

1 IN THE CIRCUIT COURT OF THE
2 SECOND JUDICIAL CIRCUIT, IN AND
3 FOR LEON COUNTY, FLORIDA.

4 CASE NO.: 97-3180

5
6 IN RE: DECLARATION OF TRUST
7 _____/



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10 PROCEEDINGS: Hearing
11 BEFORE: THE HONORABLE
12 N. SANDERS SAULS
13 DATE: Tuesday, July 8, 1997
14 TIME: Commenced at 10:30 a.m.
15 Adjourned at 10:50 a.m.
16 LOCATION: LEON COUNTY COURTHOUSE
17 Tallahassee, Florida
18 REPORTED BY: MICHELLE SUBIA, R.P.R.
19 Notary Public in and for
20 the State of Florida at
21 Large

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23 ACCURATE STENOGRAPHY REPORTERS, INC.
24 100 Salem Court
25 Tallahassee, Florida 32301
904-878-2221/800-934-9090

ACCURATE STENOGRAPHY REPORTERS, INC.

1 APPEARANCES:

2 REPRESENTING THE DEPARTMENT OF CHILDREN
3 AND FAMILIES:

4 JOHN S. SLYE, ESQUIRE
5 Deputy General Counsel
6 Office of General Counsel
7 1323 Winewood Boulevard
8 Building 2, Room 204
9 Tallahassee, Florida 32399-0700

10 ALSO PRESENT:

11 LINDA K. HARRIS, ESQUIRE
12 MARILYN J. MARSHALL, ESQUIRE
13 DAVID JON FISCHER, ESQUIRE (VIA TELEPHONE)

14 PROCEEDINGS

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18 CERTIFICATION OF REPORTER

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PROCEEDINGS

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2 THE COURT: This is the case In Re:
3 Declaration of Trust, Case Number 97-3180 on the
4 petition and motion for designation of a grantor,
5 promulgation of a declaration of trust and
6 designation of a trustee.

7 So at this time, let's go ahead and enter
8 your appearances for the record.

9 MR. SLYE: Thank you, Your Honor.

10 THE COURT: Hold on just a minute.

11 Mr. Fischer?

12 MR. FISCHER: Yes.

13 THE COURT: We are in the process of just
14 calling this case, and we are in the process of
15 having all counsel and other parties in interest
16 enter their appearances. So if you can hear, it
17 will come your turn shortly.

18 Go ahead, Mr. Slye.

19 MR. SLYE: Thank you, Your Honor. May it
20 please the Court, my name is John Slye. I am
21 deputy general counsel for the Florida Department
22 of Children and Families.

23 With me today are Linda Harris,
24 attorney/consultant to the Family, Safety and
25 Preservation Program Office for the Department of

1 Children and Families and Marilyn Marshall, local
2 attorney and proposed grantor of the Master Trust.

3 At the conclusion of our presentation,
4 Marilyn would like to make some brief comments.

5 We have present by phone Mr. David Fischer,
6 an Atlanta attorney who is a member of the Florida
7 Bar and consultant attorney who is the primary
8 drafter of the Master Trust document before you
9 today.

10 Please introduce yourself for the record,
11 David.

12 MR. FISHER: My name is David Jon, J-O-N,
13 Fischer, F-I-S-C-H-E-R.

14 THE COURT: All right. You may proceed.

15 MR. SLYE: Prior to 1996 amendments, Florida
16 Statute 402.17 imposed a fiduciary duty on the
17 Department of Children and Families to manage the
18 assets of children in its care for their current
19 needs only. This provided very little flexibility
20 in the planning options available to the
21 department to protect the children's continued
22 eligibility for federal assistance.

23 The U.S. Supreme Court decision in Sullivan
24 vs. Zebly directed retroactive disability payments
25 for children originally denied application for

1 disability. This decision resulted in lump sum
2 payments to foster children that caused their
3 client fund balances established under Florida
4 Statute 402.17 to exceed their asset eligibility
5 thresholds for SSI and other federal and state
6 public assistance programs.

7 This prompted the department to find a way
8 to set aside where possible excess funds for
9 long-term needs of the children rather than be
10 forced to spend down the funds to maintain the
11 children's eligibility.

12 Although the spend down of monies in
13 accordance with federal guidelines was effective
14 to maintain the child's public assistance
15 eligibility, such actions were not adequately
16 conserving the child's assets for long-term and
17 future needs where this would otherwise be
18 appropriate in a given case.

19 Many of these children, particularly those
20 with mental or physical illnesses will require
21 public assistance all of their lives. This
22 resulted in 1996 amendments to Florida Statute
23 402.17 that, number one, clarified the authority
24 and responsibility of the department to take
25 certain new actions as trustee of the children's

1 assets, and, two, allows the department
2 flexibility to consider the long-term care such as
3 educational independent living and vocational
4 training as well as current needs of the children
5 in administering the funds of the children as
6 trustee while maintaining the child's eligibility
7 for public assistance.

