

IN THE CIRCUIT COURT OF WILL COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

HENRY J. SAVIO and ANNA M. DOMAN,
Co-Executors of the Estate of KATHLEEN
SAVIO, deceased,

Plaintiffs,

v.

DREW PETERSON and JAMES B. CARROLL,
Defendants.

Court No. 09 L 326

JURY DEMAND

FILED
11 JAN 27 AM 9:13
CLERK OF CIRCUIT COURT
WILL COUNTY ILLINOIS

FOURTH AMENDED COMPLAINT AT LAW

NOW COME Plaintiffs HENRY J. SAVIO and ANNA M. DOMAN, Co-Executors of the Estate of KATHLEEN SAVIO, deceased, by and through their attorneys, MARTIN L. GLINK and JOHN Q. KELLY, complaining of Defendants DREW PETERSON and JAMES B. CARROLL, pleading hypothetically and in the alternative state as follows:

INTRODUCTION

1. This Complaint is brought by HENRY J. SAVIO and ANNA M. DOMAN, Co-Executors of the Estate of KATHLEEN SAVIO, deceased, pursuant to the Illinois Wrongful Death Act, 740 ILCS et seq the Illinois Survival Act, 775 ILCS §5/27-6 and Illinois common law. It seeks to recover damages from defendant Peterson for causing the death of Kathleen Savio, for other losses arising from Kathleen Savio's death, and for injuries suffered by Kathleen Savio prior to her death at the hand of defendant Peterson.

2. Damages are also sought for the mismanagement, breach of fiduciary duty and dissipation of estate assets by defendant Carroll and defendant Peterson subsequent to Ms. Savio's death.

THE PARTIES

3. The Plaintiffs, Henry J. Savio and Anna M. Doman, were appointed Co-Executors of the Estate of Kathleen Savio for, *inter alia*, purposes of administering an action on behalf of Kathleen Savio's two minor children, Thomas Drew and Kristopher Donald (see Order of Probate, dated April 21, 2008, attached hereto).

JURISDICTION and VENUE

4. Jurisdiction and venue are proper in Will County, Illinois because Plaintiff Anna Doman resides in Will County, and most of the acts and omissions committed by the defendants occurred in Will County, Illinois.

BACKGROUND

5. Kathleen Savio and defendant Peterson were married on May 3, 1992.

6. Kathleen Savio Peterson bore two sons, Thomas Drew and Kristopher Donald, during the course of her marriage to defendant Peterson.

7. On or about March 2, 1997 a document titled "Will," handwritten by defendant Peterson, was purportedly signed by Kathleen Savio Peterson. Said handwritten "Will" provided equally for defendant Peterson's two children from a prior marriage, appointed defendant Peterson's uncle, James B. Carroll, as Executor, and was purportedly witnessed by two co-workers and friends of defendant Peterson.

8. In October 2001, Kathleen became aware of defendant Peterson's extramarital relationship with Stacy Cales, and divorce proceedings were initiated shortly thereafter.

9. Kathleen Savio Peterson and defendant Peterson engaged in a contentious divorce proceeding, with custody of the children, personal property and finances contested. During 2002, with the divorce trial pending, there were a number of confrontations that resulted in Kathleen

filing police reports detailing defendant Peterson's physical assaults upon her, and repeated threats of physical violence.

10. On October 10, 2003, a judgment of divorce was entered on behalf of Kathleen Savio Peterson and defendant Peterson, but the issue of the distribution of marital assets between the parties was set down for trial on January 12, 2003, and was subsequently adjourned several times until a trial date of April 6, 2004 was set.

11. After Kathleen Savio's divorce, Defendant Peterson was married for a fourth time, to Stacy Ann Cales Peterson, and they settled in a residence located in Bolingbrook.

12. On March 1, 2004 at approximately 10:30 p.m. Kathleen Savio was found dead in her residence, face down in an empty bathtub, with a number of fresh bruises, scrapes and contusions on various parts of her body, along with a 1" laceration on the left parietal - occipital scalp, caused by blunt force trauma.

13. There was no evidence of forced entry, no indication of any property removed and the doors to the house were locked. Defendant Peterson previously was a co-owner of the residence, and after Kathleen took sole possession of the residence, defendant Peterson had gained entry to the residence, uninvited, by various means, including using a garage door opener and, on one occasion, cutting out a portion of wall and crawling through the opening into the residence.

14. The time of Kathleen's death was estimated as early as Sunday morning, February 29, 2004.

15. A Coroners' Jury Inquest was conducted, and after approximately one hour of testimony and deliberation the death of Kathleen Savio was ruled an accidental drowning. The Coroners' Jury heard testimony from an Illinois State Trooper that never saw Kathleen's body, did not

attend the autopsy and never interviewed defendant Peterson. The witness lacked personal knowledge about much of his testimony.

16. One of the jurors on the Coroners' Jury was a police officer from another agency. The juror knew defendant Peterson, and during deliberations this police officer assured the other jurors that he personally knew defendant Peterson, and that he knew defendant Peterson would never harm his ex-wife.

17. On April 8, 2005 at a hearing to finalize the distribution of marital assets between defendant Peterson and The Estate of Kathleen Savio, defendant James B. Carroll, defendant Peterson's uncle, and executor of Kathleen Savio's estate, discharged the matrimonial attorney retained to represent Ms. Savio's interest in her marital assets, and appointed himself to represent her marital assets, and proceeded to turn over all of Ms. Savio's marital assets, that were to go to her estate, to defendant Peterson, her ex-husband.

18. The marital assets that defendant Carroll (defendant Peterson's uncle), turned over to defendant Peterson included, but were not limited to, the sale proceeds from the marital residence, the sale proceeds from various businesses (bar, printing company and commercial property), as well as the proceeds from various life insurance policies and personal property.

19. In addition, on the day of Kathleen Savio's funeral, rather than attend a reception for family and friends afterwards, defendant Peterson pulled a truck into the driveway of Kathleen Savio's residence, and removed a large amount of personal property that had not been inventoried yet, nor which he had any claim to. Defendant Carroll knew or should have known defendant Peterson did, or would do, this.

20. On August 31, 2007, Stacy Peterson (defendant Peterson's fourth wife) met with Pastor Neil Schori, at her request. At that meeting Stacy Peterson told Pastor Schori that she had

personal, detailed knowledge that defendant Peterson killed Kathleen Savio, and that she had such knowledge since the night Kathleen Savio died.

21. On October 28, 2007, less than eight weeks after sharing with Pastor Schori the details of defendant Peterson's involvement in Kathleen Savio's death, and while contemplating going to the authorities with this information, and also contemplating filing her own action for divorce, Stacy Peterson disappeared — defendant Peterson was the last person known to have been with her that day.

22. Based on the highly suspicious conduct of defendant Peterson, and the circumstances surrounding Stacy Peterson's disappearance, the remains of Kathleen Savio were exhumed.

23. In a subsequent autopsy, Ms. Savio's death was re-classified as a homicide. This conclusion was also reached in independent autopsies conducted by Dr. Michael Baden, at the request of Ms. Savio's family, and Dr. Larry Blum, at the request of the Will County State Attorney's Office.

24. On December 10, 2007 in an interview conducted by Mark Fuhrman for Fox News, Pastor Schori recounted the details given him by Stacy Peterson relating to defendant Peterson's role in Kathleen Savio's death, and Stacy's fear of defendant Peterson, including:

- That during the night of February 28—March 1, 2004, Stacy woke up and Drew was gone. She checked the house and couldn't find him.
 - That in the early morning hours of March 1, 2004 Stacy observed defendant Petersen standing in front of the washing machine, dressed in all black, and holding a bag — defendant Peterson then removed his clothes and put them in the washer, and emptied the contents of the bag he was holding, which appeared to be women's clothing, into the washer also.
 - Defendant Peterson told Stacy how he hit Kathleen on the back of the head, making her death look like an accident.
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COUNT I
WRONGFUL DEATH AGAINST DREW PETERSON
(ILLINOIS WRONGFUL DEATH ACT)

25. Count I is brought by the Co-Executors of the estate of Kathleen Savio against defendant Peterson.

26. Plaintiffs re-allege and incorporate paragraphs 1 through 23 as though fully set forth herein.

27. On or about February 28, 2004, Kathleen Savio died as the legal and proximate result of the wrongful acts of defendant Peterson.

28. On or about February 28, 2004 defendant Peterson planned and prepared to assault, batter and murder Kathleen Savio and did thereafter brutally, and with malice aforethought, stalk, attack, repeatedly beat, then drown, decedent Kathleen Savio. Defendant Peterson left her dead in a bathtub. Kathleen Savio survived the brutal attack for some unknown period of time and thereafter drowned to death as a direct legal and proximate result of the wrongful and homicidal acts of defendant Peterson.

29. The attack was perpetrated by defendant Peterson with full knowledge that the assault and battery upon decedent's body, and the forced submergence of her head under water for a prolonged period of time, would lead to her death.

30. In doing the acts alleged herein, defendant Peterson acted with aggression, fraud and malice, and plaintiff is entitled to punitive and exemplary damages at an amount to be proven at trial.

31. On February 28, 2004 Thomas Drew and Kristopher Donald Peterson were the minor children and lawful heirs and survivors of Kathleen Savio.

32. As a legal and proximate result of the acts of defendant Peterson, Thomas and Kristopher Peterson suffered pecuniary loss, including loss of her society, companionship and support.

33. Kathleen Savio (and the Estate of Kathleen Savio) also sustained injuries, including pain and suffering, and incurred sums for funeral and other expenses related to her death.

WHEREFORE, Plaintiffs Henry J. Savio and Anna M. Doman, as Co-Executors of the Estate of Kathleen Savio, demand judgment be entered against defendant Peterson on Count I of the Complaint at Law, for all damages to be proven at trial, in an amount in excess of One Hundred-Thousand Dollars (\$100,000.00).

**COUNT II
ILLINOIS SURVIVAL ACT CLAIM AGAINST
DREW PETERSON**

34. Count II is brought by the Co-Executors of the Estate of Kathleen Savio against defendant Peterson.

35. Plaintiffs re-allege and incorporate paragraphs 1 through 32 as though fully set forth herein.

36. On February 28, 2004, Thomas and Kristopher Peterson were minor children and the sons of Kathleen Savio. Thomas and Kristopher Peterson have suffered and will suffer a loss of society as a result of the injuries and death suffered by Kathleen Savio. Additionally, Kathleen Savio's lost earnings and income, and thus, Thomas and Kristopher Peterson, will suffer a loss of financial benefit as a result of the injuries and death suffered by Kathleen Savio.

37. Kathleen Savio (and the estate of Kathleen Savio) sustained injuries, including injuries to her person, endured pain and suffering and incurred sums for medical and hospital-type care expenses.

38. In doing the acts alleged herein, defendant Peterson acted with aggression, fraud and malice, and plaintiff is entitled to punitive and exemplary damages at an amount to be proven at trial.

WHEREFORE, Plaintiffs Henry J. Savio and Anna M. Doman, as Co-Executors of the Estate of Kathleen Savio, demand judgment be entered against defendant Peterson on Count II of the Complaint at Law, for all damages to be proven at trial, in an amount in excess of One Hundred-Thousand Dollars (\$100,000.00).

COUNT III
ASSAULT AND BATTERY AGAINST DREW PETERSON

39. Count III is brought by the Co-Executors of the Estate of Kathleen Savio against defendant Peterson.

40. Plaintiffs re-allege and incorporate paragraphs 1 through 37 as though fully set forth herein.

41. Defendant Peterson willfully and unlawfully touched Kathleen Savio when he brutally beat and drowned her.

42. Defendant Peterson purposefully, knowingly and intentionally caused Kathleen Savio bodily injury and death by beating and drowning her.

43. On February 28, 2004 Thomas and Kristopher Peterson, the minor sons of Kathleen Savio, were the lawful heirs and survivors of Kathleen Savio.

44. As the legal and proximate result of the intentional acts of defendant Peterson, Thomas and Kristopher Peterson suffered substantial pecuniary losses, including the loss of her society, companionship and support.

45. Kathleen Savio (and the Estate of Kathleen Savio) also sustained injuries, including pain and suffering and incurred sums for funeral expenses and other expenses related to her death.

46. In doing the acts alleged herein, defendant Peterson acted with aggression, fraud and malice, and plaintiff is entitled to punitive and exemplary damages at an amount to be proven at trial.

WHEREFORE, Plaintiffs Henry J. Savio and Anna M. Doman, as Co-Executors of the Estate of Kathleen Savio, demand judgment be entered against defendant Peterson on Count I of the Complaint at Law, for all damages to be proven at trial, in an amount in excess of One Hundred-Thousand Dollars (\$100,000.00).

**COUNT IV
BREACH OF FIDUCIARY AGAINST DREW PETERSON**

47. Plaintiffs re-allege and incorporate paragraphs 1 through 46 as though fully set forth herein.

48. Count IV is brought by the Co-Executors of the Estate of Kathleen Savio against Drew Peterson.

49. Drew Peterson was appointed guardian of the estate and person of his and Kathleen Savio's two minor children, Thomas D. Peterson and Kristopher D. Peterson, by the Circuit Court of Will County on April 5, 2004 in Case Number 04 P 0232.

50. James B. Carroll was appointed Independent Executor of the Estate of Kathleen Savio, deceased/ on March 23, 2005 by the Circuit Court of Will County in Case Number 04 P 188.

51. James B. Carroll was at all times Drew Peterson's uncle.

52. Under the terms of the will of Kathleen Savio, the beneficiaries of her estate are her children, Thomas D. Peterson and Kristopher D. Peterson and her two stepchildren, Eric Drew Peterson and Steven Paul Peterson. Drew Peterson is not a beneficiary under Kathleen Savio's will nor by operation of law since at the time of her death, Kathleen Savio and Drew Peterson were divorced.

53. By accepting appointment as Guardian of the Estates and Persons of Kathleen Savio's minor children and beneficiaries of her Estate, Thomas D. Peterson and Kristopher D. Peterson, Defendant Drew Peterson assumed fiduciary duties. These duties were imposed upon Drew Peterson as a matter of law and include the fiduciary duties of good faith, loyalty, trust, reasonable care in the use, transfer, and investment of funds and assets for the benefit of the Estate of Kathleen Savio and at least her two (2) minor beneficiaries, under the "Prudent Person," standard.

54. At the time of the death of Kathleen Savio a divorce proceeding was pending between her and defendant Peterson in the Circuit Court of Will County as Case Number 02 D 420. The divorce proceeding was bifurcated with a judgment of dissolution entered prior to the death of the decedent and the court reserving the issue as to the division of the property of the parties for further proceedings. Kathleen Savio died just days before the completion of the proceedings.

55. Defendant Drew Peterson breached his fiduciary duties, wasted and mismanaged the Estate, by unduly influencing James Carroll and by having his uncle James Carroll terminate the representation of Kathleen's divorce counsel and by failing to retain alternate counsel. Further, after James Carroll appeared on behalf of the estate pro se, James Carroll and Drew Peterson agreed to permit all of the assets of the marriage to pass to Drew Peterson, Kathleen Savio's ex-husband, and away from the Estate of Kathleen Savio, and its intended beneficiaries. Drew Peterson seized the aforesaid property. The actions also breached the fiduciary duties of loyalty, good faith, fair dealing and trust owed by Defendant.

