

STATE OF MICHIGAN
IN THE PROBATE COURT FOR THE COUNTY OF KENT

In the matter of:

JENNIFER MARIE KOELZER,
A developmentally disabled individual,

Case No. 00-169259-DD

In the matter of:

MARY ELLEN KOELZER,
An alleged legally incapacitated person,

Case No. 12-191-862-GA

OPINION AND ORDER OF THE COURT

At a session of said Court held in the Probate
Courtroom, City of Grand Rapids, Kent County,
Michigan, this 17th day of October, 2012.

PRESENT: HONORABLE David M. Murkowski, Chief Judge, Probate Court

HISTORY AND BACKGROUND

Presently before the Court is a petition to revoke the durable power of attorney and appoint a public guardian for Mary Ellen Koelzer. The petition, case number 12-191862-GA, was filed by daughter, Jane M. Koelzer.

Mary Ellen Koelzer is an 81-year old widow and has 11 children. One child, Jennifer, age 38, is developmentally disabled. Mary Ellen Koelzer is currently managed under a durable power of attorney for health care. Kathy Koelzer is the named agent under the durable power of attorney.

Jane Koelzer has also filed a petition to modify the developmentally-disabled guardianship of Jennifer Koelzer, asking this Court to remove Kathy Koelzer as guardian and appoint a professional guardian as successor guardian.

Mary Ellen lives in the family residence, which is owned by the Mary Ellen Koelzer Trust, with her disabled daughter Jennifer Koelzer and her daughter Kathy Koelzer. Under apparent authority under the durable power of attorney, Kathy Koelzer hired herself as caregiver for Mary Ellen Koelzer. Jennifer, who is mentally impaired, is under a developmentally disabled (DD) guardianship, and Kathy Koelzer has served as partial co-guardian of the person for Jennifer since 2003, along with her parents, Francis and Mary Ellen Koelzer. After the death of Francis Koelzer, the incapacity of Mary Ellen Koelzer, and protracted litigation with her siblings, Kathy Koelzer serves as full plenary guardian of Jennifer since July, 2006.

Jane Koelzer and Kathy Koelzer are both licensed nurses, but Kathy Koelzer is not currently licensed to practice in the state of Michigan.

Jane Koelzer makes a number of allegations in her petitions, including that Kathy Koelzer has created such a hostile environment that family members are alienated and excluded from meaningful contact with their mother and their sister and has hidden and refused to disseminate pertinent medical information regarding Mary Ellen, including injuries requiring emergent care, and the bruising on Mary Ellen Koelzer which Kathy Koelzer attempted to conceal from family members.

Other allegations of breaches of fiduciary duty include the failure to properly report assets of Jennifer Koelzer to the Court or the Social Security Administration, the taking of loans from Mary Ellen without authorization or permission when Mary Ellen was incapacitated, the failure to properly supervise Mary Ellen and Jennifer, the failure to encourage and assist Jennifer to secure employment previously enjoyed.

Contested litigation in one form or another has continued for almost seven years between the family and included the administration of Mary Ellen's assets, the administration of her husband Francis' assets, powers of attorney, decedents' estates, trust management, and guardianship. Generally, nine siblings excluding Kathy Koelzer and Jim Koelzer, act harmoniously and share a common purpose in the litigation. Hearings were commenced in the first half of 2012 with all the siblings involving the allowance of accounts, objections to the expenditures under durable power of attorneys, petitions for modification of conservatorship and contested trust accountings. During the past seven years the Court ordered facilitative mediation on more than one occasion and in May of 2012 an agreement was reached with ten of the siblings regarding legal expenses, the resignation of the children as fiduciaries, accountings, releases, and the dismissal of pending litigation. Kathy Koelzer refused to enter into the global settlement where the other siblings indeed relinquished various fiduciary roles. Specifically, Kathy Koelzer refused to resign from her fiduciary role as agent under durable power of attorney for Mary Ellen and as guardian for Jennifer Koelzer, and hearings on those remaining petitions commenced and are presently before this Court. Kathy Koelzer denies and refutes the allegations in the petitions.

For the protection of Mary Ellen Koelzer and Jennifer Koelzer, the Court appointed Mr. Tom Kuiper as LGAL for Mary Ellen Koelzer and Mr. Arthur Winther was appointed as LGAL for Jennifer Koelzer for the remaining contested petitions, there being no dispute that Mary Ellen Koelzer is incapacitated under the Estates and Protected Individuals Code (EPIC), and Jennifer Koelzer is developmentally disabled and incapacitated under the Michigan Mental Health Code respectively. Mr. David Kinsman was appointed and served as guardian ad litem and visitor in these matters, has interviewed various interested persons, investigated allegations and made formal recommendations to the Court.

STANDARD OF CARE

The probate court may appoint a guardian if the Court finds by clear and convincing evidence both that the individual for whom a guardian is sought is an incapacitated individual and that the appointment is necessary as a means of providing customary care and supervision of the incapacitated individual. MCL 700.5306. The probate court may modify An LII guardianship when it is in the best interest of the ward, or when there has been a breach of fiduciary duty on the part of the fiduciary, or when the guardian is not suitable or is incapable of performing her fiduciary duties. MCL 700.1302, 1308, 5310 and 5313. A court may grant or modify a guardianship and terminate a patient advocate designation when the patient advocate is not acting in the ward's best interest. MCL 700.5306. The Probate Court may modify a DD guardianship and make any order that the Court considers appropriate and in the best interest of the individual. MCL 330.1637(4).

