

# APPENDIX 1

*If this opinion indicates that it is “FOR PUBLICATION,” it is subject to revision until final publication in the Michigan Appeals Reports.*

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**STATE OF MICHIGAN**

**COURT OF APPEALS**

*In re* Guardianship of ANNA-MARIE MARGARET  
BAZAKIS

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CHRISTY BOMBA, Coguardian of ANNA-MARIE  
MARGARET BAZAKIS, a legally protected person,

Appellant,

v

ANDREW BAZAKIS, Coguardian of ANNA-  
MARIE MARGARET BAZAKIS, and ANNA-  
MARIE MARGARET BAZAKIS,

Appellees.

FOR PUBLICATION

June 23, 2022

9:20 a.m.

No. 358276

Saginaw Probate Court

LC No. 20-140294-DD

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Before: RONAYNE KRAUSE, P.J., and MURRAY and O’BRIEN, JJ.

MURRAY, J.

Appellant Christy Bomba appeals by right the August 4, 2021, order granting appellee Andrew Bazakis’s motion to compel Bomba to comply with the court’s January 5, 2021, order regarding Supplemental Security Income (SSI) benefits for their daughter, Anna-Marie Margaret Bazakis (AM). The court additionally confirmed the same order regarding parenting time and ordered Bomba to provide Bazakis with access to bank accounts related to AM. We affirm in part, reverse in part, and remand for further proceedings.

**I. FACTUAL BACKGROUND**

The disputes between the parties surround the parenting time available to Bomba and the legality of a court order regarding AM’s SSI payments. In the judgment of divorce, the parties were awarded joint physical and legal custody of AM, who is developmentally disabled. AM lives equally with both parents, living at each parent’s home on a two-week basis. The parties also agreed to be and are AM’s coguardians.

Years after the divorce, Bomba applied for Social Security Disability benefits for AM and was designated by the Social Security Administration as AM's representative payee.<sup>1</sup> By early 2021, it was determined that AM was entitled to a \$794 monthly SSI payment, and she also received a \$2,381 SSI disbursement for back payments.

Soon after, disputes arose between the parties on several fronts. With respect to the SSI benefits, Bazakis was of the opinion that Bomba was failing to provide him information on the SSI application submitted on AM's behalf, information relative to the benefits awarded, and information (such as account numbers and passwords) for the account where the benefits were deposited. Regarding parenting time, the parties were unable to agree on a holiday schedule, so Bazakis moved the court to enter one for them.

The court ultimately entered an order on January 5, 2021, ordering that parenting time should continue alternating on a two-week basis and that AM spends Mother's Day with Bomba and Father's Day with Bazakis. It further split December 22 to December 24, December 24 to December 26, Thanksgiving Day, and Easter based on even and odd years. The parties were also ordered to maintain the normal two-week rotation, and there would be no special holiday schedule for other, specifically named holidays. With respect to the SSI payments, the court ordered that the Social Security Administration be informed of the parties' guardianship status and that any SSI payments received be split by the parties.

That order, however, did not resolve the parties' differences. Thus, a few months later, Bazakis moved to compel compliance with the court's January 5, 2021, order, asserting (amongst other things not relevant on appeal) that the Social Security Office refused to discuss AM's benefits or disbursements with him because he was not listed as a copayee or coguardian. Bazakis also argued that he could not access AM's online information because Bomba refused to provide "website portal access."

Ultimately, the court ordered that (1) Bomba would remain as AM's representative payee; (2) if there is portal access to the SSI account Bomba should provide access to Bazakis; (3) Bomba was to create a new bank account exclusively for AM and provide Bazakis with the password; (4) all other of AM's bank accounts should be joint with the coguardians; (5) if Bomba receives as representative payee a monthly check from the Social Security Administration, she was to provide a photocopy to Bazakis, and 50% of each check would go to Bazakis through an account chosen by his counsel, and (6) its previous order regarding both Easter and AM's birthday would remain in effect.

## II. ANALYSIS

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<sup>1</sup> We do not consider Bazakis's Exhibit F on appeal, titled "A Guide for Representative Payees," as it was not part of the lower court record. MCR 7.210(A)(1); *In re Rudell Estate*, 286 Mich App 391, 405; 780 NW2d 884 (2009).

### A. JURISDICTION OVER THE APPEAL

As a preliminary issue, Bazakis argues that this Court lacks jurisdiction over this appeal because the probate court's August 4, 2021, order was not a final order since it merely reiterated rulings from the court's August 17, 2020, and January 5, 2021, orders. We reject this argument.

The "final judgment" or "final order" definitions in MCR 7.202 apply for purposes of determining whether a judgment or order of the circuit court or Court of Claims is appealable of right to this Court under MCR 7.203(A)(1). MCR 5.801(A), however, defines the probate court orders that are appealable of right to this Court. In particular, MCR 5.801(A)(3) defines "a final order affecting the rights and interests of an adult or a minor in a guardianship proceeding under the Estates and Protected Individuals Code" as appealable of right. Bosakis offers no legal authority holding that an amended order that affects the interests of an interested person with finality cannot be a final order. Here, the August 4, 2021, order appealed from provides specific instructions on how to handle the SSI payments and provides that the court's prior order on birthdays and holidays will remain in effect. Thus, the order affects with finality Bomba's interests in those matters, making the order appealable of right under MCR 5.801(A).

### B. JURISDICTION TO ORDER DISBURSEMENT OF SSI BENEFITS

Turning to the merits, the main issue on appeal is whether the probate court's order requiring Bomba to pay half of AM's monthly SSI benefits to Bazakis is preempted by the Social Security Act (SSA),<sup>2</sup> and therefore void because the probate court lacked subject-matter jurisdiction to enter it. Our review of the legal question of whether a federal law preempts state action is *de novo*, *Foster v Foster*, 505 Mich 151, 165; 949 NW2d 102 (2020), as it is with the interpretation of statutes, *id.*, and with the general question of whether a court has subject-matter jurisdiction. *Elba Twp v Gratiot Co Drain Comm'r*, 493 Mich 265, 278; 831 NW2d 204 (2013).

The Supremacy Clause of the United States Constitution provides as follows:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. [US Const, art VI, cl 2.]

"There are three types of federal preemption: express preemption, conflict preemption, and field preemption." *In re Vansach Estate*, 324 Mich App 371, 390; 922 NW2d 136 (2018) (quotation marks and citation omitted). Express preemption occurs when a federal statute contains a clause expressly addressing preemption. *Ter Beek v City of Wyoming*, 495 Mich 1, 11; 846 NW2d 531 (2014). Federal preemption can also be implied, which is the category conflict and field preemption occupy. *Grand Trunk Western R Co v City of Fenton*, 439 Mich 240, 243-244; 482 NW2d 706 (1992). Conflict preemption occurs when "there is a 'positive conflict' between [a federal statute and a state law] such that they 'cannot consistently stand together.'" *Ter Beek*,

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<sup>2</sup> The SSA is administered by the Social Security Administration, 42 USC 901(a), and the Administration is led by the Social Security Commissioner. 42 USC 902(a).



495 Mich at 11. Field preemption exists when Congress intends to foreclose any state regulation in the area, regardless of whether the state regulation is consistent with federal standards. *Foster*, 505 Mich at 166. See also *Grand Trunk Western R Co*, 439 Mich at 243-244 (Preemption may be express where Congress has explicitly stated its intent to preempt state law; “field,” where state law regulates conduct in a field that Congress has intended to occupy exclusively; or “conflict,” where state law is in actual conflict with federal law).<sup>3</sup>

There is a presumption against preemption when Congress has legislated on matters over which states traditionally govern. *Ter Beek*, 495 Mich at 10. See also *Biondo v Biondo*, 291 Mich App 720, 724; 809 NW2d 397 (2011) (“Generally, federal law does not preempt laws governing divorce or domestic relations, a legal arena belonging to the states rather than the United States.”) and *English v Gen Electric Co*, 496 US 72, 79; 110 S Ct 2270; 110 L Ed 2d 65 (1990) (stating where “the field which Congress is said to have pre-empted includes areas that have been traditionally occupied by the States, congressional intent to supersede state laws must be clear and manifest” (internal quotations and citations omitted)). Because “probate matters traditionally have been nearly the exclusive concern of the states, there is a presumption against preemption of state law.” *Witco Corp v Beekhuis*, 38 F3d 682, 687 (CA 3, 1994).