56. Specifically, Peterson, thru Carroll, wasted, mismanaged, and/or looted the Estate of

~~Kathleen Savio by taking all proceeds from the sale of Kathleen Savio's home, proceeds~~

converted, \$287,154.00, or, in the alternative, \$288,235.31; All proceeds from the sale of the bar

Kathleen Savio and Drew Peterson owned and operated together, the Blue Lightning Corp.; Proceeds for 25% of a printing business they shared during their marriage; Peterson also looted, wasted or mismanaged the Kathleen Savio Estate, thru Carroll, by converting substantial personal property, monies over \$3,077.92. Further, Drew Peterson, thru Carroll, "weaseled" out of paying college expenses for Kathleen Savio's Estate and beneficiaries, her minor children. See attached hereto as **Exhibits 1 and 2** and incorporated herein by reference, Kathleen's Will, the "First and Final Report" of Richard Kavanagh, Public Guardian/Administrator of Will County documenting same and that: "The actions of the Executor were not in the best interests of the Estate, or its beneficiaries," (bottom of page 3), and the Verified "Joint Petition to Reopen The Estate..." attached hereto and incorporated herein by reference as **Exhibit 3**.

57. Defendant Drew Peterson, personally received all of the foregoing assets of the marriage, and in addition alleviated himself from the obligation to contribute to the college education of his children.

58. Defendant Drew Peterson did not pay, transfer to, or provide for Kathleen Savio's two (2) minor beneficiaries, the foregoing assets of Kathleen Savio's Estate.

59. Defendant Peterson converted the foregoing assets which should have been assets of the estate of Kathleen Savio diverted to the personal benefit of defendant Peterson.

60. In doing so, Drew Peterson violated his fiduciary obligation to protect and preserve the assets of his wards. His conduct was intentional, willful, egregious and motivated by financial gain to himself. His conduct was performed with full knowledge that the financial loss to his children would be to his own financial gain.

WHEREFORE, Plaintiffs, HENRY J. SAVIO and ANNA M. DOMAN, Co-Executors of
the Estate of Kathleen Savio, deceased, pray:

1. For judgment in favor of the Estate of Kathleen Savio and against Drew Peterson in an amount sufficient to compensate the Estate for loss of the funds diverted from the estate by them in the dissolution proceedings.
2. For an award of punitive damages against Drew Peterson in an amount sufficient to deter others from such conduct including but not limited to reasonable attorney's fees and costs necessary to bring and prosecute these proceedings.

COUNT V
BREACH OF FIDUCIARY DUTY AGAINST JAMES B. CARROLL

47. Plaintiffs re-allege and incorporate paragraphs 1 through 46 of Count III as though fully set forth herein.
 48. Count V is brought by the Co-Executors of the Estate of Kathleen Savio against James B. Carroll.
 49. Drew Peterson was appointed guardian of the estate and person of his and Kathleen Savio's two minor children, Thomas D. Peterson and Kristopher D. Peterson, by the Circuit Court of Will County on April 5, 2004 in Case Number 04 P 0232.
 50. James B. Carroll was appointed Independent Executor of the Estate of Kathleen Savio, deceased/ on March 23, 2005 by the Circuit Court of Will County in Case Number 04 P 188.
 51. James B. Carroll was at all times Drew Peterson's uncle.
 52. Under the terms of the will of Kathleen Savio, the beneficiaries of her estate are her children, Thomas D. Peterson and Kristopher D. Peterson and her two stepchildren, Eric Drew Peterson and Steven Paul Peterson. Drew Peterson is not a beneficiary under Kathleen Savio's will nor by operation of law since at the time of her death, Kathleen Savio and Drew Peterson were divorced.
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53. By accepting appointment as Independent Executor of Kathleen Savio's Estate, Defendant Carroll assumed fiduciary duties to the Estate of Kathleen Savio and her minor beneficiaries, at least Thomas D. Peterson and Kristopher D. Peterson. These duties were imposed upon Carroll as a matter of law and include the fiduciary duties of good faith, loyalty, trust, reasonable care in the use, transfer, and investment of funds and assets for the benefit of the Estate of Kathleen Savio and at least her two (2) minor beneficiaries, under the "Prudent Person," standard.

54. At the time of the death of Kathleen Savio a divorce proceeding was pending between her and defendant Peterson in the Circuit Court of Will County as Case Number 02 D 420. The divorce proceeding was bifurcated with a judgment of dissolution entered prior to the death of the decedent and the court reserving the issue as to the division of the property of the parties for further proceedings. Kathleen Savio died just days before the completion of the proceedings.

55. Defendant Carroll as independent executor of the Estate, breached his fiduciary duties, wasted and mismanaged the Estate, by terminating the representation of divorce counsel and by failing to retain alternate counsel, which James Carroll knew or should have known was necessary to protect the Estate's beneficiaries, especially because he had an impossible conflict of interest with Drew Peterson, the ex-spouse and nephew of Carroll. Further, James Carroll then appeared on behalf of the estate "pro se," without counsel for Estate and/or minor beneficiaries, gave and signed over to Co-Defendant Drew Peterson all of the assets of the marriage to pass to Drew Peterson, Kathleen Savio's ex-husband, and away from the Estate of Kathleen Savio, and its intended beneficiaries. The actions also breached the fiduciary duties of loyalty, good faith, fair dealing and trust. He allowed the properties to actually change hands, not to the Estate's

beneficiaries but to Drew Peterson directly, who seized same and used same, in whole or in part, to his own, personal use.

56. Specifically, Peterson, thru Carroll, wasted, mismanaged, and/or looted the Estate of Kathleen Savio by taking all proceeds from the sale of Kathleen Savio's home, proceeds converted, \$287,154.00, or, in the alternative, \$288,235.31; All proceeds from the sale of the bar Kathleen Savio and Drew Peterson owned and operated together, the Blue Lightning Corp.; Proceeds for 25% of a printing business they shared during their marriage; Peterson also looted, wasted or mismanaged the Kathleen Savio Estate, thru Carroll, by converting substantial personal property, monies over \$3,077.92. Further, Drew Peterson, thru Carroll, "weaseled" out of paying college expenses for Kathleen Savio's Estate and beneficiaries, her minor children. See attached hereto as **Exhibits 1 and 2** and incorporated herein by reference, Kathleen's Will, the "First and Final Report" of Richard Kavanagh, Public Guardian/Administrator of Will County documenting same and that: "The actions of the Executor were not in the best interests of the Estate, or its beneficiaries," (bottom of page 3). See also: the Verified "Joint Petition to Reopen The Estate...", attached hereto and incorporated herein by reference as **Exhibit 3**.

57. Defendant James Carroll gave and signed over to Drew Peterson personally, all of the foregoing assets of the marriage and in addition, allowed Peterson to alleviate himself from the obligation to contribute to the education of his children. Had Carroll hired substitute counsel, this would have been paid to/for the two (2) minor beneficiaries by Defendant Peterson.

58. In doing so, James Carroll violated his fiduciary obligation to protect and preserve the assets of the Estate of Kathleen Savio. His conduct was intentional, willful, egregious and motivated by financial gain to himself or to his nephew Drew Peterson. His conduct was

performed with full knowledge that the financial loss to the Estate's beneficiaries would be to his own financial gain, or Drew Peterson's or both.

59. James B. Carroll breached his fiduciary duty by failing to preserve and protect the assets of the estate of Kathleen Savio, which was not in the best interests of the Estate or of the beneficiaries of the Estate, and by allowing transfer, and aiding or abetting in the transfer of these Estate assets to Drew Peterson, an ex-spouse with no rights to the property which absence of rights Defendant Carroll knew or should have known.

60. Further, Carroll did not retain independent counsel to represent the Estate despite having a conflict of interest which made it impossible for Carroll to represent the Estate and at the same time, as Drew Peterson's uncle, Carroll failed to sequester the Estate's assets and failed to investigate a Wrongful Death Act and Survival Action against Drew Peterson, his nephew.

61. Carroll violated, by these acts and omissions aforesaid, 755 ILCS 5/23-2(4) and 755 ILCS 5/23-(a); 755 ILCS 5/23-2(10).

WHEREFORE, Plaintiffs, HENRY J. SAVIO and ANNA M. DOMAN, Co-Executors of the Estate of Kathleen Savio, deceased, pray:

1. For judgment in favor of the Estate of Kathleen Savio and against James B. Carroll in an amount sufficient to compensate the Estate for loss of the funds diverted from the estate by them in the dissolution proceedings.
2. For an award of punitive damages against James B. Carroll in an amount sufficient to deter others from such conduct including but not limited to reasonable attorney's fees and costs necessary to bring and prosecute these proceedings.

COUNT VI
NEGLIGENCE AGAINST JAMES B. CARROLL

58. Plaintiffs re-allege and incorporate paragraphs 1 through 57 of Count V as though fully set forth herein.

59. Count VI is brought by the Co-Executors of the Estate of Kathleen Savio against James B. Carroll.

60. Drew Peterson was appointed guardian of the estate and person of his and Kathleen Savio's two minor children, Thomas D. Peterson and Kristopher D. Peterson, by the Circuit Court of Will County on April 5, 2004 in Case Number 04 P 0232.

61. James B. Carroll was appointed Independent Executor of the Estate of Kathleen Savio, deceased/ on March 23, 2005 by the Circuit Court of Will County in Case Number 04 P 188.

62. James B. Carroll was at all times Drew Peterson's uncle.

63. Under the terms of the will of Kathleen Savio, the beneficiaries of her estate are her children, Thomas D. Peterson and Kristopher D. Peterson and her two stepchildren, Eric Drew Peterson and Steven Paul Peterson. Drew Peterson is not a beneficiary under Kathleen Savio's will nor by operation of law since at the time of her death, Kathleen Savio and Drew Peterson were divorced.

64. By accepting appointment as Independent Executor of Kathleen Savio's Estate, Defendant Carroll assumed duties to the Estate of Kathleen Savio and her minor beneficiaries, at least Thomas D. Peterson and Kristopher D. Peterson. These duties were to exercise reasonable and ordinary care in the use, transfer, and investment of funds and assets for the benefit of the Estate of Kathleen Savio and at least her two (2) minor beneficiaries, under the reasonably "Prudent Person," standard. Carroll also assumed the fiduciary duties to the Estate and two (2) minor beneficiaries, loyalty, honesty, good faith, fair dealing, trust, etc., and the duty to preserve the Estate for the two (2) minor beneficiaries.

65. At the time of the death of Kathleen Savio a divorce proceeding was pending between her and defendant Peterson in the Circuit Court of Will County as Case Number 02 D 420. The divorce proceeding was bifurcated with a judgment of dissolution entered prior to the death of the decedent and the court reserving the issue as to the division of the property of the parties for further proceedings. Kathleen Savio died just days before the completion of the proceedings.

66. Defendant Carroll as independent executor of the Estate, failed to exercise ordinary and reasonable care and negligently breached his duties owed to the Estate and its beneficiaries by negligently following the advice, instruction or recommendations by Co-Defendant Drew Peterson, by terminating the representation of divorce counsel and by failing to retain alternate or independent counsel, which James Carroll knew or should have known was necessary to protect the Estate's beneficiaries.

67. Further, James Carroll then appeared on behalf of the estate "pro se." He negligently permitted all of the assets of the marriage to pass to Drew Peterson, Kathleen Savio's ex-husband, and away from the Estate of Kathleen Savio, and its intended beneficiaries.

68. Further, the actions also negligently breached the duties owed when he allowed the properties to actually change hands, not to the Estate's beneficiaries but to Drew Peterson directly, who Carroll should have known would seize same and use same, in whole or in part, to his own, personal use.

69. Defendant James Carroll negligently breached a duty owed to the Estate or minor beneficiaries whereby Drew Peterson personally received all of the assets of the marriage and in addition alleviated himself from the obligation to contribute to the education of his children.

~~70. As a direct and proximate result of one or more of the aforesaid acts and/or omissions of~~
the Defendant James Carroll, Plaintiffs were injured, damaged and incapacitated, were caused to

incur related expenses, loss of funds diverted from the Estate, were caused to suffer pain, suffering, and the loss of a normal life.

71. At all times, the Plaintiffs were in the exercise of ordinary and reasonable care, and when compared to the negligence of the Defendant James Carroll for blindly obeying Co-Defendant Drew Peterson's instructions without hiring independent counsel, without proper verification for what he was doing, etc., Plaintiffs were zero percent (0%) negligent and Defendant James Carroll was one hundred percent (100%) negligent, or in the alternative, the greater negligent party.

72. Further, Carroll did not retain independent counsel to represent the Estate despite having a conflict of interest which Carroll knew or should have known made it impossible for Carroll to represent the Estate and at the same time, as Drew Peterson's uncle, Carroll failed to sequester the Estate's assets and failed to investigate a Wrongful Death Act and Survival Action against Drew Peterson, his nephew.

73. To the extent necessary, the Plaintiffs plead the "Discovery Rule," in that Plaintiffs only recently learned of the cause of action in April 2010 when James B. Carroll testified that, "I only did what he, (Drew Peterson), told me to."

WHEREFORE, Plaintiffs, HENRY J. SAVIO and ANNA M. DOMAN, Co-Executors of the Estate of Kathleen Savio, deceased, pray:

1. For judgment in favor of the Estate of Kathleen Savio and against James B. Carroll in an amount sufficient to compensate the Estate for loss of the funds diverted from the estate by them in the dissolution proceedings.

JURY TRIAL DEMANDED

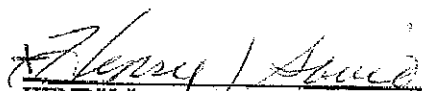
Plaintiff demands a trial by jury on all counts so triable.

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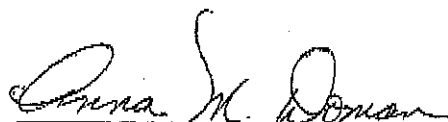
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Respectfully submitted,



HENRY J. SAVIO
Co-Executor of the Estate of
Kathleen Savio



ANNA M. DOMAN
Co-Executor of the Estate of
Kathleen Savio

Martin L. Glink
LAW OFFICE OF MARTIN L. GLINK
1655 N Arlington Heights Road Suite 100 East
Arlington Height, Illinois 60004
ARDC 00973912

John Q. Kelly
9 East 40th Street
New York, New York 10016
Pro Hac Vice

ATTORNEY'S STATEMENT

I, the undersigned, state that I represent the Parties, Henry J. Savio, Susan Doman and Nick Savio who have executed the foregoing pleading. My business address is 1655 North Arlington Heights Road, Suite 100 East, Arlington Heights, Illinois 60004. I certify that I have read the foregoing pleading and that to the best of my knowledge, information and belief, formed after reasonable inquiry of my clients, said pleading is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that said pleading is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

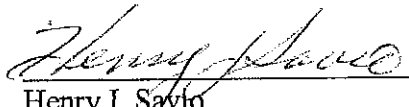
By: 

Martin L. Glink, Attorney

CLIENT'S VERIFICATION

UPON PENALTY OF PERJURY, We, the undersigned, state that we have read the foregoing pleading, including the "Attorney's Statement" and further state that we have provided to the attorney who has executed this document, information which, to the best of our knowledge and belief, is true and accurate. We further state that this pleading is being filed with our consent and as part of our attorney's required duties in representing us. We further state that our attorney has explained to us that by signing this verification, we are acknowledging that our attorney has based his statement on the factual information provided to him by us.