ALLEGATION OF HOSTILE ENVIRONMENT AND ALIENATION

It is undisputed from virtually every witness who testified that the relationship between Kathy Koelzer and her siblings is hostile, conflictual and caustic. Testimony from caregivers Rose Frederick and Mary VanLiere reveal that arguments between siblings and Kathy Koelzer at the residence or on the telephone would be in view or earshot of Mary Ellen Koelzer and Jennifer Koelzer. These arguments would be emotionally upsetting to Mary Ellen and Jennifer and Mary Ellen would become violent and upset and Jennifer would become avoidant and relocate to another room. Kathy Koelzer was described as paranoid, confrontational, aggressive, very difficult and foul-mouthed to her siblings. At least two siblings, Julie Busen and Jane Koelzer, testified that Kathy had physically assaulted them at Mary Ellen's residence. Caregivers testified that Kathy Koelzer spoke to them derogatorily of her siblings before caregivers were

hired which continued during their employment. Many of these conversations took place in front of Mary Ellen Koelzer and Jennifer Koelzer.

Caregiver Rose Frederick testified that Kathy Koelzer was aggressive, harassing, condescending, and verbally abusive, interrogating the witness and other caregivers whether they had shared information with Kathy Koelzer's siblings and instructing caregivers not to speak with family members. Ms. Frederick was terminated from her employment by Kathy Koelzer. Caregiver Leah Scott testified that when Kathy Koelzer's siblings visited Mary Ellen and Jennifer, it was a "negative event" for Kathy. During visits Kathy's body language would change and she would become distant. Ms. Scott testified that Kathy complained to caregivers that too many siblings visited for too long. Ms. Scott testified that Kathy Koelzer instructed the witness that if the siblings asked any questions that the witness was instructed to say, "Ask Kathy." Ms. Scott also testified that Kathy Koelzer instructed caregivers to follow siblings in the residence if the siblings went to the second floor of the residence. Ms. Scott also described Kathy as having a good heart and loving her mother but having a negative attitude toward the family, being irresponsible, procrastinating, and lacking in motivation. Ms. Scott testified that at one point Kathy just stated, "I will just take my mom away period!" Ms. Scott testified that she knew Jane Koelzer best from the Koelzer children because Jane had regular contact with Mary Ellen Koelzer and Jennifer Koelzer. Ms. Scott described Jane as having a bubbly personality. Ms. Scott testified that she resigned her employment with Kathy Koelzer because Ms. Scott was not providing care for Mary Ellen Koelzer but was serving in the role as Kathy Koelzer's personal assistant. Caregiver Mary VanLiere testified, consistent with the testimony of Rose Frederick and Leah Scott, that Kathy Koelzer was demanding, confrontational, and obsessive, who regularly spoke negatively of her siblings in front of Mary Ellen and Jennifer. Ms. VanLiere testified that she adored Mary Ellen Koelzer and Jennifer Koelzer and if the siblings did not

check on Mary Ellen and Jennifer's welfare things would further deteriorate in the home.

In her case in chief, Kathy Koelzer called caregiver Michelle Duba to the stand. Ms. Duba has served as caregiver for five years. The tenor of Ms. Duba's testimony was one of advocate rather than fact witness. Ms. Duba testified that Kathy Koelzer's siblings were mean to her, testifying that, "I've seen it with my own eyes." When pressed on cross-examination, Ms. Duba could provide no first-hand knowledge regarding the claim. Ms. Duba admitted that Kathy Koelzer had spoken to her about the pending litigation and that Kathy Koelzer has told her that her siblings treat her poorly. Ms. Duba was supportive in her testimony of the manner in which Kathy Koelzer maintained the residence, proclaiming that the house was "not filthy and very clean" even when confronted with photographic evidence that parts of the residence were unusable or impassable because of collected debris.

Ms. Duba testified that she considered herself a friend of Kathy Koelzer. Kathy Koelzer and Ms. Duba text each other, and Ms. Duba has been allowed to bring her disabled son to the residence during her work shift at the residence. Indeed, Ms. Duba has traveled with Kathy Koelzer to court to observe these proceedings. The Court finds Ms. Duba's testimony to be biased in nature and of little probative value.

Ann Marie Larson, one of several caregivers hired by Kathy Koelzer and currently providing care services for Mary Ellen Koelzer testified that the other Koelzer children "snapped" at Kathy and had few kind words for her. She also opined that Kathy Koelzer's siblings were "greedy" and "motivated by greed" and that if the Koelzer siblings were successful in their litigation that Jennifer Koezler would be removed from the family home and Mary Ellen would be placed in a nursing home within a month, revealing to the Court that Kathy Koelzer has provided unflattering and mostly an inaccurate portrayal of the Koelzer siblings to the witness

during the course of her employment. Ms. Larson also wrote an ex parte letter to the Court in support of Kathy Koelzer.

Michael Koelzer, son of Mary Ellen Koelzer and brother to Jennifer Koelzer, testified that historically he had a close and loving relationship with his parents. He visited frequently. Michael, a pharmacist like his father Francis, purchased his father's pharmacy and served in a position of trust with his father, including agent under his father Francis Koelzer's durable power of attorney, personal representative and co-trustee of the family trust. Michael Koelzer testified Kathy Koelzer refused to communicate or negotiate a caregiver agreement and Michael faced accusations of fraud and theft from Kathy Koelzer. Mr. Koelzer stated Kathy Koelzer had no relationship with him, his spouse or children. Because of all this turmoil, Michael Koelzer and his family have not visited his mother in four years.

