackson states, "PR's (Mrs. Owsley) status as Personal Representative has never been one to administer the Estate, but to thwart the request for information and investigation by other family members." Ms. Jackson does not provide any specifics concerning this assertion as to what Ms. Jackson claims that Mrs. Owsley has been doing to thwart the request for information and investigation by other family members. At the expedited hearing, Exhibit "C" was introduced which shows that Mrs. Owsley, prior to even being appointed Personal Representative, had waived her Right of Disposition of the body of Cary A. Owsley and assigned that right to Cary's "mother, Rosemary Pennybaker and Cary's sister, Cheryl Jackson." It is dated April 8, 2013 -- the day after Cary Owsley died. If Mrs. Owsley would have been trying to thwart an investigation by Ms. Jackson, it does not make any sense that Mrs. Owsley would have turned over disposition of Mr. Owsley's body to Ms. Jackson

¹ Apparently, Mr. McNeely was unaware of when Sheriff Myers sent a request to the FBI asking for another review because during the deposition of Dr. Smock, Mr. McNeely commented that the FBI had been presented the information going on four months. Mr. McCain objected and indicated that the Sheriff's request had gone out on March 6th, some 25 days ago.

on the day after his death. It would have made much more sense for her to have ordered the body to have been cremated. Furthermore, the testimony at the expedited hearing indicated that Mrs. Owsley turned over the proceeds from Cary Owsley's life insurance policies to Ms. Jackson shortly after the death. Finally, as it relates to Mrs. Owsley's duties as Personal Representative, she testified that she didn't even turn in Mr. Owsley's medical bills to be paid out of the estate. She paid for those out of her own funds. Because of the lack of specificity in Ms. Jackson's Petition and because of the lack of any evidence by anyone as to what Mrs. Owsley as Personal Representative is supposed to have done to thwart Ms. Jackson's family from investigating Mr. Owsley's death; this Court has no idea to what Ms. Jackson may be referring.

It is noted that prior to Mrs. Owsley's appointment in this case as Personal Representative, there was a suit concerning the exhumation of Cary Owsley for an autopsy. Mrs. Owsley, Mrs. Jackson, the Bartholomew County Coroner, and Garland Brook Cemetery were parties to that case. They all agreed to the exhumation and autopsy of Mr. Owsley. In the expedited hearing on this case, Mr. McNeely at bench indicated that Mrs. Owsley had made an offer to allow the autopsy to occur. Mr. McNeely indicated that he had made the offer to Ms. Jackson's attorney at the time. This was an attorney prior to Mr. McCain being involved in that case. Ms. Jackson testified at the expedited hearing that Mrs. Owsley had not made an offer to Ms. Jackson to allow the autopsy. Mr. McNeely noted that Mrs. Owsley would not have made such an offer to Ms. Jackson directly. It would have been done between the lawyers.

Regardless of the subject of the autopsy and how it was handled, Ms. Jackson states: "PR's status as Personal Representative has never been one to administer the Estate, but to thwart the request for information and investigation by other family members." There has been no

evidence produced by Ms. Jackson as to what requests were made of Mrs. Owsley which Ms. Jackson claims were thwarted. Once again, Ms. Jackson makes a generalized statement without any facts to support the statement.

20. In paragraph 9 of her Petition, Ms. Jackson indicates that she and Cary's mother, Rosemary Pennybaker, are contemplating a federal civil rights lawsuit against several county officials involved in the death investigation of Cary A. Owsley.

Ms. Jackson does not indicate why a potential federal civil rights lawsuit would require that Ms. Jackson be appointed as Special Administrator. No law was cited indicating that only a Special Administrator can file a federal civil rights lawsuit. In fact, because Ms. Jackson states that she and Rosemary Pennybaker are contemplating filing a federal civil rights lawsuit, it appears that one does not need to be a Special Administrator to file a federal civil rights lawsuit since Rosemary Pennybaker is not seeking to be appointed Special Administrator and is contemplating filing a federal civil rights lawsuit according to Ms. Jackson.

21. In Paragraph 9 of the Petition, Ms. Jackson also indicates: "the family is also contemplating an action against Lisa Owsley pending the federal investigation."

22. She notes that Mrs. Owsley was the only other person in the home with Cary Owsley at the time of his death. Ms. Jackson does not state what the cause of action would be filed against Mrs. Owsley.

23. In fact, at the expedited hearing, Ms. Jackson was asked who she would take action against if she were appointed Special Administrator. She stated that she would "file *charges* against DeWayne Janes." Even if this Court were to appoint her as Special Administrator, Ms. Jackson would not have the authority to file charges, i.e. the initiation of a

criminal case against DeWayne Janes. Furthermore, the appropriate authorities would have a five year statute of limitations to file charges against DeWayne Janes. At the hearing, when asked further about who else she would take action against, Ms. Jackson stated repeatedly that she didn't know. Further, when asked about the potential causes of action, she stated that unless Mr. McNeeley could bring her brother back, she was seeking money damages. So, while she states in her Petition that the family is contemplating an action against Lisa Owsley, at the hearing, she states she does not know who else, other than Dwayne Janes, she might take action against and she does not state what possible causes of actions there may be against Lisa Owsley.

Once again, there are bald assertions made in Ms. Jackson's Petition with no facts stated to back up the assertions. At the hearing, there were no facts stated to back up the assertions.

24. In paragraph 6 of her Petition, Ms. Jackson indicates: "On March 6, 2015, the Bartholomew County Sheriff Matt Myers, through counsel², asked the Federal Bureau of Investigation to conduct an investigation to the events, occurring on April 7, 2013, surrounding Cary's death." Ms. Jackson's attorney argues that she should be appointed Special Administrator pending this investigation by the FBI. At the expedited hearing, it was noted that this case was previously sent to the FBI in 2013 to review. At that time, the FBI was requested to investigate for "*color of law*" violations. That request was made by Mr. McCain and Professor Ronald Sullivan on behalf of Ms. Jackson. "Color of Law" violations are violations made by legal authorities in the administration of their duties. So the request by Mr. McCain in the Fall of 2013 was a request for the FBI to look into the conduct of Bartholomew County Authorities to

² The Petition does not indicate the identity of the "counsel" referred to in the Petition. In reading the Petition, it appeared to the Court, given the specificity of the date noted, that the counsel referred to was Attorney McCain. However, at the expedited hearing, Mr. McCain indicated that the counsel referred to is Sheriff Myers' attorney.

determine if any of those authorities willfully deprived a person of that person's right under the Constitution or a federal law. As was noted at the expedited hearing, after the FBI reviewed the case in 2013, it then responded that the facts gathered didn't warrant additional investigation. However, the FBI further indicated that they would await the results of an autopsy this Court ordered in a companion case and upon receipt would review it to determine if additional investigation is warranted. (At the expedited hearing, the Court also noted that the initial investigation by the FBI included the FBI forwarding the case to the Justice Department to determine if there were any civil rights violations. None were found.) At the expedited hearing, Mr. McCain indicated that he sent the results of the autopsy to the FBI in June of 2013 requesting a further investigation of this case. Mr. McCain has not heard from them.

While the Petition states that Sheriff Myers forwarded the case to the FBI, there was no evidence of this presented in the pleading or at the expedited hearing. However, Mr. McCain represented at the hearing that he knew that Sheriff Myers sent the case file to the FBI on March 6, 2015. The Court notes that Petitioner Jackson (if she had standing) has the burden of proof on the issues surrounding her requests. As it relates to the issue regarding Sheriff Myers sending the file to the FBI, Ms. Jackson presented no evidence as to the documents or items forwarded to the FBI or the reason why Sheriff Myers' sent this third request to the FBI. This is in spite of the fact that Ms. Jackson and Mr. McCain appeared to be well versed in the fact that the file was sent. Certainly, the FBI would not be acting as a private investigator for Sheriff Myers or anyone else.

The logical inference as to why the current Sheriff would send the file to the FBI is for the FBI to investigate the contents of the file along with the autopsies and any newly discovered FACTS to *determine if there are any "color of law" violations by the Bartholomew County*

Sheriff's Department (and perhaps by any other Bartholomew County or Indiana authorities).

Given the facts from the prior two requests and logical inferences therefrom, it appears that the FBI is not investigating Mrs. Owsley to determine if she murdered her husband, Cary Owsley. It appears that the FBI is once again reviewing the investigative files from Bartholomew County authorities and Indiana authorities to determine if there were any violations of federal law regarding "color of law" crimes. They have reviewed the investigative files previously as well as the autopsy previously. They have not chosen to file charges in the past. If they would find something new which would lead them to a different conclusion, they have the authority to file charges themselves. Ms. Jackson would not be the one filing any charges against DeWayne Janes, as she testified to, since she does not have the legal authority to do so. If the FBI finds that DeWayne Janes violated a federal law, they have the authority to file charges.

25. Ms. Jackson asserts that the FBI has new evidence from an expert, Dr. William S. Smock, M.D. Dr. Smock is not a Forensic Pathologist. After completing his medical degree, he did a three-year residency in emergency medicine and a one-year fellowship in clinical forensic medicine. He works for Louisville, Kentucky's police department in the assistance of investigations of crime scenes. Ms. Jackson indicates that Dr. Smock completed a report on this case which shows that "there are suspicious circumstances" around the death of Cary. However, Ms. Jackson did NOT file Dr. Smock's report with the Court so that the Court could review what Dr. Smock said in his report. Dr. Smock's involvement in this case was not noted in Ms. Jackson's Petition. It was brought up at the expedited hearing.

26. At the hearing, Mr. McCain offered to Publish Dr. Smock's April 1, 2015 deposition. Mr. McNeely did not object to this. The Court granted this request. In so granting,

the Court specifically noted on the record that the deposition would be published, but not admitted into evidence because it had not been offered as evidence in the case. Immediately thereafter, Mr. McCain offered Dr. Smock's deposition into evidence, along with the exhibits attached thereto. Mr. McNeeley objected. The Court took this issue under advisement. The Court now admits Dr. Smock's deposition for the limited purposes of this hearing. The Court has reviewed it and finds that Ms. Jackson's testimony that Dr. Smock indicates that Cary Owsley died under "suspicious circumstances" is not contained in Dr. Smock's deposition. Since Ms. Jackson failed to introduce Dr. Smock's report, the Court cannot make any determination as to what it says.

However, according to Dr. Smock's testimony in his deposition which was taken on April 1, 2015, Dr. Smock states that he has reviewed crime scene photographs; reviewed notes from the initial investigation; reviewed depositions; statements from sheriff deputies; reviewed the coroner's verdict and the autopsy from Dr. Wagner. It should be noted that Dr. Smock was not provided with all of the materials from the investigation of the death of Cary Owsley. At page 35 of the deposition Dr. Smock was asked; "Q. Okay. So there's a number of reports and other items that were conducted in the investigation that you haven't had the opportunity to review in making your determination; is that correct? A. That is correct, sir." Dr. Smock indicated that he had been contacted in the fall of 2014 by Ms. Jackson and asked to investigate this matter. Prior to this contact by Ms. Jackson, he had been at a police training and someone, whom he cannot remember, asked him to look at this case.

The point here is two-fold. Dr. Smock was asked by Ms. Jackson in the fall of 2014 to investigate this matter. Even though he began investigating it at that time, Ms. Jackson's

attorney indicates that there is an emergency because he just received Dr. Smock's report. Furthermore, Mr. McCain indicated that Dr. Smock's report was forwarded to the FBI. So, Mr. McCain would have had the report sometime prior to March 6, 2015 when Mr. McCain indicates that Sheriff Myers asked the FBI to look at the case again. The second point is that Mr. McCain had plenty of time to attach this specific report to Ms. Jackson's Petition so that he could have provided the Court with some specifics about Dr. Smock's findings.

In addition to Dr. Smock not having been provided with all of the materials from the investigation, Dr. Smock testified at the Deposition that he did not have his records with him at the deposition and that he had not reviewed his records prior to the deposition. Therefore, he testified that it was difficult for him to determine which of the records from the investigation he reviewed from the investigation records. Deposition, p. 33. "A. It may be difficult because I don't have my notes with me, but I'll do my best. A. Certainly. And this -- it may not be complete because I don't have my records with me."

The Deposition testimony of Dr. Smock indicates that he has twelve (12) questions for the investigators. Most of these questions revolve around the trajectory of the bullet, what the height of the garage floor was compared to the floor in the house, what the height of the damage was to the spindle in the chair, etc. Since Dr. Smock did not receive all of the investigative materials, it is possible that some of those additional materials might help answer his questions. Furthermore, when asked if Dr. Smock had relayed any of his questions to the investigators, he stated: "A. the information -- the questions were related to Mr. McCain and Mr. McCain was to arrange a meeting with the sheriff's office so that I could pose these questions to the investigating officers." There were some meetings set up for Dr. Smock to speak with the deputies. Some of

those were cancelled by the Sheriff, but not all of them. The latest meeting was cancelled because "I was notified that the new sheriff had turned my report and the investigative file over to the FBI, and so my meeting with the sheriff was cancelled." Deposition, pp 25, 26.

The Deposition testimony of Dr. Smock further indicates that he has some concerns about the investigation of the scene. He is concerned about the trajectory of the bullet through the spindles and into the wall. He is concerned about the height of the exit wound from Cary Owsley. On cross-examination during the deposition, Mr. McNeely asked Dr. Smock about Dr. Smock's assumptions with regard to Dr. Smock's concerns. Dr. Smock had assumed that Cary Owsley stood up straight in his drawings concerning the trajectory of the bullet. On pages 29 through 33, Dr. Smock indicates that if a person is bent over instead of standing or sitting erect, then this will change the trajectory of the bullet as it passes through the person's body. Mrs. Owsley testified that Cary could not stand in an upright position because of his health. His back had been significantly injured in a work accident and had two rods in his back. He was bent over after the accident. Because Dr. Smock had not considered the possibility that Cary's curvature was stooped from an accident, Dr. Smock agrees that the trajectory of the bullet would be different than in his drawing. His drawing showing the proposed trajectory of the bullet is one of his noted concerns.

Dr. Smock testified in his deposition as follows:

Q. Did you talk with either of the two pathologists that examined the body of the deceased?

A. No, sir.

Q. Why not?

A. I wasn't asked to. The questions that I had related to the crime scene itself. The pathologist determined the entrance, exit, range of fire, trajectory, location of the wounds." Deposition, p. 24.

Dr. Smock is concerned about the trajectory of the bullets, bases his diagram on the trajectory of the bullet on the assumption that Cary Owsley stands and sits erectly, but Dr. Smock doesn't speak with either of the forensic pathologists "because he has not been asked to."

Furthermore, Dr. Smock testified that he is not concerned that he was not provided with Cary Owsley's medical reports which show Cary's mental health at the time of his death. Mr. McNeely asked Dr. Smock:

- "Q. If he (Cary) expressed suicidal ideation on numerous occasions to his psychologist in that same time frame we're talking here, between December 2012 and April 2013, would that have any bearing? (on Dr. Smock's opinion as to whether Cary committed suicide)
- A. No, sir, because that does not –
- Q. It would have no bearing?
- A. That does not speak to the physical evidence, and my review of the material is related to the physical evidence.
- Q. Are you saying that this evidence is not material or relevant?
- A. it is not relevant to my portion of the investigation.
- Q. No. I'm saying to your determination of whether it was a suicide or not.
- A. That determination is, again, up to the medical examiner or the coroner. Regarding what I reviewed, that did not come into play." Deposition, p. 46.

Dr. Smock also indicated that the fact that Mrs. Owsley passed a polygraph examination would not bear on his opinion about whether Cary Owsley committed suicide. Presumably, this is for the same reason that the suicide ideation does not come into play. This was not physical evidence at the scene.

Dr. Smock was very specific in his concerns about the death scene investigation, including the fact that Deputy Dwayne Janes was present at the scene; the fact that the chair was burned closely after the time of the investigation; and the fact that Mr. Owsley was found tipped over backward in the chair. This Court has NEVER indicated in any manner that the

investigation surrounding the death of Cary Owsley was in any way exemplary. In fact, there is no doubt that the investigation was substandard. This has even been acknowledged by the then-elected sheriff of Bartholomew County. In fact, he suspended three deputies as a result of the substandard investigation of the death scene.

Dr. Smock he indicates that he has concerns about the investigation. But, he does not state that in his opinion that Cary Owsley was murdered. He does concur that the entrance wound from the gunshot is a contact wound and that almost 100% of suicides by handguns result in contact wounds. He also notes that a contact wound does not mean that it is a suicide because homicides can be as the result of contact wounds. He does not give a percentage of homicide contact wounds.