Dated: 


Henry J. Savio

Martin L. Glink
LAW OFFICE OF MARTIN L. GLINK
1655 N Arlington Heights Road Suite 100 East
Arlington Height, Illinois 60004
ARDC 00973912

John Q. Kelly
9 East 40th Street
New York, New York 10016
Pro Hac Vice

JAN-26-2011 10:31AM FROM-

10473941621

T-032 P.021/021 F-600

ATTORNEY'S STATEMENT

I, the undersigned, state that I represent the Parties, Anna M. Doman and Henry M. Savio who have executed the foregoing pleading. My business address is 9 East 40th Street, New York, New York 10016. I certify that I have read the foregoing pleading and that to the best of my knowledge, information and belief, formed after reasonable inquiry of my clients, said pleading is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that said pleading is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

By: 

John Q. Kelly, Attorney

CLIENT'S VERIFICATION

UPON PENALTY OF PERJURY, We, the undersigned, state that we have read the foregoing pleading, including the "Attorney's Statement" and further state that we have provided to the attorney who has executed this document, information which, to the best of our knowledge and belief, is true and accurate. We further state that this pleading is being filed with our consent and as part of our attorney's required duties in representing us. We further state that our attorney has explained to us that by signing this verification, we are acknowledging that our attorney has based his statement on the factual information provided to him by us.

Dated: 1/26/11
Anna M. Doman

Martin L. Glink
LAW OFFICE OF MARTIN L. GLINK
1635 N Arlington Heights Road Suite 100 East
Arlington Heights, Illinois 60004
ARDC 00973912

John Q. Kelly
9 East 40th Street
New York, New York 10016
Pro Hac Vice

EXHIBIT

1

WILL

THIS DAY MARCH 2ND 1997 DREW WALTER PETERSON AND KATHLEEN SAUL PETERSON, BOTH BEING OF SOUND BODY AND MIND, DO HEREBY BEQUEATH ALL OF OUR WORLDLY POSSESSIONS TO EACH OTHER IN THE EVENT OF EITHER OF OUR INDIVIDUAL DEATHS.

IN THE UNLIKELY EVENT WE SHOULD DIE ON OR ABOUT THE SAME TIME WE DO HEREBY BEQUEATH ALL OF OUR WORLDLY POSSESSIONS, TO BE DIVIDED EQUALLY AMONG, OUR FOUR SURVIVING CHILDREN, ERIC DREW PETERSON, STEPHEN PAUL PETERSON, THOMAS DREW PETERSON, KRISTOPHER DONALD PETERSON.

PROPERTY INCLUDED BUT NOT LIMITED TO THE FOLLOWING:

- 1) GOLDEN RULE LIFE INSURANCE POLICY \$100,000.⁰⁰
- 2) MONUMENTAL LIFE INSURANCE POLICY \$125,000.⁰⁰
- 3) THE PRUENTIAL LIFE INSURANCE POLICY \$308,137.⁵⁹

BENEFICIARY MERCHANTS BANK OSWEGO TO PAY OFF NOTE FOR SUDS PUB IN MONTGOMERY. REMAINING FUNDS TO BE DIVIDED.

- 4) BOLINGBROOK POLICE PENSION FUND IN EXCESS OF \$50,000.

- 5) REAL ESTATE - 1040 WALDEN CT IN BOLINGBROOK, ILL. INCLUDING ALL CONTENTS. 1993 FORD VAN - 1993 NISSAN PATHFINDER.

- 6) REAL ESTATE - 9 CLAY CT. IN MONTGOMERY, ILL.

- 7) THE BLUE LIGHTNING CORP. (SUDS PUB IN MONTGOMERY 1250 S. BROADWAY IN MONTGOMERY) 100%.

- 8) DA PAGE CORP. - (EAST N' ACCURATE GRAPHICS - 87 CUSHING SOUTH IN LOMBARD) 100%.

- 9) C M Y K CORP. LOMBARD: OAKVILLE (PRINTING) 25%.

WE DREW WALTER PETERSON AND KATHLEEN SAUL PETERSON

DO ALSO NAME JAMES B. CARROL TO BE EXECUTOR OF THIS WILL AND TO HAVE FULL CONTROL TO HANDLE ALL OF OUR FINAL AFFAIRS IN THE EVENT OF OUR DEATHS.

and
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IT IS ALSO THE DESIRE OF DREW WALTER PETERSON TO
HAVE HIS REMAINS CREMATED AND BURIED WITH THE
REMAINS OF HIS WIFE, KATHLEEN SAVID PETERSON.
WE DREW WALTER PETERSON AND KATHLEEN SAVID PETERSON
DO HEREBY MAKE THIS OUR LAST WILL AND TESTIMATE.

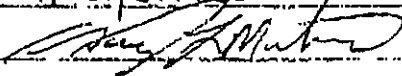
END

Drew Walter Peterson
Kathleen Savid Peterson

WITNESSES

CH. Maki 03/02/97

ALAN J. MAGILL



GARY H. MARCOLINA 3/2/97

STATE OF ILLINOIS)
) SS
COUNTY OF WILL)

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS

APPROVED

ESTATE OF **SEE ORDER SIGNED**

KATHLEEN SAVIO, FEB 15 2006) NO. 2004 P 188
)
Deceased.)

FILED
FEB 07 2006
WILL COUNTY CIRCUIT CLERK
BY

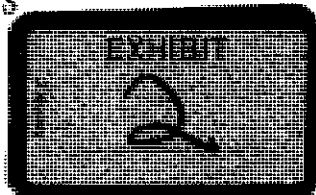
FIRST AND FINAL REPORT

The undersigned, Richard J. Kavanagh, Public Administrator of Will County and former Administrator of the Estate of Kathleen Savio, Deceased, would respectfully submit to the Court the following First and Final Report of his acts and doings as such Administrator from April 21, 2004 to January 30, 2006.

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TOTAL RECEIPTS

\$3,077.92



<u>DATE</u>	<u>ITEMS OF DISBURSEMENT</u>	<u>AMOUNT</u>
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	TOTAL DISBURSEMENTS	\$ 960.79

RECAPITULATION

Total amount received	\$3,077.92
Total amount paid out	<u>\$960.79</u>
Balance on hand December 19, 2005:	\$2,117.13

Richard J. Kavanagh, Public Administrator of Will County and Administrator of the Estate of Kathleen Savio, Deceased, further reports the residence of the decedent located at 392 Pheasant Chase Drive, Bolingbrook, Illinois was sold pursuant to court order, and the net proceeds of the sale totaling \$287,154.00 were held in escrow pursuant to court order pending a final order in the case of Peterson v. Peterson, Case No. 02 D 420.

The closing for the sale of the residence took place in October, 2004. The title to the residence was in the names of Drew Peterson and Kathleen Peterson, husband and wife, not as joint tenants or tenants in common but as tenants by the entirety.

The divorce proceeding between Drew Peterson and Kathleen (Savio) Peterson (02 D 420) was bifurcated, with a judgment of dissolution entered prior to the death of the decedent, and the Court (Judge Susan O'Leary) reserving the issue of the division of the property of the parties pending further proceedings.

Kathleen (Savio) Peterson was represented by Attorney Harry Smith of the firm of Rice & Smith, Ltd., while Drew Peterson was represented first by Attorney Alex Beck and subsequently by Attorney Joseph Mazzone.

After my appointment as Administrator, I conferred with Attorney Harry Smith with respect to the status of the property settlement portion of the divorce proceeding, and also attended several status hearings before Judge O'Leary. Attorney Smith continued to represent the Estate of Kathleen (Savio) Peterson in the divorce proceedings.

Attorney Smith advised me that there were three (3) major issues with respect to the division of property, viz.: (1) whether Kathleen's estate would be entitled to any portion of Drew Peterson's pension; (2) the valuation of the business known as the Blue Lightning Corporation, which had been sold with all of the proceeds going to Drew Peterson; and (3) the value of the house, and whether Kathleen (Savio) Peterson's estate would be entitled to receive not only her one-half of the proceeds of any sale, but an additional portion of the remaining one-half as an offset for the cash taken by Drew Peterson from the sale of the business.

Attorney Smith further advised me that it was his opinion that after a full and complete hearing on the property settlement, the estate of Kathleen (Savio) Peterson would be awarded: (1) Kathleen's one-half of the proceeds from the sale of the residence; and (2) most, if not all, of Drew Peterson's one-half of the proceeds from the sale of the residence as an offset for the business sale proceeds retained by Drew Peterson.

On March 23, 2005, after hearing, Judge Lechwar entered an order admitting the Last Will and Testament of Kathleen Peterson to probate and appointing James Carroll, the uncle of Drew Peterson, as executor of the estate of Kathleen (Savio) Peterson. The new representative, immediately fired Harry Smith as attorney for the estate of Kathleen (Savio) Peterson in the divorce proceeding.

Sixteen days later, on April 8, 2005, a "Judgment for Dissolution of Marriage" was entered in Case 02 D 420 by Judge Michael Powers "upon the agreement of the parties as to all issues." The judgment awarded Drew Peterson not only the business known as the Blue Lightning Corporation, but also all the proceeds from the sale of the marital home, and further provided that Drew Peterson would not be obligated to fund any college expenses for the minor children of the parties due to the fact that life insurance on the life of Kathleen in the amount of \$1,000,000 had been payable to the children. A copy of the judgment is attached hereto as Exhibit "A".

The Estate was represented by the Executor, James Carroll, who appeared pro se. No one appeared for the residuary beneficiaries of the estate, who were the two minor children of the decedent, Kathleen (Savio) Peterson, and the two step-children of the decedent. The effect of the judgment was to transfer anywhere from \$144,117.65 to \$288,235.31 (one-half to all of the proceeds of the home sale) from the four children who were the beneficiaries of the estate of Kathleen (Savio) Peterson to Drew Peterson, the former husband of the decedent and the father of the four children. The actions of the Executor were not in the best interest of the Estate or its beneficiaries.

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INVENTORY

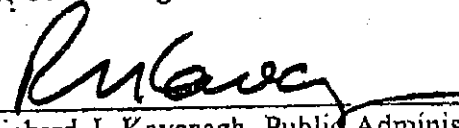
In addition to the cash detailed above, the Administrator obtained possession of certain items of jewelry, which have been listed on the inventory filed contemporaneously with this report and which were given to Michael Overmann, attorney for the Estate, on February 1, 2006. All of the remaining items of personal property of the decedent had been removed from the decedent's residence prior to the appointment of the administrator in April of 2004.

There were also three claims which were timely filed against the estate, and copies of those claims were provided to the attorney for the executor on April 25, 2004. Those claims were the following:

- | | |
|---|------------|
| 1. Omnium Worldwide, Inc. for People's Bank | \$5,513.68 |
| 2. Citibank (SD) NA/BPET | \$ 141.76 |
| 3. Attorney Timothy P. McHugh | \$ 729.00 |

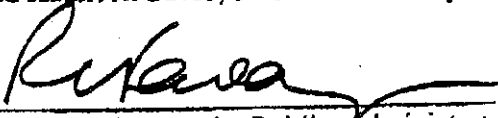
In addition, the Administrator has contemporaneously filed a Petition for Administrator's and Attorney's fees, and has requested a hearing on said Petition.

Richard J. Kavanagh, Public Administrator of Will County and Administrator of the Estate of Kathleen Savio, Deceased, now moves the Court that he may be approved of his acts and doings as above set forth, and having made and taken receipts therefore, and presented to this Court, asks the Report be approved and he be discharged as Administrator of the Estate, all of which is respectfully submitted.


Richard J. Kavanagh, Public Administrator of Will
County and Administrator of the Estate of Kathleen
Savio, Deceased

STATE OF ILLINOIS)
) SS
COUNTY OF WILL)

Richard J. Kavanagh, Public Administrator of Will County and Administrator of the Estate of Kathleen Savio, Deceased, being duly sworn, says that the foregoing is a full and perfect account of all his dealings and transactions, and of all money and effects received and paid out by him on account of said Kathleen Savio, Deceased from April 21, 2004 to January 30, 2006.


Richard J. Kavanagh, Public Administrator of Will County and
Administrator of the Estate of Kathleen Savio, Deceased

Subscribed and Sworn to before me

this 6th day of February, 2006.


Notary Public



STATE OF ILLINOIS)
) SS
COUNTY OF WILL)

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS - IN PROBATE

IN THE MATTER OF THE ESTATE OF:)
)
KATHLEEN SAVIO,) NO. 04 P 188
)
Deceased.)

**JOINT PETITION TO REOPEN THE ESTATE OF KATHLEEN SAVIO,
REMOVE JAMES CARROLL AS EXECUTOR FOR CAUSE AND
APPOINT HENRY J. SAVIO AND ANNA MARIE DOMAN AS
CO-SUCCESSOR EXECUTORS**

NOW COMES ANNA MARIE DOMAN, sister of Kathleen Savio, and
HENRY MARTIN SAVIO, brother of Kathleen Savio, by their
attorneys, LAWRENCE E. VARSEK and JOHN Q. KELLY, and HENRY J.
SAVIO, Father of Kathleen Savio, SUSAN DOMAN, sister of Kathleen
Savio, and NICHOLAS SAVIO, brother of Kathleen Savio, by their
attorney, MARTIN L. GLINK, and in support of their Joint Petition
to Reopen the Estate of Kathleen Savio, Remove James Carroll as
Executor for Cause and Appoint Henry J. Savio and Anna Marie
Doman as Co-Successor Executors state as follows:

1. Kathleen Savio died March 1, 2004 a resident of
Bolingbrook, Will County, Illinois.
2. She was married but once and then to Drew Peterson. The
marriage was terminated by divorce in a bifurcated proceeding in
Will County, Illinois in November of 2003 in Case No. 02 D 420.
3. Two children were born of the marriage of Kathleen to
Drew, namely:

- a) Thomas D. Peterson born January 5, 1993; and
- b) Kristopher D. Peterson born August 8, 1994.

-2-

Their father, Drew Peterson, serves as the guardian of their person and estate by appointment of the Circuit Court of Will County in Case Number 04 P 232.

4. Kathleen Savio neither had or adopted any other children.

5. The purported will of Kathleen Savio dated March 2, 1997 was admitted to probate on March 23, 2005 and James B. Carroll was appointed executor. A copy of the purported will is attached as Exhibit A. Under the terms of the will, the beneficiaries of her estate are her children, Thomas D. Peterson and Kristopher D. Peterson, and her two step-children, Eric Drew Peterson and Stephen Paul Peterson.