Peter Koelzer, son of Mary Ellen Koelzer and brother to Jennifer Koelzer, testified, for similar reasons, he has not visited his mother since 2010. Peter Koelzer provided poignant testimony that the alienation reaches beyond immediate family with seven spouses and 33 grandchildren affected and with Kathy Koelzer as the oldest sibling and Jennifer as the youngest, that ultimate care of Jennifer will fall upon Jennifer's nieces and nephews who currently have no or little contact with Jennifer or their grandmother. It should be noted that Kathy Koelzer is 17 years older than Jennifer Koelzer.

Therese Koelzer, daughter of Mary Ellen Koelzer and sister to Jennifer Koelzer, testified that Kathy Koelzer has also accused her of committing federal offenses in front of Jennifer Koelzer. Therese Koelzer also testified that Kathy has instructed Jennifer Koelzer not to speak with other family members. Kathy Koelzer denies that allegation. Uncontroverted testimony reveals that Kathy Koelzer has placed deadbolts on several doors in the home which is not owned by Kathy Koelzer but owned by the Mary Ellen Koelzer Trust. The locks had been

placed in the home against the wishes and direction of the trustees and their continued use against the order of this Court. It should be noted Kathy Koelzer has moved in and remains in the home since 2002 against the direction and wishes of the trustees. When Kathy Koelzer moved from Chicago to Grand Rapids to care for her mother, her father Francis Koelzer purchased a home for her to reside in. Kathy has never occupied that home since its purchase. Therese Koelzer testified it was never her parents' intention that Kathy Koelzer move into the family home. Kathy Koelzer testified that the home was purchased not for her to live in but in case her mother's care needs changed. This testimony is contradicted by Kathy Koelzer's own statements to guardian ad litem Judy Gabrielse who compiled a written report filed with the Court on March 3, 2006, in the contested Jennifer Koelzer guardianship matter. At that time, Kathy Koelzer stated to the guardian ad litem, "My dad bought me a house and paid me money, a total of about a hundred ninety thousand for the last four years. I pay my own health insurance now. I still pay taxes and expenses on my condo in Chicago and the house on Houseman Northeast. I don't live in Houseman because I am needed here. He bought me that house so I would have a place to live if I decided to stay here in Grand Rapids."

In further support of the claim of alienation by Kathy Koelzer, Peter Koelzer, Jane Koelzer, and other family members testified Kathy will not respond to letters from siblings, leaves telephone mailboxes full, refuses telephone calls, and refuses to correspond by email resulting in further alienation between Mary Ellen, Jennifer, and the remaining family members by making information-sharing and contact difficult. Therese and Jane testified that Kathy Koelzer refuses household assistance from her siblings and will refold clean and folded laundry handled by Jane Koelzer. Testimony revealed that Kathy Koelzer has attempted to instruct family members and caregivers on how to launder and fold clothes and wash recyclables.

Testimony supports the allegation that Kathy Koelzer will not share Mary Ellen's medical information with family members including refusing to share the circumstances surrounding Mary Ellen's required emergency medical care after a fall. Jane Koelzer asserted that Kathy Koelzer also attempted to conceal bruises on Mary Ellen after a fall in the shower during Kathy's care further deepening the distrust between Kathy Koelzer and her siblings.

Kathy Koelzer appeared in court and testified wearing, oddly, some of her mother's clothing. Kathy Koelzer testified that it is important for Mary Ellen and Jennifer Koelzer to have a relationship with her siblings and that it is important for Mary Ellen to see all of her children. Ms. Koelzer denies barring her siblings access to her mother or Jennifer but does admit asking her siblings to call first before visiting their mother and sister. Ms. Koelzer does admit to placing numerous locks throughout the house, claiming rights of privacy for herself and Jennifer. The Court finds this explanation disingenuous with evidence supporting the fact that Ms. Koelzer uses the locks to hide her hoarding habits. Further, Ms. Koelzer does admit that she and a caregiver had a code to inform Kathy Koelzer of when siblings appeared at the home, but that this arrangement was made at the request of a caregiver named Molly who Kathy claimed was bullied by Jane Koelzer. Kathy Koelzer claimed she could not recall if she instructed other caregivers to notify her if siblings arrived at the home in her absence. Ms. Koelzer did admit attempting to hide a bruise suffered by Mary Ellen Koelzer while under the direct care of Kathy Koelzer but places part of the responsibility for the bruise on her siblings demanding a change in Mary Ellen Koelzer's schedule. Kathy Koelzer does admit that Mary Ellen Koelzer suffered a fall outside of the home under Kathy Koelzer's direct care and she failed to share information regarding the injury or Mary Ellen's emergency care with her siblings. Kathy Koelzer claimed that she could not remember if she had discussed this case with Jennifer Koelzer. The Court finds that there is evidence that Kathy Koelzer has repeatedly provided information to her ward

Jennifer Koelzer with the intention to sway or manipulate Jennifer Koelzer to support Kathy Koelzer's various positions in these proceedings.

Kathy Koelzer further confirmed the testimony of her siblings that she did accuse her sister Mary Frey of sifting through her purse and that she believed that family members have planted listening devices in the residence.