It is also true, both as a common-sense matter and as a principle of federalism, that state courts generally possess concurrent sovereignty with federal courts in deciding cases under federal law. *Burt v Titlow*, 571 US 12, 19; 134 S Ct 10; 187 L Ed 2d 348 (2013). The Supreme Court has “consistently held that state courts have inherent authority, and are thus presumptively competent, to adjudicate claims arising under the laws of the United States.” *Tafflin v Levitt*, 493 US 455, 458; 110 S Ct 792; 107 L Ed 2d 887 (1990). See also *Stone v Powell*, 428 US 465, 493, n35; 96 S Ct 3037; 49 L Ed 2d 1067 (1976) (“In sum, there is ‘no intrinsic reason why the fact that a man is a federal judge should make him more competent, or conscientious, or learned with respect to the (consideration of Fourth Amendment claims) than his neighbor in the state courthouse.’ ”); *Huffman v Pursue, Ltd*, 420 US 592, 611; 95 S Ct 1200; 43 L Ed 2d 482 (1975) (rejecting the argument that “state judges will not be faithful to their constitutional responsibilities”); *Worldwide Church of God v McNair*, 805 F2d 888, 891 (CA 9, 1986) (“[S]tate courts are as competent as federal courts to decide federal constitutional issues.”). Consequently, a “litigant may still enforce rights pursuant to the Federal law in state courts unless the Constitution or Congress has, expressly

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<sup>3</sup> As Justice VIVIANO has noted, “[i]t is difficult to determine when a field has been impliedly preempted by a statute. At bottom, field preemption is really a species of conflict preemption, in that it is triggered when a legal provision trenches upon (i.e., conflicts with) a statute’s occupation of a field. That a conflict lies at the heart of field preemption is important to keep in mind because it is very easy for the field-preemption analysis to exalt extratextual purpose above statutory text. The reason is that field preemption essentially implies additional statutory clauses beyond the statute’s text, clauses that mandate preemption. In addition, choosing the correct field definition is difficult and critical because defining the field at a certain level of generality becomes the entire game.” *Bronner v City of Detroit*, 507 Mich 158, 179; 968 NW2d 310 (2021)(VIVIANO, J., concurring) (quotation marks, brackets, and citations omitted).

or impliedly, given a Federal court exclusive jurisdiction over the subject matter.” *Marshall v Consumers Power Co*, 65 Mich App 237, 244; 237 NW2d 266 (1976).<sup>4</sup>

Because there is no explicit statement by Congress expressing federal preemption on issues involving a representative payee’s handling of social security benefits, we must determine whether implied preemption exists. Bomba does not specify if her argument is based upon field or conflict preemption, and the case she leads with, *Philpott v Essex Co Welfare Bd*, 409 US 413; 93 S Ct 590; 34 L Ed 2d 608 (1973), does not speak to any form of federal preemption. Instead, the *Philpott* Court held that the mandates of 42 USC 407 applied to the state’s attempt to obtain social security benefits as reimbursement for housing costs, notwithstanding any state law. *Id.* Thus, it appears the court was applying conflict preemption, even though it did not expressly say so. We conclude that this matter is resolved through a straight-forward application of conflict preemption.

The most relevant provision of the Social Security Act at issue is 42 USC 407(a), which provides:

The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law. [42 USC 407(a).]

Several years back, this Court examined 42 USC 407(a) and concluded that SSI benefits are protected from legal processes—even once deposited into the recipient’s account—until converted into another source, and a state court order conflicting with the statute is preempted:

The protection afforded to money received as Social Security benefits extends before and after the benefits are received. *Philpott v Essex Co Welfare Bd*, 409 US 413, 415-417; 93 S Ct 590; 34 L Ed 2d 608 (1973). See also *State Treasurer v Abbott*, 468 Mich 143, 155; 660 NW2d 714 (2003); *Whitwood, Inc v South Blvd Prop Mgt Co*, 265 Mich App 651, 654; 701 NW2d 747 (2005). The fact that the payments have been made does not make them lose their character as Social Security benefits or make them subject to legal process. To the contrary, the protections of 42 USC 407(a) apply, by their terms, to “moneys paid or payable” (emphasis added); the fact that benefits have been paid and may be on deposit in a recipient’s bank account does not shed them of that protection until they are in some way converted into some other kind of asset. *Philpott*, 409 US at 415–417. Thus, even after a recipient receives SSDI benefits and deposits them into a bank account,

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<sup>4</sup> All of our published decisions have precedential effect under the rule of stare decisis. MCR 7.215(C)(2). However, published decisions issued after November 1, 1990 that are on point with a particular issue must be followed by this Court *without discretion* (though we can express our reasons why we would prefer not to, and seek a polling of the Court to hold a conflict panel, see MCR 7.215(J)(1)), whereas older published opinions *should* be followed by this Court unless “important prudential considerations” compel us to do otherwise. *2000 Baum Family Trust v Babel*, 488 Mich 136, 180 n 26; 793 NW2d 633 (2010).

the SSDI benefits are still protected by 42 USC 407(a). *Whitwood*, 265 Mich App at 654. When a state court order attaches to Social Security benefits in contravention of 42 USC 407(a), the attachment amounts to a conflict with federal law, and such a conflict is one “that the State cannot win.” *Bennett v Arkansas*, 485 US 395, 397; 108 S Ct 1204; 99 L Ed 2d 455 (1988). [*In re Lampert*, 306 Mich App 226, 234-235; 856 NW2d 192 (2014)].

Accord: *Biondo*, 291 Mich App at 727-728.

In certain circumstances, the Social Security Act also allows for benefits to be paid to a recipient’s representative payee:

Upon a determination by the Commissioner of Social Security that the interest of such individual would be served thereby, such payments shall be made, regardless of the legal competency or incompetency of the individual or eligible spouse, to another individual, or an organization, with respect to whom the requirements of subparagraph (B) have been met (in this paragraph referred to as such individual’s “representative payee”) for the use and benefit of the individual or eligible spouse. [42 USC 1383(a)(2)(A)(ii)(I).]

The Commissioner has the authority to define the term “use and benefit,” 42 USC 1383(a)(2)(A)(iv), and to determine if a representative payee has misused benefits. 42 USC 1383(a)(1)(A)(iii). A misuse of benefits by the representative payee “occurs in any case in which the representative payee receives payment under this subchapter for the use and benefit of another person and converts such payment, or any part thereof, to a use other than for the use and benefit of such other person.” 42 USC 1383(a)(2)(A)(iv).

Importantly, the SSA also addresses how a representative payee can use the recipient’s benefits. For example, “[b]enefits of an individual may not be paid to any other person pursuant to subparagraph (A)(ii) if . . . such person’s benefits under this subchapter, subchapter II, or subchapter VIII are certified for payment to a representative payee during the period for which the individual’s benefits would be certified for payment to another person.” 42 USC 1383(a)(2)(B)(iii)(VII). Benefits may not be paid to “a creditor of such individual who provides such individual with goods or services for consideration.” 42 USC 1383(a)(2)(B)(iii)(III). However, this provision does not apply if the creditor is a relative residing in the same household as the individual, 42 USC 1383(a)(2)(B)(v)(I), or a legal guardian or legal representative of the individual, 42 USC 1383(a)(2)(B)(v)(II).