6. The oath and bond of James B. Carroll was approved.

7. Prior to the admission of the will, Richard J. Kavanaugh, public administrator of Will County, served as administrator of the estate of Kathleen Savio, deceased, from about April 1, 2004 until the will was admitted to probate. His final account and report is attached as Exhibit B. When the will was admitted to probate, Richard J. Kavanagh was discharged as administrator of the Estate of Kathleen Savio and James B. Carroll was appointed executor under the will.

8. On May 19, 2006 the Final Account and Report of James B. Carroll, a copy of which is attached as Exhibit C, was approved, an Order of Discharge entered and the estate was closed.

-3-

9. Whether by fraud, mistake, or accident, the cause of action for wrongful death was not reported or pursued.

ALLEGATIONS RELATING TO REOPENING OF THE ESTATE

10. Joint Petitioners, Anna Marie Doman and Susan Doman, sisters of the decedent, Henry Martin Savio and Nicholas Savio, brothers of the decedent, and Henry J. Savio, father of the decedent, are interested persons within the meaning of the Probate Act 755 ILCS 5/1-2.11 and 755 ILCS 5/24-9.

11. That a wrongful death cause of action against Drew Peterson would be a newly discovered asset of the estate or an unsettled portion of the estate of Kathleen Savio within the meaning of 755 ILCS 5/24-9 in that based on facts unknown during pendency of the estate, arising only after two (2) "second" autopsies of Kathleen Savio were done. One was done by Dr. Michael Baden in November 2007 and another was done by a Will County Deputy Coroner in November 2007, after the estate of Kathleen Savio was closed, showing, amongst other things, that death was probably a homicide and not accidental, (see Exhibits D and F attached).

12. Based in part on the above and following, Joint Petitioners are prepared to investigate the possibility of a wrongful death cause of action against Drew Peterson on behalf of the Estate of Kathleen Savio:

a. Allegations contained in the Petition for Exhumation, Affidavit of Coroner O'Neil and Order for Exhumation in Case

-4-

Number 07 MR 1015, copies of which are not attached as Exhibit D because the file has been impounded;

b. Conclusion reached by Dr. Michael Baden that the death of Kathleen Savio was not an accident and it was not suicide as shown by the Fox News transcript interview of Dr. Baden dated November 16, 2007, a copy of which is attached as Exhibit E;

c. Interview given to Fox News by Pastor Neil Schori, Stacey Peterson's pastor, dated January 28, 2008, a copy of the transcript of which is attached as Exhibit F.

13. Upon information and belief there may be other assets belonging to Kathleen Savio which were not administered prior to closing the estate and therefore remain unadministered or assets that were improperly administered.

ALLEGATIONS RELATING TO THE REMOVAL OF JAMES B. CARROLL AS EXECUTOR

14. James B. Carroll is an uncle of Drew Peterson and therefore would be in a direct conflict of interest as to the proposed wrongful death action in violation of 755 ILCS 5/23-2(10). He may also have committed waste or mismanagement of the estate in violation of 755 ILCS 5/23-2(4), and failed to file an adequate inventory in violation of 755 ILCS 5/23-2(4) and was incapable of suitably discharging his duties in violation of 755 ILCS 5/23-2(9).

-5-

15. The Final Report of Richard Kavanagh, public administrator, attached as Exhibit B was approved by the Honorable Herman Haase on February 15, 2006.

16. James B. Carroll as Executor of the Estate in violation of 755 ILCS 5/23-2(4), wasted and mismanaged the estate by terminating the representation of divorce counsel and by failing to retain alternate, independent counsel. Further, appearing on behalf of the estate pro se, he agreed on behalf of the estate to permit all the assets of the marriage to pass to Drew Peterson, the former spouse, and away from the intended beneficiaries of the estate. In doing so he has also breached his duty of undivided loyalty which is cause for removal within 755 ILCS 5/23-2(10).

17. That James B. Carroll be given the opportunity to respond to these allegations.

ALLEGATIONS RELATING TO THE APPOINTMENT OF JOINT PETITIONERS AS CO-SUCCESSOR EXECUTORS

18. Joint Petitioners, Henry J. Savio, is a parent of the decedent, Anna Marie Doman and Susan Doman, are sisters of the decedent.

19. The decedent is also survived by Nicholas Savio and Henry Martin Savio, brothers of the decedent (Nicholas Savio being a half-brother).

20. The decedent, Kathleen, Anna Marie Doman, Henry Martin Savio and Susan Doman, were the only children born of the marriage of Henry J. Savio to Mary Savio.

-6-

21. On information and belief, after the marriage of Henry J. Savio and Mary Savio terminated:

- a) Henry J. Savio married Florine whose whereabouts are unknown. Upon information and belief, two children were born of the marriage whose names and whereabouts are unknown.
- b) After the marriage of Henry J. Savio and Florine was terminated, Henry J. Savio married Marsha. Upon information and belief, a child, Nicholas Savio, was born of the marriage of Henry J. Savio and Marsha. Nicholas Savio is half-brother to Kathleen Savio, deceased.

22. After the marriage of Henry J. Savio to Mary Savio terminated, Mary Savio married an individual named Muller. One daughter was born of that marriage and it is believed that she resides in Shorewood, Illinois. No further information is available to your Petitioners.

23. The purported will of Kathleen Savio makes no appointment of successor executor in the event of the removal of James B. Carroll.

24. Pursuant to 755 ILCS 5/9-3(e), the father and parent of the decedent, Henry J. Savio, has a statutory preference to serve as administrator/successor executor.

25. Pursuant to 755 ILCS 5/9-34(f) all of the siblings of the decedent would have equal preference including the half brothers and sisters.

-7-

26. Petitioners have acted with due diligence in filing this petition within a reasonable time of discovery of a potential cause of action.

27. Petitioners have a meritorious claim.

WHEREFORE, Joint Petitioners, Anna Marie Doman, Susan Doman, Henry Martin Savio, Nicholas Savio and Henry J. Savio pray:

1. That the Estate of Kathleen Savio be reopened pursuant to 755 ILCS 5/24-9.

2. That a Citation be issued pursuant to statute against James B. Carroll to show cause why he should not be removed as executor of the estate.

3. That letters issue to Joint Petitioners, ANNA MARIE DOMAN and HENRY J. SAVIO, as successor co-executors and order them to provide their bond pursuant to statute.

ANNA MARIE DOMAN

HENRY MARTIN SAVIO

+ Henry J. Savio

HENRY J. SAVIO

+ Susan Doman

SUSAN DOMAN

+ Nicholas P. Savio

NICK SAVIO

-8-

ATTORNEY'S STATEMENT

I, the undersigned, state that I represent the Parties, Anna Marie Doman and Henry M. Savio, who have executed the foregoing pleading. My business address is 1403 Essington Road, Suite 400, Joliet, IL 60431. I certify that I have read the foregoing pleading and that to the best of my knowledge, information and belief, formed after reasonable inquiry of my clients, said pleading is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that said pleading is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

By: 

Lawrence E. Varsek, Attorney

ATTORNEY'S STATEMENT

I, the undersigned, state that I represent the Parties, Anna Marie Doman and Henry M. Savio, who have executed the foregoing pleading. My business address is 516 Fifth Avenue, New York, NY 10036. I certify that I have read the foregoing pleading and that to the best of my knowledge, information and belief, formed after reasonable inquiry of my clients, said pleading is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that said pleading is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

By: _____

John Q. Kelly, Attorney

ATTORNEY'S STATEMENT

I, the undersigned, state that I represent the Parties, Henry J. Savio, Susan Doman and Nicholas Savio, who have executed the foregoing pleading. My business address is 3345 North Arlington Heights Road, Arlington Heights, IL 60004. I certify that I have read the foregoing pleading and that to the best of my knowledge, information and belief, formed after reasonable inquiry of my clients, said pleading is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that said pleading is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

By: 

-9-

CLIENT'S VERIFICATION

UPON PENALTY OF PERJURY, We, the undersigned, state that we have read the foregoing pleading, including the "Attorney's Statement" and further state that we have provided to the attorney who has executed this document, information which, to the best of our knowledge and belief, is true and accurate. We further state that this pleading is being filed with our consent and as part of our attorney's required duties in representing us. We further state that our attorney has explained to us that by signing this verification, we are acknowledging that our attorney has based his statement on the factual information provided to him by us.

Dated: 3/17/08ANNA MARIE DOMANHENRY MARTIN SAVIOHenry J. Savio
HENRY J. SAVIOSusan Doman
SUSAN DOMANNicholas H. Savio
NICHOLAS SAVIO

John Q. Kelly
THE KELLY GROUP, P.C.
516 Fifth Avenue
New York, NY 10036
(212) 704-0500

Lawrence E. Varsek (02891816)
Attorney at Law
1403 Essington Road, Suite 400
Joliet, IL 60431
(815) 744-3323

Law Office of Martin L. Glink (00973912)
3345 N. Arlington Heights Road, Suite G
Arlington Heights, IL 60004
(847) 394-4900

WILL

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SPUG

Drew Walter Peterson
Kathleen Savid Peterson

WITNESSES

Al Mucelli 03/02/97

ALLEN J. MUCELLI

[Signature]

GARY L. MARCOWNA 3/2/97

STATE OF ILLINOIS)
) SS
 COUNTY OF WILL)

FILED
 FEB 07 2006
 WILL COUNTY CIRCUIT CLERK
 BY *[Signature]*

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
 WILL COUNTY, ILLINOIS

APPROVED

ESTATE OF **SEE ORDER SIGNED**

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 Deceased.)

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The divorce proceeding between Drew Peterson and Kathleen (Savio) Peterson (02 D 420) was bifurcated, with a judgment of dissolution entered prior to the death of the decedent, and the Court (Judge Susan O'Leary) reserving the issue of the division of the property of the parties pending further proceedings.

Kathleen (Savio) Peterson was represented by Attorney Harry Smith of the firm of Rice & Smith, Ltd., while Drew Peterson was represented first by Attorney Alex Beck and subsequently by Attorney Joseph Mazzone.

After my appointment as Administrator, I conferred with Attorney Harry Smith with respect to the status of the property settlement portion of the divorce proceeding, and also attended several status hearings before Judge O'Leary. Attorney Smith continued to represent the Estate of Kathleen (Savio) Peterson in the divorce proceedings.

Attorney Smith advised me that there were three (3) major issues with respect to the division of property, viz.: (1) whether Kathleen's estate would be entitled to any portion of Drew Peterson's pension; (2) the valuation of the business known as the Blue Lightning Corporation, which had been sold with all of the proceeds going to Drew Peterson; and (3) the value of the house, and whether Kathleen (Savio) Peterson's estate would be entitled to receive not only her one-half of the proceeds of any sale, but an additional portion of the remaining one-half as an offset for the cash taken by Drew Peterson from the sale of the business.

Attorney Smith further advised me that it was his opinion that after a full and complete hearing on the property settlement, the estate of Kathleen (Savio) Peterson would be awarded: (1) Kathleen's one-half of the proceeds from the sale of the residence; and (2) most, if not all, of Drew Peterson's one-half of the proceeds from the sale of the residence as an offset for the business sale proceeds retained by Drew Peterson.

On March 23, 2005, after hearing, Judge Lechwar entered an order admitting the Last Will and Testament of Kathleen Peterson to probate and appointing James Carroll, the uncle of Drew Peterson, as executor of the estate of Kathleen (Savio) Peterson. The new representative, immediately fired Harry Smith as attorney for the estate of Kathleen (Savio) Peterson in the divorce proceeding.

Sixteen days later, on April 8, 2005, a "Judgment for Dissolution of Marriage" was entered in Case 02 D 420 by Judge Michael Powers "upon the agreement of the parties as to all issues." The judgment awarded Drew Peterson not only the business known as the Blue Lightning Corporation, but also all the proceeds from the sale of the marital home, and further provided that Drew Peterson would not be obligated to fund any college expenses for the minor children of the parties due to the fact that life insurance on the life of Kathleen in the amount of \$1,000,000 had been payable to the children. A copy of the judgment is attached hereto as Exhibit "A".

The Estate was represented by the Executor, James Carroll, who appeared pro se. No one appeared for the residuary beneficiaries of the estate, who were the two minor children of the decedent, Kathleen (Savio) Peterson, and the two step-children of the decedent. The effect of the judgment was to transfer anywhere from \$144,117.65 to \$288,235.31 (one-half to all of the proceeds of the home sale) from the four children who were the beneficiaries of the estate of Kathleen (Savio) Peterson to Drew Peterson, the former husband of the decedent and the father of the four children. The actions of the Executor were not in the best interest of the Estate or its beneficiaries.

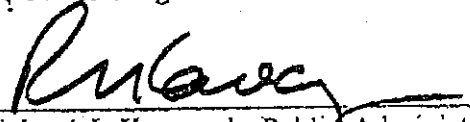
In addition to the cash detailed above, the Administrator obtained possession of certain items of jewelry, which have been listed on the inventory filed contemporaneously with this report and which were given to Michael Overmann, attorney for the Estate, on February 1, 2006. All of the remaining items of personal property of the decedent had been removed from the decedent's residence prior to the appointment of the administrator in April of 2004.

There were also three claims which were timely filed against the estate, and copies of those claims were provided to the attorney for the executor on April 25, 2004. Those claims were the following:

- | | |
|---|------------|
| 1. Omnium Worldwide, Inc. for People's Bank | \$5,513.68 |
| 2. Citibank (SD) NA/BPET | \$ 141.76 |
| 3. Attorney Timothy P. McHugh | \$ 729.00 |

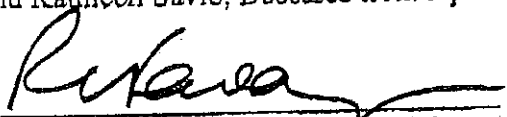
In addition, the Administrator has contemporaneously filed a Petition for Administrator's and Attorney's fees, and has requested a hearing on said Petition.

Richard J. Kavanagh, Public Administrator of Will County and Administrator of the Estate of Kathleen Savio, Deceased, now moves the Court that he may be approved of his acts and doings as above set forth, and having made and taken receipts therefore, and presented to this Court, asks the Report be approved and he be discharged as Administrator of the Estate, all of which is respectfully submitted.


Richard J. Kavanagh, Public Administrator of Will
County and Administrator of the Estate of Kathleen
Savio, Deceased

STATE OF ILLINOIS)
) SS
COUNTY OF WILL)

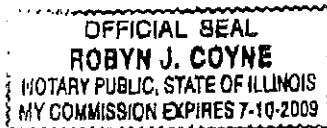
Richard J. Kavanagh, Public Administrator of Will County and Administrator of the Estate of Kathleen Savio, Deceased, being duly sworn, says that the foregoing is a full and perfect account of all his dealings and transactions, and of all money and effects received and paid out by him on account of said Kathleen Savio, Deceased from April 21, 2004 to January 30, 2006.


Richard J. Kavanagh, Public Administrator of Will County and
Administrator of the Estate of Kathleen Savio, Deceased

Subscribed and Sworn to before me

this 6th day of February, 2006.