The Court finds ample evidence that Mary Ellen Koelzer and Jennifer Koelzer have been alienated from Mary Ellen's children and Jennifer's siblings and a hostile and unwelcoming environment has been created within the family where meaningful contact between Mary Ellen, Jennifer and the Koelzer siblings is discouraged, avoided or refused and information pertaining to Mary Ellen Koelzer and Jennifer Koelzer is reluctantly shared with siblings by Kathy Koelzer. The Court finds that alienation and hostility has been caused in no small part by the disposition and behavior of Kathy Koelzer in her fiduciary relationship with Mary Ellen Koelzer and Jennifer Koelzer.

ALLEGATION OF MENTAL ILLNESS ON THE PART OF THE GUARDIAN AND AGENT

Sufficient evidence is found in the record to establish that Kathy Koelzer's behavior, at a minimum, exhibits obsessive compulsive personality traits. Kathy Koelzer denies any formal mental illness diagnosis or any hoarding tendencies but stated the condition of the home has been "unacceptable," but temporary in nature. Kathy Koelzer testified she was ashamed at the condition of the residence but was focused on the care of Mary Ellen. There is no question that Kathy Koelzer hoards. There appears to be an inability on her part to discard worthless objects even though they have no sentimental value. Bedrooms are filled with clothing, paper and debris and are impassable. A bathroom countertop is heaped with clothing, newspapers, paperwork and debris rendering the sinks inaccessible. The garage contained mounds of bagged recycling,

garbage and trash including used cat litter so that vehicles could not be parked in the garage. Jane Koelzer removed recyclables from the garage on two occasions and took them to her home for disposal. Kathy Koelzer followed Jane home and retrieved the recyclables claiming bottles of fish oil had been removed from the garage. Locks were placed by Kathy Koelzer on several interior doors of the residence with the claim of a need for privacy. The Court is convinced that the locks were used, at least in part, to conceal the results of Kathy Koelzer's hoarding behavior. The photographs admitted into evidence capture the extent of this hoarding behavior. Other obsessive compulsive personality disorder traits exhibited by Kathy Koelzer and established by testimony include Kathy Koelzer's insistence that others, in this instance care providers, submit to exactly her way of doing things, such as laundry, kitchen duties, recycling preparation and the administration of immunizations and shots to Mary Ellen Koelzer, the unreasonable reluctance of Kathy Koelzer to allow others to perform tasks because of the conviction the task will not be performed correctly and a preoccupation with rules and order.

Rose Frederick, Leah Scott and Mary VanLiere all testified that Kathy Koelzer hoarded and demanded the repeated washing of recyclables and dishes. Ms. Frederick testified she was forced to fold laundry over and over again. Caregiver Ann Marie Larson testified Kathy Koelzer had to demonstrate to Ms. Larson how to properly rinse recyclables. Leah Scott received instructions on how to fold clothes and testified that if Jane Koelzer took laundry home to assist the family Kathy Koelzer would rewash the clean clothes. Ms. Scott also testified that Kathy Koelzer gave strict instructions on her first day of work in what she could do, say and who she could speak with.

One obvious risk worth noting is the tripping hazard created for Mary Ellen Koelzer, Jennifer Koelzer and hired caregivers. Indeed, Mary Ellen Koelzer has suffered a fall at the residence requiring emergency care. In addition, because of the accumulated mounds of

recycling, trash and debris in the garage, it became impossible to park cars in the garage stalls requiring both Mary Ellen and Jennifer to enter and exit vehicles at the home outside in potentially snowy, icy and rainy conditions.

Sister Julie Busen testified that Kathy Koelzer heightened the risks to Mary Ellen and Jennifer by leaving and retaining syringes on the counter in Jennifer Koelzer's bathroom. Leah Scott testified she had retrieved syringes from Mary Ellen's bedroom and noted Kathy Koelzer had no discard box for the syringes used in the care of Kathy Koelzer's insulin-dependent cat. Rose Frederick testified that she found syringes in Jennifer's room, Kathy Koelzer's room and the stairs of the home. Kathy Koelzer testified that the home is equipped with a container for syringes.

There is overwhelming evidence that the paid caregivers hired to assist Mary Ellen spend considerable amount of time providing cleaning services instead of care services. Rose Frederick testified that over one-half of her time at work was spent on cleaning the residence. Ms. Frederick's work shifts included Friday Saturday and Monday. Ms. Frederick testified, and her testimony was supported by both caregivers Leah Scott and Mary VanLiere, that by Monday morning the house was "trashed." Many times Ms. Frederick was instructed by Kathy Koelzer to rewash clean dishes over and over and provided instructions on how to clean pots and pans. Kathy Koelzer periodically was compelled to hire neighbors to clean out the garage of the garbage, trash and recyclables with the work paid for by Mary Ellen Koelzer. Excluding Kathy Koelzer, there are nine hired caregivers providing approximately 60 hours a week of caregiver services to the family. Leah Scott testified that she resigned her employment with Kathy Koelzer because she was not caring for Mary Ellen but was acting as Kathy Koelzer's assistant.

Mary Koelzer Frey, daughter of Mary Ellen Koelzer and sibling of Jennifer Koelzer, who served as church choir director with Mary Ellen Koelzer, testified that in addition to Kathy

Koelzer's salary and the 60 hours per week of paid caregiver and cleaning services, a cleaning company consisting of three women cleaned the house every two weeks at the cost of \$640 per month.

The testimony establishes that Kathy Koelzer's hoarding habits present a safety and health risk to Mary Ellen and Jennifer Koelzer along with caregivers.