That the SSA contains great detail in both describing what a representative payee can and cannot do with the recipient’s benefits, and in the oversight placed upon representative payees, was recognized by the Supreme Court in *Washington State Dep’t of Social and Health Services v Keffeler*, 537 US 371, 376-377; 123 S Ct 1017; 154 L Ed 2d 972 (2003):

Detailed regulations govern a representative payee’s use of benefits. Generally, a payee must expend funds “only for the use and benefit of the beneficiary,” in a way the payee determines “to be in the [beneficiary’s] best interests.” 20 CFR § 404.2035(a), 416.635(a). The regulations get more specific

in providing that payments made for “current maintenance” are deemed to be “for the use and benefit of the beneficiary,” defining “current maintenance” to include “cost[s] incurred in obtaining food, shelter, clothing, medical care, and personal comfort items.” §§ 404.2040(a), 416.640(a). Although a representative payee “may not be required to use benefit payments to satisfy a debt of the beneficiary” that arose before the period the benefit payments are certified to cover, a payee may discharge such a debt “if the current and reasonably foreseeable needs of the beneficiary are met” and it is in the beneficiary’s interest to do so. §§ 404.2040(d), 416.640(d). Finally, if there are any funds left over after a representative payee has used benefits for current maintenance and other authorized purposes, the payee is required to conserve or invest the funds and to hold them in trust for the beneficiary. § 404.2045, 416.645.

The SSA also contains a thorough administrative process through which a representative payee’s appointment can be challenged. The act specifically provides that “[a]ny individual who is dissatisfied with a determination by the Commissioner of Social Security to pay such individual’s benefits to a representative payee . . . shall be entitled to a hearing by the Commissioner of Social Security, and to judicial review of the Commissioner’s final decision . . .” 42 USC 1383(a)(2)(B)(xi). The judicial review is to be filed exclusively in federal court. 42 USC 405(g).

The probate court entered its order in an attempt to equally distribute the SSI benefits between the parties, as they are both coguardians of AM and both have physical custody of her on an equal basis. Presumably, as Basakis argues, the probate court entered the order in this guardianship proceeding under MCL 700.1302. Hence, the probate court had subject matter jurisdiction to enter the order, as a guardianship proceeding comes within the probate court’s limited jurisdiction. See MCL 700.1302(c) and *Biondo*, 291 Mich App at 727. Instead, the question is whether this part of the order conflicts with the mandates of the SSA and, if so, which prevails. We hold that the order requiring that Bomba direct one-half of AM’s monthly SSI benefits to Basakis conflicts with at least 42 USC 1383(a)(2)(A)(ii)(I), and potentially 42 USC 407(a).

The probate court order conflicts with the federal requirement that the *representative payee* determines (consistent with federal guidelines) how to best allocate the SSI benefits for the “use and benefit of” AM. 42 USC 1383(a)(2)(A)(ii)(I). This statute is clear in that only the representative payee can decide what to do with the SSI benefits awarded to the recipient, and other statutes are clear in what limits there are in allocating the benefits. The probate court’s order directing how Bomba—the representative payee—is to allocate AM’s benefits conflicts with these laws and, under the Supremacy Clause, the federal law controls over a conflicting state court order.<sup>5</sup>

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<sup>5</sup> Though our conclusion that the probate court’s order violates 42 USC 1383(a)(2)(A)(ii)(I) is sufficient to resolve this portion of Bomba’s appeal, we are unconvinced that this portion of the order conflicts with 42 USC 407(a). Although, as confirmed by the *In re Lampart* Court, 306

Although Bazakis has not cited any relevant<sup>6</sup> authority in support of the probate court order, the majority of foreign state jurisdictions addressing this issue have held that a state court order requiring a representative payee to make a specific payment on behalf of the recipient conflicts with, and thus is preempted by, these same provisions of the SSA. These decisions are persuasive. *Mettler Walloon, LLC v Melrose Twp*, 281 Mich App 184, 221 n 6; 761 NW2d 293 (2008).

In holding that state courts cannot order a representative payee to direct benefits in a certain manner, our sister states have used both conflict preemption and field preemption. See, e.g., *Boulter v Boulter*, 113 Nev 74, 79; 930 P2d 112 (1997) (explaining that, pursuant to 42 USC 407(a), even if the social security benefit is deposited into the recipient's bank account, the district court "is not empowered to compel [the recipient] to pay those benefits to [another]"); *In re Guardianship of Smith*, 17 A3d 136, 140; 2011 ME 51 (2011) (holding that an order requiring the representative payee to deposit a portion of the child's social security benefit into a bank account subject to the joint control of another was preempted because it conflicted with federal statutes and regulations); *Silver v Pinskey*, 981 A2d 284, 299; 2009 PA Super 183 (2009) (concluding that the order requiring the father to split a social security derivative benefit with the mother effectively dispensed with the federal statutes as a whole); *Brevard v Brevard*, 74 NC App 484, 488; 328 SE2d 789 (1985) (explaining that 42 USC 407(a) applies to funds that have been disbursed in concluding that the court did not have the power to order a father, the representative payee, to pay the benefits he received on behalf of the children to the court or to the mother);<sup>7</sup> *In re Ryan W*, 434 Md 577, 596; 76 A3d 1049 (2013) (holding that federal law divested state courts of subject-matter jurisdiction and that a representative payee's allocations of benefits was not subject to state

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Mich App at 236, 42 USC 407(a) contains a broad mandate on the inability to obtain a recipient's benefits through writs, attachment, or other similar legal process, that provision only applies when one is seeking to "discharge or secure discharge of an allegedly existing or anticipated liability." *Keffeler*, 537 US at 385. Here, it is less than clear whether the ordered payments to Bazakis were in part for a prior debt, thus making Bazakis a creditor and making 42 USC 407(a) applicable. And, even if it was in part for an existing debt, there is an exception for payments to both a relative residing in the same household as the individual, 42 USC 1383(a)(2)(B)(v)(I), and a legal guardian of the individual, 42 USC 1383(a)(2)(B)(v)(II).

<sup>6</sup> The only decision cited on this issue is *In re Vansach Estate*, but there is nothing in that opinion even referencing representative payees. Instead, that Court addressed the transferring of assets for purposes of Medicaid eligibility. See *In re Vansach Estate*, 324 Mich App at 390. The majority of Bomba's remaining authority concerns a court's authority to appoint a representative payee, not whether a state court can order the representative payee to make certain payments.

<sup>7</sup> However, the North Carolina Court of Appeals later held that state courts are not preempted from ordering the specific use of SSI benefits by a representative payee on the ward's behalf. *In re JG*, 186 NC App 496, 504-505; 652 SE2d 266 (2007). A year later, another panel of that court held that *Brevard* was the controlling law until the North Carolina Supreme Court ruled differently. *O'Connor v Zelinske*, 193 NC App 683, 694; 668 SE2d 615 (2008).



review); and *Peace v Peace*, 234 Ariz 546, 548; 323 P3d 1197 (App, 2014) (employing field preemption and holding that an order designating where benefits were to be sent was preempted).<sup>8</sup>

As her final argument regarding the SSI benefits, Bomba argues that the probate court could not have ordered her to place AM's SSI benefits into a joint account with both coguardians on the account, along with AM.<sup>9</sup> Initially, we point out that our reading of the order is not necessarily the same as Bomba's. We read paragraph two of the order to require Bomba to set up a new account with only AM being named on the account, but both Bomba and Bazakis have passwords to access account information. In any event, even if Bomba's reading of the order is correct, there is no authority holding that an individual receiving benefits cannot hold a joint account. On the contrary, when accounting for a disabled individual's funds, the Code of Federal Regulations provides as follows for determining the resources of a person receiving SSI:

(c) Jointly-held account—

(1) Account holders include one or more SSI claimants or recipients. If there is only one SSI claimant or recipient account holder on a jointly held account, we presume that all of the funds in the account belong to that individual. If there is more than one claimant or recipient account holder, we presume that all the funds in the account belong to those individuals in equal shares. [20 CFR 416.1208.]

Because the federal regulations expressly contemplate that an account may be held jointly with an SSI recipient, or that multiple SSI recipients might share a joint account, it stands to reason that an SSI recipient can in fact hold an account jointly with a nonrecipient. The probate court did not err when it ordered that all of the accounts in AM's name would be held jointly between her coguardians.<sup>10</sup>

### C. BIRTHDAY VISITATION

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<sup>8</sup> Although the probate court could not order Bomba to split the benefits with Bazakis, nothing seems to preclude the court from considering Bomba's use of those benefits for AM while she is residing with her, for purposes of child support or other relevant matter. See, e.g., *In re Marriage of Stephenson and Papineau*, 302 Kan 851, 875-876; 358 P3d 86 (2015) and *LaMothe v LeBlanc*, 193 Vt 399, 414; 2013 VT 21; 70 A3d 977 (2013).