Notary Public



STATE OF ILLINOIS)
) SS
 COUNTY OF WILL)

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
 WILL COUNTY - IN PROBATE

Estate of

KATHLEEN SAVIO, Deceased

CASE NO: 04 P 188

FINAL REPORT OF INDEPENDENT REPRESENTATIVE

James Carroll independent representative of this estate, under penalties of perjury states that the administration of this estate has been completed and in accordance with s28-11 of the Probate Act of 1975 (755 ILCS 5/28-11) further states as follows:

1. Notice of probate has been given in compliance with Sec. 6-10 or Sec. 9-5 of the Probate Act.
2. The notice to creditors required by Sec. 18-3 has been published, and the final publication occurred more than 6 months before the date of this report.
3. Copies of the inventory and accounting having been mailed or delivered to the extent required By Sec. 28-6 and Sec. 28-11.
4. Each claim filed has been allowed, disallowed, compromised, or dismissed, or is barred; and
 - (a) ~~* all claims allowed have been paid in full.~~
 - (b) * the estate was not sufficient to pay all of the claims in full, and all claims allowed have been paid according to their respective priorities.
5. (a) * A spouse's award has been is not applicable
 (paid) (waived) (is barred) (is not applicable)
 (b) * A child's award has been not paid (no assets)
 (paid) (is not applicable)
6. (a) ~~* All death taxes have been determined and paid or otherwise provided for.~~
 (b) * The estate is not subject to death taxes.
7. All administration expenses and other liabilities of the estate have been paid and Administration
 - (a) * has been completed.
 - (b) ~~* has not been completed but has been provided for (see attached).~~
8. Notice of probate and release of the estate's interest in real estate has been recorded to the extent required by law.
9. The remaining assets of the estate have been distributed to the persons entitled thereto.

(SEE REVERSE SIDE)

APPROVED
 SEE ORDER SIGNED
 MAY 19 2006

10. The fees paid or payable to the independent representative and attorney
n/a (no fees paid from estate) approved by all interested persons.
(have been) (have not been)

11. Receipts have been obtained from all heirs or legatees and written approvals obtained from
unpaid creditors and are filed with this report, except (see attached).

James B. Carroll
Independent Representative

May 5, 20 06
Michael Overmann
Attorney Certification

Atty. Name Michael Overmann

ARDC # 6229995

Firm Name Michael Overmann, Ltd.

Attorney for Executor

Address 7702 S. Cass Ave., Suite 135

City & Zip Darien, IL 60561

Telephone 630-810-0316

PAMELA J. MCGUIRE, CLERK OF THE CIRCUIT COURT

EXHIBIT D

Petition for Exhumation

Affidavit

Order

Impounded



Dr. Michael Baden Performed New Autopsy on Kathleen Savio

Monday, November 19, 2007

FOX NEWS

This is a rush transcript from "On the Record," November 16, 2007. This copy may not be in its final form and may be updated.

GRETA VAN SUSTEREN, HOST: Dr. Baden joins us here in Bolingbrook, Illinois. Dr. Baden, your day started today speaking to the family of Kathleen Savio?

DR. MICHAEL BADEN, FORENSIC PATHOLOGIST: Yes. Yes, speaking to Kathleen's father, who was next to me, and the rest of the family and going over what their concerns were and what they wanted to learn from the autopsy and how I was going to proceed.

VAN SUSTEREN: What did you hear from them? What did you learn from them before you did the autopsy?

BADEN: Well, what I had learned was that the family had certain concerns because the way that Kathleen was in the bathtub and that she hadn't been heard from for some 36 hours before she — before the body was discovered, that her habit was to take off her jewelry and put her in her up before she took a bath, which wasn't done that time. So they had certain concerns that there were suspicious things in that bathtub.

VAN SUSTEREN: All right. Now, after meeting with the family — how long did that meeting take?

BADEN: About an hour, a little over an hour.

VAN SUSTEREN: OK. Then where did you go?

BADEN: Went — we met in the coroner's office. The coroner was very helpful, this O'Neil. We gave us all his facilities. We went from there, drove over to the morgue where the autopsy was done. And everybody was very helpful.

VAN SUSTEREN: All right. Now, this — there was an autopsy done when she died in March 2004.

BADEN: In 2004.

VAN SUSTEREN: Then there was one done yesterday, right?

BADEN: The day before, yes.

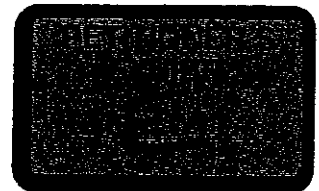
VAN SUSTEREN: All right. And so then yours — your autopsy today was the third.

BADEN: Yes.

VAN SUSTEREN: How many people were in the room today?

BADEN: There were five Illinois State Troopers who came down. One of them took photographs, took notes. We exchanged some information. There was a coroner, an administrative coroner, who was there, very helpful. We went over the X-rays. There was Steph Watts

ADVERTISEMENT



from your office who was there, who was very helpful.

VAN SUSTEREN: He's the one who videotaped you...

(CROSSTALK)

BADEN: He did the videotape, and he was very helpful in taking notes and helping out. And it was a big, very nice autopsy room. They do about 500 autopsies a year in that room, so it's not a small operation. And when the autopsy was done two days ago, about 13 X-rays were taken, which I was able to review. They have an X-ray view box. They had the X-rays. No fractures. And when I did the examination, there were no fractures on the body.

VAN SUSTEREN: All right. And so the viewers know that, Steph Watts, when he videotaped you, we were very careful not to videotape the remains and being...

BADEN: That's right.

VAN SUSTEREN: ... respectful of the seriousness of the situation...

BADEN: Yes.

VAN SUSTEREN: ... and for the family and the dignity of Kathleen Savio. Now, just as background, how many autopsies have you done?

BADEN: I've done, over the past 45 years, over 20,000 autopsies.

VAN SUSTEREN: And how many post-exhumation? Because that's a little different type of autopsy.

BADEN: Much different. Over 200 exhumation autopsies. And exhumations are always done because some information arises that was not known at the time of the first autopsy, and the exhumations can be a year later, three years later, even 30 years later, when additional information comes up not known initially.

VAN SUSTEREN: All right. Now, we're going to get to your conclusion in a second, but I first want to know is, were there any particular challenges presented to you today in doing that autopsy?

BADEN: Well, there's always a challenge in doing an exhumation autopsy because there always is some deterioration of the body. But the advantage is we have more information when we're doing the exhumation than was known at the time of the first autopsy, so it's a more focused autopsy. That is, there was various information that was gathered that led to the exhumation in the first place that wasn't known initially.

VAN SUSTEREN: All right. Now, the condition of the body, I understand, wasn't an ideal situation because the casket hadn't been sealed.

BADEN: Well, the casket may have been sealed, but a lot of water got in. It wasn't effectively sealed. A lot of water had gotten in and there was a lot of deterioration of soft tissues.

VAN SUSTEREN: Did that inhibit you from reaching a conclusion — which we'll get to in a second, but the soft tissue damage from the water, could that — did that inhibit you from reaching a conclusion?

BADEN: No, because there was enough information there, together with all the other information that's been available from the other two autopsies, that permits me to arrive at a conclusion as to cause and manner of death.

VAN SUSTEREN: One of the things that we read about in the autopsy report that was done back in 2004 is that there was a lot of blood in Kathleen Savio's hair. Was that a determination you were able to make today, whether or not that — or had she been — you know, did the funeral home clean that up or — could you make that determination?

BADEN: Any blood in the hair was already cleaned up by the funeral home. At the time of the first autopsy and when the exhumation was done, there was no more blood in the hair.

VAN SUSTEREN: What conclusion did you reach as to the manner of death after doing the autopsy today?

BADEN: That was a homicide.

VAN SUSTEREN: Any doubt in your mind whatsoever that it's a homicide?

BADEN: To a reasonable degree of medical certainty is the standard we usually use. It's my opinion to a reasonable degree of medical certainty that it's a homicide, and that's what I would have put down on the death certificate.

VAN SUSTEREN: Had you been the initial medical examiner doing the autopsy in...

BADEN: Even initially, there was enough information that it was a homicide because of the fact that she was an adult, healthy, hadn't been drinking or anything, found dead in a bathtub. It does not happen accidentally. No history of seizures or illness. And in addition, there were indications then of multiple blunt force traumas, of being beaten up. And one of the things we were able to look at today is those bruises were still there, and we could see with the naked eye that they were fresh.

VAN SUSTEREN: All right. Now, you say that you can — I mean, that makes a big difference, if the bruises were fresh...

BADEN: Right.

VAN SUSTEREN: ... I mean, close to the time of her death. How do you make that determination now, you know, three-plus years later, looking at the remains, that those are fresh bruises?

BADEN: Well, even in 2004, the doctor who did the autopsy describes them as fresh bruises. And now the color is what is very helpful. It gives you a purple, fresh color, like in a boxing match. A person gets struck in the eye, and then, the next round, there's a purple discoloration around it. A bright purple discoloration is indicative of fresh hemorrhage, and that should be always confirmed by looking at it under the microscope. That wasn't done previously, but we've taken sections of that to look at it under the microscope to determine conclusively whether it's fresh or not.

VAN SUSTEREN: All right. One of the things that I would have thought is that you would have bruising to indicate someone was held down under water. Because she drowned, right? I mean, that — you agree that she got...

BADEN: Yes. I agree with the very first autopsy...

VAN SUSTEREN: ... the drowning — but it's whether or not someone caused her to drown. I would have expected bruises on her back or on her arms to hold her down, or something. Did you find anything like that? And is that even relevant?

BADEN: That — no, those weren't found. They weren't found, bruises on the arms. There were bruises on the hands that could be part of a struggle. There were bruises on the chest, the abdomen, the thighs, but not on the arms, no evidence that she was grabbed by the arms, which can leave characteristic bruising.

However, in this kind of a drowning, what could happen is that the head is pushed down into the water by a stronger person, and there need not be any bruises on the body.

VAN SUSTEREN: I assume you looked to see whether there was any indication whether she'd been strangled.

BADEN: No indication of strangulation.

VAN SUSTEREN: Positive about that?

BADEN: Yes.

VAN SUSTEREN: All right. Now, in terms of — there had been reported in the autopsy that there was a laceration to the head. Was there any way to realize the condition of the body was a challenged one, but any indication of a laceration to the head?

BADEN: No, that laceration was no longer present, either because it was removed at the first autopsy or because of deterioration of the soft tissues. However, it's clearly described in the first autopsy. And that kind of a laceration indicates a very strong blunt force impact, which in fact can cause unconsciousness.

VAN SUSTEREN: But we don't — but there's no way you could determine today whether, in fact, that happened, right?

BADEN: We can't tell if somebody's unconscious or not before death. We have to go by the history. She could have been unconscious. She could have been placed into the bathtub. Her face could have been pushed under the water, and that could cause death.

VAN SUSTEREN: Is there any conceivable theory, based on your examination today, under which you could say that there's a possibility it was an accident?

BADEN: No, I don't think there's any possibility this was an accident, and I don't think there's any indication that this was a suicide.

VAN SUSTEREN: And I guess you would agree that there's — based on your finding, you've determined — you conclude that it was — it was a homicide, but there's no way you can say, based on your examination, who did the homicide.

BADEN: That's correct. The autopsy tells you what happened. The police tell you who done it.

VAN SUSTEREN: Is there — have you taken any samples away from the autopsy for further examination?

BADEN: Yes. With discussion with the family, we did remove some samples to look at under the microscope to see how fresh the bruises were, and also to do toxicology examination.

VAN SUSTEREN: To see if she was drunk or doing drugs.

BADEN: Well, that was ruled out in 2004. No drugs, no alcohol. What wasn't looked for were certain poisons. And poisons should be looked for. In fact, I just spoke with the chief about it. He felt also that there should be a search for poisons. And that will be easily done, even after three-and-a-half years.

VAN SUSTEREN: Is there anything from her hands or any part of a body that would indicate a struggle, other than the bruises? I mean, I don't...

BADEN: Well, there were bruises on the hand which would indicate some defensive type of activity.

VAN SUSTEREN: Like what? What were the bruises like?

BADEN: Like punching somebody or warding off punches.

VAN SUSTEREN: But can you get — I guess it's — like, suppose someone scratched somebody. Would you — is it too late to look for DNA under fingernails?

BADEN: Yes.

VAN SUSTEREN: Too late for that?

BADEN: Too late for that. And also, she had very short fingernails, even back in 2004. So that wasn't looked for, but it reads as if it would not have been very helpful.

VAN SUSTEREN: Then you reported this all back to the family.

BADEN: Spoke to the family. Spoke to the Illinois state troopers. Spoke to the family. And now we're speaking to you.

VAN SUSTEREN: Is it hard to talk to the family after this? Or I mean — or...

BADEN: Oh, sure, it's hard. It's always hard to talk to a parent or a sibling about the death of a young person. I mean, the parents are opposed to die before children, and it's just horrible when the children die first. And this family, in particular, seemed to be very close to Kathleen. That is, there's a tremendous amount of love from her siblings and that they still, after three years, are not over it. And one of the reasons they asked me to do the autopsy was if they could bring some kind of closure to this pain that's been in their hearts so long.

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All market data delayed 20 minutes.

Subj: FW: OTR transcripts 12/10 and 12/11 interview with Pastor Neil Schori
Date: 1/28/2008 3:16:16 PM Central Standard Time
From: jkelly@kellygrouppc.com
To: kesrav@aol.com

From: O'Connor, Kerry [mailto:kerry.oconnor@FOXNEWS.COM]
Sent: Monday, January 28, 2008 3:25 PM
To: jkelly@kellygrouppc.com
Subject: OTR transcripts 12/10 and 12/11 interview with Pastor Neil Schori

On the Record with Greta Van Susteren 12/10/07	burner	12/11/07 08:08:02	41:06	12/11/07 08:08:21	burner
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CATEGORY

Transcripts

<Show: FOX ON THE RECORD WITH GRETA VAN SUSTEREN>
<Date: December 10, 2007>
<Time: 22:00:00>
<Tran: 121001cb.260>
<Type: Show>
<Head: Gunman Kills Four in Attacks on Colorado Religious Centers>
<Sect: News; Domestic>
<Byline: Greta Van Susteren>
<Guest: Lt. Skip Arms, Jeanne Assam, Brady Boyd>
<Spec: Mass Murder; Religion>

GRETA VAN SUSTEREN, HOST: Tonight, there is breaking news in the Stacy Peterson case. Did Stacy Peterson tell her pastor Sergeant Peterson confessed to murdering wife number three? What did Stacy say, and what did Sergeant Peterson say? Listen to her pastor.

(BEGIN VIDEOTAPE)

NEIL SCHORI, PASTOR STACY CONFIDED IN: I try not to push people into an area that they're uncomfortable, and I gave her -- I gave her an out. I said, If you'd like to share it with me, I'm here to hear it, I said, but there's no pressure. You don't have to feel like you have to share anything you're not comfortable with. So if you are -- if you are comfortable, please share it. And we talked about various other things, and then she blurted out the reason.

VAN SUSTEREN: Which was?

SCHORI: She said, He did it.

VAN SUSTEREN: Just like that.

SCHORI: Just like that.