Finally, as it relates to Dr. Smock, he indicates that he needs to do additional investigation in order to render an opinion as to whether this death was a suicide or a homicide. He admits that the determination of suicide vs. homicide comes under the authority of the coroner and that Dr. Smock doesn't consider matters such as whether a person has suicidal ideations at the time of their death. When asked if he was going to investigate this matter any further, he indicated testified:

Q. So is your investigation terminated at this point?

A. I'm not sure what my role will be. You know, this -- my review of this material was all pro bono at the request of --

Q. Okay.

A. And I'm not sure if I'll be involved or not. ... And to answer your question, I don't -- if I could answer it. I don't know what my role will be or won't be. My role to this point was to review the material and say, you know, do I have concerns as a forensic physician, and clearly I do.

Q. But you told us that your investigation was not completed, correct?

A. I don't know whether it's completed or not, sir. I can't answer that. I don't know what --

- Q. Who determines whether your investigation is completed?
- A. Well, I think that would be up to -- if the FBI asks me to assist them, I will be happy to assist them. If the sheriff's office had asked me to assist them, go to the scene, which was suggested, I'm happy to do that. I don't know where -- you know, my --
- Q. Well, if Cheryl asked you to continue your investigation, will you do that?
- A. If I have time. I'm not -- at this point I can't answer that question. If the FBI asks me to assist them, I would be happy to.
- Q. If Cheryl asks you to continue the investigation, how much time would it take to complete your investigation?
- A. I think that would be determined -- do we have access to the home? But any investigation that I would do would be in concert with a law enforcement agency, the sheriff's office, the FBI.
- Q. Have you contacted any of them to ask their permission to have you assist?
- A. No. It's not up to me to ask them, it would be up to them. If they wanted my assistance, I'm happy to provide it.
- Q. So the only person that asked is the sheriff; is that correct?
- A. Has been her attorney, Mr. McCain. Deposition pp. 41 - 42.

So, for this Court the bottom line is that sometime last fall, Ms. Jackson's attorney, Mr. McCain, is the person who contacted Dr. Smock to ask Dr. Smock to assist Ms. Jackson. Dr. Smock was not provided with all of the investigative materials for him to form an opinion. Dr. Smock's report was not provided to the Court, which report would presumably indicate what specific materials Dr. Smock relied upon to form his report. Dr. Smock does not have an opinion whether Cary Owsley's death was a homicide or a suicide. Dr. Smock indicates that nearly 100% of suicides by handguns are caused by contact wounds and that Cary Owsley's death was by a contact wound from a handgun. Dr. Smock has no further plans to investigate this case any further. He will assist a law enforcement agency if so requested, but will not commit to assist Ms. Jackson in further investigation.

Given all of the above, the Court does not believe that the evidence provided to the Court, or the lack thereof, concerning Dr. Smock's involvement in this case sets forth any reason for the Court to grant Ms. Jackson's requests.

MS. JACKSON'S REQUEST TO BE APPOINTED SPECIAL ADMINISTRATOR

27. As it relates to Ms. Jackson's overall Petition, the Court notes that Ms. Jackson did not indicate any specifics as to why she needed to be appointed a Special Administrator. This would be a similar requirement as would be for a person when they file a Motion to Intervene. Ms. Jackson makes broad statements with conclusory language. Ms. Jackson, by and large, does not make factual statements in her requests. This type of nonfactual allegations and assertions do not assist a Court in determining whether the person seeking to be appointed Special Administrator has a valid interest in the appointment or a valid claim to be pursued. Ms. Jackson may believe that a factual assertion in her Petition at paragraph 7 that "according to the current record, (Mrs. Owsley) was the only other person present when Cary died at his home at 4303 Roosevelt Road in Columbus, Indiana" helps her cause. Actually, Mrs. Owsley admitted in her testimony that Mrs. Owsley was the only other person present at the home at the time of Cary's death. But, what is the point of paragraph 7 of Ms. Jackson's Petition? Is Ms. Jackson attempting to insinuate that Mrs. Owsley had something to do with Mr. Owsley's death by the fact that she was the only other person there at the time of the death? Ms. Jackson does not elaborate with any facts or evidence why this paragraph is pertinent to her requests.

A Special Administrator can be appointed in an estate pursuant to I.C. 29-1-10-15. Some of the requirements for the appointment for a Personal Representative are the same as those requirements for the appointment of a Special Administrator. Some are not the same. One of the

requirements for the appointment of a Special Administrator is that found in I.C. 29-1-10-1. The person requesting the appointment must indicate to the Court whether they are seeking to be appointed seeking domiciliary letters or whether they are seeking letters as a nonresident. Ms. Jackson does not indicate in her Petition whether she is a resident of the State of Indiana or not. There are separate requirements for nonresidents to qualify.

Furthermore, in determining whether to appoint a Special Administrator, the Court should consider “the strength of the claim, the costs to the estate in pursuing it ...” *Inlow v. Inlow*, 797 N.E.2d 810, 819 (Ind.App. 2003). Ms. Jackson has not presented any evidence concerning the cost of pursuing any of these potential claims. Ms. Jackson has not presented **facts** with sufficient merit for the appointment of a Special Administrator. Once again, it is noted that Ms. Jackson didn’t indicate who would be sued and why they would be sued. On page 8 of Mr. Shirley’s *Memo*, he notes that this Court is called upon to review the evidence as if it were ruling on a motion to dismiss or a motion for directed verdict in determining whether to appoint a Special Administrator. Mr. Shirley cites three Indiana cases setting forth this law. The Court specifically finds that Ms. Jackson did not present sufficient evidence that there is a claim against anyone regarding Cary Owsley’s death. The Court would grant a directed verdict against Ms. Jackson based upon her Petition and the evidence presented at the expedited hearing.

Furthermore, Ms. Jackson had previously sought to be appointed as Personal Representative of Cary Owsley’s estate in an *Unsupervised Administration*, that is without court supervision. She did not follow the law relating to her request for this appointment even though this Court entered Orders on two occasions indicating the deficiencies in her requests. She failed to correct those deficiencies and furthermore, she also chose not to file a request to be appointed

as Personal Representative of Cary Owsley's estate in a *Supervised Administration*, that is with court supervision. Since Ms. Jackson did not follow the simple instructions in the Court's order regarding her request to be appointed as Personal Representative of Cary Owsley's estate for an *Unsupervised Estate*, and since Ms. Jackson's current Petition has numerous assertions full of innuendo instead of fact, and since Ms. Jackson testified that she does not know who she would bring a cause of action against nor does she know what facts the underlying cause would be based on, and since Ms. Jackson failed to provide this Court with a key piece of evidence which was at her disposal, i.e., Dr. Smock's report; this Court would not appoint Ms. Jackson as Special Administrator regardless of whether she was a proper party to this action by having filed a Trial Rule 24 motion.

**MS. JACKSON'S REQUEST THAT MRS. OWSLEY BE REMOVED
AS PERSONAL REPRESENTATIVE**

28. Ms. Jackson's Petition is confusing at best when one attempts to determine what Ms. Jackson is seeking in the way of relief and what claims she is making as it relates to each of her alternative requests for relief. The caption of Ms. Jackson's petition is: Verified Petition to Remove Personal Representative, or in the Alternative, Appoint a Special Administrator and Request for Expedited Hearing Before April 6, 2015. From this caption, it appears that Ms. Jackson is seeking three items of relief: 1) Removal of Mrs. Owsley as Personal Representative, 2) Appoint Ms. Jackson as Special Administrator, and 3) Have an expedited hearing set. The Court immediately granted Ms. Jackson's request for an expedited hearing.

In reviewing the body of the Petition, there are no specific paragraphs relating to certain relief requested by Ms. Jackson. All paragraphs are numerical and do not fall under different headings of relief sought. Also, in the body of the Petition, at paragraph 12, Ms. Jackson

requests “In the *first* alternative, Petitioner respectfully requests that the Court appoint her Special Administrator, under IC 29-1-10-15, to prosecute contemplated claim(s) as discussed above.” In paragraph 14 of the Petition, Ms. Jackson states that her *second* alternative request for relief is “that the trial court order the Estate to transfer all right, title, standing, and interest in any cause of action concerning the decedent’s death to the decedent’s son.” Note, nowhere in the caption of the Petition does it indicate that Ms. Jackson is seeking to have the Estate transfer all rights to potential cause(s) of actions to Logan.

The body of the remainder of the Petition does not address a request for Mrs. Owsley to be removed as personal representative. However, in the summary paragraph of the Petition where Ms. Jackson summarizes the relief she is seeking, she states that she “respectfully requests the Court *immediately* order the Personal Representative to appear and show cause why she should not be removed.” It is absolutely unclear what law Ms. Jackson is attempting to utilize in requesting that this Court order Mrs. Owsley to appear and show cause why Mrs. Owsley should not be removed as personal representative of her husband’s estate. This is not ever addressed in the body of the Petition. To buttress this point that it is not Mrs. Owsley’s burden of proof to show cause why she should not be removed as personal representative, at the expedited hearing, Mr. McCain presented evidence first. The party with the burden of proof presents its case first and Mr. McCain represents Ms. Jackson.

The Court finds that Ms. Jackson has the burden to show why Mrs. Owsley should be removed as personal representative. The statute regarding removal of a personal representative is found at I.C. 29-1-10-6. Ms. Jackson’s Petition has confused the facts necessary for the appointment of a Special Administrator and the facts necessary to remove a personal

representative. Even if Ms. Jackson had standing in this case, she has not met her burden to have Mrs. Owsley removed as personal representative.

LOGAN ANDRE OWSLEY'S SITUATION CONCERNING THIS CASE

29. Logan did not file a consent to Ms. Jackson's Petition. In fact, Logan has not filed any pleadings or motions in this case. On the morning of the expedited hearing on Ms. Jackson's Petition, which began at 8:30 a.m., Curtis Shirley entered an Appearance on behalf of Logan. Mr. Shirley also filed Andre Logan Owsley Hearing Memo in Support of Petitions. This was filed just prior to the expedited hearing. The judge did not see this Memo until after the hearing. This Memo is just that – a memo. It is not a Pleading or a Motion. See Indiana Trial Rule 7. Also see Indiana Trial Rule 6 which indicates that a Motion shall be filed “not less than 5 days before the time specified for the hearing.”

Since Logan has not filed any affirmative requests by way of a motion or a pleading, he is not entitled to any affirmative relief for himself (or negative relief against him). If he seeks affirmative relief in the future, he will need to file an appropriate pleading or motion seeking that relief. Since there are no motions or pleadings before the Court by Logan requesting that the Court grant Logan something regarding this case; this Court does not have any matter to rule on regarding Logan.

This may be a bit confusing to a lay person since Ms. Jackson in her Petition states in paragraph 14 that she is requesting as a second alternative that Mrs. Owsley be ordered to transfer all right, title, standing, and interest in any cause of action concerning Cary Owsley's death, to Logan Owsley. The Court is satisfied that Mr. McCain and Mr. Shirley will be able to explain this to their respective clients. However, as has been noted previously by this Court in a

prior case, this matter has garnered considerable public attention. In fact, on the morning of this expedited hearing, when the judge came into the Courthouse, there were between 40 and 75 signs on stakes leaning against the Courthouse wall on the porch. They were related to this case and had slogans such as “Justice for Owsley.” Therefore, this Court will attempt to explain this matter in more detail.

Logan Owsley is an adult. He has not filed any petition or motion in this case asking that Mrs. Owsley be required to transfer any rights to any cause of action in relation to Cary Owsley’s death to himself. It might appear to the lay person that the Court should consider Ms. Jackson’s request for the Court to transfer any cause of action to Logan, as though it is a request by Logan himself. However, the Court cannot do this because first of all, they are two separate persons with different interests in this matter. Secondly, if the Court rules against Ms. Jackson on a request made by her purportedly on behalf of Logan, Logan would be bound by that negative ruling without his own right to plead and be heard on the matter. Finally, there is another party to this matter, i.e., Mrs. Owsley, who lost her husband, Cary Owsley. She has the right to see any pleading or motion that Logan files relating to this case and she then has the right to respond to that pleading or motion.

**ADDITIONAL EVIDENCE FROM THE EXPEDITED HEARING WHICH
BUTTRESSES THE FINDING BY THE CORORER THAT CARY A. OWSLEY
COMMITTED SUICIDE**

30. At the expedited hearing, Mr. McCain was asking Mrs. Owsley questions concerning a safe at the home. The attempt was clearly to create an inference that someone else was in the home at the time of Cary Owsley’s death who had gotten into the safe and taken items

therefrom.³ Mrs. Owsley testified that there was no one else in the home at the time of her husband's death. She testified that she was at the other end of the house from Cary and she was changing window screens. She heard a gunshot from the other end of the house. She immediately ran to where Cary was and then telephoned 911. Mr. McCain noted that since Cary was at the other end of the house, another person might have shot Cary and Mrs. Owsley would not have seen them. Mrs. Owsley indicated that she would have seen them because she was down the hallway from where Cary was and would have seen the other person in the hallway.

Mr. McCain then asked about a safe that was either in the room with Cary or in the room next to Cary. The police found that safe opened when they arrived. Mr. McCain then began to ask about someone potentially taking papers and valuables from the safe. Mr. McNeely objected to this line of questioning, but Mrs. Owsley interjected, "No, this is something that I want to straighten out." (paraphrased) Mrs. Owsley then testified that the safe was a large safe about six feet tall and 3 or 4 feet wide. It belonged to one of her sons. Her son wanted to sell it because he needed cash. Cary told her son that he would not receive enough money from the sale of the safe and asked the son how much money the son needed. The son indicated that he needed \$500.00. Mrs. Owsley then testified that Cary gave her son \$500.00 and told her son that when her son got the \$500.00 back to Cary, then her son could have the safe again.

Most importantly, Mrs. Owsley testified that Cary changed the combination to the lock and that he kept guns in the safe. Cary was an avid hunter and fisherman throughout the course of his life until the spring of 2013. Mrs. Owsley testified that she didn't know the combination to

³ Because of the short time between the hearing and the time when this Court is producing this Order, the Court does not have time to go back and listen to the actual hearing. Therefore, the Court will only be able to paraphrase the testimony based upon the Judge's memory and his notes.

the safe, Cary did. Given the fact that the police found the safe open when they arrived, that Cary kept his guns in the safe, and the fact that Cary died of a contact gunshot wound to his chest, this buttresses the finding of the Bartholomew County Coroner that Cary Owsley committed suicide on April 7, 2013. It would be logical for Cary to go to the safe where he kept his guns, open it, take out a gun, leave it open, and then use the gun to commit suicide.

ATTACHMENTS

31. There were additional exhibits introduced into evidence at the expedited hearing. The Court does not have sufficient time to go through all of those within the body of this Order. However, the Court did consider everything that was introduced at the expedited hearing. Therefore, the Court is going to attach each of the exhibits to this Order. These include Exhibits A (statute regarding removal of personal representative); B (Ms. Jackson's Petitions to be appointed P.R. in an *Unsupervised Estate* and the Court's orders thereon); C (Mrs. Owsley's Waiver of Right of Disposition of her husband's body); D (Mrs. Owsley's Proposal for allowing an autopsy of Cary's body); E (Diagram prepared by Dr. Smock demonstrating the entrance and exit wounds for someone standing vertically); H (Diagram shown to Dr. Smock demonstrating the entrance and exit wounds for someone crouched forward); L (Court Order dated May 28, 2014 regarding the autopsies); M (Sua Sponte Court Order dated June 11, 2014 concerning the report and letter of Dr. Spitz, the forensic pathologist hired by Ms. Jackson); and N (the Polygraph test report for Mrs. Owsley). Furthermore, the Court is going to attach the Trial Brief filed by Mr. McNeely on behalf of Mrs. Owsley as well as the Andre Logan Owsley Hearing Memo in Support of Petitions filed by Mr. Shirley on behalf of Logan. Finally, the Court is attaching Ms. Jackson's Petition and Mrs. Owsley's Response and Objection to (Ms. Jackson's)

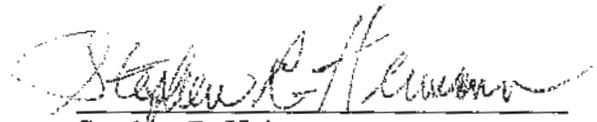
Petition to this Order. Furthermore, this Court going to order that this Order is to be posted on the Bartholomew County Website as soon as possible on the morning of April 8, 2015.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Ms. Jackson's Petition is denied in its entirety.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Logan Owsley has no matters pending before this Court and so this Court is not providing any affirmative or negative relief concerning Logan.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Order, including the Attachments, shall be posted on the Bartholomew County Website under Circuit Court as soon as is possible by the Bartholomew County IT Department.

All of which is ORDERED on this 7th day of April, 2015 at 10:59 o'clock p.m.