Jane Koelzer has also alleged Kathy Koelzer demonstrates paranoid behaviors which negatively affect Mary Ellen Koelzer and Jennifer Koelzer's relationship with the siblings. Leah Scott and Mary VanLiere testified that Kathy Koelzer follows her siblings throughout the house when they visit Mary Ellen and Jennifer. Ms. VanLiere was instructed by Kathy to monitor the siblings during visits. Rose Frederick testified that she would be interrogated by Kathy Koelzer and asked, "Are you talking to my sisters?" Ms. Scott testified that Kathy Koelzer instructed her to call her if she were away from the residence and any of the siblings stopped at the family home. Mary VanLiere testified that family members were accused of planting listening devices through the house, and Kathy Koelzer acknowledged that belief or suspicion during her testimony.

Therese O'Connor testified that Kathy Koelzer would not share medical information about Mary Ellen with family members and did not inform the siblings in 2011 when Mary Ellen Koelzer fell and cut her head, creating suspicion among family members about the circumstances surrounding the fall. Ms. O'Connor also testified that Kathy Koelzer will not inform siblings of Mary Ellen's scheduled medical appointments. Julie Busen testified that Kathy Koelzer would not share Jennifer's mental health records with family members. Therese O'Connor testified that Jennifer was told by Kathy Koelzer not to speak with other members of the family.

Julie Busen testified that under Kathy Koelzer's care Jennifer has become secretive, deferential and more dependent upon Kathy Koelzer. Mary Frey testified that Jennifer Koelzer

is becoming more isolative and points to the fact that Jennifer did not attend the annual family vacation in Traverse City with her brothers and sisters for the first time in 32 years, and Therese O'Connor provided testimony, denied by Kathy Koelzer, that Kathy has instructed Jennifer Koelzer not to speak to other members of the family. Jane Koelzer testified that she has a close relationship with Jennifer and together they regularly attend Weight Watchers on Saturdays yet within the last month Jennifer refuses to speak with Jane Koelzer and hangs up the phone when Jane calls. Kathy Koelzer testified that Jennifer is happy, has grown as a person, and is more self confident.

The testimony does establish that Kathy Koelzer's behavior and her actions as both caregiver and siblings create an atmosphere of suspicion and distrust between Kathy Koelzer and family members which negatively impacts Jennifer Koelzer's relationship with her siblings. Kathy Koelzer's monitoring and following of siblings during visits, the padlocking of interior rooms of the home, and the promotion of the belief that siblings have bugged the family residence projects the message to Jennifer Koelzer that her siblings do not belong at the family home, that her siblings should not be trusted, that her siblings are not and should not be welcomed in the home and that it is somehow wrong for Jennifer to love, trust and enjoy her brothers and sisters.

FINANCIAL MANAGEMENT AND WASTE

In the last seven years between \$500,000 and \$1 million has been spent on this litigation and related contested matters with little resolved between family members until the summer of 2012 when, in the midst of trial, those other issues were settled and disposed. Kathy Koelzer refused to join this settlement agreement. Prior to 2006, tens of thousands of dollars in damages was done to Mary Ellen and Jennifer's residence by Kathy Koelzer's cat "Ollie" as the cat

sprayed clothing, carpeting, furnishings and personal property requiring professional cleaning, deodorizing of the home and the replacement of carpeting and furnishings. Kathy Koelzer continues to own this cat.

In the last ten years Kathy Koelzer has received between \$750,000 and \$800,000 worth of compensation for her care of Mary Ellen and Jennifer. Under the authority of the durable power of attorney, Kathy Koelzer has hired herself as Mary Ellen Koelzer's caregiver. Kathy Koelzer has been paid \$45,000 per year for the care of Mary Ellen plus room and board valued at between \$20,000 and \$25,000 annually as Kathy has moved into the family residence of Mary Ellen and Jennifer. It should be noted that Kathy Koelzer has no authority to live in the home as the residence is an asset of the Mary Ellen Koelzer Trust, managed, until recently, by the Koelzer children who served as trustees. Kathy Koelzer has also paid herself a monthly salary of \$900 from Jennifer's \$1,200 monthly supplemental security (SSI) benefit for compensation as Jennifer's caregiver and guardian.

In addition to the care services provided by Kathy Koelzer to Mary Ellen Koelzer, other caregivers have been hired by Kathy Koelzer to provide direct care to Mary Ellen. In 2006, hired care workers provided approximately 25 hours per week in services. Currently, nine hired providers work approximately 60 hours per week in the residence. Many caregivers complained that they were not providing direct care to Mary Ellen but spending a large amount of their work hours either cleaning messes created by Kathy Koelzer or her cats or satisfying Kathy Koelzer's obsessive compulsive personality traits by refolding clothes, rewashing clean laundry, reorganizing kitchen cupboards, rescouring pots and pans or rewashing recyclables.

Specifically, Leah Scott testified that she was not caring for Mary Ellen but acting as Kathy Koelzer's assistant. Rose Frederick testified that over half of her work hours were spent cleaning Kathy's mess and that Kathy was a "slob." Rose Frederick also testified that when she

worked a Monday morning shift at the residence she always found the house "trashed." Mary VanLiere, a current caregiver, testified that Kathy Koelzer has difficulty with household chores because of her obsessive compulsive traits. Ms. VanLiere stated that when she would arrive to work a Monday morning shift, she would find "everything" on the counters. After working a Monday shift, Ms. VanLiere stated she didn't want to return to work for her next shift. Because of the hoarding of recyclables and trash in the garage, Kathy Koelzer would periodically hire neighbors or caregivers' children to clean the garage. Mary Frey testified that in addition to the caregivers cleaning the residence, Mary Ellen's trust paid three persons \$20 per hour for three hours every two weeks to clean the residence. The Court finds that Mary Ellen Koelzer should not bear the financial responsibility for cleaning the aftermath of Kathy Koelzer's hoarding behavior.