(END VIDEOTAPE)



<Show: FOX ON THE RECORD WITH GRETA VAN SUSTEREN>

<Date: December 10, 2007>

<Time: 22:09:00>

<Tran: 121002cb.260>

<Type: Show>

<Head: Pastor Says Stacy Told Him Drew Killed Third Wife>

<Sect: News; Domestic>

<Byline: Greta Van Susteren>

<Guest: Neil Schori>

<Spec: Drew Peterson; Missing Persons; Murder>

VAN SUSTEREN: Now, last week, we told you about a report involving Stacy Peterson's pastor. That Stacy told him Sergeant Peterson admitted to murdering wife number three, Kathleen Savio. Is it true? Did she say that? Well, now you will hear from the pastor himself. We sat down with Pastor Neil Schori earlier.

(BEGIN VIDEOTAPE)

VAN SUSTEREN: When was the first time you ever met or heard the name Stacy Peterson?

NEIL SCHORI, PASTOR STACY CONFIDED IN: Probably about two years ago. She was just someone who came to the church. Got to know her that way.

VAN SUSTEREN: Was she active in your church?

SCHORI: At different points, she'd be somewhat active. She was sort of a hit-and-miss kind of person, but I got to know her to a certain extent that way.

VAN SUSTEREN: How about her husband?

SCHORI: He would come less frequently, but he was also an attendee.

VAN SUSTEREN: During the first year that you knew her, did you ever, you know, meet privately with her? Was it simply that she would come to church on Sunday and listen to your sermon?

SCHORI: Well, I was not the lead pastor of the church, so I didn't do too many sermons. But I -- in the role that I played as a counseling pastor, I met -- I met Stacy probably a year -- somewhere in the first year of being at the church. So initially, I got to know her at the church, and then she reached out.

VAN SUSTEREN: I don't know if this is the right question, but in the first times that you met with her, sort of run-of-the-mill -- if there is a such thing as run-of-the-mill issues a young housewife, young mother, that type of thing?

SCHORI: Sure, just like anybody's issues with life. I mean, nothing huge, nothing extremely out of the ordinary, just somebody who was dealing with life as a young mom.

VAN SUSTEREN: What was your first impression of her?

SCHORI: I thought she was very sweet. I think most people who meet her, their initial impression

is that she's a very, very kind person, someone who -- you don't have to be around her very much to figure out that she really loves her children. She talks about them incessantly.

VAN SUSTEREN: And your first impression of Sergeant Peterson, when you met him?

SCHORI: He was -- he was nice enough. He was a little more reserved.

VAN SUSTEREN: Let's say up until, like, July or August of this year, how would you characterize the marriage? Was it a strong one, a growing one, a weak one (INAUDIBLE)? How would you describe it?

SCHORI: There were certainly issues. Some were just regular issues. Some seemed a little more -- a little deeper, I could say.

VAN SUSTEREN: I know it's impossible to predict the future, but at the time when you were meeting with them, did you think that these problems were insurmountable, or you thought that they were just sort of the bumps and scrapes of a marriage?

SCHORI: You know, I try not to look at any obstacles as insurmountable related to marriage. I always believe there's hope, if people are willing to make changes, regardless of who they are.

VAN SUSTEREN: Was it a marriage, though, that was just hanging out, or did you -- or were they both -- did they both seem determined to work on it?

SCHORI: Well, they seemed in some ways determined to work on it. Both at them at different points would say that. But I definitely saw -- I definitely saw a reason for deep concern.

VAN SUSTEREN: Did there come a time after July that Stacy called you and met with you alone?

SCHORI: Yes, she did. Yes, in August.

VAN SUSTEREN: Do you remember receiving that call?

SCHORI: I do.

VAN SUSTEREN: Were you at your church?

SCHORI: I was.

VAN SUSTEREN: What did she tell you she wanted to meet with you for?

SCHORI: I hadn't spoken with her in, oh, probably two or three months and she hadn't really been around the church recently. And she called me. It was just a regular phone call. And she just said, Hey, could we get together? I just have some stuff I'd like to talk about. And that wasn't really unusual. It was just that it had been probably several months. And I said, Sure, I said, When can you do it? And she told me, and it was -- I believe it was the next day. And I actually had availability, which is unusual for me to have availability right away, but I agreed.

VAN SUSTEREN: Where did you agree to meet?

SCHORI: We met at a coffee shop in Bolingbrook.

VAN SUSTEREN: How did the conversation start?

SCHORI: I walked up and I saw her and she said, Oh, it's great to see you. And we sat down and small talk, like you would with anybody that you hadn't seen in a while. And then we talked more about the issues that she had and why she wanted to meet with me that day.

VAN SUSTEREN: And what did she describe as the reason that she needed to meet with you?

SCHORI: Again, it was some of the same relationship issues that she had concerns about, but she kept leading me to believe that there was some other reason that she had for meeting that day.

VAN SUSTEREN: Were you able to get that reason from her, or did she want to talk about it? How did that happen?

VAN SUSTEREN: Well, I try not to push people into an area that they're uncomfortable. and I gave her -- I gave her an out. I said, If you'd like to share it with me, I'm here to hear it, I said, but there's no pressure. You don't have to feel like you have to share anything you're not comfortable with. So if you are -- if you are comfortable, please share it. And we talked about various other things, and then she blurted out the reason.

VAN SUSTEREN: Which was?

SCHORI: She said, He did it.

VAN SUSTEREN: Just like that.

SCHORI: Just like that.

VAN SUSTEREN: Do you know what the reference point was, as that point, that, He did it?

SCHORI: I had a feeling, but I needed clarification, so of course, I followed up.

VAN SUSTEREN: How did you happen to know that that -- I mean, had you spoken about the "He did it" aspect before with her?

SCHORI: I had never spoken with her about that before. I had just heard casual conversations in the community and in my own church about speculation over an interesting death of Mr. Peterson's wife, his third wife.

VAN SUSTEREN: So when she said, He did it, what did you believe that to mean?

SCHORI: I believed, unfortunately, that it was exactly what I thought, and I believed that it was related to the death of his wife. But I clarified, and I said, He did what? And she said, He killed Kathleen.

And I was really blown away. I was reeling inside.

VAN SUSTEREN: So how -- what did do you?

SCHORI: I asked for more specific things. She gave me details that I really can't share. But I just got her talking about it and asked her what this is a crazy amount of information. Again, I asked her, What exactly can I do with this? Why did you tell me? I asked her if she had ever told anyone else. She said at the time, she had never told another person.

VAN SUSTEREN: What was the reason for her all of a sudden do you think or the compulsion to suddenly tell you? What was -- what was eating at her, or why did she want to tell you?

SCHORI: I've wondered that for two-and-a-half months. I hope that it's because she looked at me as a safe person that she could share some very important information with. It's really speculation, at this point.

VAN SUSTEREN: How do you know that it wasn't just speculation on her part, you know, that he had information that he had -- did it?

SCHORI: She had specific information.

VAN SUSTEREN: Like?

SCHORI: She had specific information about his not being in the house.

VAN SUSTEREN: The night Kathleen died?

SCHORI: Uh-huh.

VAN SUSTEREN: Did she say she'd ever confronted him about it?

SCHORI: They talked shortly after that about it.

VAN SUSTEREN: And did he admit it to her, or did she put two and two together?

SCHORI: It was more than just putting two and two together. It was not speculation on her part.

VAN SUSTEREN: Did she see something?

SCHORI: No.

VAN SUSTEREN: Was there any -- besides the fact that he wasn't home that night, did -- were there any other clues or signs that he wasn't just mean, I don't know why anyone would brag about it, but I mean, that he wasn't just lying about it or trying to scare her or something?

SCHORI: Well, she shared details with me that I can't -- I'm not comfortable getting into, but it's very clear. It was very clear that this was not just speculation. She was not jumping to conclusions.

VAN SUSTEREN: Why did she stay with him after that?

SCHORI: That's a really good question. My guess would be out of fear.

VAN SUSTEREN: Did she ever say she was afraid of him?

HORI: Yes.

N SUSTEREN: Did she say she was going to leave him?

HORI: Never -- she never told me she was going to, no.

N SUSTEREN: Did she ever give an explanation or did Drew Peterson ever say to her why he

HORI: Not that she told me.

N SUSTEREN: Did she ever talk to the police?

HORI: She never shared this with the police.

N SUSTEREN: Police ever go to her and ask her?

HORI: She was interviewed by the police.

N SUSTEREN: She didn't tell them?

HORI: She didn't tell them that, no.

N SUSTEREN: What did she tell them?

HORI: I don't know that for sure. I just know that she did not tell them that.

N SUSTEREN: Did she say why she didn't tell the police, you know, when they talked to her
athleen Savio's death, what she knew?

HORI: I believe she was simply afraid.

D VIDEOTAPE)

N SUSTEREN: More from the pastor coming up. Does he think Stacy is alive?

later we have made peace. Yes, the war between Sergeant Peterson's lawyer and us is over.
dsky is back on the show. In a moment, he goes "On the Record."

MMERCIAL BREAK)

N SUSTEREN: Here's is more with Stacy Peterson's pastor, Neil Schori.

GIN VIDEOTAPE)

N SUSTEREN: So what did you do? I mean, it's a rather awkward situation. You're in a coffee
she tells you that her husband murdered wife number three.

ORI: Well, I tried to control my own anxiety that I felt just hearing this information. But then
owed up with her and said, Well, this is a lot of information you just gave me. And she said, I

just had to get it off my chest.

VAN SUSTEREN: What did she expect you to do with it, do you think?

SCHORI: I think she expected me to do exactly what I did with it, and not say anything at that time.

VAN SUSTEREN: Be a sounding board?

SCHORI: I believe so.

VAN SUSTEREN: Did she have any intention of going to the police with information?

SCHORI: I don't think so. That's speculation on my part, but I don't think so.

VAN SUSTEREN: Did she have any solid information he did it? Let me back up a second. He actually confessed to her to having killed Kathleen Savio?

SCHORI: Yes.

VAN SUSTEREN: Did she tell you what words he used?

SCHORI: I'm not sure that I can give that detail.

VAN SUSTEREN: Can you give us at least some little idea? We're trying to -- I'm trying to figure out whether this is, you know, the fantasy of a woman who's distressed her marriage is falling apart, or whether it's the real deal. Do you know what I mean? It's, like -- you know, it's hard to sort of sort through that. You know, when people get divorced or have unhappy marriages, you know, they say -- as you know, they say all sorts of things about each other.

SCHORI: Right. Sure. Sure.

VAN SUSTEREN: But was there any sort of, you know, strong clue that made you think that, This is it, this is the real deal?

SCHORI: Well, the one thing that he did say to her was, You know where I was, as if she knew. And she said, What do you mean? And he said, You know where I was.

VAN SUSTEREN: And this was how soon after the murder?

SCHORI: This was the morning after.

VAN SUSTEREN: And that was all he said.

SCHORI: All that I feel that I can share, yes.

VAN SUSTEREN: Have you spoken to Sergeant Peterson since she vanished?

SCHORI: No, I have not.

VAN SUSTEREN: How about between the time she spoke to you in August and the time that she

sappeared? Did you talk to him at all?

SCHORI: I did not talk with him. He reached out to me after that meeting with her that August morning.

VAN SUSTEREN: And how did he reach out?

SCHORI: He had suggested that since I had met with Stacy -- he knew that, and he said that he'd like to get together because he hadn't seen me for a while.

VAN SUSTEREN: Did you get together?

SCHORI: No.

VAN SUSTEREN: Do you think he knew she told you that?

SCHORI: That's a really good question. That's a really good question. I don't know that I can even answer that.

VAN SUSTEREN: How soon after did he call you, after you met with her in the coffee shop and said that he...

SCHORI: There was a message on my voice-mail at the church when I got back after meeting with

VAN SUSTEREN: That soon?

SCHORI: That soon.

VAN SUSTEREN: And then you responded to the voice-mail.

SCHORI: Uh-huh.

VAN SUSTEREN: Did you get him or did you get the voice-mail?

SCHORI: I checked my voice-mail, and then I called him back.

VAN SUSTEREN: And you reached him?

SCHORI: I did.

VAN SUSTEREN: And the conversation went how?

SCHORI: Pretty much just like the voice-mail. He just said, Hey, I'm just trying to get a hold of you. I thought maybe we could meet since you just met with Stacy. And I -- I sort of backed out of that.

VAN SUSTEREN: Your heart must have been in your shoes when you got that voice-mail.

SCHORI: Oh, my gosh. Sure

VAN SUSTEREN: You know, right after.

SCHORI: Sure. My mind was everywhere.

VAN SUSTEREN: Do you think she's alive?

SCHORI: I sure hope and pray that she is.

VAN SUSTEREN: What do you think?

SCHORI: I don't believe so.

VAN SUSTEREN: What makes you, as you sit there now, believe Stacy, that she was telling you the truth that Sergeant Peterson had confessed to killing Kathleen Savio?

SCHORI: Right. Because the very specific details that Stacy shared with me that morning are being backed up by the investigation that's being done and is being reported in the news.

VAN SUSTEREN: So stuff you're reading about now is...

SCHORI: Is -- completely backs up what she said.

VAN SUSTEREN: Is there anything else you want to -- that I haven't asked you in this interview, that you want to add to this interview?

SCHORI: I would just like to say that if there is somebody out there that has information related to Stacy, and for whatever reason, they have not come forward yet, that now is the time to do it because this is a missing mother. There are four kids that need their mom. And it's always the right thing to do, right.

VAN SUSTEREN: Tough, though.

SCHORI: Tough, very tough. But it doesn't take away from the fact that it's the right thing to do.

(END VIDEOTAPE)

December 11th Part 2
(COMMERCIAL BREAK)

VAN SUSTEREN: Now, yesterday, right here, you heard Stacy Peterson's pastor, Neil Schori. The pastor says Stacy confided in him that Sergeant Peterson admitted to Stacy to killing his wife number three, Kathleen Savio.

(BEGIN VIDEOTAPE)

NEIL SCHORI, PASTOR STACY CONFIDED IN: I try not to push people into an area that they're

uncomfortable, and I gave her -- I gave her an out. I said, If you'd like to share it with me, I'm here to hear it, I said, but there's no pressure. You don't have to feel like you have to share anything you're not comfortable with. So if you are -- if you are comfortable, please share it. And we talked about various other things, and then she blurted out the reason.

VAN SUSTEREN: Which was?

SCHORI: She said, He did it.

VAN SUSTEREN: Just like that.

SCHORI: Just like that.

VAN SUSTEREN: Did you know what the reference point was, as that point, that, He did it?

SCHORI: I had a feeling, but I needed clarification, so of course, I followed up.

VAN SUSTEREN: How did you happen to know that that -- I mean, had you spoken about the "He did it" aspect before-with her?

SCHORI: I had never spoken with her about that before. I had just heard casual conversations in the community and in my own church about speculation over an interesting death of Mr. Peterson's wife, his third wife.

VAN SUSTEREN: So when she said, He did it, what did you believe that to mean?

SCHORI: I believed, unfortunately, that it was exactly what I thought, and I believed that it was related to the death of his wife. But I clarified, and I said, He did what? And she said, He killed Kathleen.
And I was really blown away. I was reeling inside.