<sup>9</sup> Bomba has not waived this issue. A waiver is an intentional relinquishment or abandonment of a known right. *Quality Prod & Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 374; 666 NW2d 251 (2003). In the trial court, Bomba repeatedly and vociferously opposed adding Bazakis to the account that she had as AM's representative payee. Although Bomba proposed to create an account at a neutral bank so that providing Bazakis with the password would not allow Bazakis to access her other bank accounts, that offer was not an intentional relinquishment of the argument that the court could not order her to create a joint account for AM.

<sup>10</sup> Bomba is correct that the probate court did not have jurisdiction to enter an order regarding who should be AM's representative payee. However, because the order did not purport to change AM's representative payee, but simply confirmed what the SSA did, there was no remedy for this error.

Next on our plate is Bomba's argument that the probate court erred by failing to consider AM's preferences when deciding with whom she would spend her birthday and Easter. According to Bomba, AM should be able to celebrate Easter holy days with both parents on their respective holy days and spend time with each parent on her birthday.

This Court reviews for an abuse of discretion the probate court's dispositional rulings concerning guardianship. *In re Bibi Guardianship*, 315 Mich App 323, 328; 890 NW2d 387 (2016). The court abuses its discretion when its decision falls outside the range of reasonable outcomes. *Id.* at 329.

MCL 330.1628(1) provides that the court may appoint a guardian for a person with a developmental disability. Before doing so, "the court shall make a reasonable effort to question the individual concerning his or her preference regarding the person to be appointed guardian, and any preference indicated shall be given due consideration." MCL 330.1628(2). MCL 330.1637(1) provides that the individual's guardian may petition the court for "a discharge or modification order . . ." The court's order may, among other things, "[m]ake any other order that the court considers appropriate and in the interests of the individual with a developmental disability." MCL 330.1637(4)(e). The court must "set[] forth the factual basis for its findings . . ." MCL 330.1637(4).

As far as we can discern, no provision of the Mental Health Code provides that the probate court must take the developmentally disabled person's preference into account other than when deciding the person to be appointed as the disabled person's guardian. Bomba fails to provide any legal basis to extend this statute to circumstances under which the court resolves a dispute between coguardians. *Caldwell v Chapman*, 240 Mich App 124, 132-133; 610 NW2d 264 (2000).<sup>11</sup>

#### D. SANCTIONS

As her final argument, Bomba challenges the trial court's failure to decide the motion for sanctions that she filed against Bazakis. However, as Bazakis argues, Bomba waived any argument regarding sanctions.

A waiver is an intentional relinquishment or abandonment of a known right. *Quality Prod & Concepts Co*, 469 Mich at 374. An affirmative expression of assent constitutes a waiver. *Id.* at 378. In contrast, a failure to timely assert a right constitutes forfeiture. *Id.* at 379. "Generally, a party may not remain silent in the trial court, only to prevail on an issue that was not called to the trial court's attention." *Walters v Nadell*, 481 Mich 377, 388; 751 NW2d 431 (2008).

Towards the end of the relevant motion hearing, the following exchange took place following the parties' arguments regarding AM's birthday and Easter:

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<sup>11</sup> Bomba relies on *In re Neal*, 230 Mich App 723, 729 n 5; 584 NW2d 654 (1998), for the proposition that the court needs to consider the developmentally disabled person's preference. However, *Neal* only discusses the disabled person's preference for who will be appointed guardian, but that issue is not being argued by Bomba, and the order did not appoint AM's guardian.

THE COURT. Anything else?

MR. PICARD [counsel for Bazakis]. Not from us.

MR. WARNER [counsel for Bomba]. No, Your Honor.

Because during the hearing at which the parties' motions were being addressed, Bomba expressly stated that she had nothing else, even though the trial court had not addressed her motion for sanctions, Bomba has waived this argument. Bomba cannot challenge on appeal the probate court's failure to decide her motion when she failed to raise her motion for sanctions to the probate court's attention.<sup>12</sup>

In any event, there was no abuse of discretion. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). Bomba based her arguments for sanctions on the allegedly frivolous and vexations nature of Bazakis's pleadings. However, it is not likely that, had the probate court addressed Bomba's motion for sanctions, the result of the proceedings would have been different because it is not reasonably probable that the court would have sanctioned Bazakis after siding with him on each issue. And, even though some of Bomba's arguments have succeeded on appeal, nothing from the probate court record reveals that the pleadings challenged were frivolous or otherwise sanctionable.

The probate court's order is reversed to the extent it directs Bomba how to allocate AM's benefits, and in all other respects, we affirm. This matter is remanded for further proceedings. We do not retain jurisdiction. Nor do we award costs, neither party having prevailed in full. MCR 7.219(A).

/s/ Christopher M. Murray

/s/ Amy Ronayne Krause

/s/ Colleen A. O'Brien

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<sup>12</sup> Had Bomba not affirmatively advised the trial court that she had nothing else, the trial court's failure to address her motion could not be held against her. See *Peterman v Dep't of Natural Resources*, 446 Mich 177, 183; 521 NW2d 499 (1994).



# APPENDIX 2

STATE OF MICHIGAN  
IN THE COURT OF APPEALS

IN THE MATTER OF ANNA-MARIE BAZAKIS,  
AN INDIVIDUAL WITH A DEVELOPMENTAL  
DISABILITY.

Court of Appeals No. 358276

Saginaw Probate Court No. 20-140294-DD

\_\_\_\_\_ /

**BRIEF OF APPELLANT,  
MOTHER, CHRISTY BOMBA**

**ORAL ARGUMENT REQUESTED**

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## TABLE OF CONTENTS

INDEX OF AUTHORITIES.....	ii
STATEMENT OF JURISDICTION OF THE COURT OF APPEALS.....	vi
QUESTIONS PRESENTED.....	vii
INTRODUCTION .....	1
STATEMENT OF FACTS .....	2
STANDARDS OF REVIEW .....	8
ARGUMENT.....	8
I.    The probate court lacked jurisdiction to issue instructions related to the developmentally disabled person’s Supplemental Security Income account and the administration thereof by mother, in her capacity as the “representative payee” .....	8
A. The probate court lacked jurisdiction the enter an order for mother to remain as the “representative payee”, further instructing mother to pay 50% of the developmentally disabled person’s Supplemental Security Income to father’s counsel’s ILOTA or a Zelle pay, father’s counsel’s choice.....	10
B. The probate court lacked jurisdiction to require that Anna’s SSI account be changed from mother as the “representative payee” to the account to be placed into a joint account with father; nor can it be legally done.....	14
C. The probate court was without jurisdiction to enter instructions directing to mother in her capacity as the “representative payee” to perform administerial acts .....	16
II.   The probate court’s cruel instructions that Anna cannot see her mother on her actual birthday, unless it falls on mother’s two-week parenting schedule, and that Anna cannot celebrate Christian Easter with her mother every of year, even though father does not recognize Christian Easter, amounted to a clearly erroneous ruling .....	17
A. Anna’s Birthday .....	17
B. Easter.....	19

III. The probate court's decision to ignore mother's motions for monetary sanctions for having to respond to parts of father's motion and father issuing a subpoena to JPMorgan Chase Bank, N.A., was clearly erroneous, and mother requests this Court to rule upon whether sanctions should be imposed against father, and or his counsel, pursuant to MCR 7.216(A)(7) .....	21
A. Motion for Sanctions, Response to Father's Motion .....	22
B. Request for Sanctions, Motion to Quash Father's Subpoena .....	24
RELIEF SOUGHT .....	27
ADENDUM TO BRIEF PURSUANT TO MCR 2.712(C)(7), (D)(1) .....	28
CERTIFICATE OF SERVICE .....	29
APPENDIX .....	30