Stephen R. Heimann
Bartholomew County Circuit Judge

CC:

Trent A. McCain
5655 Broadway
Merrillville, IN 46410

Mark W. McNeely
30 E. Washington St., Suite 100
Shelbyville, IN 46176

Curtis E. Shirley
151 N. Delaware St., Suite 1700
Indianapolis, IN 46204

Sheriff Matt Myers
Courthouse Mailbox

FBI – Indianapolis Office
8825 Nelson B Klein Parkway
Indianapolis, IN 46250

Ronald S. Sullivan, Jr.
6 Everett St., suite 5116
Cambridge, MA 02138

Larry Fisher, Coroner
662 N. Gladstone Avenue
Columbus, IN 47201

¹ In spite of this short time that this Court had to produce this Order, on Easter Sunday the judge spent three hours in the afternoon at the Courthouse working on this case and three hours at home that evening on this case, as well as six hours at home working on this case on Monday April 6th after receiving the epidural. Finally, the judge spent several hours on Tuesday April 7, 2015 working on this Order. The Order has been finalized by the date that Ms. Jackson indicated that it needed to be finalized, April 7, 2015. The Court realizes that it could have simply dealt with Ms. Jackson's lack of standing and Logan's failure to file any pleadings or motions and that would have taken care of all issues. However, because of the large amount of misunderstanding concerning the facts in the cases, the Court felt it would serve not only the parties, but the community at large, for the Court to deal with each issue as though Ms. Jackson had had standing to file her Petition.

STATE OF INDIANA)
) SS:
COUNTY OF BARTHOLOMEW)

IN THE CIRCUIT COURT
CAUSE NO. 03C01-1406-ES-002796

IN RE: THE MATTER OF THE)
SUPERVISED ESTATE OF)
CARY A. OWSLEY, DECEASED)
)

VERIFIED PETITION TO REMOVE PERSONAL REPRESENTATIVE, OR IN THE ALTERNATIVE, APPOINT A SPECIAL ADMINISTRATOR AND REQUEST FOR EXPEDITED HEARING BEFORE APRIL 6, 2015

Petitioner, CHERYL OWSLEY JACKSON, by counsel, Trent A. McCain of MCCAIN LAW OFFICES, P.C., pursuant to IC 29-1-10-6(b), petitions this Court to order the Personal Representative to appear and show cause why she should not be removed, or in the alternative, appoint Petitioner as Special Administrator of the Estate. In support, Petitioner states as follows:

1. On April 7, 2013, Cary A. Owsley (“Cary”) died of a gunshot wound to the chest.
2. On or about June 27, 2014, fifteen (15) months after her husband’s death, Lisa Owsley was appointed Personal Representative (“PR”) of the Estate of Cary A. Owsley, deceased.
3. PR’s status as Personal Representative has never been one to administer the Estate, but to thwart the request for information and investigation by other family members.
4. Petitioner, Cheryl Owsley Jackson, is Cary’s only sibling.
5. Andre Logan Owsley (“Logan”) is Cary’s one and only child. He has the next highest priority to Cary’s spouse. Logan consents to and joins in the filing of this petition.
6. On March 6, 2015, the Bartholomew County Sheriff Matt Myers, through counsel, asked the Federal Bureau of Investigation to conduct an investigation to the events, occurring on April 7, 2013, surrounding Cary’s death.

7. According to the current record, the Personal Representative was the only other person present when Cary died at his home at 4303 Roosevelt Road in Columbus, Indiana.

8. The Personal Representative was once married to a key figure in the investigation, former Bartholomew County Sheriff's deputy, E. DeWayne Janes, Sr. ("Janes"). Janes is the father of the PR's two (2) adult children, E. DeWayne Janes, Jr. and Joshua Janes.

9. Cary's son, mother (Rosemary Pennybaker), and sister are contemplating a federal civil rights lawsuit against several county officials involved in the death investigation and the initial ruling that Cary's death was a suicide, including the PR's ex-husband and father of her children. The family is also contemplating an action against Lisa Owsley pending the results of the federal investigation.

10. Thus, Lisa Owsley has a conflict of interest and is unsuitable or incapable of discharging her duties as personal representative of Cary's estate.

11. The two-year statute of limitations runs in thirty (30) days, i.e. April 7, 2015, necessitating an expedited hearing.

12. In the *first* alternative, Petitioner respectfully requests that the Court appoint her Special Administrator, under IC 29-1-10-15, to prosecute the contemplated claim(s) as discussed above.

13. In the *second* alternative, pursuant to IC 29-1-13-8, if Lisa Owsley believes the anticipated cause of action has no value to the estate, she may abandon them. The section provides that "[w]hen any property is valueless, or is encumbered, or is in such condition that it is of no benefit to the estate, the court may order the personal representative to abandon it." The Probate Code Study Commission Comments to Section 8 further indicate that the Court may order the Petitioner to distribute the claims and related rights of action. "If the rights involved

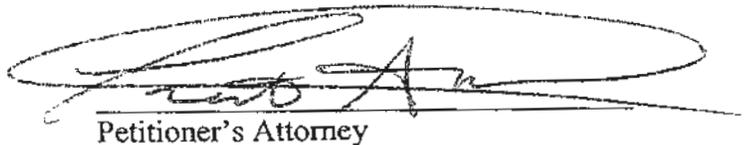
have any prospective value, they may be transferred by way of distribution to the beneficiaries who will succeed to all rights of the deceased.”

14. Thus, in the *second* alternative, the Petitioner requests that the trial court order the Estate to transfer all right, title, standing, and interest in any cause of action concerning the decedent’s death to the decedent’s son.

WHEREFORE, Petitioner respectfully requests the Court *immediately* order the Personal Representative to appear and show cause why she should not be removed; or in the *first* alternative, appoint Petitioner as Special Administrator of the Estate for the purposes of prosecuting a lawsuit against county officials and all others liable on behalf of the Estate; or in the *second* alternative, order the Personal Representative to abandon the prospective cause of action or transfer all right, title, standing, and interest to decedent’s son, Andre Logan Owsley; and any other relief the Court deems just and appropriate.

Respectfully submitted,

McCain Law Offices, P.C.

A handwritten signature in black ink, appearing to read "Trent A. McCain", is written over a horizontal line. The signature is enclosed within a large, hand-drawn oval.

Petitioner’s Attorney

Trent A. McCain, #23960-45
McCain Law Offices, P.C.
5655 Broadway
Merrillville, IN 46410
(219) 884-0696 phone
(219) 884-0692 fax
TAM@McCainLawOffices.com

CERTIFICATE OF SERVICE

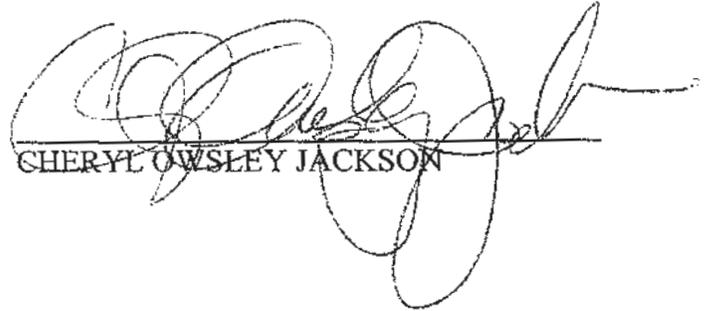
I, the undersigned attorney, certify that on the 9th day of March 2015, service of a true and complete copy of the above and foregoing pleading or paper was made upon each party or attorney of record herein by depositing the same via United States Mail in an envelope properly addressed to each of them and with sufficient first-class postage affixed and/or facsimile.

A handwritten signature in black ink, appearing to read "Trent A. McCain", is written over a horizontal line. The signature is enclosed within a large, hand-drawn oval.

Trent A. McCain, #23960-45

VERIFICATION

I affirm, under the penalties of perjury, that the foregoing is true and accurate to the best of my knowledge.



CHERYL OWSLEY JACKSON

Dated: March 8, 2015

IN THE BARTHOLOMEW CIRCUIT COURT

STATE OF INDIANA

IN RE: THE MATTER OF THE)
SUPERVISED ESTATE OF)
CARY A. OWLSEY, DECEASED.)

CAUSE NO. 03C01-1406-ES-2796

**RESPONSE AND OBJECTION TO VERIFIED
PETITION TO REMOVE PERSONAL REPRESENTATIVE**

Comes now, Lisa Owsley, Personal Representative herein, by counsel, Mark W. McNeely and makes the following Response and Objection to Petitioner, Cheryl Owsley Jackson's Verified Petition to Remove Personal Representative.

Legal Procedure:

1. On or about March 13, 2014, Petitioner, Cheryl Owsley Jackson, filed a Petition for Appointment of Personal Representative in this Court under Cause No. 03C01-1403-EU-001170 which was denied.

2. On or about June 27, 2014, Lisa Owsley filed to open an estate of her late husband's behalf and it was granted.

3. The Personal Representative herein, Lisa Owsley, is the widow of Cary Owsley and the proper legal person to be Personal Representative of his estate.

4. Lisa Owsley opened the estate for her late husband, Cary Owsley, for the sole purpose of handling his affairs and distributing what personal property he owned.

FBI Investigation:

5. Lisa Owsley has not used her appointment as Personal Representative to thwart the request for information and investigation by other family members.

6. Although Cheryl Owsley Jackson is the sibling of the decedent, she rarely had contact with her brother during his lifetime.

7. There is no correlation between the estate and the FBI's investigation into the events surrounding decedent's death nor is it relevant that Lisa Owsley was at home when decedent died or that she was previously married to former Sheriff's Deputy, E. DeWayne Janes, Sr. and shares children with him.

Media Exposure:

8. Petitioner herein, Cheryl Owsley Jackson, has exaggerated and twisted the events surrounding decedent's death while defaming Lisa Owsley through public media.

9. Petitioner has created a Facebook page, "Mission for Justice", that continually "spins" the issues and has encouraged numerous rallies which has created a hostile environment. This hostile environment has created an added expense of security for all court appearances.

Prior Civil Lawsuit:

10. Petitioner has also filed a civil suit with regard to decedent's death which resulted in the exhumation of the decedent and an autopsy performed by professional pathologist, one of which was hired by petitioner herself. The results of the autopsy were that no criminal action could be substantiated as determined by this Court.

11. When the results of the autopsy did not satisfy Petitioner, she pushed to get the FBI involved in the investigation and continues to accuse Lisa Owsley and the county officials involved in his death investigation for publicity's sake.

Statute Requirement:

12. I.C. 29-1-10-6(b) states:

When the personal representative becomes incapacitated (unless the incapacity is caused only by a physical illness, infirmity, or impairment), disqualified, unsuitable or incapable of discharging the representative's duties, has mismanaged the estate, failed to perform any duty imposed by law or by any lawful order of the court, or has ceased to be domiciled in Indiana, the court may remove the representative.

13. Personal Representative, Lisa Owsley, is not incapacitated, unsuitable or incapable of discharging her duties as a Personal Representative nor has she mismanaged or failed to perform her duties in accordance with Indiana Probate I.C. § 29-1 *et seq.*

14. Petitioner has not shown to this Court any valid legal reason why Lisa Owsley should be removed as Personal Representative.

15. Lisa Owsley should remain Personal Representative in this matter.

WHEREFORE, Personal Representative, Lisa Owsley respectfully requests the Court deny

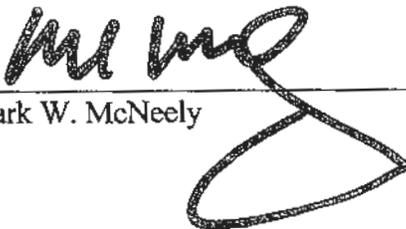
Petitioner's Petition to Remove her as Personal Representative and Order that she remain Personal Representative of the Estate of Cary A. Owsley, and for all other relief just and proper in the premises.

Respectfully submitted,
McNEELY LAW OFFICE

By 
Mark W. McNeely

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing pleading was served by placing the same in the United States Mail, first class, postage prepaid, on Trent A. McCain, McCAIN & WHITE, P.C. 5655 Broadway, Merrillville, IN 46410 this 12th day of March, 2015.



Mark W. McNeely

Mark W. McNeely, Attorney #9543-73
30 East Washington Street, Suite 100
Shelbyville, Indiana 46176
Telephone: (317) 392-4321
Fax: (317)392-9329

created a Facebook page, "Mission for Justice", that continually "spins" the issues and has encouraged numerous rallies which have created a hostile environment. This hostile environment has created an added expense of security for all court appearances. Petitioner has also filed a civil suit with regard to decedent's death which resulted in the exhumation of the decedent's body and an autopsy performed by a professional pathologist, one of which was hired by petitioner herself. The results of the autopsy were that no criminal action could be substantiated as determined by this Court. When the results of the autopsy did not satisfy Petitioner, she pushed to get the FBI involved in the investigation and continues to accuse Lisa Owsley and the county officials involved in his death investigation for publicity's sake.

I.C. 29-1-10-6(b) states:

When the personal representative becomes incapacitated (unless the incapacity is caused only by a physical illness, infirmity, or impairment), disqualified, unsuitable or incapable of discharging the representative's duties, has mismanaged the estate, failed to perform any duty imposed by law or by any lawful order of the court, or has ceased to be domiciled in Indiana, the court may remove the representative.

Personal Representative, Lisa Owsley, is not incapacitated, unsuitable or incapable of discharging her duties as a Personal Representative nor has she mismanaged or failed to perform her duties in accordance with Indiana Probate I.C. § 29-1 *et seq.* Petitioner has not shown to this Court any valid legal reason why Lisa Owsley should be removed as Personal Representative. There is no conflict of interest and Lisa Owsley should remain Personal Representative in this matter.

No emergency exists with regard to removing Lisa Owsley as Personal Representative. On April 8, 2013, Lisa Owsley willingly signed a Waiver of Right of Disposition giving Cary Owsley's mother, Rosemary Pennybaker, and sister, Cheryl Jackson, the right to make arrangements for funeral services and/or other ceremonial arrangements for the decedent. Petitioner has had ample time to consult with experts, etc. regarding Cary's death. Cheryl Jackson's lack of priority and inaction do not constitute an emergency.

Five (5) governmental departments were involved in the investigation of the death of Cary Owsley. These include the Bartholomew County Sheriff's Department, the Columbus Police, the Indiana State Police, the Bartholomew County Coroner's Office, and the Bartholomew County Prosecutor's Office. The Bartholomew County Sheriff's Department's death investigation of Cary Owsley has been reviewed at the request of Petitioner Cheryl Jackson and the findings indicated

suicide. A coroner has the discretion to determine whether an autopsy on a deceased person is necessary or not under Ind. Code 36-2-14-6.

Lisa Owsley has been fully cooperative throughout this investigation. On August 6, 2013, Lisa Owsley authorized Bartholomew County Prosecutor William M. Nash to publicly release any and all medical and psychological records pertaining to her late husband, Cary Owsley. Furthermore, Lisa Owsley voluntarily took a polygraph examination which shows that she passed the test indicating that she did not shoot Cary Owsley. Lisa Owsley was eliminated from any criminal liability.

Despite recent efforts of the newest doctor hired by "The Mission", the conclusion of murder or fowl play is NOT the answer. Dr. Smock claims that the bullet entrance and exit wounds are inconsistent with a man who is standing up and has shot himself. From the crime scene photos, it is clear that if Mr. Owsley was standing, he was not standing straight and tall as Dr. Smock's pictures would have you believe, but he would have been bent over due to his health issues, of which Dr. Smock admittedly agreed during his deposition. Mr. Owsley was a proud man, even at his lowest point, and it's easy to see why he wouldn't have shot himself in the head. He wanted to preserve his face, but take away the pain by shooting himself in the heart.

Mr. Owsley's bullet wounds and the wall markings, along with the broken spindle from the chair, the position of the body, are easily explained as the initial investigation reports. Mr. Owsley shot himself.

Lisa Owsley, widow, has not misrepresented the Estate of her late husband, there is no neglect, and there is no emergency. Lisa continues to remain strong and focused, her only wish being that this matter (along with her beloved husband) be laid to rest in peace. Under Indiana Statute, sister, Cheryl Owsley, has no authority to have wife removed as the Personal Representative of her late husband's estate.

FACTS OF SUICIDE:

Cary Owsley was born on the 8th day of January 1964. At the time of his death he was 49 years old. That is about the extent of the truth in a Fox 59 report of March 19, 2015.

Mr. Cary Owsley proposed to Lisa Owsley on or about the fall of 2009, the couple was having a cook-out in the garage with all the neighbors when Carey proposed to Lisa. Everyone was excited and happy. One of the neighbors (Cary's good friend Gary Strahl) even gave them the rings on that day. The couple had lived together since the Spring of 2009, when Cary moved

in with Lisa after dating for approximately a year. The couple married April 24, 2010.

The couple met at work and started dating in 2008, after Cary pursued Lisa for some time. All of Lisa's family cared for and loved Cary Owsley, accepting him as part of the family with open arms.

Shortly after the couple started dating, Cary was very open and honest with Lisa about a previous back surgery which resulted in him losing everything including his job and his home. When the parties met, Mr. Owsley was working, even though he was involved in a pain management program and was regularly taking Norco 10/325 approximately 6 times a day, a muscle relaxer, and Klonopin for an existing anxiety issue.