(END VIDEOTAPE)

Kevy E. O'Connor
Fox News Channel
On The Record w/ Greta Van Susteren
office: 212-301-3543
blackberry: 646-469-0311
kevyn.oconnor@foxnews.com

902 N.E.2d 1113

388 Ill.App.3d 242, 902 N.E.2d 1113, 327 Ill.Dec. 727

(Cite as: 388 Ill.App.3d 242, 902 N.E.2d 1113, 327 Ill.Dec. 727)

H

Appellate Court of Illinois,

Third District.

In re ESTATE OF Kathleen SAVIO, Deceased.

No. 3-08-0294.

Feb. 4, 2009.

Background: After autopsies that were conducted after decedent's estate was closed indicated that decedent's death was probably homicide rather than an accident, decedent's father and siblings filed petition to reopen the estate, remove the executor, and have father and one sibling appointed as co-executors. The Circuit Court, Will County, Carmen Goodman, J., granted the petition. Removed executor and decedent's former husband appealed.

Holdings: The Appellate Court, Carter, J., held that:

- (1) potential wrongful death action against former husband was a newly discovered asset of decedent's estate, so as to warrant reopening estate;
- (2) former executor's actions in divorce proceedings that were pending at the time of decedent's death were sufficient basis for his removal; and
- (3) trial court's decision to appoint father and sibling as successor co-executors was not against the manifest weight of the evidence.

Affirmed.

West Headnotes

[1] Executors and Administrators 162 510(11)

162 Executors and Administrators

162XI Accounting and Settlement

162XI(E) Stating, Settling, Opening, and Review

162k510 Review

162k510(11) k. Questions of Fact, and Findings. Most Cited Cases

Appellate Court would apply a manifest weight of the evidence standard of review to trial court's reopening of estate, rather than a de novo standard of review; issue did not involve interpretation of the probate law, but rather application of that law to the facts. S.H.A. 755 ILCS 5/24-9.

[2] Appeal and Error 30 1012.1(5)

30 Appeal and Error

30XVI Review

30XVI(I) Questions of Fact, Verdicts, and

Findings

30XVI(I)3 Findings of Court

30k1012 Against Weight of Evidence

30k1012.1 In General

30k1012.1(5) k. Manifest

Weight. Most Cited Cases

A trial court's ruling is against the manifest weight of the evidence only if it is unreasonable, arbitrary and not based on evidence, or when the opposite conclusion is clearly evident from the record.

[3] Death 117 7

117 Death

117III Actions for Causing Death

117III(A) Right of Action and Defenses

117k7 k. Nature and Form of Remedy.

Most Cited Cases

The purpose of a wrongful death action is to compensate the surviving spouse and the next of kin for the pecuniary losses resulting from the decedent's death. S.H.A. 740 ILCS 180/1.

[4] Death 117 31(3.1)

117 Death

117III Actions for Causing Death

117III(A) Right of Action and Defenses

117k31 Persons Entitled to Sue

117k31(3) Personal Representatives

117k31(3.1) k. In General. Most

Cited Cases

To avoid multiple lawsuits, a wrongful death action

may only be brought by the personal representative of the decedent. S.H.A. 740 ILCS 180/2.

[5] Death 117 ⚡31(3.1)

117 Death

117III Actions for Causing Death

117III(A) Right of Action and Defenses

117k31 Persons Entitled to Sue

117k31(3) Personal Representatives

117k31(3.1) k. In General. Most

Cited Cases

Death 117 ⚡32

117 Death

117III Actions for Causing Death

117III(A) Right of Action and Defenses

117k32 k. Persons for Whose Benefit Suit

May Be Maintained. Most Cited Cases

Although a wrongful death action is to be brought under the Wrongful Death Act by and in the name of the personal representative of the deceased person, the legislative intent of the Act is that the claims brought are those of the individual beneficiaries. S.H.A. 740 ILCS 180/2.

[6] Executors and Administrators 162 ⚡509(4)

162 Executors and Administrators

162XI Accounting and Settlement

162XI(E) Stating, Settling, Opening, and Review

162k509 Opening or Vacating

162k509(4) k. Grounds. Most Cited

Cases

Potential wrongful death action against decedent's former husband was a newly discovered asset of decedent's estate, so as to warrant reopening estate, even if decedent's father and siblings suspected former husband of involvement in decedent's death from the outset; family had no legal or proper factual support for a wrongful death claim until additional autopsies conducted after the estate was closed determined that decedent's death was prob-

ably a homicide and not an accident. S.H.A. 740 ILCS 180/1, 180/2.1; 755 ILCS 5/24-9.

[7] Executors and Administrators 162 ⚡51

162 Executors and Administrators

162III Assets of Estate

162III(A) In General

162k48 Debts and Rights of Action

162k51 k. Right of Action for Death of Decedent. Most Cited Cases

Executors and Administrators 162 ⚡271

162 Executors and Administrators

162VI Claims Against Estate

162VI(E) Priorities and Payment

162k270 Property Available for Payment

162k271 k. In General. Most Cited Cases

Executors and Administrators 162 ⚡509(4)

162 Executors and Administrators

162XI Accounting and Settlement

162XI(E) Stating, Settling, Opening, and Review

162k509 Opening or Vacating

162k509(4) k. Grounds. Most Cited Cases

A wrongful death claim is not an asset of a decedent's estate for the purpose of whether it may be used to satisfy the claims of creditors of the estate; however, a newly discovered wrongful death claim is an asset of a decedent's estate for the purpose of whether the estate may be reopened. S.H.A. 740 ILCS 180/2.1; 755 ILCS 5/24-9.

[8] Executors and Administrators 162 ⚡35(19)

162 Executors and Administrators

162II Appointment, Qualification, and Tenure

162k35 Removal

162k35(19) k. Review. Most Cited Cases

A trial court's ruling on a petition for removal of an executor is subject to a manifest weight of the evid-

ence standard of review on appeal; an appellate court will not reverse a trial court's ruling in that regard unless it is against the manifest weight of the evidence. S.H.A. 755 ILCS 5/23-2.

[9] Executors and Administrators 162 ⚡75

162 Executors and Administrators

162IV Collection and Management of Estate

162IV(A) In General

162k75 k. Representation of Creditors and Distributees. Most Cited Cases

Executors and Administrators 162 ⚡91

162 Executors and Administrators

162IV Collection and Management of Estate

162IV(A) In General

162k90 Custody and Management of Estate

162k91 k. In General. Most Cited Cases

A representative of a decedent's estate has a fiduciary relationship with the estate's beneficiaries; for that reason, a representative is held to the highest standard of fair dealing and diligence when dealing with the estate.

[10] Executors and Administrators 162 ⚡91

162 Executors and Administrators

162IV Collection and Management of Estate

162IV(A) In General

162k90 Custody and Management of Estate

162k91 k. In General. Most Cited Cases

A court will scrutinize an estate representative's actions closely to insure that the representative has adhered to the highest standards of fair dealing and diligence.

[11] Executors and Administrators 162 ⚡35(19)

162 Executors and Administrators

162II Appointment, Qualification, and Tenure

162k35 Removal

162k35(19) k. Review. Most Cited Cases

Any challenge to the procedure followed by the trial court in removing executor, which involved only argument from the parties and not the presentation of evidence, was forfeited for purposes of appeal, where neither side objected in the trial court or raised the issue on appeal. S.H.A. 755 ILCS 5/23-2.

[12] Executors and Administrators 162 ⚡35(8)

162 Executors and Administrators

162II Appointment, Qualification, and Tenure

162k35 Removal

162k35(8) k. Waste, Negligence, or Mismanagement. Most Cited Cases

Executor's actions in appearing in divorce proceedings that were pending at the time of decedent's death and agreeing to transfer all of decedent's interest in the marital property to former husband individually were a sufficient basis for removal of **executor**, regardless of whether such actions were classified as mismanagement of the estate or simply other good cause for removal. S.H.A. 755 ILCS 5/23-2.

[13] Executors and Administrators 162 ⚡17(4)

162 Executors and Administrators

162II Appointment, Qualification, and Tenure

162k17 Right to Appointment as Administrator

162k17(4) k. Guardian of Infants or Insane Next of Kin. Most Cited Cases

Executors and Administrators 162 ⚡20(7)

162 Executors and Administrators

162II Appointment, Qualification, and Tenure

162k20 Proceedings for Appointment

162k20(7) k. Evidence. Most Cited Cases
Trial court's decision to appoint decedent's father and one of decedent's siblings as **successor co-executors** of decedent's reopened estate, rather than

allow former husband to nominate a **successor executor** in his capacity as guardian of decedent's minor children, was not against the manifest weight of the evidence, even though there was a statutory preference for allowing decedent's children to name **successor**, where estate was reopened in the context of allegations that former husband was responsible for decedent's death, and former husband was a likely defendant in a wrongful death action to be brought by the estate. S.H.A. 755 ILCS 5/9-3.

****1115** Joel A. Brodsky (argued), Reem H. Odeh, Brodsky & Odeh, Chicago, IL, Andrew Abood (argued), Abood Law Firm, East Lansing, MI, for Appellant.

Martin Glink (argued), Arlington Heights, Lawrence Varsek, Joliet, IL, John Q. Kelly, New York, NY, for Appellee.

Justice CARTER delivered the opinion of the court:

***243 ***729** The father and four of the siblings of the above decedent filed a petition to reopen her estate, to remove the prior executor, and to appoint the father and one of the siblings as coexecutors of the reopened estate. After a hearing on the matter, the trial court granted the petition. The former executor of the estate and the decedent's ex-husband, who is also the guardian and father of decedent's two minor children, appeal the trial court's ruling, arguing that the trial court erred in: (1) reopening the estate, and (2) removing and replacing the former executor. We affirm.

FACTS

On March 1, 2004, 40-year-old Kathleen Savio was found dead in the bathtub of her home. An autopsy revealed that she had drowned. The death was classified in the initial autopsy report as accidental.

****1116 ***730** Savio was survived by her two minor children, K.P. and T.P., and by her ex-husband, Drew Peterson. Peterson is the natural father of the two minor children and also the chil-

dren's guardian. Savio and Peterson were divorced in October or November of 2003 in a bifurcated proceeding. Although the bonds of marriage had been legally dissolved, the division of property between Savio and Peterson had been reserved and was still pending at the time of Savio's death. At the ***244** initial coroner's inquest, Savio's sister testified that she believed that Peterson was responsible for Savio's death and that Savio was scared that something might happen to her because of the upcoming property division hearing in the divorce case.

Initially, it was believed that Savio had died without leaving a will. The public guardian, Richard Kavanagh, was appointed as the independent administrator of Savio's estate. At some point later, however, a will was produced. The handwritten will, dated March 2, 1997, made a joint disposition of decedent's and Peterson's property. In the will, decedent and Peterson each provided that all of their property would pass to the other upon either of their deaths. The will provided further that if decedent and Peterson passed away at or about the same time, all of the property was to be divided equally between K.P. and T.P. and between Peterson's two adult children (S.P. and E.P.) from a previous marriage. Set forth in the will was a specific list of some of the property of Savio and Peterson, including certain life insurance policies, a pension, certain real estate, and a certain business interest. The will also provided that James Carrol was to serve as the executor of the estate.

In September of 2004, Peterson filed a petition to have James Carrol appointed as executor. Carrol followed up that request with a petition of his own. In March of 2005, an order was entered admitting Savio's will to probate, discharging Kavanagh as the independent administrator, and appointing Carrol as the independent executor of the estate.

Kavanagh later filed a final report of his activities as independent administrator. Of relevance to this appeal, Kavanagh's report stated that: (1) the home where Savio lived, which belonged to both Savio

and Peterson, was sold pursuant to a court order; (2) the net proceeds of the home sale, approximately \$287,000, were placed in an escrow account pending a final order in the divorce case; (3) upon being appointed executor of the estate, Carrol fired Savio's divorce attorney, appeared for the estate in the divorce case *pro se*, and essentially agreed to turn over all of the marital property to Peterson individually, including the entire interest in the business and all of the net proceeds of the home sale; and (4) in Kavanagh's opinion, Carrol's actions were not in the best interest of the estate or its beneficiaries and served to transfer anywhere from approximately \$144,000 to \$288,000 away from the beneficiaries to Peterson. A copy of the property division order was attached to Kavanagh's report. In addition to the above, the property division order indicated that: (1) a trust fund in excess of \$1 million (primarily from Savio's life insurance policy) had been set up at a bank for the benefit of K.P. and T.P. to provide for the children's *245 future medical, educational, and other necessary expenses; (2) Peterson assumed all of the marital debts including about \$10,000 in debts that were debts of the estate; and (3) all personal property that was in Peterson's possession was awarded to him free and clear from any claims of the estate. Kavanagh's final report was approved by the trial court in February of 2006, and Kavanagh was discharged as independent administrator of Savio's estate.

****1117 ***731** In May of 2006, Carrol filed an inventory and final report of his activities as executor of the estate. The inventory reported that the only assets of the estate were certain items of tangible personal property, having little cash value, which were turned over to Peterson. The final report indicated that the administration of the estate had been completed; that each claim of the estate had been allowed, disallowed, compromised, dismissed or was barred; that the assets of the estate were insufficient to pay all of the claims in full; and that any claims that were allowed were paid according to their respective priorities. The docket sheet indicates that Carrol's inventory and final report were

approved by the trial court, Carrol was discharged as independent executor, and the estate was closed.

In March of 2008, Savio's father and siblings filed a joint petition to reopen Savio's estate, to remove Carrol as executor, and to appoint the father and one of the siblings as the successor coexecutors of the reopened estate. In the joint petition, Savio's father and siblings alleged that: (1) Savio's body had been exhumed; (2) additional autopsies had been conducted on the body in November of 2007; (3) the additional autopsies concluded that Savio's death was probably a homicide and not accidental; (4) a wrongful death cause of action against Peterson was a newly discovered asset or an unsettled portion of the estate; (5) Carrol was Peterson's uncle, and as such, was in a direct conflict of interest as to the proposed wrongful death action; (6) Carrol may have committed waste or mismanagement of the estate by allowing everything to pass to Peterson in the divorce proceeding and by failing to file an adequate inventory regarding the estate; (7) Carrol was incapable of suitably discharging his duties as administrator; (8) Carrol had breached his duty of undivided loyalty to the estate and its beneficiaries, which would constitute good cause for removal of Carrol as executor; (9) Savio's will made no appointment of a successor executor in the event that Carrol was removed; and (10) Savio's father and sibling had a statutory preference (755 ILCS 5/9-3 (West 2006)) to serve as successor coexecutors of the estate. In their prayer for relief, Savio's father and siblings sought to have the estate reopened, to have a citation issued pursuant to statute against Carrol to show cause why he should not be removed as executor of the estate, and to have letters *246 issued to Savio's father and one of the siblings as successor coexecutors of the reopened estate.

A hearing was held on the petition in April of 2008. During the hearing, no evidence was presented, only arguments. After hearing the arguments of the attorneys, the trial court granted the petition and entered an order reopening the estate, removing

Carrol as executor, and appointing Savio's father and sibling as successor coexecutors of the reopened estate. This appeal followed.