## INDEX OF AUTHORITIES

### *Cases*

<i>Abulkhair v. Comm'r of Soc Sec</i> , 450 FApp'x 117 (CA 3, 2011) .....	3
<i>Arizona v United States</i> , 567 US 387; 132 S Ct 2492; 183 L Ed 2d 351 (2012) .....	3
<i>Banta v Serban</i> , 370 Mich 367; 121 NW2d 854 (1963) .....	24
<i>Chambers v NASCO, Inc</i> , 501 US 32; 111 S Ct 2123; 115 L Ed 2d 27 (1991) .....	24
<i>Chen v Holder</i> , 715 F3d 207(CA 7, 2013) .....	3
<i>Davis v Henry (In re Contempt of Henry)</i> , 282 Mich App 656; 765 NW2d 44 (2009) .....	23
<i>Ford Motor Co v Dep't of Treasury</i> , 313 Mich App 572; 884 NW2d 587 (2015) .....	24
<i>Foster v Foster</i> , 505 Mich 151; 949 NW2d 102 (2020) .....	8
<i>Hall v Fortino</i> , 158 Mich App 663; 405 NW2d 106 (1986) .....	23
<i>Heckler v Ringer</i> , 466 US 602; 104 S Ct 2013; 80 L Ed 2d 622 (1984) .....	17
<i>In re Estate of Stan</i> , 301 Mich App 435; 839 NW2d 498 (2013) .....	8
<i>In re Kasuba Estate</i> , 401 Mich 560; 258 NW2d 731 (1977) .....	10
<i>In re Gerstler Guardianship</i> , 324 Mich App 494; 922 NW2d 168 (2018) .....	8

<i>In re Guardianship of Nelson</i> , 547 NW2d 105, 107 (Minn App, 1996).....	13
<i>In re Guardianship of Smith</i> , 17 A3d 136; 2011 ME 51 (2011).....	10, 11, 13
<i>In re Redd Guardianship</i> , 321 Mich App 398; 909 NW2d 289 (2017).....	8
<i>In re Ryan W.</i> , 434 Md App 577; 76 A3d 1049 (2013) .....	13, 16
<i>In re Townsend Conservatorship</i> , 293 Mich App 182; 809 NW2d 424 (2011) .....	8
<i>Laurie Q. v Callahan</i> , 973 F Supp 925 (ND Cal 1997).....	17
<i>Martinez v SSA Office of the Inspector General</i> , Civil Action No. 19-mc-00004-MSK, 2019 US Dist LEXIS 23008 (D Colo Feb. 12, 2019) .....	25, 26
<i>Mathews v Eldridge</i> , 424 US 319; 96 S Ct 893; 47 L Ed 2d 18 (1976) .....	17
<i>Mettler Walloon, LLC v Melrose Twp</i> , 281 Mich App 184; 761 NW2d 293 (2008).....	13
<i>Maldonado v Ford Motor Co</i> , 476 Mich 372; 719 NW2d 809 (2006).....	24
<i>Neal v Neal (In re Neal)</i> , 230 Mich App 723; 584 NW2d 654 (1998) .....	17, 21
<i>Peace v Peace</i> , 234 Ariz 546; 323 P3d 1197 (App, 2014) .....	13
<i>People ex rel E.Q.</i> , 472 P3d 1115; 2020 COA 118 (Colo App 2020) .....	12, 13
<i>Persichini v Beaumont Hosp</i> , 238 Mich App.626; 607 NW2d 100 (1999)).....	24
<i>Peterman v Dept of Nat Res</i> , 446 Mich 177; 521 NW2d 499 (1994).....	2, 22
<i>Philpott v Essex County Welfare Board</i> , 409 US 413; 93 S Ct 590; 34 L Ed 2d 608 (1973)..	11
<i>Prince v MacDonald</i> , 237 Mich App 186; 602 NW2d 834 (1999) .....	24
<i>State in Interest of W.B.</i> , 755 So2d 281 (La App 9/24/99) .....	12
<i>Stragapede v City of Evanston</i> , 125 F Supp 3d 818 (ND Ill 2015) .....	22
<i>Ter Beek v City of Wyoming</i> , 495 Mich 1; 846 NW2d 531 (2014).....	8
<b>Michigan Constitution</b>	
Const 1963, art 6, § 15 .....	10

***Michigan Compiled Laws***

MCL 330.1628(2) .....18, 21

***Michigan Court Rules***

MCR 1.109(E)(5)(b) .....1, 23

MCR 1.109(E)(5)(c) .....1, 23

MCR 1.109(E)(6).....23

MCR 2.302(A)(5) .....26

MCR 2.302(A)(5)(a).....26, 27

MCR 2.302(B)(1).....25

MCR 2.302(C) .....26

MCR 5.801(A)(2)(cc) ..... vi

MCR 7.216(A)(7) .....2, 22, 27

***United States Constitution***

US Const, art. VI, cl. 2.....11

***Federal Statutes***

12 USC 3405(1) .....25

42 USC 405(g).....17

42 USC 405(h).....17

42 USC 405(j).....9

42 USC 405(j)(1)(A).....9, 12

42 USC 405(j)(1)(A).....9

42 USC 405(j)(2)(A)(i) .....12

42 USC 405(j)(2)(A)(i)(ii) .....12

42 USC 407(j)(3)(A).....	10
42 USC 407(j)(7)(A).....	10
42 USC 659(a).....	9
42 USC 901(a).....	9, 11
42 USC 901(b).....	9, 11

***Code of Federal Regulations***

20 CFR 416.610 .....	9, 12
20 CFR 416.625 .....	10
20 CFR 416.635 .....	10
20 CFR 416.635(a).....	10
20 CFR 416.641(a).....	10
20 CFR 416.665 .....	10
20 CFR 404.1820(b) .....	9
20 CFR 404.2035 .....	1, 11, 28

***Other Authorities***

<a href="https://www.ssa.gov/payee/">https://www.ssa.gov/payee/</a> .....	3, 11
<a href="https://www.ssa.gov/pubs/EN-05-10076.pdf">https://www.ssa.gov/pubs/EN-05-10076.pdf</a> .....	3, 16

***Other Resources***

Franklin D. Roosevelt, Message to Congress, pp. 1-2 (June 8, 1934) available at <a href="http://www.fdrlibrary.marist.edu/daybyday/resource/june-1934/">http://www.fdrlibrary.marist.edu/daybyday/resource/june-1934/</a> .....	9
<a href="https://en.wikipedia.org/wiki/List_of_dates_for_Easter">https://en.wikipedia.org/wiki/List_of_dates_for_Easter</a> .....	20
<a href="https://www.saginawcounty.com/courts-public-safety/courts/probate-court/">https://www.saginawcounty.com/courts-public-safety/courts/probate-court/</a> .....	3

## STATEMENT OF JURISDICTION OF THE COURT OF APPEALS

This Court has jurisdiction over this appeal under MCR 5.801(A)(2)(cc) as an order granting or denying a petition for instructions is considered a final order. The probate court's final order was entered on August 4, 2021. The Claim of Appeal was timely filed with this Court on August 24, 2021.



### QUESTIONS PRESENTED

1. Whether the probate court lacked jurisdiction to issue instructions related to the developmentally disabled person's Supplemental Security Income account and the administration thereof by mother, in her capacity as the "representative payee"?

<b>Mother:</b>	<b>Yes</b>
<b>Father:</b>	<b>No</b>
<b>Probate court:</b>	<b>No</b>

2. Whether the probate court's cruel instructions that Anna cannot see her mother on her actual birthday, unless it falls on mother's two-week parenting schedule, and that Anna cannot celebrate Christian Easter with her mother every of year, even though father does not recognize Christian Easter, amounted to a clearly erroneous ruling?

<b>Mother:</b>	<b>Yes</b>
<b>Father:</b>	<b>No</b>
<b>Probate court:</b>	<b>No</b>

3. Whether the probate court's decision to ignore mother's motions for monetary sanctions for having to respond to parts of father's motion and father issuing a subpoena to JPMorgan Chase Bank, N.A., was clearly erroneous, and should this Court to rule upon whether sanctions should be imposed against father, and or his counsel, pursuant to MCR 7.216(A)(7) ?