Three months after the couple married, Cary fell off of metal shelving that they were moving (At RightWay Fasteners). This fall resulted in Husbands inability to return to work, due to extensive back injuries. When Cary was told that he would never return to work, Cary's personality started to change. Cary felt the need for constant control of every other aspect of his life. He expressed fear that Lisa would leave him due to his inability to provide as a husband. On one occasion he asked Lisa to stay home with him, but she had to go to work. Cary became so angry that he threw a coffee cup through the glass on the oven and broke it. Cary would call Lisa regularly throughout the day and scream at Lisa when he was upset because she couldn't be there.

Lisa sought help for Cary's emotional issues related to his chronic pain. He had back injections, and was ultimately turned down for a surgery because his back was too bad for a surgery to be of any help. Cary couldn't stand for any length of time without falling due to his back issues. At the end of 2012, the doctors discussed making special braces for his legs, but was told that his spinal stenosis and arthritis had gotten too bad. The doctors finally reached a point where medication was Cary's only option and he was told that he would spend the rest of his life in a wheel chair. Cary looked at Lisa and said "I will NOT spend the rest of my life in a wheelchair".

Cary suffered emotionally due to his health degrading. He had always been active, in work and in leisure. Cary was an avid fisherman and a hunter. Every spring he would get the boat ready for his fishing trips. The spring of 2013, he did not even attempt to get ready for fishing season.

Husband LOVED his collection of knives, ball caps, and guns. From a few months after the date of the wedding until the date of Cary's death, he spent a lot of time alone. He also spent a lot of time with his neighbor. However, as time passed, towards the end of 2012 to the date of

death, Cary became decreasingly active and took a lot of medications. Lisa noticed that Cary abused his medications on a regular basis (specifically the anti-anxiety medications).

On or about April 3, 2013, Cary's psychologist's notes show that he was suffering not only from physical pain, but from severe depression as well. He felt worthless, a feeling Mr. Owsley expressed at ALL seven (7) visits to his therapist. Four out of his seven psychology visits show that Cary Owsley presented with suicidal ideation.

In addition to the physical pain, and possibly adding to the mental anguish, Cary had an estranged relationship with his son, whom he expressed heart break over.

Cary decided that he wasn't going to anymore specialist doctor appointments (other than his pain management doctor). He specifically stated to a neurosurgeon that "the pain would be less if he cut his head off".

Lisa, her son Josh, and Cary's ex-stepson Dustin spent their lives taking Cary to doctor appointments, and taking care of him. Cary often expressed agitation and depression at home. Cary's estranged son, Logan, took him to the store one day when Cary fell. Logan was embarrassed and just took Cary home. Lisa was so protective of Cary that she regularly sent people to the house to check on him while she was at work. It was her son Josh that found Cary on the floor one afternoon after a fall. Lisa's family cared and loved Cary so much that he was never considered an inconvenience. Lisa tried to keep all interaction happy and light.

Cary's relationship with his side of the family was volatile at best. His son ran away and refused to talk to him, and his sister Cheryl Jackson would communicate often ending in an argument. Cary was bringing in approximately \$800.00 per month, he was on Lisa's health insurance, and the medical bills were extensive. While Cary's check went into the joint account and Lisa handled the couple's financial affairs, Cary had full access to any amount of money at any time.

While it is true that the day before Cary died, Cary became upset and left wife's parent's home. Lisa had no idea why Cary was so upset and later found out that he told their neighbor, Raymond, that he had planned that particular argument. The parties had been planning their anniversary when Cary told Lisa that he had been saving some money and had approximately \$2,000.00 set aside to buy new rings. Lisa was ecstatically happy, and also saddened when Cary would tell her that she was going to leave him. Lisa constantly told Cary that she wasn't leaving him, ever. She tried to reassure him that she loved him.

On the seventh day of April 2013, a Sunday afternoon, Lisa was in the master bedroom down the hall from Cary. Wife was putting the screens in the windows, and taking the storm

windows out. Cary called to Lisa "Honey, come here" in a normal tone. Lisa replied "Give me just a minute, I've got to get this window out of my hand, I'll be right there." And Cary immediately replied "I don't have time" and then wife heard one gun shot. Lisa had just set the window down on the floor when she heard the gunshot. Lisa ran into the office and found Cary on the floor. She immediately called 911 to scene.

The first person wife recognized on the scene was Dean Johnson, a County Officer. EMS didn't come onto the scene until they knew the gun was stabilized. There was a note found in a spiral notebook on wife's desk that stated he wanted an insurance policy left to his wife and sister after his death.

Since the date that Cary Owsley killed himself Lisa has been under crucifixion from his family. She has not only had to see her husband die before her eyes, but she has undergone investigation and scrutiny. Cary's sister, Cheryl Jackson, is making claims that Lisa planned Cary's death. Lisa Owsley previously agreed to take a lie detector test and passed with no question.

Cheryl Jackson, Cary's sister, is a freelance journalist, and initially worked for CNN. Wife believes she also teaches English. Wife believes that her deceased Husband's sister is receiving money from donations. Cheryl Jackson has been requesting donations for her "mission". The amount of money raised is unknown at this time.

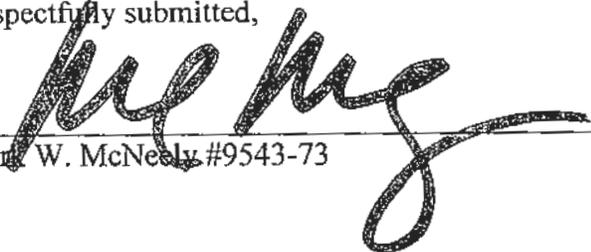
On or about the 19th day of March 2015, Fox 59 News printed an article online wherein it stated that Lisa Owsley was an "estranged wife" and made outrageous, previously called "horribly irresponsible" statements, with very little factual information. DeWayne Janes was in fact, last on the scene and only proceeded at the direction of superiors. There was no mention that Mr. Janes was also a good friend to Cary Owsley in any of the media coverage.

Cheryl Jackson has made false claim after false claim. The media has taken Cheryl's story and made a mockery out of the Owsley marriage, Lisa Owsley, and her love for her physical and mentally ill husband. Cheryl Jackson and the media continue to degrade and prolong Lisa's pain. Cheryl Jackson never physically cared for her brother. She came out of the woodwork publicly, the day she had an article published in *The Republic* on June 15, 2013, two months after Cheryl had her brother buried, an investigation and an autopsy had been concluded.

Two years later, Cary Owsley still cannot be left to Rest in Peace, and Widow, Lisa Owsley has not been left to properly grieve. Lisa Owsley, is an innocent bystander who needs to put her husband to rest and proceed with her grieving process. Lisa has NEVER been uncooperative with the police or any investigation relating to her husband's death.

Cary Owsley was depressed and suicidal. He was and still is deeply loved and missed by Lisa and her family.

Respectfully submitted,

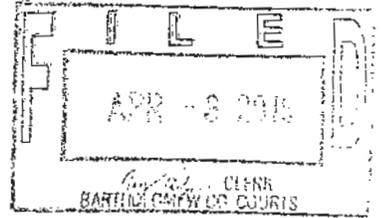

Mark W. McNeely, #9543-73

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been provided to all parties, this 3rd day of April, 2015.


Mark W. McNeely, #9543-73

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In the Circuit Court
Bartholomew County, Indiana

Cause No. 03C01-1406-ES-002796

IN THE MATTER OF THE ESTATE OF)
)
CARY A. OWSLEY, deceased.)

ANDRE LOGAN OWSLEY HEARING MEMO IN SUPPORT OF PETITIONS:

- (1) FOR THE REMOVAL OF THE PERSONAL REPRESENTATIVE,**
- (2) PETITION FOR APPOINTMENT OF A SPECIAL ADMINISTRATOR, and**
- (3) PETITION TO DISTRIBUTE ABANDONED PROPERTY**

ANDRE LOGAN OWSLEY IS AN INTERESTED PARTY

The decedent, Cary Owsley, died intestate. No Will has been offered for probate.

There are two heirs at law. The decedent was survived by his wife, Lisa A. Owsley and his son, Andre Logan Owsley. After the payment of all claims, fees, expenses, and taxes, Lisa and Logan should inherit equal, one half shares.

As a beneficiary and as the decedent’s son, Logan is an interested party in the Estate. See Indiana Code Section 29-1-1-3.

STANDARD FOR REMOVAL OF EXECUTOR

The trial court appointed Lisa A. Owsley as personal representative of the decedent’s Estate.

The trial court has discretion to remove Lisa if she is “unsuitable or incapable of discharging the representative’s duties, has mismanaged the estate, [or] failed to perform any

duty imposed by law ...” See *Indiana Code Section 29-1-10-6; Inlow v. Henderson Daily*, 787 N.E.2d 385 (Ind.App. 2003).

The personal representative is regarded as a trustee appointed by law for the benefit and protection of creditors and distributees. *Fall v. Miller*, 462 N.E.2d 1059, 1061 (Ind.App. 1984). The fiduciary character of the relationship extends to all legatees. *Fall*, at 1063. The Probate Code specifically charges the personal representative with the responsibility of collecting and preserving all assets of the estate. *Indiana Code Section 29-1-13-1; Fall*, 462 N.E.2d at 1063. The language of Indiana Code Section 29-1-13-1 is mandatory: the personal representative "shall" take possession of all of the decedent's property.

The personal representative has a duty to file a complaint against those that owe the decedent money or those that harmed the decedent prior to her death. *I. C. §§ 29-1-13-1; 29-1-13-10; 29-1-16-1; 29-1-1-3* (personal property includes "choses in action", defined as a right to bring an action to recover a debt, money or thing); *Inlow v. Henderson Daily*, 787 N.E.2d 385, 391 (Ind.App. 2003) ("In short, Indiana Code section 29-1-13-1 gives a personal representative the right to the decedent's contract and tort claims, along with the decedent's other property interests"); *Fall*, 462 N.E.2d at 1061; *Diaz v. Duncan*, 406 N.E.2d 991, 1002 (Ind.App. 1980); *Ind. Dept. of Revenue v. Cohen*, 436 N.E.2d 832, 836 (Ind.App. 1982); *Oberting v. Jutte*, 150 N.E. 796 (Ind.App. 1926).

"The personal representative is regarded as a trustee appointed by law for the benefit and protection of creditors and distributees. *Fall v. Miller* (1984), Ind.App., 462 N.E.2d 1059, 1061. The fiduciary character of the relationship extends to all legatees. *Id.* at 1063. The personal representative bears a heavy burden in this regard for it is his duty to guard against error in the distribution by exercising the greatest possible care to see that all available evidence is fully and truthfully presented to the court in a hearing on a petition for distribution of the estate. *Diaz v. Duncan* (1980), Ind.App., 406 N.E.2d 991, 1002. The personal representative owes a duty to all interested parties to administer an estate impartially. *Ind. Dept. of State Revenue v. Estate of Cohen* (1982), Ind.App., 436 N.E.2d 832, 836.

“The Indiana Probate Code specifically charges the personal representative with the responsibility of collecting and preserving all assets of the estate. Fall, 462 N.E.2d at 1063. The language of I.C. 29-1-13-1 is mandatory: the personal representative “shall” take possession of all of the decedent’s property. To perform this duty, the personal representative is given the power to maintain suit for the recovery of possession of any property of the estate. I.C. 29-1-13-10. Indeed, I.C. 29-1-13-10 specifically authorizes a proceeding where there is a dispute as to ownership between the estate and another person. It is the personal representative’s duty to bring an action for conversion. Oberting v. Jutte (1926), 84 Ind.App. 208, 210, 150 N.E. 796. A personal representative who fails to use due diligence in collecting a claim due the estate becomes personally liable for any loss caused thereby. Cohen, 436 N.E.2d at 836. See also, I.C. 29-1-16-1(c).”

Estate of Banko, 602 N.E.2d 1024, 1028-29 (Ind.App. 1992) reversed on other grounds, 622 N.E.2d 476 (Ind. 1994).

If the personal representative does not file a complaint that could increase the value of the estate, then any interested person can object to the final accounting. I.C. §§ 29-1-11-10; 29-1-14-11; 29-1-16-1. Williamson v. Williamson, 714 N.E.2d 1270 (Ind.App. 1999); Inlow v. Henderson Daily, 787 N.E.2d 385, 393 (Ind.App. 2003) (“the heir may seek the removal of the personal representative altogether, petition for the collection of indebtedness and the appointment of a special administrator if necessary, or sue the personal representative for loss to the estate”); Estate of Burmeister v. Burmeister, 621 N.E.2d 647 (Ind.App. 1993) (executor surcharged for not selling stock that rapidly declined in value).

The question of suitability includes the removal of a personal representative who has a conflict of interest. See Matter of Swank’s Estate, 375 N.E.2d 238 (Ind.App. 1978); Hauck v. Second Nat. Bank, 286 N.E.2d 852 (Ind.App. 1972).

THE PROBLEM OF STANDING TO FILE SUIT ON BEHALF OF THE ESTATE

There are Indiana appellate cases which hold that heirs do not have standing to file a complaint on behalf of the estate, leaving any such lawsuit up to the personal representative or special administrator to file:

Inlow v. Inlow, 797 N.E.2d 810 (Ind.App. 2003); Inlow v. Henderson Daily, 787 N.E.2d 385 (Ind.App. 2003); Inlow v. Ernst & Young, LLP, 771 N.E.2d 1174 (Ind.App. 2002) (vacated by the Indiana Supreme Court and then settled); Newton v. Hunt, 103 N.E.2d 445 (Ind.App. 1952) (administrator of estate can bring action to recover assets of estate for distribution to beneficiaries); Umbstead v. Preachers' Aid Society, 58 N.E.2d 441 (Ind. 1944) (noting that personal property of the decedent and the right to any action passes to the personal representative); Baker v. State Bank of Akron, 44 N.E.2d 257 (Ind.App. 1942) (only personal representative can bring action to recovery money or personal assets of the decedent necessary to administer the estate); Smith v. Massie, 179 N.E. 20 (Ind.App. 1931) (the right to sue to recover money and personal property belongs to personal representative and not surviving widow or widower); Magel v. Milligan, 50 N.E. 564 (Ind. 1898) (heirs have no right to sue to recover debts owed to the estate); Holland v. Holland, 30 N.E. 1075 (Ind. 1892) (unless given permission by administrator, legatee has no standing to bring action to recover estate assets from third party); Clegg v. Bamberger, 9 N.E. 700 (Ind. 1887) (administrator can bring action for conversion against attorney hired by decedent); Henry v. State ex rel. Franklin, 98 Ind. 381 (1884) (administrator represents creditors in collection against estate and may bring action for conversion to secure assets due the estate); Schee v. Wiseman, 79 Ind. 389 (1881) (personal property of decedent and right to cause of action for trespass passes to administrator); Smith v. Dodds, 35 Ind. 452 (1871) (administrator is proper person to bring action for conversion and trespass to protect property of decedent); Walpole's Administrator v. Bishop, 31 Ind. 156 (1869) (only administrator may bring cause of action on behalf of estate); Grimes v. Blake, 16 Ind. 160 (1861) (administrator of estate may bring suit to recover overpayment to creditor).

Conversely, there are Indiana appellate cases which hold that individual heirs do have standing to file a complaint against those they believe owe something to the estate:

Ohlfest v. Rosenberg, 71 N.E.2d 614, 616 (Ind.App. 1947) (The real estate is in the name of the heirs, subject only to the claims of creditors and the spousal allowance); Graves v. Summit Bank, 541 N.E.2d 974 (Ind.App. 1989) (non-probate property does not involve the personal representative); McCoy v. Like, 511 N.E.2d 501, 502 n.1 (Ind.App. 1987) and Blake v. Blake, 391 N.E.2d 848 (Ind.App. 1979) (interested persons have standing); Umbstead v. Preachers' Aid

Soc., 58 N.E.2d 441 (Ind. 1944) (heirs and legatees are the proper parties to maintain an action to set aside deeds and other transfers involving undue influence or fraud, and the executor need not even be made a party); *Hutchinson's Estate v. Arnt*, 1 N.E.2d 585 (Ind. 1936) (the wife's duty to preserve her husband's estate assets was to the remainderman, not to the estate of her husband. "Any right of action for conversion is in the remainderman. They are the real persons in interest."); *Leazenby v. Clinton County Bank*, 355 N.E.2d 861, 863 (Ind.App. 1976) (electing spouse may sue to collect "such property as would have passed under the laws of descent and distribution"); *Barkley v. Barkley*, 106 N.E. 609 (Ind. 1914) (the father had conveyed real estate to son in 1900, and much later the grandchildren allowed to sue and collect their one third intestate share of what should have passed to their mother who died in 1901); *Villanella v. Godbey*, 632 N.E.2d 786, 788-89 (Ind.App. 1994) (heirs of the estate sued executor in his individual capacity on grounds of undue influence where the unlawful transfers purportedly occurred in 1987 and 1988 where the decedent died in 1991); *Hunter v. Milhous*, 305 N.E.2d 448 (Ind.App. 1973) (wife permitted to sue to set aside deeds although the Court had appointed a non-relative guardian of the estate); *Keys v. McDowell*, 100 N.E. 385 (Ind.App. 1913) (heirs of the estate of decedent who died in 1907 sued church trustees for alleged undue influence in obtaining real estate deeds in 1902); *Folsom v. Buttolph*, 143 N.E. 258 (Ind.App. 1924) (mother died intestate in 1920 and thereafter decedent's daughter sued decedent's son alleging undue influence in procuring deeds to real estate in 1917); *Banko v. National City Bank*, 602 N.E.2d 1024, 1030 (Ind.App. 1992) (even after an investigation convinces an executor not to pursue an action, any person interested in the estate has standing to pursue a claim, in this case for possible conversion of estate assets), *vacated on other grounds*, 622 N.E.2d 476 (Ind. 1993).