ANALYSIS

On appeal, Peterson and Carrol argue first that there is no proper legal ground to justify reopening Savio's estate and that the trial court erred, therefore, in granting the petition to reopen. More specifically, Peterson and Carol contend that under Illinois law, a decedent's estate may only be reopened if there is a newly discovered asset or an unsettled portion of the estate and that neither of those two legal grounds for reopening an estate is present in the instant case. Focusing their argument primarily on the first legal ground, Peterson and Carrol assert that a possible wrongful death claim is: (1) not an asset of the estate; and (2) not newly discovered, since Savio's family had been accusing Peterson***732 **1118 of causing the death since as early as the initial coroner's inquest.

Savio's father and siblings argue that the trial court properly granted the petition to reopen the estate. Savio's father and siblings assert that a possible wrongful death claim is a newly discovered asset that would provide sufficient legal grounds for reopening Savio's estate. In making that assertion, Savio's father and siblings point out that despite the family's suspicions, the possibility of a wrongful death claim did not truly arise until after the estate had been closed and the additional autopsies had determined that Savio's death was probably a homicide. Savio's father and siblings note that regardless of whether the claim belongs to the estate or to the beneficiaries, it still must be brought by the personal representative of the decedent. See 740 ILCS 180/2 (West 2006).

[1][2] Initially, we must determine the appropriate standard of review to be applied to this issue. Peterson and Carrol argue that a *de novo* standard of review should be applied because this issue involves a question of statutory interpretation (see *In*

re Estate of Poole, 207 Ill.2d 393, 401, 278 Ill.Dec. 532, 799 N.E.2d 250, 255 (2003) (the supreme court applied a *de novo* standard of review to a question involving statutory interpretation in determining who had legal preference to act as the administrator of a particular estate)) and because the trial court's ruling was not the result of an evidentiary hearing. Savio's father and *247 siblings, on the other hand, argue that a manifest weight of the evidence standard is appropriate and cite general case law regarding the removal of an executor to support that conclusion. See *in re Estate OF debevec*, 195 Ill.App.3d 891, 897, 142 Ill.Dec. 302, 552 N.E.2d 1043, 1047 (1990) (the appellate court applied a manifest weight of the evidence standard in determining whether a guardian of the person of a disabled adult was properly removed). Although we have reviewed the case law in this area, we have found no clear statement of the standard of review that should be applied to a trial court's decision on a petition to reopen a decedent's estate. We note, however, that contrary to the argument of Peterson and Carrol, the issue before this court in the present case does not involve an interpretation of the probate law in Illinois. Rather, the issue involves the application of that law to the facts of the present case and a factual determination of whether the possible wrongful death claim is a newly discovered asset. See *In re Estate of Moskal*, 50 Ill.App.3d 291, 293, 8 Ill.Dec. 354, 365 N.E.2d 592, 594 (1977) (the appellate court found that based upon the facts of the case, the trial court's ruling that certain personal property was not a newly discovered asset was not erroneous). Therefore, we will apply a manifest weight of the evidence standard of review to this issue and will not reverse the trial court's decision on this issue unless it is against the manifest weight of the evidence. A trial court's ruling is against the manifest weight of the evidence only if it is unreasonable, arbitrary and not based on evidence, or when the opposite conclusion is clearly evident from the record. *Smith v. Marvin*, 377 Ill.App.3d 562, 569, 317 Ill.Dec. 31, 880 N.E.2d 1023, 1030 (2007).

Turning to the substantive arguments of the parties on this issue, section 24-9 of the Probate Act of 1975 (the Act) provides in pertinent part as follows:

"If a decedent's estate has been closed and the representative discharged, it may be reopened to permit the administration of a newly discovered asset or of an unsettled portion of the estate on the petition of any interested person." 755 ILCS 5/24-9 (West 2006).

****1119 ***733** Thus, section 24-9 establishes two limited circumstances when a decedent's estate may be reopened: when there is a newly discovered asset or when there is an unsettled portion of the estate. 755 ILCS 5/24-9 (West 2006).

[3][4][5] To determine if the claim in the present case is a newly discovered asset, we must consider wrongful death law in Illinois. Section 1 of the Wrongful Death Act creates an independent cause of action for the death of an individual caused by the wrongful act, neglect, or default of another. 740 ILCS 180/1 (West 2006); *Pasquale v. Speed* *248 *Products Engineering*, 166 Ill.2d 337, 360, 211 Ill.Dec. 314, 654 N.E.2d 1365, 1378 (1995); *Kessinger v. Grefco, Inc.*, 251 Ill.App.3d 980, 982, 191 Ill.Dec. 356, 623 N.E.2d 946, 948 (1993). The purpose of a wrongful death action is to compensate the surviving spouse and the next of kin for the pecuniary losses resulting from the decedent's death. *Pasquale*, 166 Ill.2d at 360, 211 Ill.Dec. 314, 654 N.E.2d at 1378; *Kessinger*, 251 Ill.App.3d at 982-83, 191 Ill.Dec. 356, 623 N.E.2d at 948. To avoid multiple lawsuits, a wrongful death action may only be brought by the personal representative of the decedent. 740 ILCS 180/2 (West 2006); *Pasquale*, 166 Ill.2d at 361, 211 Ill.Dec. 314, 654 N.E.2d at 1378. "Although the action is to be brought under the [Wrongful Death] Act by and in the name of the personal representative of the deceased person, the legislative intent of the [Wrongful Death] Act is that the claims brought are those of the individual beneficiaries." *Kessinger*, 251 Ill.App.3d at 983, 191 Ill.Dec. 356, 623 N.E.2d at 948.

[6] The facts on this matter in the present case are not in dispute. It is clear from record that during the period that the estate was initially open after Savio's death, the only autopsy done on Savio's body had classified the death as accidental. However, after the estate was closed, additional autopsies conducted in November of 2007 found that Savio's death was probably a homicide and not an accident. Regardless of the family's suspicions prior to that time, it was only after the additional autopsies were done, that Savio's family had any legal or proper factual support for a possible wrongful death claim. Based on the facts of the present case, we find that the trial court's implicit ruling-that the possible wrongful death claim was a newly discovered asset of the estate for the purpose of whether the estate should be reopened-was not against the manifest weight of the evidence.

[7] Carol and Peterson's assertion to the contrary, as to the issue before this court, is a distinction without a difference. It is clear that under Illinois law, a wrongful death claim may only be brought by the personal representative of the decedent. See 740 ILCS 180/2 (West 2006); *Pasquale*, 166 Ill.2d at 361, 211 Ill.Dec. 314, 654 N.E.2d at 1378. Moreover, section 2.1 of the Wrongful Death Act specifically references a cause of action for wrongful death as being an asset of the decedent's estate. See 740 ILCS 180/2.1 (West 2006). Section 2.1 states, in pertinent part: "[i]n the event that the only asset of the deceased estate is a cause of action arising under this Act, and no petition for letters of office for his or her estate has been filed * * *," 740 ILCS 180/2.1 (West 2006). The distinction to be made here is one of purpose. A wrongful death claim is not an asset of a decedent's estate for the purpose of whether it may be used to satisfy the claims of creditors of the estate. See *Berard v. Eagle Air Helicopter Inc.*, 257 Ill.App.3d 778, 781, 195 Ill.Dec. 913, 629 *249 N.E.2d 221, 223 (1994). However, a newly discovered wrongful death claim is an asset of a decedent's estate for the purpose of whether the estate may be reopened under section 24-9 inasmuch as letters ***734 ****1120** have been

filed in a closed estate. See 740 ILCS 180/2.1 (West 2006). Therefore, we affirm the portion of the trial court's ruling granting the petition to reopen Savio's estate.

Next, Peterson and Carrol argue that even if the trial court properly granted the petition to reopen Savio's estate, it was still error for the trial court to grant the remaining portion of the petition and to replace Carrol as **executor** with Savio's father and sibling. Peterson and Carrol contend that the trial court acted without giving effect to the statutory preference of Savio's minor children to nominate a **successor executor** through Peterson, the children's guardian. Peterson and Carrol contend further that the instant action cannot be used to collaterally attack the prior administration of the estate. In the alternative, Peterson and Carrol assert that, at the very least, the trial court, before ruling on the matter, should have appointed a guardian *ad litem* to report on the best interests of the minor children as it pertains to the estate and the appointment of a successor executor.

Savio's father and siblings argue that the trial court's ruling is proper and should be affirmed. Savio's father and siblings assert that the undisputed fact that Carrol agreed to give away all of the possible assets of the estate in the divorce proceeding is cause for removal, as is the fact that Carrol mismanaged the estate and now has a conflict of interest in any possible wrongful death claim against his nephew, Peterson.

[8] A trial court's ruling on a petition for removal of an executor under section 23-2 of the Act is subject to a manifest weight of the evidence standard of review on appeal. *Debevec*, 195 Ill.App.3d at 897, 142 Ill.Dec. 302, 552 N.E.2d at 1047. An appellate court will not reverse a trial court's ruling in that regard unless it is against the manifest weight of the evidence. *Debevec*, 195 Ill.App.3d at 897, 142 Ill.Dec. 302, 552 N.E.2d at 1047. A trial court's ruling is against the manifest weight of the evidence only if it is unreasonable, arbitrary and not based on evidence, or when the opposite conclusion is

clearly evident from the record. *Smith*, 377 Ill.App.3d at 569, 317 Ill.Dec. 31, 880 N.E.2d at 1030.

[9][10] A representative of a decedent's estate has a fiduciary relationship with the estate's beneficiaries. *In re Estate of Storer*, 131 Ill.App.2d 1049, 1054, 269 N.E.2d 352, 355 (1971). For that reason, a representative is held to the highest standard of fair dealing and diligence when dealing with the estate. *Storer*, 131 Ill.App.2d at 1054, 269 N.E.2d at 355-56. A court will scrutinize a representative's actions closely to insure that the representative has adhered to those ***250** high standards. *In re Estate of Glenos*, 50 Ill.App.2d 89, 95, 200 N.E.2d 65, 68 (1964). Section 23-2 of the Probate Act provides that a representative may be removed for, among other listed reasons, waste or mismanagement of the estate, unsuitability for discharge of duties, or for other good cause. 755 ILCS 5/23-2 (West 2006). The procedure for removal is spelled out in section 23-3 of the Act. See 755 ILCS 5/23-3 (West 2006). When a representative is removed, a successor must be appointed. The Illinois statute creates an order of preference for who may serve as or nominate a representative. 755 ILCS 5/9-3 (West 2006). For purposes of this case, statutory preference would go first to Savio's children, then to her parents, and then to her siblings. See 755 ILCS 5/9-3 (West 2006). The statute provides further that any person who has been removed as representative under the Act may not name a successor. 755 ILCS 5/9-3 (West 2006).

[11] Our review of this issue in the present case is complicated by the fact that at the hearing on the matter, no evidence***735 **1121 was presented, only arguments. It does not appear from the record that the parties followed the statutory procedure for removal set forth in section 23-3 of the Act. However, no objection was made in the trial court by either side as to the manner of proceeding and no argument has been raised on that point here on appeal. Thus, at this point, any issue regarding the procedure followed in the trial court is forfeited.

See *Dowell v. Bitner*, 273 Ill.App.3d 681, 692, 210 Ill.Dec. 396, 652 N.E.2d 1372, 1380 (1995) (each party has the obligation to raise and present its issues in the trial court and the failure to do so will result in the forfeiture of those issues on appeal).

[12] As for the underlying substance of this issue, the property division order from the divorce proceeding was made part of the trial court record when it was attached to the final report of the public guardian. In addition, the trial court was free to take judicial notice of that order. See *Murdy v. Edgar*, 103 Ill.2d 384, 394, 83 Ill.Dec. 151, 469 N.E.2d 1085, 1090 (1984) (a court may take judicial notice of matters which are commonly known and of facts that are readily verifiable from sources of indisputable accuracy); *Secrist v. Petty*, 109 Ill. 188 (1883) (a court may take judicial notice of its own acts and records in the same case); *People v. Davis*, 65 Ill.2d 157, 161, 2 Ill.Dec. 572, 357 N.E.2d 792, 794 (1976) (a court may take judicial notice of other cases in the same jurisdiction). The order showed that Carrol appeared in the divorce proceeding on behalf of the estate and essentially agreed to transfer all of Savio's interest in the marital property to Peterson individually. Regardless of whether we classify that action as mismanagement or other good cause, it would certainly provide a sufficient basis for removal of Carrol as executor. See 755 ILCS 5/23-2 (West 2006); *Glenos*, 50 Ill.App.2D AT 96-99, 200 N.E.2D AT 68-69 (sufficient cause existed for removal of executor where executor had retained the services of a friend to act as broker to sell certain real property belonging to the estate, the friend was not licensed to sell property in that area and had never sold property in that area, and executor failed to follow through on repeated opportunities to sell the property at a higher price). Even from an objective standpoint, we can think of no just or fair reason why Carrol, as executor of the estate, would relinquish all of Savio's interest in the marital property to Peterson individually. That action was arguably contrary to the best interests of the estate and its beneficiaries and justifies the trial court's decision.

[13] Nor do we find that the trial court erred in appointing Savio's father and sibling as **successor** co-executors of the estate. Upon removal, Carrol lost his right to name a **successor executor**. See 755 ILCS 5/9-3 (West 2006)). In addition, Peterson's and Carrol's brief on appeal somewhat concedes that because of the underlying allegations, a court would not be likely to allow Peterson to nominate a **successor executor** of Savio's estate. See *Storer*, 131 Ill.App.2d at 1053, 269 N.E.2d at 355 (administrator who was potential defendant in wrongful death claim arising out of decedent's death suffered from an impossible conflict of interest)). Thus, we conclude that the portion of the trial court's ruling removing Carrol as executor and appointing Savio's father and sibling as successor coexecutors was not against the manifest weight of the evidence.

We are not persuaded that the decision in *In re Estate of Cage*, 381 Ill.App.3d 110, 319 Ill.Dec. 206, 885 N.E.2d 477 (2008), cited by Peterson and Carrol, requires a different result in the present case. In *Cage*, the First District Appellate Court held that the mother of the decedent's children, acting as the guardian of the children, had a higher statutory preference than decedent's sister to nominate an administrator***736 **1122 and could nominate herself as the administrator of the decedent's estate. *Cage*, 381 Ill.App.3d at 113-15, 319 Ill.Dec. 206, 885 N.E.2d at 479-80. The facts of *Cage* are readily distinguishable from the facts of the present case in that the children's guardian in *Cage* was not also a likely defendant in a possible wrongful death suit resulting from the decedent's death. As noted above, there seems to be very little argument that under the circumstances of the present case, Peterson is not a suitable person to serve as or nominate a successor executor.

For the foregoing reasons, we affirm the judgment of the circuit court of Will County.

Affirmed.

McDADE, J. and SCHMIDT, J. concurring.

902 N.E.2d 1113

388 Ill.App.3d 242, 902 N.E.2d 1113, 327 Ill.Dec. 727

(Cite as: 388 Ill.App.3d 242, 902 N.E.2d 1113, 327 Ill.Dec. 727)

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