<b>Mother:</b>	<b>Yes</b>
<b>Father:</b>	<b>No</b>
<b>Probate court:</b>	<b>Did not answer the question</b>

## INTRODUCTION

This appeal involves questions of first impression in Michigan: Whether the probate court lacked jurisdiction to enter instructions as to mother in her capacity as the “representative payee”, as that term is used in 20 CFR 404.2035, when it: (1) instructed mother to pay father’s attorney (father himself or any other person for that matter) fifty percent of the Developmentally Disabled Adult’s Supplemental Security Income (“SSI”); (2) instructed mother to take on administrative matters in her capacity as the “representative payee” in regard to the account established for the Developmentally Disabled Adult under the Social Security Act, when the Act completely occupies this field of law, including reporting requirements and enforcement actions; and (3) lacked jurisdiction to enter an instruction for mother to remain as the representative payee; an instruction that could be used by father to in the future to try to have the probate court strip mother of her being appointed as the “representative payee” by the Social Security Administration.

This appeal also involves the probate court’s cruel decision not to enter instructions in accordance with Anna’s articulated verbal preference to be with her mother, or even Anna’s best interests, instead entering instructions that rewarded father’s antagonism towards mother that deprives Anna with being with her mother on Anna’s actual birthday, due to the two-week parenting schedule and Christian Easter, every other year, whereas father does not recognize Christian Easter.

Mother also appeals the probate court’s decision to ignore her motion for sanctions for having to respond to parts of father’s motion filed in violation of MCR 1.109(E)(5)(b), (c), and the probate court’s decision to ignore her motion for sanctions for her to quash father’s subpoena to JPMorgan Chase Bank, N.A. Because the probate court ignored mother’s request to impose deterrent monetary sanctions against father and or his counsel, mother requests this Court to rule

upon the motion and request. See MCR 7.216(A)(7); see also *Peterman v Dept of Nat Res*, 446 Mich 177, 182-184; 521 NW2d 499 (1994).

The probate court was to only enter instructions on matters to which it had jurisdiction over and to call balls and strikes based on Anna's preference and in her best interest, not to reward father by adding to the ongoing conflict between mother and father that has been ongoing since divorcing when Anna was one-year old.

WHEREFORE the reasons stated herein, this Court should find the instructions probate court regarding mother in her capacity as the "representative payee" under federal law are void, entered without jurisdiction and rule upon mother's two motions for sanctions for reasonable attorney's fees and costs applying MCR 7.216(A)(7). Furthermore, this Court should reverse the probate court's instructions as to Anna's birthday, permitting each co-guardian to spend time with Anna on her actual birthday, and reverse the probate court's instructions regarding Easter, permitting Anna to be with mother on every Christian Easter and father on every Orthodox Easter, as requested by.

#### STATEMENT OF FACTS

With Anna reaching the age of majority, but due to her autism brought her within the statutory definition of an individual with a developmental disability, Anna's submitted an application to the Social Security Administration ("SSA") for Supplemental Security Income ("SSI") for Anna, and for mother to be the "representative payee". See **A 004, Tr. 8:8-15**; see **A 011 ¶¶ 6, 19**; see **A 015**; see **A 020**. The "Social Security's Representative Payment Program provides benefit payment management for our beneficiaries who are incapable of managing their Social Security or Supplemental Security Income (SSI) payments. **We appoint a suitable representative payee (payee) who manages the payments on behalf of the beneficiaries.**"

<https://www.ssa.gov/payee/> (emphasis added).<sup>1</sup> The SSA expressly prohibits the representative payee from opening a joint account for the beneficiary. A Guide for Representative Payees, p. 6 <https://www.ssa.gov/pubs/EN-05-10076.pdf> (“don’t use joint accounts”).<sup>2</sup>

Mother also petitioned the probate court to be Anna’s plenary guardian, and for father to be the standby guardian, wherein, father objected to mother’s petition and requested that he alone be Anna’s guardian and without mother as a standby guardian. **A 003, Tr. 2:6-14.**

On June 22, 2020, the probate court, who additionally is a judge of the circuit court in the county<sup>3</sup>, took testimony on the competing guardianship petitions. The expert in the field of pediatrics, who has been treating Anna since she was three years old, testified that Anna is, “quite capable of carrying on simple conversations and seems to have a grasp of some basic abstract abilities to answer questions like what, who, and where . . . . When I interviewed her yesterday, she -- she did express a preference to live with her mother preferentially when I talked with her about it” and “I do respect her autonomy and I do think she has the capacity to have opinions”. **A 005-008, Tr. 14:5-10, 24-25; Tr. 16:15-18, 19:2-6, 20:2-4, 9-10.**

The probate court did not take any testimony from Anna, instead addressing Anna once in closing stating, “[b]ye-bye Anna”. **A 009, Tr. 47:19.**

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<sup>1</sup> This Court can take judicial notice of facts contained on the official government website of the Social Security Administration. *Abulkhair v. Comm’r of Soc Sec*, 450 FApp’x 117, 119 n.3 (CA 3, 2011) (unpublished). *Abulkhair*, copy of which is attached, **A 169-170**, is on point taking judicial notice of the Social Security Administration’s website.

<sup>2</sup> This Court can take judicial notice of this fact contained in a document of the SSA. See *Qiu Yun Chen v Holder*, 715 F3d 207, 212 (CA 7, 2013) (“A document posted on a government website is presumptively authentic if government sponsorship can be verified by visiting the website itself.”)

<sup>3</sup> <https://www.saginawcounty.com/courts-public-safety/courts/probate-court/> (visited Aug. 20, 2021) (the probate judge also “handles a full 10th Judicial Circuit Court Civil Case Docket”).

On August 17, 2020, the probate court appointed mother and father as co-guardians, further entering orders regarding, medical care, parenting time and “share equally in the proceeds received from the Social Security Administration for the benefit of” Anna. **A 011-13 ¶¶ 8, 14, 19.**

On September 14, 2020 at 10:20 EDT, mother faxed the SSA office in Saginaw a copy of the probate court’s August 17, 2020 Order. **A 061-68.**

On December 14, 2020 the probate court held a hearing and on January 5, 2021, the probate court entered an additional order. See **A 014-16.**

On March 19, 2021 father sent an email to mother, in which father indicated that he had conversations with “Janis Hall, the banker at Chase”, and from those conversations father had knowledge that, “only one of us is assigned to be on the account with Anna-Mare as per the rules of setup”, and that he had knowledge that, “Anna cannot have a separate login”. **A 101.**

On April 27, 2021, father filed a motion for instructions and request for sanctions against mother, when it was known by father and his counsel that mother had terminated her counsel and therefore was *pro se*, styled as a “MOTION TO COMPEL COMPLIANCE WITH COURT ORDERS AND SET UP FORMS OF COMMUNICATION AND ORDERLY TREATMENT FOR THE PROTECTED PERSON”, in which father alleged in part:

2. This Court entered an Order dated January 5, 2021 which, inter alia, directed Co Guardian, Christy Bomba, to inform the Office of Social Security to be informed of the two guardians and to split all monies equally between the guardians. [**A 103 ¶ 2**].

Even though the January 5, 2021 Order actually did not direct mother, and father could of submitted the same to the Social Security Administration as follows:

IT IS FURTHER ORDERED the Office of Social Security shall be informed of the co-guardianship arrangement for Anna and payments, when received, shall be split equally between the guardians. [**A 015**].