For example, in *Darlage v. Cheryl Drummond*, 576 N.E.2d 1303 (Ind.App. 1991), the decedent's sister was appointed executrix and failed to request a proper accounting of the decedent's partnership assets. The executrix was found to have misappropriated estate property in concert with the decedent's surviving partner and father (Darlage). The decedent's prior spouse (Cheryl) was a creditor of the estate and also *guardian ad litem* of her children as beneficiaries. Darlage argued that a non-executor does not have standing as the real party in interest. The Court disagreed:

“While Indiana Code Sections 23-4-1-42 and 29-1-13-3 do provide for a deceased partner's estate to pursue claims against the continuing partner, these statutes in no way foreclose enforcement of the deceased partner's rights by other persons. The legislature could not have intended to prevent enforcement of such

rights where, as here, the executrix has failed to act on behalf of the estate for many years, and enforcement remains doubtful.

“We further note that the likelihood of Jane ever enforcing the estate's rights against her father is slim. . . . Cheryl, as creditor of the estate and as guardian of the estate's devisees, not only has standing to assert this claim, but is the only one affected thereby who is willing to assert such a claim. We find Cheryl has standing).”

Darlage, 576 N.E.2d at 1308.

Whether or not Andre Logan Owsley, individually, has standing to file a complaint on behalf of the decedent, the parties do not dispute that the personal representative or a special administrator definitely has such standing.

STANDARD FOR APPOINTMENT OF SPECIAL ADMINISTRATOR

Pursuant to Indiana Code Section 29-1-10-15, the Court should appoint a special administrator to take such action as it shall direct. See *Darlage v. Cheryl Drummond*, 576 N.E.2d 1303 (Ind.App. 1991); *McCoy v. Like*, 511 N.E.2d 501, 502 n.1 (Ind.App. 1987).

“Whenever any interested person files with the court having jurisdiction of an estate a petition showing that such person has reason to believe and does believe that the personal representative of the estate or any other person is indebted to the estate, or that any property is in the possession of the personal representative of the estate or of any other person, and that diligent effort is not being made to collect such indebtedness or to secure possession of such property for the estate, the court shall hold a hearing upon such petition and shall determine what action, if any, shall be taken. Should the court decide that there is sufficient merit in the petitioner's claim to warrant action, it shall direct the personal representative to take such action as the court deems necessary; provided, however, where the person claimed to be indebted to the estate or having in his possession property belonging to the estate is the personal representative or where the court is of the opinion that the personal representative would not or could not for any reason prosecute such action with sufficient vigor, it shall appoint a special administrator to take such action as it shall direct.”

Indiana Code Section 29-1-13-16. See Powell v. Jackson, 111 N.E. 208 (Ind.App. 1916); see also Estate of Swank, 375 N.E.2d 238, 241 (Ind.App. 1978) (allegations of fraud, unlawful influence or incompetency justify the appointment of special administrator).

In assessing whether to appoint a special administrator, the court should consider “the strength of a claim, the costs to the estate in pursuing it, and the desirability of closing the estate before certain assets depreciate in value.” *Inlow v. Inlow, 797 N.E.2d 810, 819 (Ind.App. 2003) (Baker, J., concurring), citing Inlow v. Henderson Daily, 787 N.E.2d 385, 391 (Ind.App. 2003).*

“First, the probate court--not the litigant--determines whether a petitioner's claim of a person's indebtedness has merit. Second, unless the personal representative either is the indebted person or will not prosecute an action with "sufficient vigor," he is presumed the proper party to collect the indebtedness. Third, if the presumption of personal representative fitness is overcome, then the probate court appoints a special administrator to prosecute the action.”

Inlow, 787 N.E.2d at 393.

The question for the court is whether a special administrator should be appointed to investigate or if Logan has already established a *prima facie* case. *Estate of Banko v. National City, 602 N.E.2d 1024, 1029 (Ind.App. 1992), vacated on other grounds, 622 N.E.2d 476; Inlow v. Inlow, 797 N.E.2d 810, 818 (Ind.App. 2003) (“Our review of the record shows that the Inlow Children fail to present a *prima facie* case with regard to either court of conversion against Anita”).*

In reviewing whether Logan has or can present facts with sufficient merit for the appointment of a special administrator, the court should consider any and all evidence in the light most favorable to Logan, and which evidence if believed or left uncontradicted, would lead to a judgment in favor of the estate. *Mullins v. State, 646 N.E.2d 40, 51 (Ind. 1995); Mariah Foods v. Indiana, 749 N.E.2d 646 (Ind.Tax 2001); Earl v. American States, 744 N.E.2d 1025 (Ind.App. 2001).* Contradiction of *prima facie* evidence merely creates a question of fact that a Judge or

Jury must resolve by way of a separate lawsuit. Mullins, 646 N.E.2d 40, 51 (Ind. 1995); Ramsey v. Madison County, 707 N.E.2d 814, 816 (Ind.App. 1999).

The court should review the evidence as if it were ruling on a motion to dismiss or motion for directed verdict; that is, can Logan present enough evidence to support a judgment or verdict? Indiana CPA Society v. GoMembers, 777 N.E.2d 747 (Ind.App. 2002); Dominiack v. Dunbar, 757 N.E.2d 186 (Ind.App. 2001); City of New Haven v. Allen County, 694 N.E.2d 306, 311 (Ind.App. 1998) (allegations taken as true, and question is whether any set of facts entitle the plaintiff to relief). Likewise, has Logan presented enough evidence that a complaint should be filed and a more thorough investigation be had?

Because time is of the essence, Logan requests the trial court appoint a special administrator to file any complaints and then report to the trial court after further investigation.

ASSERTION OF PRIVILEGE

The U.S. Constitution Bill of Rights allows Lisa to assert a claim of privilege against testifying against herself on a potential criminal matter. However, Evidence Rule 501(d) does not prevent comment upon or an inference from such a claim of privilege.

If Lisa refuses to answer any questions because of the privilege against self incrimination, this permits the trial court and the Jury to rule in favor of Logan so long as he introduces a scintilla of other evidence to support a verdict. Baxter v. Palmigiano, 425 U.S. 308, 96 S.Ct. 1551, 1558 (U.S. 1976); Hardiman v. Cozmanoff, 4 N.E.3d 1148, 1152 (Ind. 2014); In re A.G., 6 N.E.3d 952, 957 (Ind.App. 2014); Gash v. Kohm, 476 N.E.2d 910, 915 (Ind.App. 1985); Aubrey v. State, 310 N.E.2d 556 (Ind. 1974); Loomis v. Ameritech, 764 N.E.2d 658, 662 (Ind.App. 2002).

"In Indiana, the exclusive possession of facts or evidence by a party, coupled with the suppression of the facts or evidence by that party, may result in an inference that the production of the evidence would be against the interest of the party which suppresses it."

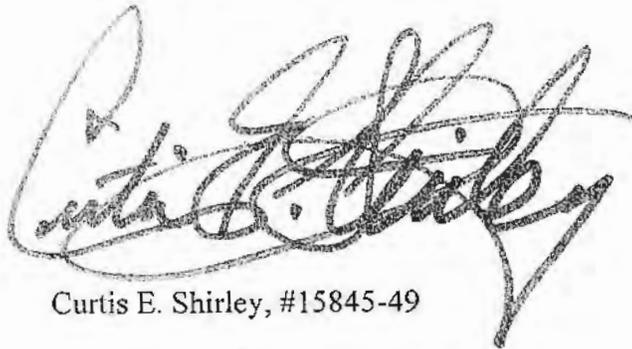
Cahoon v. Cummings, 734 N.E.2d 535, 545 (Ind. 2000), citing *Porter v. Irvin's Interstate*, 691 N.E.2d 1363, 1364-65 (Ind.App. 1998), *Great Am. Tea Co. v. Van Buren*, 33 N.E.2d 580, 581 (Ind. 1941); *Morris v. Buchanan*, 44 N.E. 2d 166 (Ind. 1942) ("Many of the facts about which there is uncertainty were peculiarly within the knowledge of the appellant and such a situation may give rise to an inference that if these had been fully disclosed they would have been unfavorable. While this rule will not be carried to the extent of relieving a party of the burden of proving his case, it may be considered as a circumstance in drawing reasonable inferences from the facts established"), citing *Van Buren*, 33 N.E.2d at 581. See *Westervelt v. National Mfg.*, 69 N.E. 169 (Ind.App. 1903).

THE TRIAL COURT MAY ASSIGN THE CLAIMS

Undoubtedly the personal representative, Lisa Owsley, believes that what Logan seeks to file on behalf of the Estate does not have any merit. If so, Logan asks that the trial court order the Estate to abandon the claims and related causes of action which Logan seeks to pursue and assign them to him. I.C. § 29-1-13-8 (Abandonment of property), states "When any property is valueless, or is encumbered, or is in such condition that it is of no benefit to the estate, the court may order the personal representative to abandon it." The Probate Code Study Commission Comments to I.C. § 29-1-13-8 further indicate the trial court may order the Estate to distribute the claims and related rights of action, "If the rights involved have any prospective value, they may be transferred by way of distribution to the beneficiaries who will succeed to all rights of the deceased."

WHEREFORE the trial court should either (1) remove Lisa Owsley as personal representative; (2) appoint a special administrator; or (3) order the Estate to abandon all claims of the Estate and distribute them to Logan.

Respectfully submitted,

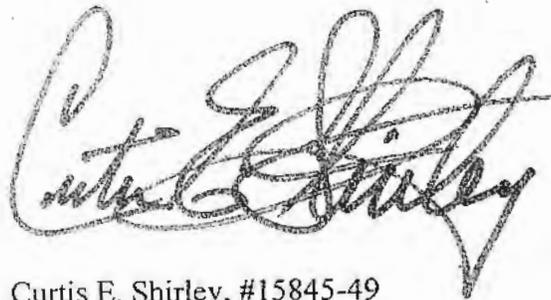


Curtis E. Shirley, #15845-49

Attorney for Andre Logan Owsley

CERTIFICATE OF SERVICE

I certify that the foregoing was served on all counsel of record at the hearing on April 3, 2015.



Curtis E. Shirley, #15845-49

Attorney for Andre Logan Owsley

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IC 29-1-10-6**Removal of personal representatives for reasons other than a change in control of a corporate fiduciary**

Sec. 6. (a) This section does not apply to the removal of a corporate fiduciary after a change in control of the corporate fiduciary.

(b) When the personal representative becomes incapacitated (unless the incapacity is caused only by a physical illness, infirmity, or impairment), disqualified, unsuitable or incapable of discharging the representative's duties, has mismanaged the estate, failed to

perform any duty imposed by law or by any lawful order of the court, or has ceased to be domiciled in Indiana, the court may remove the representative in accordance with either of the following:

(1) The court on its own motion may, or on petition of any person interested in the estate shall, order the representative to appear and show cause why the representative should not be removed. The order shall set forth in substance the alleged grounds upon which such removal is based, the time and place of the hearing, and may be served upon the personal representative in the same manner as a notice is served under this article.

(2) The court may without motion, petition or application, for any such cause, in cases of emergency, remove such personal representative instantly without notice or citation.

(c) The removal of a personal representative after letters are duly issued does not invalidate official acts performed prior to removal.

(Formerly: Acts 1953, c.112, s.1006.) As amended by Acts 1982, P.L.171, SEC.28; P.L.33-1989, SEC.40; P.L.143-2009, SEC.12.

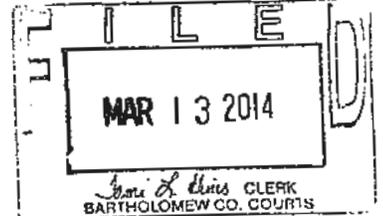


STATE OF INDIANA)
) SS.
COUNTY OF BARTHOLOMEW)

IN CIRCUIT COURT
PROBATE DIVISION
CAUSE NO.

03201-1403-EU-1170

IN THE MATTER OF THE UNSUPERVISED)
ADMINISTRATION OF THE ESTATE OF)
)
)
CARY A. OWSLEY, deceased.)



**PETITION FOR APPOINTMENT OF A PERSONAL REPRESENTATIVE
AND FOR UNSUPERVISED ADMINISTRATION**

CHERYL JACKSON, the surviving sibling of the decedent herein, CARY A. OWSLEY,
and respectfully represents to the Court as follows:

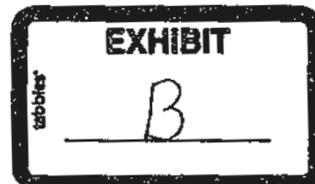
1. The above-named decedent, age 49, died intestate on April 7, 2013, while domiciled in Bartholomew County, Indiana.

2. The petitioner herein, CHERYL JACKSON ("Jackson"), is an interested party in the decedent's estate in that she is the sibling of the decedent.

3. Lisa Owsley ("Lisa") is decedent's surviving spouse and has a higher order than Petitioner under IC 29-1-10-1. To date, however, she has not petitioned the Court to open an estate for her husband.

4. The name, age, relationship, and residence of all of the known heirs at law of the decedent are as follows: **Lisa Owsley**, surviving spouse, c/o Mark W. McNeely, Esq., McNeely Law Office, 30 East Washington St., Ste. 100, Shelbyville, IN 46176-1372 and **Andre Logan Owsley** ("Logan"), adult son, 817 Central Place, Columbus, Indiana 47201.

5. Logan joins in said petition for the appointment of CHERYL JACKSON as personal representative of the estate of CARY A. OWSLEY and request unsupervised administration as evidenced by his consent, attached hereto as Exhibit A, and made a part of this



petition.

6. To the petitioner's best knowledge, the decedent's estate is believed to be solvent and to consist of the following properties:

- A. Real Property Valued: None.
- B. Personal Property Valued: In possession of surviving spouse, Lisa Owsley.

7. The decedent's creditors are unknown as of the time of the filing of this petition for the appointment of a personal representative.

8. The petitioner herein, CHERYL JACKSON, resides at 200 Jackson Street, #333, Columbus, Indiana 47201, and is entitled to be appointed personal representative of the estate of the decedent pursuant to IC 29-1-10-1(a)(5)(B), and that said petitioner is a qualified person to administer the decedent's estate without supervision.

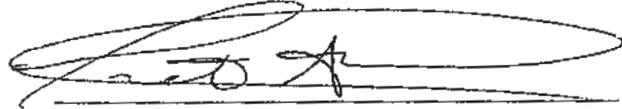
9. The name and business address of the legal counsel who will represent the personal representative is Trent A. McCain, McCain Law Offices, P.C., 5655 Broadway, Merrillville, IN 46410, (219) 884-0696 phone.

10. It will be in the best interest of the decedent's estate to appoint the petitioner as personal representative.

WHEREFORE, the petitioner, along with the decedent's surviving issue, pray the Court for an order appointing CHERYL JACKSON as personal representative of the decedent's estate, directing Letters of Administration be issued, upon the taking of an oath, and that said petitioner be authorized to proceed with unsupervised administration with regard to the decedent's estate, upon proper notice being given to the creditors, and for all other relief which is proper in the premises.

Respectfully submitted,

McCAIN LAW OFFICES, P.C.



Petitioner's Attorney

Trent A. McCain, #23960-45
McCAIN LAW OFFICES, P.C.
5655 Broadway
Merrillville, IN 46410
(219) 884-0696 phone
(219) 884-0692 fax
TAM@McCainLawOffices.com

CERTIFICATE OF SERVICE

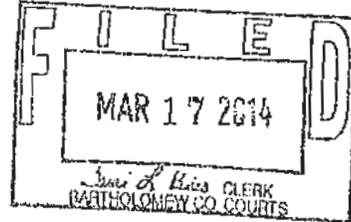
I, the undersigned attorney, certify that on the 13th day of March 2014, service of a true and complete copy of the above and foregoing pleading or paper was made upon each party or attorney of record herein by depositing the same via United States Mail in an envelope properly addressed to each of them and with sufficient first-class postage affixed and/or facsimile.