8 With the passage of the 1996 amendments to
9 Florida Statute 402.17, the department with the
10 assistance of David Fischer and advice and counsel
11 with the private Bar reviewed the federal and
12 state requirements for the use of monies for the
13 needs of children in foster care and considered
14 options for meeting our responsibilities on behalf
15 of our clients.

16 The establishment of separate individual
17 trusts for each child seemed to require an
18 extraordinary amount of legal work and
19 departmental and perhaps court workload problems.
20 Mr. Fischer's research indicated that a Court
21 ordered Master Trust would create a trust umbrella
22 under which each child's individual trust account
23 could be managed.

24 This trust procedure would preserve the
25 children's eligibility for public assistance

1 programs and form these arrangements to meet
2 federal requirements concerning the use of trust
3 to manage the children's assets and provide for
4 longer term as well as current needs in
5 appropriate circumstances.

6 Jurisdiction over a child's trust account
7 would be in the juvenile court in the county where
8 that child or their property is located.

9 We are implementing the 1996 amendments to
10 Florida Statute 402.17 by developing the Master
11 Trust Declaration which is now before the Court
12 for the purpose of the Court's, one, awarding the
13 promulgation of the trust by the grantor, Marilyn
14 Marshall, two, designation of the Department of
15 Children and Families as the trustee of the trust,
16 and, three, finding that the Master Trust is
17 irrevocable.

18 The proposed orders further find that the
19 trust funds are unavailable to the beneficiaries,
20 their families or assistance groups, and transfers
21 of funds from one subaccount to another within a
22 client beneficiary's Master Trust account are not
23 transfers of assets subject to penalty under
24 federal or state public assistance programs.

25 We have prepared and submitted a memorandum

1 of law covering these and other legal issues.

2 A Court order making such findings is
3 necessary to assure the ongoing eligibility of
4 clients of the state of Florida, Department of
5 Children and Families for services under the
6 Florida Medicaid and other public assistance
7 programs.

8 These orders satisfy the federal and state
9 eligibility requirements for the use of trusts in
10 determining Medicaid eligibility as found in
11 Section 1917(d) of the Social Security Act,
12 otherwise referenced as 42USC Section 1396(p)(d)
13 and comply with the requirements for handling
14 retroactive lump sum payments for supplemental
15 security income recipients under age 18 as found
16 in Section 1614(1)(2)(f) with the Social Security
17 Act or 42USC 1383(a)(2)(f).

18 Because these and other parts of the law
19 change over time, the trust has provisions within
20 it that will allow changes to the document to
21 reflect changes in the law that affect
22 administration of the trust.

23 Further, the flexibility of the trust
24 concept allows for necessary application of the
25 children's funds to meet their change in

1 situations and needs.

2 Included with the filings before you is a
3 brief showing the authority of the Court under
4 common law equitable jurisdiction to appoint a
5 common law guardian ad litem for the purpose of
6 authorizing such common law guardian ad litem to
7 act as grantor of the proposed Declaration of
8 Master Trust.

9 Marilyn Marshall, an attorney in private
10 practice in Tallahassee or a former assistant
11 attorney general for the state of Florida has
12 agreed to serve as the common law guardian ad
13 litem for the Department of Children and Families'
14 clients whose funds will be a part of the Master
15 Trust and in that capacity to be designated as the
16 grantor of the proposed Declaration of Master
17 Trust.

18 A proposed order designating Mrs. Marshall
19 as common law guardian ad litem and grantor of the
20 Declaration of Master Trust is enclosed as a part
21 of our filings.

22 Upon entry of the proposed order directing
23 the promulgation of the Declaration of Master
24 Trust, the proposed orders provide that
25 Mrs. Marshall be discharged as the guardian ad

1 litem and is relieved of any further
2 responsibilities in regard to this Master Trust
3 and to the beneficiaries thereof.

4 Your Honor, certified copies of the
5 Declaration of Trust and orders of the Court will
6 be sent to the Chief Judge in each of the circuits
7 together with a cover letter from Richard Dorn,
8 general counsel for the department and a two-page
9 "Q" and "A" outline included as a part of the
10 materials before you. Each sheet, Judge, will be
11 personally briefed by local department district
12 counsel.

13 A briefing of juvenile judges on the
14 implementation of the trust took place on June the
15 15th at the recent conference of circuit judges at
16 Palm Beach Gardens and was well received by them.

17 Copies of the two-page outline included with
18 our filing with the Court are being distributed to
19 the guardian ad litem offices throughout the state
20 by the state court administrator's office.
21 Implementation of the trust will be phased in over
22 a period of time to assure the children's funds
23 are handled appropriately.

24 That concludes my initial remarks, Judge
25 Sauls.

1 Linda or David, do either of you have
2 anything you would like to add before we ask the
3 Court to enter the orders?

4 MR. FISCHER: I don't.

5 MS. HARRIS: No.

6 MR. SLYE: As I said earlier, Mrs. Marshall
7 has asked to briefly be heard.

8 MS. MARSHALL: I just want to make it clear,
9 Your Honor, that no money has been given to me to
10 do this. I have been in writing assured by
11 Richard Dorn, general counsel, that they do not
12 believe there is any liability attaches. But if
13 they are wrong in that assessment, I have no
14 immunity from the state.