Father's motion did not request that father be made a joint account holder of the "representative payee" account for Anna, but sought to compel mother, "to provide all information, passwords, and access codes to Father for all Social Security information, including bank account information". **A 105.**

On May 14, 2021, Father issued a subpoena to JPMorgan Bank, N.A., with a return date of June 4, 2021, which was four-days prior to the hearing on father's June 8, 2021 motion, seeking:

[c]opies of monthly banking statements provided or available to customer for any and all accounts including checking, savings, loan balances, certificates of deposit as of the opening of the account and each month thereafter through the date of answering this Subpoena in the name of Anna-Marie Bazakis d/o/b [REDACTED], SS# [REDACTED], individually, jointly or with any third party. **[A 124-127].**

On June 1, 2021 mother, through newly retained counsel, filed a response in opposition to father's motion and request for sanctions, which included within the opposition a motion for monetary sanctions, **A 022-102**, filed a motion to amend the January 5, 2021 order, **A 108-114**, and filed a motion to quash the subpoena to JPMorgan Bank, N.A., which included a request for monetary sanctions. **A 115-127.**

On June 3, 2021, Father filed his "Answer to Motion to Quash Subpeona (sic) to Chase Bank", **A 128-130**, which in part requested the probate court to, "order the immediate transfer from the petitioner [mother] to respondent [father] as the 'representative payee' of the protected person." **A 129.** Father also filed an Answer to the Motion to Amend the January 5, 2021 Order, **A 131-133**, and an Answer to Counter Statement of Facts by Respondent. **A 134-136.**

On June 8, 2020 the probate court heard oral arguments. **A 137-168.** At oral arguments, mother's counsel stated to the probate court, in part, as follows:

[t]he Social Security Administration is established by federal law, it has federal regulations. The probate court is a court of specific jurisdiction, not of general jurisdiction. It would violate the supremacy clause of the United States of America in which a probate court would be able to order a person to be the representative payee when there's specific federal

law and guidelines and administrative procedures that need to be followed and there are reasons for this, [A 142, Tr. 6:8-17],

the probate court in response stated, “I don’t – I don’t want to get into all of that - - ... that doesn’t bother me.” A 142, Tr. 6:18-21.

Mother’s counsel also stated in part, “the other part of the order [requested by father] says all bank accounts are to be joint with all co-guardians. [] I had contacted [] Chase Private Client services, and in fact they will not do that. There [] only can be one representative payee. They will not add another person to it[.]” A 155-156, Tr. 19:22 – 20:2.

Subsequently the following exchange occurred:

MR. PICARD: Your Honor, she can give him access to the sign-in so that he can monitor that account without being as the named [] on the account itself.

THE COURT: Can she do that, Mr. Warner?

MR. WARNER: It’s kind of circumventing what Chase tells you []shouldn’t be doing. . . .

A 157, Tr. 21:1-7.

The exchanged with the probate court continued:

THE COURT: The representative payee can only go to one bank?

MR. WARNER: No, Your Honor. What I’m saying is we would be going to multiple banks asking each bank to not comply with the federal law until we found one that did. . . .

A 158, Tr. 22:9 – 14.

Later, the probate court stated, “I’ll check on my own because I have to do the same thing”, but nevertheless indicated that if mother’s counsel was “wrong , then I’m going to award sanctions because I shouldn’t have to be doing this on my own.” A 158, Tr. 22:22 – 23:2.

The probate court also had the following exchange with father’s counsel:

THE COURT: Just a second. All right. So back on December 14, 2020 I believe it was, at least that’s the day of the transcript, or not, I indicated that quote, ‘on Easter mom will have

on even years and dad will have on odd years unless they can agree on Catholic and Greek schedule.' I take it they can't agree on it.

MR. PICARD: Correct.

THE COURT: The order will stay as it is.

**A 163, Tr. 27:18 – 28:1.**

The probate court without citing any evidence stated that:

THE COURT: The birthday I already ruled will not be a holiday. Anna doesn't recognize birthdays so you can celebrate that whenever you want, when it's the two-week schedule.

**A 164, Tr. 28:4-7.**

On June 22, 2021, Father's submitted an "ORDER FOLLOWING HEARING REGARDING MOTION TO COMPEL COMPLIANCE, ET AL (sic), MOTION TO QUASH SUBPOENA, AND MOTOIN TO MODIFY PARENTING TIME", **A 166-168**, which proposed, in part, that the probate court entering an order that, "... co-guardian, ANDREW BAZAKIS, shall be added to a new bank account to be set up for the protected person's benefit by co-guardian, CHRISTY BOMBA. . . ." **A 167.**

On August 4, 2021, to resolve mother's and father's proposed orders based on the oral arguments, the probate court settled the order and entered instructions that included in part:

1. Mother Christy Bomba remain as payee.
2. If there is portal access, Christy Bomba is to provide any time of access she is given to father Andrew Bazakis. *{In the meantime Mother, Christy Bomba, is to set up a new account at a new bank so that a new password to that new account can be made and given to Father Andrew Bazakis so that both parties have access to a new account with a new password that only reflects the account of Anna Marie Bazakis}{.}*
3. If she only receives a check every month from Social Security, then she is to make a photocopy of the check and then provide that photocopy to Mr. Picard and father Andrew Bazakis. Fifty percent of that Social Security check should go to Mr. Picard's ILOTA account or a Zelle which ever Mr. Picard chooses. *{Mother shall make a copy of the means of deposit and provide that to [father], in the event direct deposits are made}*



\* \* \*

5. All of Anna Bazakis' bank accounts are to be joint with the Co-Guardians.

\* \* \*

11. The Motion to Quash is GRANTED.

A 020 ¶¶ 1, 2, 3, 5 and 11(emphasis by the probate court).

### STANDARDS OF REVIEW

“Whether federal law preempts state action is a question of law that this Court reviews *de novo*.” *Foster v Foster*, 505 Mich 151, 165; 949 NW2d 102 (2020) (citing *Ter Beek v City of Wyoming*, 495 Mich 1, 8; 846 NW2d 531 (2014)). This Court reviews *de novo* whether the probate court properly applied the law to the facts. *In re Gerstler Guardianship*, 324 Mich App 494, 507; 922 NW2d 168 (2018). Likewise, issues of statutory interpretation are reviewed *de novo*. *In re Estate of Stan*, 301 Mich App 435, 442; 839 NW2d 498 (2013).

This Court reviews a probate court's findings for clear error. *In re Townsend Conservatorship*, 293 Mich App 182, 186; 809 NW2d 424 (2011). “A finding is clearly erroneous when a reviewing court is left with a definite and firm conviction that a mistake has been made, even if there is evidence to support the finding.” *Id.* A probate court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes. *In re Redd Guardianship*, 321 Mich App 398, 403; 909 NW2d 289 (2017).

### ARGUMENT

**I. The probate court lacked jurisdiction to issue instructions related to the developmentally disabled person's Supplemental Security Income account and the administration thereof by mother, in her capacity as the “representative payee”**

With America in the deep throes of the Depression, and the traditional social safety net of work, savings, family and charity in tatters, Congress acted upon President Franklin D. Roosevelt's

June 8, 1934, message for it to, “place the security of the men, women and children of the Nation First” to “undertake the great task of furthering the security of the citizen and his family through social insurance”<sup>4</sup>, and exercised its power under Article I, Section 1 of the United States Constitution, to create the Social Security Act of 1935, currently codified at 42 USC 301 – 1397mm.

42 US 901 of the Act provides that:

(a) There is hereby established, as an independent agency in the executive branch of the Government, a Social Security Administration (in this subchapter referred to as the ‘Administration’).

(b) It shall be the duty of the Administration to administer the old-age, survivors, and disability insurance program under subchapter II and the supplemental security income program under subchapter XVI.

42 US 901(a)-(b).

The Social Security Act itself provides that Social Security benefits are neither assignable nor subject to legal process, 42 USC 407(a), with only one expressed exception, not relevant to the appeal here, where in the Social Security benefits paid are to persons whom are obligated to provide alimony or child support payments. See 42 USC 659(a); 20 CFR 404.1820(b).

The court in *In re Guardianship of Smith* set forth details of the Act and the SSA’s regulations over the representative payee as follows:

The SSI program, which is administered by the Social Security Administration (SSA), provides federal assistance to low-income individuals who are elderly, blind, or disabled. See 42 USC 1381-1385 (LexisNexis 2010). Although SSI benefits are, in some cases, paid directly to the beneficiary, payments can be made to a duly certified fiduciary—called a ‘representative payee’—for the beneficiary’s ‘use and benefit’ if the Commissioner of the SSA ‘determines that the interest of [the beneficiary] . . . would be served thereby.’ 42 USC 405(j), (j)(1)(A); see also 20 CFR 416.610 (‘When payment will be made to a representative payee.’)....

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<sup>4</sup> See Franklin D. Roosevelt, Message to Congress, pp. 1-2 (June 8, 1934) available at <http://www.fdrlibrary.marist.edu/daybyday/resource/june-1934/> (visited Aug. 20, 2021).