Trent A. McCain, #23960-45

STATE OF INDIANA) IN THE BARTHOLOMEW CIRCUIT COURT
) SS:
COUNTY OF BARTHOLOMEW) CAUSE NO.: 03C01-1403-EU-1170

IN THE MATTER OF THE UNSUPERVISED
ADMINISTRATION OF THE ESTATE OF
CARY A. OWSLEY,
Deceased



ORDER

The Petitioner indicates that Lisa Owsley is the widow of the decedent. She has not been served with the Petition. It indicates that her attorney Mark McNeely is being served, but there is no attorney who has entered an Appearance on her behalf in this case. There is no indication as to whether the decedent has a will. There has been no consent to unsupervised administration by Lisa Owsley.

IT IS THEREFORE, ORDERED, ADJUGED AND DECREED that the Petition for Appointment of a Personal Representative and for Unsupervised Administration is DENIED.

SO ORDERED THIS 17TH DAY OF MARCH, 2014.

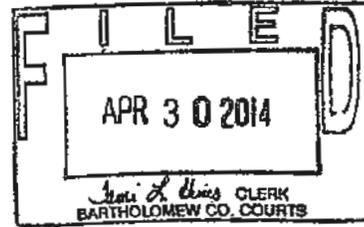

Stephen R. Heimann, Judge
Bartholomew Circuit Court

copies:
Trent A. McCain
McCain Law Offices, P.C.
5655 Broadway
Merrillville, IN 46410

STATE OF INDIANA)
) SS.
COUNTY OF BARTHOLOMEW)

IN CIRCUIT COURT
PROBATE DIVISION
CAUSE NO. 03C01-1403-EU-1170

IN THE MATTER OF THE UNSUPERVISED)
ADMINISTRATION OF THE ESTATE OF)
)
CARY A. OWSLEY, deceased.)



**AMENDED PETITION FOR APPOINTMENT OF A
PERSONAL REPRESENTATIVE AND FOR UNSUPERVISED ADMINISTRATION**

CHERYL JACKSON, by counsel, amends her petition for appointment as personal representative of the Estate of Cary A. Owsley, deceased, and for unsupervised administration as follows:

1. The above-named decedent, age 49, died *intestate* on April 7, 2013, while domiciled in Bartholomew County, Indiana.
2. The petitioner herein, CHERYL JACKSON (“Jackson”), is an interested party in the decedent’s estate in that she is the sibling of the decedent.
3. Lisa Owsley (“Lisa”) is decedent’s surviving spouse and has a higher order than Petitioner under IC 29-1-10-1. To date, however, she has not petitioned the Court to open an estate for her husband.
4. The name, age, relationship, and residence of all of the known heirs at law of the decedent are as follows: **Lisa Owsley**, surviving spouse, 4303 Roosevelt Drive, Columbus, IN 47201-7993 and **Andre Logan Owsley** (“Logan”), adult son, 817 Central Place, Columbus, Indiana 47201.
5. Logan joins in said petition for the appointment of CHERYL JACKSON as personal representative of the estate of CARY A. OWSLEY and requests unsupervised

administration as evidenced by his consent, attached hereto as Exhibit A, and made a part of this petition.

6. To the petitioner's best knowledge, the decedent's estate is believed to be solvent and to consist of the following properties:

A. **Real Property Valued:** None.

B. **Personal Property Valued:** In possession of surviving spouse, Lisa Owsley.

7. The decedent's creditors are unknown as of the time of the filing of this petition for the appointment of a personal representative.

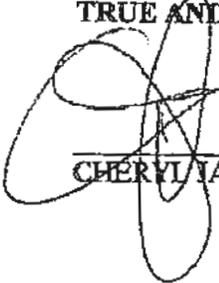
8. The petitioner herein, CHERYL JACKSON, resides at 200 Jackson Street, #333, Columbus, Indiana 47201, and is entitled to be appointed personal representative of the estate of the decedent pursuant to IC 29-1-10-1(a)(5)(B), and that said petitioner is a qualified person to administer the decedent's estate without supervision.

9. The name and business address of the legal counsel who will represent the personal representative is Trent A. McCain, MCCAIN LAW OFFICES, P.C., 5655 Broadway, Merrillville, IN 46410, (219) 884-0696 phone; (219) 884-0692 facsimile.

10. It will be in the best interest of the decedent's estate to appoint the petitioner as personal representative.

WHEREFORE, the petitioner, along with the decedent's surviving issue, pray the Court for an order appointing CHERYL JACKSON as personal representative of the decedent's estate, directing Letters of Administration be issued, upon the taking of an oath, and that said petitioner be authorized to proceed with unsupervised administration with regard to the decedent's estate, upon proper notice being given to the creditors, and for all other relief which is proper in the premises.

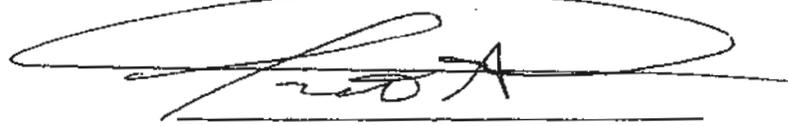
I AFFIRM, UNDER THE PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND/OR BELIEF.



CHERYL JACKSON

Respectfully submitted,

McCAIN LAW OFFICES, P.C.

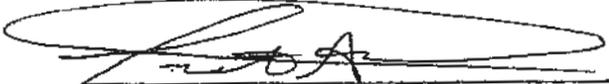


Petitioner's Attorney

Trent A. McCain, #23960-45
McCAIN LAW OFFICES, P.C.
5655 Broadway
Merrillville, IN 46410
(219) 884-0696 phone
(219) 884-0692 fax
TAM@McCainLawOffices.com

CERTIFICATE OF SERVICE

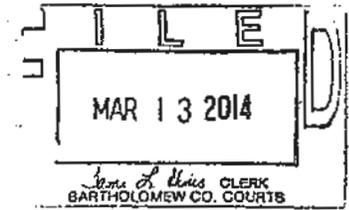
I, the undersigned attorney, certify that on the 30th day of April 2014, service of a true and complete copy of the above and foregoing pleading or paper was made upon each party or attorney of record herein by depositing the same via United States Mail in an envelope properly addressed to each of them and with sufficient first-class postage affixed and/or facsimile.



Trent A. McCain, #23960-45

STATE OF INDIANA)
) SS.
COUNTY OF BARTHOLOMEW)

IN CIRCUIT COURT
PROBATE DIVISION
CAUSE NO.



03C01-1463-EU-1170

IN THE MATTER OF THE UNSUPERVISED)
ADMINISTRATION OF THE ESTATE OF)
)
CARY A. OWSLEY, deceased.)
)

CONSENT TO APPOINT PERSONAL REPRESENTATIVE

1. I am of lawful age.
2. I am the sole surviving child of the decedent, Cary A. Owsley.
3. I consent for my aunt, Cheryl Jackson, to be appointed the Personal Representative of my father's estate.

I, AFFIRM, UNDER THE PENALTIES FOR PERJURY, THAT THE FOREGOING REPRESENTATIONS ARE TRUE.

DATED: March 13, 2014



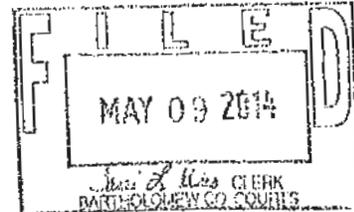
ANDRE LOGAN OWSLEY

STATE OF INDIANA) IN THE BARTHOLOMEW CIRCUIT COURT
) SS:
COUNTY OF BARTHOLOMEW) CAUSE NO. 03C01-1403-EU-1170

IN THE MATTER OF THE)
UNSUPERVISED ADMINISTRATION)
OF THE ESTATE OF:)

CARY A. OWSLEY, Deceased.)

CHERYL JACKSON, Petitioner.)



ORDER

Comes now Cheryl Jackson, by counsel, on the 30th day of April, 2014 and files her Amended Petition For Appointment of a Personal Representative and For Unsupervised Administration. Previously, on March 13, 2014, Petitioner Jackson filed a Petition For Appointment of Personal Representative and For Unsupervised Administration. Both the initial Petition and the Amended Petition indicate: "Lisa Owsley ("Lisa") is decedent's surviving spouse and has a higher order than Petitioner under IC 29-1-10-1. To date, however, she has not petitioned the Court to open an estate for her husband." The initial Petition was denied by this Court on March 17, 2014 indicating that Petitioner Jackson had not served Cary A. Owsley's widow, Lisa Owsley, with the Petition.

The Amended Petition does not indicate that it was served on Lisa Owsley. There is no Summons attached to the Amended Petition or any other indication that Lisa Owsley was served with the Amended Petition. The Certificate of Service on the Amended Petition signed by Petitioner Jackson's attorney, Trent A. McCain states:

"I, the undersigned attorney, certify that on the 30th day of April 2014, service of a true and complete copy of the above and foregoing pleading or paper was made *upon each party or attorney of record* herein by depositing the same via United States Mail in an envelope properly addressed to each of them and with sufficient first-class postage affixed and/or facsimile." (emphasis added)

This Certificate of Service does not constitute proper service. There is no other "party or attorney of record." So, it is unclear what Attorney McCain is certifying.

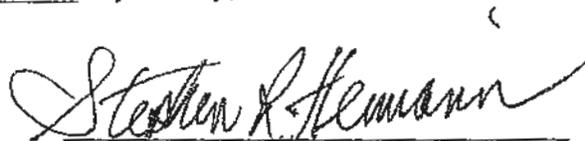
In addition to the lack of service, the Amended Petition is requesting that this Court appoint Petitioner Jackson to act as Personal Representative in an *Unsupervised Estate*. The law is quite clear about the requirements for a Court to appoint a Personal Representative in an unsupervised estate where the decedent did not leave a will. I.C. 29-1-7.5-1 and I.C. 29-1-7.5-2 state that a court may grant a petition for administration without court supervision, when a decedent dies intestate (without a will), if all the heirs at law join in the petition. The Amended Petition indicates that Lisa Owsley is an heir. She has not joined the Amended Petition seeking to have Cheryl Jackson appointed as PR in an unsupervised estate for Cary Owsley.

For the foregoing reasons, this Court is denying Petitioner Jackson's Amended Petition For Appointment of a Personal Representative and For Unsupervised Administration.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Petitioner Jackson's Amended Petition For Appointment of a Personal Representative and For Unsupervised Administration is DENIED.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that in the event Petitioner Jackson files an additional request to be appointed as Personal Representative of Cary A. Owsley's estate, she is required to serve Lisa Owsley with the Petition either by Certified Mail, return receipt requested, or by Sheriff.

All of which is ORDERED this 9th day of May, 2014.


Hon. Stephen R. Heimann
Bartholomew Circuit Court

CC:

Trent A. McCain
5655 Broadway
Merrillville, IN 46410

Waiver of Right of Disposition

If the person vested with the authority to determine final disposition fails to exercise that right within 72 hours of notification of the death of the decedent, they forfeit that right and it passes to the next person(s) described in the law.

I Lisa A. Owsley bearing the relationship of Wife to the decedent, CARY A. Owsley do hereby warrant and represent to the Jewell-Rittman Funeral Home that I have the authority to arrange for the disposition of the decedent under Indiana law, IC 25-15-9-18, et al, and that no one has an equal or superior right of disposition.

I hereby waive, relinquish, and give up my right to designate the manner, type, and selection of the final disposition of the decedent as well as the right to make arrangements for funeral services and/or other ceremonial arrangements for the decedent.

This waiver includes the waiver and relinquishment of any right to seek the recovery, possession, relocation, or disinterment of the decedent's remains or cremated remains.

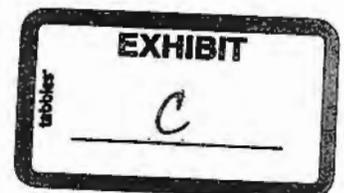
I hereby acknowledge that by signing this waiver, the right of disposition of the decedent will transfer to Rosemary Pennybaker bearing the relationship of Mother to the decedent. Cheryl Jackson Sister

I hereby warrant and represent the truthfulness of these statements and that the funeral home may rely upon the statements made herein in good faith.

I agree to indemnify and hold harmless the funeral home, its owners, employees, and agents from any and all claims or causes of action arising from or related in any aspect to this waiver and the funeral home's reliance thereon.

Lisa A. Owsley
Signature

Apr 8, 2013
Date



STATE OF INDIANA)
)SS:
COUNTY OF BARTHOLOMEW)

IN THE BARTHOLOMEW CIRCUIT
COURT

CAUSE NO. 03C01-1307-MI-004161

CHERYL JACKSON,)
)
Petitioner,)
)
v.)
)
LISA OWSLEY and GARLAND)
BROOK CEMETERY,)
)
Respondents.)

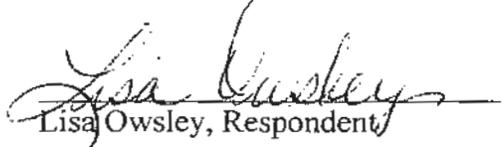
PROPOSAL

Comes now Respondent, Lisa Owsley, by counsel, Mark W. McNeely, and makes the following proposal:

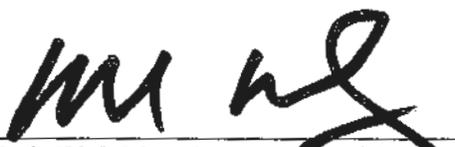
In the event the body of Cary Owsley is disinterred for autopsy, Respondent requests:

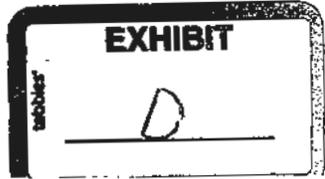
1. The right to have her own agent present, and that the body should remain in the State of Indiana during any autopsy so that the Court can continue to have jurisdiction over the body;
2. That the autopsy be videotaped; and
3. That the autopsy be performed by a licensed Indiana Pathologist appointed by the Court.

READ AND APPROVED:


Lisa Owsley, Respondent

Respectfully Submitted,


Mark W. McNeely, Attorney #954373
Attorney for Respondent, Lisa Owsley



CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served upon the following parties personally this 20th day of November, 2013.

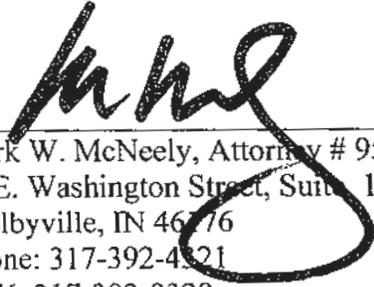
Jeff Beck, Esq
Counsel for Respondent/Garland Brook Cemetery

Trent A. McCain, Esq.
Counsel for Petitioner/ Cheryl Jackson

Ronald S. Sullivan
Counsel for Petitioner/ Cheryl Jackson

Grant Tucker
Counsel for Intervener/Larry Fisher

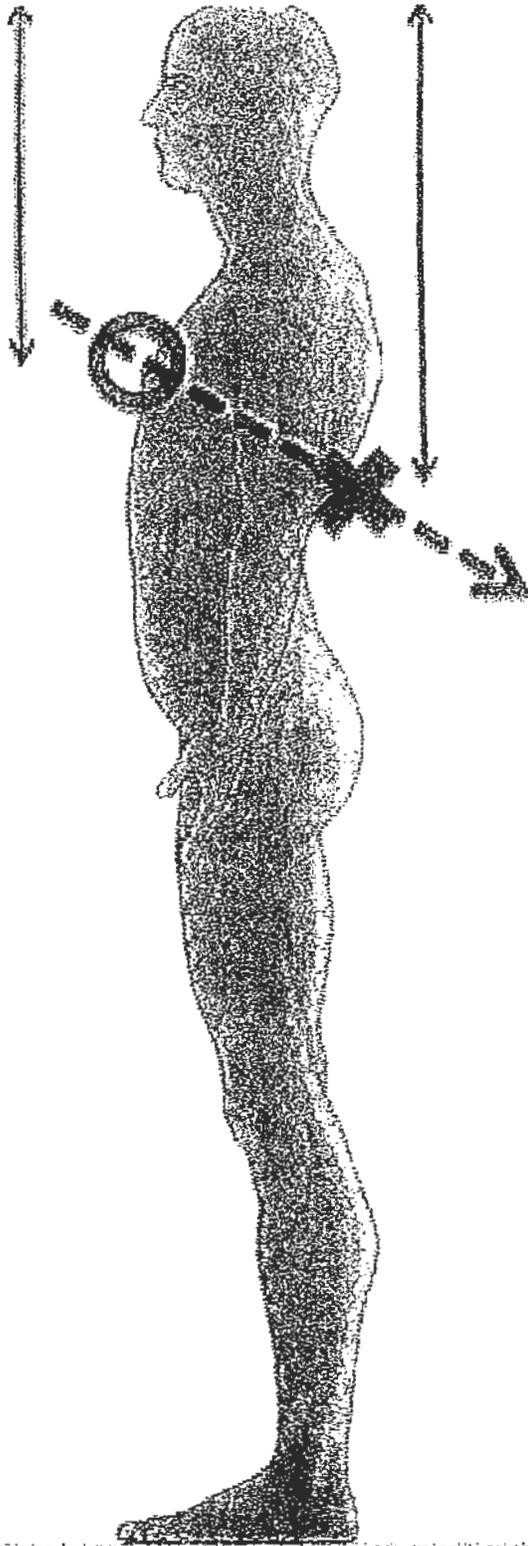
Terrance Coriden
Counsel for Respondent/ Lisa Owsley