Kathy Koelzer previously has charged personal items such as clothing, car repairs and veterinary bills on Mary Ellen's credit card without Mary Ellen's or her siblings' knowledge or consent. Kathy Koelzer has subsequently repaid this debt. Kathy Koelzer has also refused to return a computer purchased by Michael Koelzer for his father Francis, claiming that she has personal emails on the computer which she cannot retrieve or delete. Kathy has also failed to account to this Court for a \$55,000 inheritance Jennifer Koelzer received from her grandmother. Kathy Koelzer testified the money was deposited by her in Fifth Third Bank in the name of Jennifer Koelzer but could not state with certainty if the account was titled in Jennifer's name individually or titled as a guardianship account. MCL 330.1631(2)(h) requires a guardian to annually account for all financial transactions made by the guardian involving the ward's estate. Ms. Koelzer admits to this breach of fiduciary duty.

Between mounting litigation costs, Kathy Koelzer's compensation package, the wages of supplemental caregivers and the maintenance and cleaning of the residence, it is obvious that the current financial arrangement cannot be sustained or tolerated.

**CARE AND SUPERVISION OF
MARY ELLEN KOELZER AND JENNIFER KOELZER**

Kathy Koelzer is a registered nurse although not currently licensed to practice nursing in Michigan. Kathy Koelzer has no specialized training or education in geriatric care. Petitioner, Jane Koelzer, is also a registered nurse licensed to practice in Michigan. Jane Koelzer possesses no specific training in geriatric care. Kathy Koelzer believe she provides excellent care for Mary Ellen Koelzer and Jennifer Koelzer and testified she has good judgment and assessment skills to specifically monitor the health of Mary Ellen Koelzer.

Dr. Melonie Ice is the primary care physician for Mary Ellen Koelzer and Jennifer Koelzer. Dr. Ice testified by de bene esse deposition. Dr. Ice testified that Mary Ellen Koelzer is diagnosed with vascular dementia-severe and Jennifer Koelzer with mental retardation. Jennifer Koelzer has faced few health care issues and Dr. Ice has typically seen Jennifer Koelzer for regular preventative care visits. During Kathy Koelzer's role as fiduciary, Mary Ellen Koelzer has faced the typical ailments one would expect for any octogenarian: reflux, pneumonia, elevated thyroid, colitis, diarrhea and the typical behavioral problems associated with severe dementia. Under Kathy Koelzer's supervision Mary Ellen has also endured falls, a dog bite and a suspected bat bite. As previously noted, one fall Mary Ellen suffered resulted in a head laceration requiring a trip to the emergency room. Kathy Koelzer failed to report this fall or the emergency visit to her siblings. Also previously noted is bruising of the arm Mary Ellen suffered which Kathy Koelzer attempted to conceal from her siblings. Kathy Koelzer testified that the

bruise was the result of Mary Ellen being combative in the shower and striking her arm. It should be noted Jane Koelzer testified that Kathy Koelzer assaulted her. Julie Busen testified that Kathy Koelzer bared her teeth and assaulted Julie Busen. Kathy Koelzer denied assaulting Julie Busen but admitted to clenching her teeth at her sister.

Dr. Ice believes Kathy Koelzer to be cooperative and attentive to the needs of Mary Ellen Koelzer and Jennifer Koelzer. Dr. Ice believes that Kathy Koelzer keeps Dr. Ice well informed about the health status of Mary Ellen Koelzer and Jennifer Koelzer but also acknowledges there are other individuals capable of providing this care to Mary Ellen Koelzer. Mary Ellen Koelzer's medical records do reveal that Dr. Ice's staff has expressed annoyance with Kathy Koelzer's insistence that Mary Ellen Koelzer only receive shots from nurses. Typically medical assistants administer shots to patients in the office, and office personnel found Kathy Koelzer's insistence in this regard unnecessary and time consuming.

Through Kathy Koelzer, Dr. Ice has some awareness of the contested litigation between Kathy Koelzer and her siblings. Kathy Koelzer has also requested Dr. Ice pen a letter of support on behalf of Kathy Koelzer in this pending litigation.

From representations made by Kathy Koelzer to Dr. Ice, Dr. Ice believes Kathy Koelzer provides all of the care for Mary Ellen Koelzer and tries to include family members as much as possible in this care including arranging family outings between Mary Ellen Koelzer and her children. The doctor was also informed by Kathy Koelzer that if Kathy Koelzer is removed as Mary Ellen's agent under durable power of attorney that the family would institutionalize Mary Ellen Koelzer. Dr. Ice does admit that the impression she has of Kathy Koelzer has been created solely by Kathy Koelzer and her interactions with Ms. Koelzer and the information Ms. Koelzer has provided to Dr. Ice.