15 They have waived any possible conflict in
16 the future should in my practice as an attorney I
17 have an occasion to sue the department. But other
18 than that, I just wanted to make it clear on the
19 record what my position is in all of this matter.

20 THE COURT: Thank you. I have received the
21 file and have reviewed the memoranda submitted not
22 only by the department but also your memorandum,
23 and it was apparent that you are apparently
24 serving in this capacity strictly on a pro bono
25 basis and as a public service.

1 MS. MARSHALL: Yes, Your Honor.

2 THE COURT: Having reviewed the memorandum
3 and the Declaration of Trust, Declaration of
4 Master Trust that was attached and having heard
5 the presentation submitted here this morning,
6 based upon the record and the transcript compiled
7 here by Madam Court Reporter, and based on the
8 authorities and with the understanding that this
9 is a suitable and appropriate mechanism not only
10 to implement the intent of the Florida Statutes
11 but also to comply with various federal and state
12 regulations with respect to the various programs
13 that are involved that it appears that at this
14 time that the Court should grant the motion for
15 designation of guardian ad litem, Mrs. Marshall,
16 for the interest of the clients of the Department
17 of Children and Family Services and appoint
18 Mrs. Marshall as the grantor of the trust and
19 enter an order of promulgation of the Declaration
20 of Master Trust.

21 And the Court would specifically find that
22 the trust is irrevocable and unavailable to the
23 beneficiary and beneficiary's family or assistance
24 group and is not subject to Aid to Families with
25 Dependent Children transfer of assets policies and

1 that the state of Florida, Department of Children
2 and Family Services should be and hereby will be
3 designated as trustees of the trust that is
4 attached and annexed to the complaint.

5 And it appears that the terms and conditions
6 set forth in detail in the trust or Declaration of
7 Master Trust are adequate and will amply provide
8 for the needs of the children of this state. So
9 at this time, the Court will enter the appropriate
10 order.

11 Do you have those?

12 MR. SLYE: Yes, I do. They were submitted,
13 but we had a typo on one of them so let me give
14 you these.

15 THE COURT: This transcript is relatively
16 brief, you may wish just for the purpose -- if you
17 are going to send the information to the
18 respective Chief Judges, you might want to just
19 include a copy of the transcript so the Chief
20 Judges of each circuit can have that.

21 MR. SLYE: That's an excellent suggestion.

22 THE COURT: As opposed to just a two-page
23 questionnaire. That's more than adequate for
24 other entities or individuals.

25 So if there is nothing further, the Court

1 will enter these orders and this will conclude the
2 hearing.

3 MR. SLYE: The only thing that I would like
4 to do is one other thing, and that is the
5 declaration of trust document has got a couple of
6 blank dates on it. I just need permission from
7 Mrs. Marshall to go ahead and -- we need to fill
8 in those dates.

9 THE COURT: We need to conform those dates
10 of this order?

11 MR. SLYE: Yes. Today is the 8th. And on
12 the first page of the Declaration of Master Trust
13 that we need to put the date is July the 8th. And
14 then on the 15th page, we need to put the date of
15 July the 9th that it will actually become
16 effective at 12:01.

17 THE COURT: And by your lead, let me get
18 that and we'll initial the attachment to the
19 complaint.

20 Will that be satisfactory?

21 MR. SLYE: That will be fine.

22 THE COURT: All right. The first date on
23 Page 1 --

24 MR. SLYE: Page 1 should be -- up at the top
25 I believe it is -- it should be July the 8th

1 instead of June.

2 THE COURT: The Court has made that
3 correction.

4 MR. SLYE: And then on Page 15 which will be
5 I think the last page of the declaration, up at
6 the top should be July the 9th because that will
7 be the effective date.

8 THE COURT: All right. That has been so
9 marked. And now you can conform all of your
10 copies.

11 If there is nothing further, that will
12 conclude it.

13 MR. SLYE: Your Honor, we thank you on
14 behalf of all of us, the beneficiaries of the
15 trust and the Department of Children and Families.

16 (Proceedings adjourned at 10:50 a.m.)
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CERTIFICATE OF REPORTER

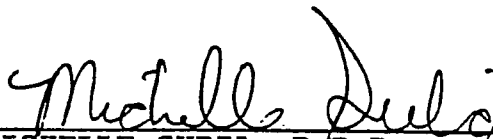
STATE OF FLORIDA:

COUNTY OF LEON:

I, MICHELLE SUBIA, do hereby certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter translated under my supervision; and the foregoing pages numbered 1 through 16 are a true and correct record of the aforesaid proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, or financially interested in the foregoing action.

DATED THIS 17TH DAY OF JULY, 1997.


MICHELLE SUBIA, R.P.R.
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