Mark W. McNeely, Attorney # 9543-73
30 E. Washington Street, Suite 100
Shelbyville, IN 46776
Phone: 317-392-4321
FAX: 317-392-9329

y: Anterior to posterior, superior to inferior

ound



Exit Wound: over left 11th rib
2.5" from midline
23" from vertex
45" from heel

Bill Smock, MD



Exit Wound: over
2.5" from midline
23" from vertex
45" from heel

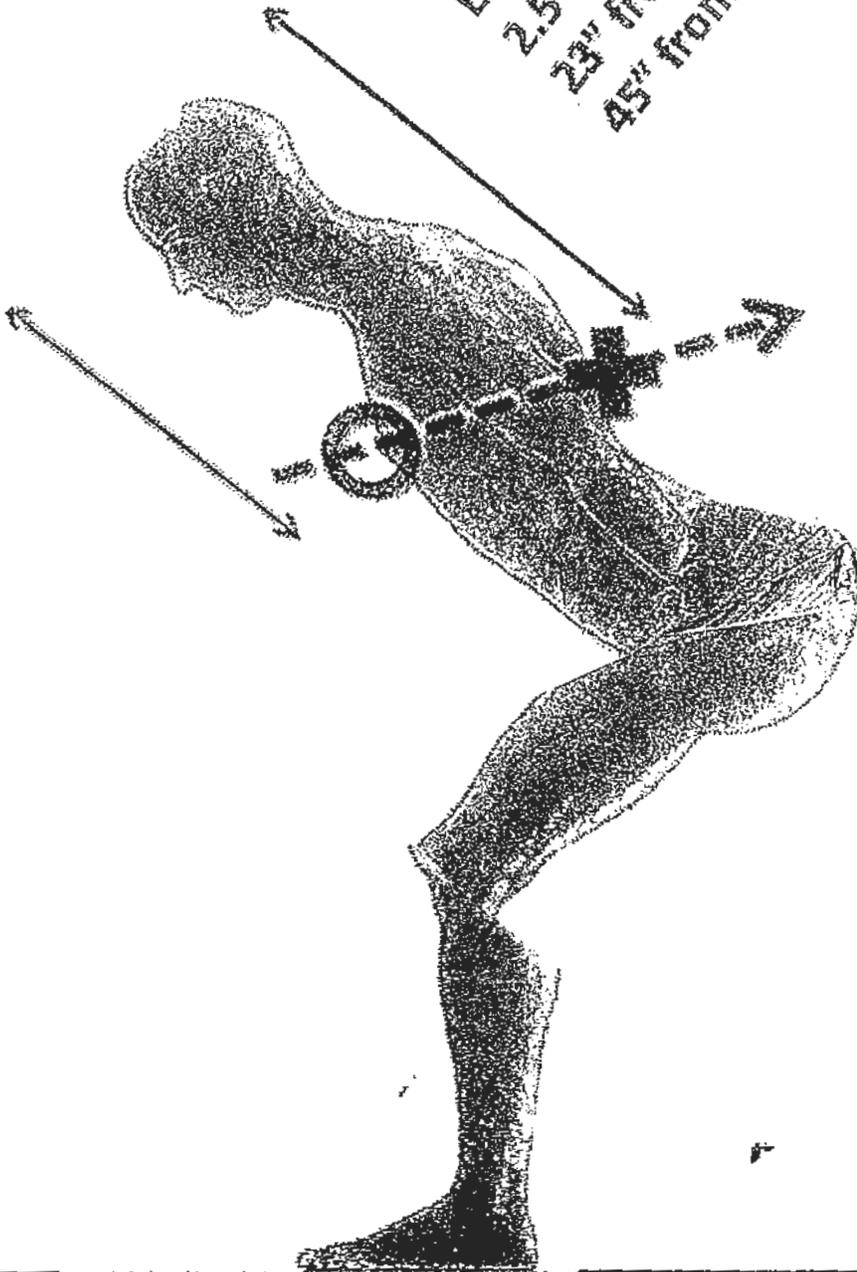


EXHIBIT
tabbles
H

STATE OF INDIANA)
COUNTY OF BARTHOLOMEW)

CHERYL JACKSON,)
Petitioner,)

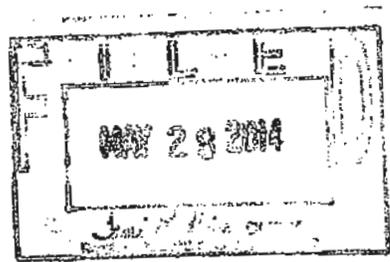
vs.)

LISA OWSLEY and GARLAND)
BROOK CEMETERY,)
Respondents,)

and)

LARRY S. FISHER,)
Intervener.)

IN THE BARTHOLOMEW CIRCUIT COURT
SS:
CAUSE NO: 03C01-1307-MI-4161



**ORDER ON PETITIONER'S MOTION FOR EMERGENCY HEARING REGARDING
MATERIALS PROVIDED TO DR. WERNER SPITZ and
WHETHER TO KEEP DR. SCOTT WAGNER'S AUTOPSY REPORT SEALED**

Petitioner Cheryl Jackson does not appear in person for the hearing, but does appear by counsel, Trent A. McCain. Respondent Lisa Owsley appears in person and by counsel, Mark W. McNeely. Intervener Larry S. Fisher does not appear in person for the hearing, but does appear by counsel, J. Grant Tucker. Respondent Garland Brook Cemetery does not appear either in person or by counsel. On the 27th day of May, 2014, the Court holds a hearing on Petitioner's Emergency Motion for Hearing as it relates to: 1) those items received by her Forensic Pathologist Dr. Warner Spitz as well as 2) Petitioner's request for the Court to order the independent Forensic Pathologist, Dr. Scott Wagner's Autopsy Report, to be kept sealed. The Court also dealt with other matters other than those raised in Petitioner's Motion for Emergency Hearing.



ISSUE REGARDING WHETHER DR. SPITZ HAD RECEIVED ALL OF THE SAME DOCUMENTS WHICH HAD BEEN PROVIDED TO DR. WAGNER

The Petitioner's Emergency Motion indicates: "*Dr. Werner O. Spitz informed Petitioner that he might not have received a complete copy of the Bartholomew County Sheriff Department's investigative reports...*" (emphasis added). At the hearing, the Court noted that the Court provided a copy of the Bartholomew Co. Sheriff's Investigative Report to Dr. Spitz by Certified Mail on April 8, 2014. The Court read into the record all of the documents which were forwarded to Dr. Spitz as a part of the Sheriff's Investigative Report. They were the same documents which had been forwarded to Dr. Wagner. As noted at the hearing, the Sheriff Department Records include the following:

- a) Compendium by Detective by Det. Gregory Duke — *M*
- b) Incident/Investigation Report which includes the following
 - i) Reporting Officer Narrative by Dep. Brent Worman
 - ii) Case Supplemental Report by Det. Christie Nunemaker
 - iii) Case Supplemental Report by Dep. Dean Johnson
 - iv) Case Supplemental Report by Dep. Brent Worman
 - v) Case Supplemental Report by Dep. William Kinman
 - vi) Case Supplemental Report by Dep. DeWayne Janes — *W*
 - vii) Case Supplemental Report by Det. Christopher Roberts
- c) Transcribed Statement of Joshua Janes
- d) Transcribed Statement of Lisa Ann Owsley
- e) Transcribed Statement of Lisa Ann Owsley
- f) Transcribed Continued Statement of Lisa Ann Owsley
- g) Neighborhood Canvas Report
- h) Cell Phone Records
- i) Indiana State Police Report – May 9, 2013
- j) April 7, 2013 BCSD Log Report/Officer Event Reports
- k) Drawings of 4303 Roosevelt St.
- l) Cary A. Owsley Death Certificate
- m) Lisa Owsley Polygraph Report
- n) Joshua Janes Polygraph Report
- o) AIT Laboratories Report
- p) Lincoln Financial Group Application – 1 page only
- q) Hand Written Note – Cary Owsley
- r) Pictures of Cary Owsley's Hand
- s) Pictures of Text Messages to and from Cary Owsley
- t) Statement of Robin White

- u) Statement of Kaylee Roane
- v) Statement of Gary Strahl
- w) Statement of Kyle Gwin
- x) Statement of Logan Owsley
- y) Statement of Charlie Grissom
- z) Statement of Peter Castoreno
- aa) Indiana State Police Certificate of Analysis dated July 25, 2013
- bb) Indiana State Police Certificate of Analysis dated August 16, 2013
- cc) Lt. Christopher Roberts Memo to File dated December 18, 2013
- dd) October 11, 2013 letter from Professor Ronald S. Sullivan
- ee) November 8, 2013 letter from Special Agent Robert Allen Jones, FBI
- ff) February 21, 2014 Release signed by Lisa Owsley
- gg) Cary Owsley's Columbus Regional Hospital Records
- hh) Cary Owsley's Wellspring Pain Solutions Records
- ii) Scene Photographs – **some graphic**
- jj) Photographs of various writings and notebooks
- kk) CD Containing Audio Files

Because the photographs had not photocopied clearly, Dr. Wagner requested that he and Dr. Spitz receive a copy of the photographs digitally. The digital copies were sent to Dr. Wagner, overnight mail, on March 10, 2014, two days prior to the autopsy. Two copies of the digital photographs were sent to Dr. Wagner. He kept one and gave the other to Dr. Spitz.

In the Itemized List filed by Petitioner on May 27, 2014, Dr. Spitz acknowledges that he received "Scene photographs (presumably from the Sheriff) contained on a CD (labeled 'Court Copy')."

After the Court reviewed the entire Sheriff Department file, Mr. McCain on behalf of Petitioner agreed that he knew of no Sheriff Department investigative records which were not received by Dr. Spitz. The Court assured him that it had forwarded all of these records to Dr. Spitz that the Court had received from the Sheriff. Circuit Court Reporter Leah is the person who had copied the entire Sheriff Department investigative file containing 239 pages plus a one page index and one page cover sheet.

**ISSUE REGARDING WHETHER DR. SPITZ HAD RECEIVED
THE MICROSCOPIC SLIDES FROM DR. WAGNER**

The Court did not attend the autopsy and was not privy to the information which was to be shared between the two forensic pathologists. Dr. Wagner did inform the Court that he and Dr. Spitz worked well together, cooperating in all respects. The Court became aware in the past two months that Dr. Spitz had requested some tissue samples be sent to a laboratory of his choice. Dr. Wagner had attempted to do so, but had not received a response from that laboratory in order to have the samples appropriately sealed and transported. Dr. Wagner declined to have any parties or attorneys receive the tissue samples for transport. After the issue came to light, the matter was resolved and the tissue samples were forwarded to the laboratory selected by Dr. Spitz.

It was not until the Court received the Emergency Motion filed May 15, 2014 that the Court became aware of the issue that Dr. Spitz had not received microscopic slides from the autopsy. Unfortunately, this Judge was traveling to FL that afternoon to drive his parents back to IN for the summer and could not clearly determine what the issue involved. The Emergency Motion did not indicate that Dr. Spitz was seeking the slides. Precisely, it only indicated that he had told Petitioner that he had not received them. Since the Judge was traveling and did not have the Emergency Petition in his possession, the Court was not in a position to make that distinction at the time. So the Judge contacted Dr. Wagner under the belief that Dr. Spitz was requesting the slides. Dr. Wagner indicated that he was surprised as he had not heard from Dr. Spitz concerning Dr. Spitz needing the slides for Dr. Spitz' report. However, Dr. Wagner indicated that he would send out slides to Dr. Spitz immediately. In the May 27, 2014 Itemized List filed by Petitioner, Petitioner indicates: "On or about May 20, 2014, Dr. Spitz received, presumably, a complete set of microscopic slides of autopsy tissues from Dr. Scott Wagner."

The Court was unclear at the hearing why the word “presumably” was used. The Court inquired and counsel for Petitioner presented no reasons why Petitioner may believe that Dr. Spitz did not receive a complete set of the microscopic slides. The Court has never seen the slides and has no knowledge of how many of them were prepared. Presumably Dr. Spitz would know how many slides there were since he was present and jointly conducted the autopsy. He would therefore know if he had not received a complete copy. No such evidence was presented to the Court. The Court has no reason to believe that Dr. Spitz has not received all of the microscopic slides.

PAYMENT OF COSTS

On behalf of Petitioner, Mr. McCain agreed to release monies being held in the Clerk’s Office to pay the costs for the autopsy by Dr. Wagner in the sum of \$9,425.00 and to the Garland Brook Cemetery in the sum of \$5,585.06. After the hearing, an invoice was submitted by Sexton Wilbert Corporation for the Disinterment and Reinterment for \$800.00. Staff contacted Mr. McCain’s office and Mr. McCain agreed to have the money released to pay this bill as well. Therefore the total costs to date are the above three invoices plus D.O. McComb and Sons invoice in the sum of \$600.00, which sum totals \$16,410.06.

RELEASE OF DR. SCOTT WAGNER’S AUTOPSY REPORT

In the Motion For Emergency Hearing, Petitioner requested: “If, at the time of this filing, Dr. Wagner has already submitted his final Autopsy Report to the Court, Petitioner respectfully requests that it be kept under seal while it is determined if both pathologists received *all* of the pertinent information.” At the conclusion of the portion of the hearing dealing with the records that Dr. Spitz received, when it was determined that there was no reason to believe that he had not received all of the records; the hearing then turned to the issue of releasing the Autopsy Report to the public. The Court had received the Autopsy Report earlier in the day of the

hearing and gave a copy to each of the parties present. A discussion then ensued about the purpose of the appointment of Dr. Wagner and what the Court believed would be the most important consideration as to whether the report should be released.

The Court reminded the parties that initially Dr. Wagner was appointed to act as an independent forensic pathologist to render an opinion concerning the cause of death of Cary Owsley. The filing by the Petitioner had requested that the Court order that Mr. Owsley's body be released to Petitioner to be transported to a forensic pathologist out of state to perform an autopsy. The Petitioner has indicated that she does not believe that her brother, Cary Owsley committed suicide, and that there was a crime committed. At the first hearing, the Court indicated that it did not know what had taken place, but that if Cary Owsley had died at the hands of another person, then a criminal investigation would need to take place. The Court was interested in getting to the bottom line, regardless of that bottom line. Therefore, the Court indicated that it would not release the body to Petitioner because then there could be later claims regarding tampering with the body or issues regarding chain of custody of evidence. The Court proposed that the Court appoint an independent forensic pathologist to perform an autopsy but that it be conducted jointly with a forensic pathologist hired by Petitioner. This was agreed to by all parties and was so ordered.

The Court further discussed whether the Autopsy Report when filed would then become public or be kept confidential. The Court indicated at the time that it believed that the Autopsy Report should be kept confidential if it indicated that Cary Owsley died at the hands of another. If the Report found that Cary Owsley died at the hands of another, then a criminal investigation would be appropriate and it would not be proper to release the Autopsy Report.

At the hearing on May 27, 2014, the Court indicated that it believed that there was no reason for the Autopsy Report to be kept confidential as there was no reason to believe that a

criminal investigation would be needed given the findings of Dr. Wagner and the rest of the documents which the Court had reviewed. Dr. Wagner's Autopsy Report stated:

"Manner of Death: Undetermined

Comment: Whereas key pieces of evidence are not available for examination, namely the shirt and the entrance wound (which has been altered by postmortem preparation and decomposition), the manner of death cannot be determined within reasonable medical certainty. **Gunshot particles deep in the wound suggest a contact wound and, therefore, Suicide.** The inability to confirm the range of the entrance wound leaves some doubt. Accident cannot be completely ruled out. **There is no evidence this death is a homicide, within reasonable medical certainty.**" (emphasis added).

In reaching his conclusions, Dr. Wagner also reviewed the following items: the Indiana State Department of Health Certificate of Death, Garland Brook Cemetery records, Jewell Rittman Family Funeral Home records, the Bartholomew County Coroner's Report, the Bartholomew County Sheriff's Binder and information regarding the death investigation of Cary Owsley, the scene photographs, and two Indiana State Police Certificates of Analysis.