Dr. Ice admitted she was not aware of any of the concerns shared by the siblings regarding Kathy Koelzer. These concerns include allegations of alienation from the family, financial exploitation, improper supervision, hoarding and other obsessive compulsive personality traits. Dr. Ice testified that if those concerns or accusations were established she would be concerned for the safety and well being of Mary Ellen Koelzer and Jennifer Koelzer and would reconsider her recommendation that Kathy Koelzer continue to serve in a fiduciary role for Mary Ellen Koelzer and Jennifer Koelzer.

Other testimony was elicited regarding Kathy Koelzer's supervision of Mary Ellen Koelzer and Jennifer Koelzer in the family residence. Kathy Koelzer testified that Mary Ellen Koelzer sleeps approximately 12 hours per night but awakens three to four times during the night. Family members and caregivers testified when Mary Ellen is under their care Mary Ellen Koelzer sleeps throughout the night and rarely awakens during the night. Medical records support the assertion that Mary Ellen sleeps 12 hours per night. There was no entry in the medical records supporting the proposition that Mary Ellen suffers from any disruption in her sleep wake cycle. This testimony is germane when considering the type, degree and cost of care required for Mary Ellen Koelzer. Oddly, Kathy Koelzer frequently sleeps on the floor in Mary Ellen Koelzer's bedroom. Kathy asserts this is done to monitor any disruption in Mary Ellen's sleep wake cycle. Kathy Koelzer also testified she sleeps on a sofa on the first floor. Family members argue that Kathy Koelzer sleeps on the floor in Mary Ellen's room, not to monitor Mary Ellen but because Kathy Koelzer's bedroom is so cluttered from hoarding the bedroom is inaccessible for use as sleeping quarters. Kathy Koelzer does admit her bedroom is locked and is "a mess." If Mary Ellen does require monitoring at night one must ask why Kathy Koelzer does not accomplish this monitoring through the simple use of a baby monitor.

Regarding the home environment, family members and caregivers testified that Kathy Koelzer often is asleep when she is serving as the primary caregiver for Mary Ellen and Jennifer Koelzer.

Julie Busen testified that she found Kathy Koelzer asleep five times when Kathy Koelzer was to be providing primary care for Mary Ellen and Jennifer Koelzer and stated that Jennifer was left in charge of Mary Ellen Koelzer.

Mary Frey testified she found Kathy Koelzer asleep at 10:30 a.m. with no caregiver present to supervise Mary Ellen Koelzer and Jennifer Koelzer and that Mary Ellen Koelzer had not been fed breakfast.

Jane Koelzer testified she found Kathy Koelzer asleep at the residence a number of times when she was the primary caregiver for Mary Ellen Koelzer and Jennifer Koelzer and on one occasion after returning with Jennifer from an outing found Kathy Koelzer asleep and Mary Ellen Koelzer unattended.

Caregiver Leah Scott testified she has found Kathy Koelzer asleep on the floor in Mary Ellen's room a number of times when she arrived to begin her morning shift at the residence and that Kathy Koelzer often slept until noon.

Caregiver Ann Marie Larson testified that Kathy Koelzer was awake when she arrived to work her morning shift at the residence and that Kathy Koelzer would return to bed after Ms. Larson arrived.

In her testimony Kathy Koelzer stated that Leah Scott is a liar and that Leah Scott has never found Kathy Koelzer sleeping when she was providing care for Mary Ellen Koelzer. One photograph was admitted into evidence depicting Kathy Koelzer asleep on the floor in Mary Ellen Koelzer's bedroom.

Family members also expressed concerns regarding daily programming for Mary Ellen Koelzer and Jennifer Koelzer. Mary Ellen Koelzer is not kept on a regular schedule by Kathy Koelzer and is allowed to sleep until she awakens. Mary Ellen also takes frequent afternoon naps. Family members commented that Mary Ellen is forced to function on Kathy Koelzer's schedule and that this lack of daily structure is unhealthy and used to deny family members contact with Mary Ellen. Therese O'Connor testified that Kathy Koelzer purposely keeps Mary Ellen Koelzer down in bed to avoid visits between Mary Ellen Koelzer and her children. Kathy Koelzer responded that Mary Ellen requires additional sleep with her advancing dementia and does not keep Mary Ellen Koelzer on any schedule. Jane Koelzer also expressed concern that Kathy Koelzer serves dinner to Mary Ellen late in the evening aggravating Mary Ellen Koelzer's reflux.

Jennifer Koelzer held employment at a local restaurant for several years until 2008. By all accounts she was quite proud of this accomplishment and enjoyed her work. Kathy Koelzer testified Jennifer's work hours were reduced and Jennifer couldn't multi-task job responsibilities resulting in her termination from employment. Therese O'Connor and her siblings testified that Jennifer's employment gave her a sense of independence and Kathy Koelzer made no effort to secure new employment for Jennifer. Kathy Koelzer has never pursued any type of sheltered employment for Jennifer. Jennifer does participate in a number of enrichment activities including day camp, bowling, art classes and special Olympics. Jane, who has historically remained close to Jennifer, continues to regularly participate with Jennifer in weekly weight watcher classes.

The testimony clearly establishes that Kathy Koelzer has claimed to Jennifer Koelzer, caregivers, and to Mary Ellen and Jennifer's treating physician that if Jane Koelzer is granted the relief sought that Mary Ellen Koelzer will be moved to a nursing home and Jennifer Koelzer will

be moved to an out-of-home placement. Jane Koelzer denied any plans to change the placement of either Mary Ellen Koelzer or Jennifer Koelzer and the Court finds no validity to Kathy Koelzer's assertion in this regard.

The Court finds that Kathy Koelzer is attentive to the health care needs of Mary Ellen Koelzer and Jennifer Koelzer and maintains regular preventative health care appointments for both. Mary Ellen Koelzer does not require around-the-clock skilled nursing care but both Mary Ellen Koelzer and Jennifer Koelzer require 24-hour supervision. Certainly Kathy Koelzer is not the only person qualified to provide care or supervision of Mary Ellen Koelzer. There is evidence that Kathy Koelzer has been negligent on occasion with her direct supervision of Mary Ellen Koelzer and Jennifer Koelzer. Supervision of Jennifer Koelzer can obviously be accomplished through a number of different caregivers and a number of people both family and professional could serve in the formal role of guardian.

RELIEF SOUGHT

Jane Koelzer has petitioned the Court to revoke the durable power of attorney for health care and appoint a professional guardian for Mary Ellen Koelzer and to remove Kathy Koelzer as plenary guardian of the person for Jennifer Koelzer and appoint a professional successor plenary guardian of the person and estate. She is joined by all of her siblings except Jim Koelzer who declined to participate in these proceedings. Kathy Koelzer requests that both petitions be denied. Jennifer Koelzer, the developmentally-disabled respondent, in her individual capacity requests that Jane Koelzer's petition regarding her guardianship be denied. The Court has given due consideration to the request of Jennifer Koelzer. The LGAL for Mary Ellen Koelzer requests the petition of Jane Koelzer be granted and that Kathy Koelzer be removed as patient advocate and a professional guardian be appointed for Mary Ellen Koelzer. The LGAL for

Jennifer Koelzer requests the petition of Jane Koelzer be granted and Kathy Koelzer be removed as plenary guardian for Jennifer Koelzer and that Jane Koelzer be appointed as successor plenary guardian of the person and estate for Jennifer Koelzer. The guardian ad litem and visitor David Kinsman recommends that both petitions be granted and Kathy Koelzer be removed as patient advocate and a public guardian be appointed as full guardian for Mary Ellen Koelzer and that Kathy Koelzer be removed as plenary guardian for Jennifer Koelzer and a public successor plenary guardian of the person and estate be appointed for Jennifer Koelzer.

CONCLUSIONS AND ORDERS

It has been established by testimony and exhibits that Kathy Koelzer has created an environment of suspicion, hostility and alienation between Mary Ellen Koelzer and Jennifer Koelzer and the remaining family members. Jennifer Koelzer is withdrawing from the family and has become more dependent on Kathy Koelzer. Injuries suffered and treatment administered to Mary Ellen Koelzer should not be hidden from the family. Family members should not have to schedule an appointment to visit their mother and sister in the family home and doors shouldn't be padlocked. Contact between Mary Ellen Koelzer and Jennifer Koelzer and the remaining family members should not be discouraged, and family members should not be monitored or followed during visits.

It has been established by testimony and exhibits that Kathy Koelzer has created an unsafe environment within the family residence through the hoarding of debris in the residence. This hoarding also causes waste of the estate of Mary Ellen Koelzer and Jennifer Koelzer with diminishing value to the residence and additional labor costs for cleaning and maintenance of the residence. Waste of the estate is also caused by the unwillingness and inability of Kathy Koelzer

to resolve conflict between family members and her refusal to engage in meaningful communication with family members resulting in endless and expensive litigation.

The testimony also established that Kathy Koelzer directly violated her fiduciary duty to Jennifer Koelzer by failing to account for Jennifer Koelzer's inheritance from her grandmother to Jennifer Koelzer and the Court. Kathy Koelzer also violated her fiduciary duty to Mary Ellen Koelzer by using funds of Mary Ellen Koelzer without her knowledge or informed consent.

The Court finds that in the capacity of patient advocate Kathy Koelzer has not acted in the best interest of Mary Ellen Koelzer and in the capacity of plenary guardian of Jennifer Koelzer Kathy has not acted in the best interest of Jennifer Koelzer. The petition for appointment of guardian for Mary Ellen Koelzer is granted. Kathy Koelzer is removed as patient advocate for Mary Ellen Koelzer and the durable power of attorney for health care is revoked. Given the history of this case and in an attempt to reduce both family conflict and the continued expense of litigation, a public guardian is appointed full successor guardian for Mary Ellen Koelzer.

The petition of Jane Koelzer for modification of the guardianship of Jennifer Koelzer is also granted. Kathy Koelzer is removed as guardian. Jane Koelzer is appointed successor plenary guardian of the person for Jennifer Koelzer. Jane Koelzer has maintained a loving and close and long-standing relationship with Jennifer Koelzer and continues to engage Jennifer Koelzer in regular positive peer activity. Appointing Jane Koelzer as successor guardian for Jennifer Koelzer will diminish any disruption caused by the change in guardianship. Jane Koelzer is also appointed guardian of the estate of Jennifer Koelzer to allow proper accounting and management of Jennifer Koelzer's estate.

Jane Koelzer may serve as guardian in each matter by filing the appropriate Acceptance of Appointment.

The placement of Mary Ellen Koelzer or Jennifer Koelzer may not be changed without the written order of this Court. The Court expects Kathy Koelzer to remain engaged in the lives of Mary Ellen Koelzer and Jennifer Koelzer but not in a fiduciary capacity. Appropriate orders on SCAO forms conforming to the Court's opinion are attached.

Date: _____

Honorable David M. Murkowski (P35026)
Chief Judge
Kent County Probate Court