At this point in the hearing, the Court then indicated to the parties some of the reasons, in addition to the autopsy report, why this Court does not believe that this Autopsy Report needs to be forwarded for a criminal investigation. The Court has reviewed every document tendered in this case. The Court bases this finding on the following:

- 1) The Autopsy Report conclusions.
- 2) The fact that while the Dr. Wagner did not observe stripling at the time of the autopsy, Det. Nunemaker noted "Stripling or blackening was visible around the entrance wound..."
- 3) The fact that Lisa Owsley was present in the home at the time Cary Owsley died from gunshot, and the Polygraph Examination of Lisa Owsley which shows that she passed the polygraph test indicating that she did not shoot Cary Owsley.

4) The fact that the police determined through corroborative evidence that Josh Janes was not at the Roosevelt residence at the time the shooting.

5) The fact that Cary Owsley's medical records¹ show the following: that he suffered from chronic pain for years, which pain was increasing over time; medical procedures did not provide lasting relief; the fact that Cary Owsley self-reported his pain as increasing to 9/10 in the month of his death; he was consistently depressed in the seven appointments with his psychologist between December of 2012 and April of 2013, expressing a feeling of worthlessness; he expressed suicidal ideation on numerous occasions to his psychologist in that same time frame; and he recommitted to the safety plan set up for him by his psychologist to protect him from harming himself.

6) A hand written note from Cary Owsley stating:

“(Just a man with out a prupess)
I Cary Owsley leve miss Jackson every thank I Cary Owsley own and any personal property our unresoal matters with her. When I die I Cary Owsley want to be cremayted and my ashes put back in to earth from where I came with the rest of God Creatur's Please follow my last wishes that all I Cary Owsley ask of any one.
Love you guys specialy you Sis (Heart drawing)”

7) A hand written note from Cary Owsley stating: “As I need to take out more life insurances to make my love ones not to worry about my debts and what it takes to put me away. To help pay off the house and the kids. I Cary Owsley leave my sis and my wife Lisa to do with the Insurance money to help and do what is best.”

8) Cary Owsley's March 26, 2014 text message to a friend which, in pertinent part, is as follows:

¹ It is noted that much of this information about Cary Owsley's medical records, concerning depression, suicide ideation and safety plans for when he felt like committing suicide were contained in the sheriff's investigative report. This Court independently reviewed the medical records to verify the accuracy of the police report.

“Cary Osley: K need to talk

Cary Osley: K need to talk help fast don’t know what to do

Me: Trying to get ready For work

Cary Osley: I fell like I want to die. Boom”;

9) The interview by Det. Roberts with that same friend who told Det. Roberts that Cary Owsley discussed killing himself in November and December of 2012, stating in December of 2012 that Cary “was tired of the pain, the medication, and not being able to do things he used to.” At the time, Cary Owsley told his friend that he was having an especially difficult time with one of his wife’s sons, which son was living with them at the time. That son moved out of Cary and Lisa Owsley’s home in the months prior to this death.

10) The letter to Professor Ronald S. Sullivan Jr. (one of Petitioner’s attorneys) from the U.S. Department of Justice, Federal Bureau of Investigation which is attached hereto and labeled “Exhibit A” which states that the FBI and DOJ have reviewed all of the materials sent to them by Ms. Jackson and the Indiana State Police report and that they FBI and Department of Justice have not identified facts which indicate a violation of federal criminal rights statutes.

11) The Coroner’s Report where he finds that the manner of death is suicide.

12) The lack of evidence that the manner of death is anything other than a suicide.

Mr. McNeely, on behalf of Respondent Lisa Owsley, inquired of the Court as to whether the Court would receive a copy of Dr. Spitz’ Autopsy Report, and, if so, would it then be released to the other parties. The Court indicated that Dr. Spitz was retained privately by Petitioner Jackson and the Court does not believe that it has the authority to order Dr. Spitz to release his report to the Court at this time. Mr. McNeely then inquired whether they could obtain it by requesting it through discovery. The Court responded that they would have to file such a request in writing and the Court would then await a response from Petitioner. Mr. McCain was

then asked whether Petitioner would voluntarily release Dr. Spitz' Autopsy Report. He indicated that Petitioner Jackson had not reached a decision on that. From his response, it appears that Petitioner Jackson has not yet received a copy of a report from Dr. Spitz.

The Court then inquired from counsel for the parties if there was any reason to keep Dr. Wagner's Autopsy Report sealed. The Court noted that the first two pages contain the summary of the report, and the balance of the pages describes in graphic detail the autopsy procedure. It was agreed upon by all parties that that the first two pages could be released, but that the balance of the report would remain sealed for the sake of the family.

The Court, having heard comments by counsel and having reviewed the May 27, 2014 Itemized List submitted by counsel for Petitioner, and having reviewed the entire contents of the file, now FINDS and ORDERS as follows:

- 1) Dr. Warner Spitz did receive all information that was provided to Dr. Scott Wagner and has received the microscopic slides.
- 2) Petitioner agrees to the payment of Garland Brook Cemetery's expenses, including attorney fees. The Court Orders the Clerk of the Court to pay Garland Brook Cemetery \$5,585.06.
- 3) Petitioner agrees to the payment of \$9,425.00 to Dr. Scott A. Wagner, M.D. The Court Orders the Clerk of the Court to issue this payment.
- 4) After the hearing but before this order was typed, Petitioner agreed to pay Sexton Wilbert Corporation \$800.00. The Court Orders the Clerk of the Court to issue this payment.
- 5) Counsel for the Parties have no objection to the release of the first two pages of the Dr. Wagner's Postmortem Examination Final Report (Autopsy Report) that summarize

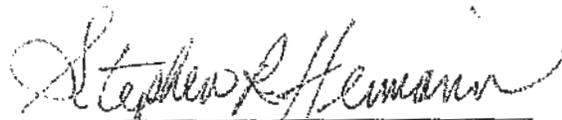
the information contained in the Report. Those two summary pages are attached hereto and labeled "Exhibit B."

6) The Court after review of Autopsy Report by the independent pathologist as well as all other records provided to the Court, sees no reason for forwarding the autopsy report for criminal investigation since the Dr. Wagner concludes: "There is no evidence this death is a homicide, within reasonable medical certainty."

7) The parties do not see any immediate need for this case to remain open at this time, but counsel for Petitioner has asked that it remain open for a period of time so that Petitioner can make a decision as to any further action she may wish to take. Therefore, the Court will order that the Clerk retain the balance of the funds in trust until the conclusion of this case.

SO ORDERED THIS 27th DAY OF MAY, 2014.

COMPLETED AND SIGNED ON May 28, 2014 at 7:05 p.m.


Hon. Stephen R. Heimann
Judge, Bartholomew Circuit Court

cc:

Trent A. McCain
5655 Broadway
Merrillville, IN 46410

cc by fax

Ronald S. Sullivan, Jr.
6 Everett St. Suite 5116
Cambridge, MA 02138

Mark W. McNeely
30 East Washington Street, Suite 100
Shelbyville, IN 46176

cc by fax

G. Terrence Coriden

J. Grant Tucker

Jeffrey L. Beck

Dr. Scott Wagner
700 Broadway
Ft. Wayne, IN 46802

Dr. Werner Spitz
23001 Greater Mack
St. Clair Shores, MI 48080



U.S. Department of Justice
Federal Bureau of Investigation
Indianapolis, Indiana

8825 Nelson B. Klein Parkway
Indianapolis, Indiana 46250

November 8, 2013

Professor Ronald S. Sullivan Jr.
Criminal Justice Institute,
Harvard Law School
6 Everett Street, Suite 5116
Cambridge, MA 02138

Re: Cary Owsley, deceased
Harvard Law School File Number 1058.1

Dear Professor Sullivan:

The FBI has reviewed the facts of the complaint made in reference to the death of Cary Owsley. We have not identified facts which indicate a violation of federal criminal rights statutes. A formal assessment was made by our office, which included the review of all information provided by Ms. Cheryl Jackson, the original complainant. We also reviewed the Indiana State Police report and spoke with the investigator who authored the report. The FBI reviewed all facts gathered and presented them to the Civil Rights Section of the Department of Justice. They agreed with our determination that the facts gathered did not warrant further investigation at this time. This assessment was communicated to Ms. Jackson by our office. We understand that the family of the deceased intends to have a private autopsy performed, and the results of that autopsy can be forwarded to us for further consideration. We also welcome the presentation of any new or never before presented facts, which you think warrant our further consideration.

Sincerely,

Robert Allan Jones
Special Agent in Charge

cc: Sheriff Mark Gorbett, Bartholomew County

Exhibit A

NORTHEAST INDIANA FORENSIC CENTER
SAINT JOSEPH HOSPITAL LABORATORY
700 BROADWAY, FORT WAYNE, IN 46802
260-425-3762
POSTMORTEM EXAMINATION
FINAL REPORT

NAME: OWSLEY, CARY A.

AUTOPSY NO: A14-108

AGE: 49 (1-8-64)

SEX: MALE

PERFORMED BY: SCOTT A. WAGNER, M.D.

DATE PERFORMED: 3/12/2014

PERFORMED FOR: THE HONORABLE STEPHEN R. HEIMANN
JUDGE, BARTHOLOMEW CIRCUIT COURT

ANATOMIC FINDINGS:

1. Entrance gunshot wound, left chest
 - A. Range – could not be determined
 - B. Wound track directed front to back and declining head to toe
 - C. Wound track involves skin, right 5 – 6th rib interspace, pericardium, left ventricle of heart, base (posterior) of left lower lung lobe, left hemi-diaphragm, spleen, diaphragm, 11th rib and corresponds to:
 - D. Exit gunshot wound, left lower back
2. Contusion, right dorsal wrist/hand, healing

TOXICOLOGY:

1. Blood Clot Positive for:
 - A. Diazepam, Quant 330 ng/g
 - B. Caffeine
2. Liver:
 - A. Diazepam 1401 ng/g
 - B. Naproxen 49.2 mcg/g
 - C. Positive for caffeine

CAUSE OF DEATH:

Gunshot Wound of the Chest

MANNER OF DEATH:

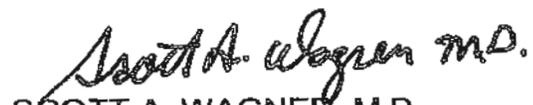
Undetermined

COMMENT:

Exhibit B

Whereas key pieces of evidence are not available for examination, namely the shirt and the entrance wound (which has been altered by postmortem preparation and decomposition), the manner of death cannot be determined within reasonable medical certainty. Gunshot particles deep in the wound suggest a contact wound and, therefore, Suicide. The inability to confirm the range of the entrance wound

leaves some doubt. Accident cannot be completely ruled out. There is no evidence this death is a homicide, within reasonable medical certainty.

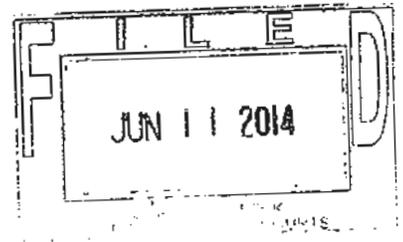


SCOTT A. WAGNER, M.D.
BOARD CERTIFIED FORENSIC PATHOLOGIST

SAW/ms/br/tm

5/23/2014

STATE OF INDIANA)	IN THE BARTHOLOMEW CIRCUIT COURT
)	SS:
COUNTY OF BARTHOLOMEW)	CAUSE NO: 03C01-1307-MI-4161
CHERYL JACKSON,)	
Petitioner,)	
)	
vs.)	
)	
LISA OWSLEY and GARLAND)	
BROOK CEMETERY,)	
Respondents,)	
)	
and)	
)	
LARRY S. FISHER,)	
Intervener.)	



SUA SPONTE ORDER

Comes now the Court, *sua sponte*, and finds the following and enters the following order.

This case has generated a large amount of public interest. On May 28, 2014, this Court entered what it believed would be the final order in this case. That order dealt with the hearing held on May 27, 2014. Because of the media inquiries and public inquires to the staff of the Court, that order was faxed to the media. In spite of this “final” order being entered, the Court staff has continued to have significant public inquiry about this case. While the judge does not deal with these inquiries, they take the time of Circuit Court staff to listen to the inquiries. Staff indicates that the inquiries are primarily based upon social media reports. The judge of this court does not subscribe to social media: Twitter, Face Book, LinkedIn, etc., and therefore does not search out such matters, and certainly has not made decisions based on matters outside of the documents and testimony presented to the Court. However the Court notes that these public inquiries take time from the Circuit Court staff. Because the general public does not have the



requested that Dr. Spitz forward a copy of his report to the Court, but had not received it as of the date of the hearing. Since Dr. Spitz was hired by a private party, Petitioner Jackson, the Court indicated that it was not in a position to order Dr. Spitz' report to be provided to the Court. At the hearing, the Court inquired of Mr. McCain as to whether Petitioner Jackson would be releasing Dr. Spitz' report to the Court and the other parties. Mr. McCain indicated that he would need to confer with his client about whether to allow it to be released.

47. On June 6, 2014, this Court received a copy of Dr. Spitz' report under cover letter dated June 3, 2014. Both the letter and report are ordered posted. The letter is posted because it buttresses the Court's belief that this matter is concluded at this point. Dr. Spitz indicated, "I wish to express to you my upmost respect and thanks for the way you handled this investigation and *brought it to what I believe is an acceptable conclusion.*" (emphasis added) Dr. Spitz' report does not provide any additional *evidence* which would lead the Court to forward this case for criminal investigation.

48. The Court has not ordered all pleadings and orders from this case to be placed on the Bartholomew County Website. For example, the Court didn't post regular or mundane documents which concern purely procedural matters. If any of the parties believe that an additional pleading or order should be posted, then they can request the Court to do so. The Court also orders that the Chronological Case Summary (CCS) be posted. The CCS lists all documents filed with the Court and orders entered by the Court.

SO ORDERED THIS 11th DAY OF JUNE, 2014.


Hon. Stephen R. Heimann
Judge, Bartholomew Circuit Court



Columbus Police Department
 123 Washington Street
 Columbus, IN 47201
 812-376-2600

Kristen Brown, Mayor
 Jason Maddix, Chief of Police

Polygraph Report
Confidential and Privileged

Referral Information

Name: Lisa Owsley
Date/Time of Exam: 06/12/2013 9:00a.m.
Location: Columbus Police Department
Type of Exam: Specific Issue
Total charts collected: 4

Mrs. Owsley was referred for a polygraph examination by Lieutenant Chris Roberts of the Bartholomew County Sheriff's Department as part of death investigation. The purpose of the examination was to determine whether or not Mrs. Owsley shot her husband, Carrie Owsley. Mrs. Owsley signed a form entitled Columbus Police Department, Advice of Rights prior to the start of our interview. The interview was video and audio recorded. Lieutenant Roberts also monitored the exam.

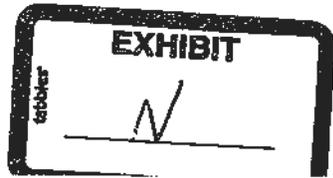
Pre-test interview

The polygraph was explained to Mrs. Owsley. She stated that she was completely clear on the allegations that are being made against her. According to Mrs. Owsley, she is being blamed by her deceased husband's family of having something to do with his death.

Mrs. Owsley was present in the home when Mr. Owsley was shot; however, she was in a different part of the house. The initial facts of the case lead investigators to believe Mr. Owsley suffered from a self-inflicted gunshot wound. Mrs. Owsley's pre-test statement was consistent with what I was told by Lt. Roberts prior to the exam. Mrs. Owsley was tearful during the interview when talking about Mr. Owsley. She admitted that the two experienced marital problems, but nothing beyond what most couples experience.

Mrs. Owsley also corroborated information obtained by Lt. Roberts that Mr. Owsley was suffering from depression and had been under the care of a therapist and was taking medication. According to Mrs. Owsley, Mr. Owsley would promise or agree to not harm himself after the last appointment he had with this therapist.

"To Protect and Serve"



When I questioned Mrs. Owsley about Mr. Owsley's mood the day he was shot, she told me that he was very edgy. She said that was a pretty consistent mood for him lately. She claims that he tried to initiate an argument earlier in the day, but she did not participate. Again, she claimed to be at the opposite end of the house when Carrie was shot.

Polygraph Examination

A DACA, Specific Issue (YOU-Phase) Zone Comparison Test was formulated. All the questions were reviewed with Mrs. Owsley prior to the test. She stated that she understood the questions and her answers. An acquaintance test was conducted. The tests were administered on a Lafayette Instrument LX4000 computerized polygraph.

The following relevant questions were asked in the examination which includes other information and/or comparison type questions.

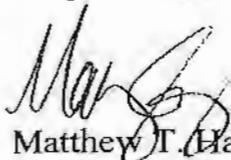
1. Did you shoot Carrie? NO.
2. Regarding Carrie being shot, did you do it? NO.

Three charts were collected. After a careful evaluation of the physiological responses recorded on the polygraph charts, the final determination is NO SIGNIFICANT REACTION.

Post-test interview

I briefly spoke with Mrs. Owsley about the results and then allowed Lt. Roberts to walk her to the lobby of the police department.

Respectfully,



Matthew T. Harry
Polygraph Examiner