Representative payees are subject to detailed regulations governing the use of SSI benefits. See, e.g., 20 CFR 416.635 ('What are the responsibilities of your representative payee?'), 416.640 ('Use of benefit payments.'), 416.645 ('Conservation and investment of benefit payments.'). Payees must abide by 'a system of accountability monitoring' under which they are forbidden from 'misus[ing]' an individual's benefit payments in any way. 5Link to the text of the note 42 USC 405(j)(3)(A), (j)(7)(A). Payees are also required to report to the SSA at least once per year 'with respect to the use of such payments.' 42 USC 405(j)(3)(A); see also 20 CFR 416.625 ('What information must a representative payee report to us?'); 416.665 ('How does your representative payee account for the use of benefits?')....

Federal law specifically requires the representative payee to use the benefits of the beneficiary 'in a manner and for the purposes *he or she determines* . . . to be in [the beneficiary's] best interests.' 20 CFR 416.635(a). . . . Moreover, while representative payees are subject to multiple regulations created to prevent misuse or abuse of funds, and are 'responsible for paying back misused benefits,' 20 CFR 416.641(a)[.]

*In re Guardianship of Smith*, 17 A3d 136, 140; 2011 ME 51 ¶¶ 11-13 (2011) (emphasis by the court) (citations formatted).

The probate court is a court of limited jurisdiction, Const 1963, art 6, § 15, defined entirely by statute. *In re Kasuba Estate*, 401 Mich 560, 565-66; 258 NW2d 731 (1977).

**A. The probate court lacked jurisdiction the enter an order for mother to remain as the “representative payee”, further instructing mother to pay 50% of the developmentally disabled person’s Supplemental Security Income to father’s counsel’s ILOTA or a Zelle pay, father’s counsel’s choice**

The probate court, at oral arguments, was informed that the principle of federalism encompassed father’s motion for instructions as to mother in her capacity as the “representative payee” as follows:

[t]he Social Security Administration is established by federal law, it has federal regulations. The probate court is a court of specific jurisdiction, not of general jurisdiction. It would violate the supremacy clause of the United States of America in which a probate court would be able to order a person to be the representative payee when there’s specific federal law and guidelines and administrative procedures that need to be followed and there are reasons for this, [A 142, Tr. 6:8-17],

The probate court in response however stated, “I don’t – I don’t want to get into all of that - - ... that doesn’t bother me.” A 142, Tr.6:18-21.

The preemption doctrine is premised upon the Supremacy Clause of the United States Constitution. See *Arizona v United States*, 567 US 387; 132 S Ct 2492, 2500; 183 L Ed 2d 351 (2012). The Supremacy Clause provides that federal law “shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” US Const, art. VI, cl. 2.

The Supreme Court in *Philpott v Essex County Welfare Board*, 409 US 413; 93 S Ct 590; 34 L Ed 2d 608 (1973), made it clear that under the Supremacy Clause, the Social Security Act, preempts state law. *Id.* at 415, 417. “Although ‘[t]he exercise of federal supremacy should not be presumed lightly,’ when ‘no other conclusion is possible given the nature of the regulated subject matter, or Congress has clearly ordained this result, federal law must preempt conflicting state law[.]’ Such is the case here” in regard to the representative payee being ordered to pay others money from the ward’s SSI. *In re Guardianship of Smith*, 2011 ME 51 ¶ 15 (internal citations omitted).

The probate court erroneously believed that the probate court had jurisdiction to enter instructions regarding whom shall be the “representative payee”, as that term is used in 20 CFR 404.2035, despite Congress’ creation of the SSA, “as an independent agency in the executive branch of the Government” with the “duty to administer”, 42 USC 901(a), (b). **A 020** ¶ 1 (“Mother Christy Bomba remain as payee.”) The Social Security Administration is however the sole entity with the power to “appoint a suitable representative payee (payee) who manages the payments on behalf of the beneficiaries.” <https://www.ssa.gov/payee/>.

The ruling of the probate court was not in father’s opening motion, but prompted by father’s request in his answer to mother’s motion to quash the subpoena to JPMorgan Chase Bank, N.A. in which father requested the probate court to enter an instruction for, “the immediate transfer from

the petitioner [mother] to respondent [father] as the ‘representative payee’ of the protected person.”

**A 129.** Notably, father’s entire Answer in opposition to the motion to quash was not supported by a single citation of law. *Id.* Nor did the probate court indicate how as a matter of law the probate court had jurisdiction to enter such an instruction.

The law whether a state court judge lacks jurisdiction to enter such an order regarding whom should be the representative payee should be well settled as:

. . . no provision of the SSA permits a state court to determine who should serve as the representative payee. Rather, the SSA tasks the Commissioner of Social Security with investigating and determining whether an individual receiving SSDI benefits should have a representative payee and, if so, who should serve as the payee. *State in Interest of W.B.*, 755 So2d 281, 282 (La App 9/24/99); see also 42 USC 405(j)(1)(A), (2)(A)(i)-(ii) (2018); 20 CFR 416.610 (2019) (reciting the principles and procedures that the administration follows in determining whether to make representative payment and in selecting a representative payee).

*People ex rel E.Q.*, 472 P3d 1115, 1121; 2020 COA 118 ¶ 31(Colo App 2020) (citations formatted).

The probate court further entered an order instructing mother, in her capacity as the “representative payee”, to pay monies to directly from the developmentally disabled person’s Supplemental Security Income (“SSI”) account, “[f]ifty percent of that Social Security Check should go to Mr. Picard’s ILOTA account or a Zelle whichever Mr. Picard [father’s attorney] chooses.” **A 020 ¶ 3.** Notably, the probate court’s instructions do not direct father on what he must spend the money on, yet mother as the “representative payee” is the sole person who must account that the monies are spent in the manner required under the Act.

While the question whether a probate judge has jurisdiction to instruct a person in their capacity as the “representative payee”, to act or to refrain from an act, is a question of first

impression in Michigan, the Supreme Judicial Court of Maine in *In re Guardianship of Smith*,<sup>5</sup>, held that a probate court may not tread on the SSA's delegation of rights and responsibilities to the "representative payee" under the Act. *See id.* 2011 ME 51 ¶¶ 12-15 ("The [York County Probate] court's order here—requiring Robert [the "representative payee"] to deposit a portion of Justan's [the ward's] monthly SSI benefits into a bank account subject to the joint control of Candy, Christine [the "co-guardians"], and Justan—conflicts with these federal statutes and regulations.")

Courts have clear that state court judges are without jurisdiction to enter orders as to a "representative payee". E.g. *People ex rel E.Q.*, 472 P3d at 1121 ("a juvenile court lacks the authority to determine who a parent must designate as the representative payee for his or her SSDI benefits"); E.g. *Peace v Peace*, 234 Ariz 546, 548, ¶ 9; 323 P3d 1197 (App, 2014) (holding, inter alia, "[b]ecause federal law occupies the field, a family court is preempted from reviewing the [management of derivative Social Security benefits] of a representative payee"); E.g. *In re Ryan W.*, 434 Md App 577, 601; 76 A3d 1049, 1063 (2013) (corrected Nov. 12, 2013) ("we conclude that Maryland state courts lack jurisdiction over disputes regarding a representative payee's allocation of OASDI [Old Age and Survivor's Disability Insurance] benefits"); *In re Guardianship of Nelson*, 547 NW2d 105, 107, 109 (Minn App, 1996) ("ISSUE[:] Do federal social security regulations preempt state law that requires a representative payee parent to provide personally for the support, maintenance, and education of his or her child?" \* \* \* Answer, "the district court erred by prohibiting Nelson from using Blake's social security survivor benefits for Blake's food, shelter, and clothing.")

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<sup>5</sup> Caselaw from sister states are persuasive, not binding authority. *Mettler Walloon, LLC v Melrose Twp*, 281 Mich App 184, 221 n. 6; 761 NW2d 293 (2008).

This Court should likewise find that the probate court was without jurisdiction to enter instructions regarding whom should remain the “representative payee” and that the mother as “representative payee” is required to pay a father’s counsel directly to his ILOTA or send a Zelle payment at his direction, and hold those instructions by the probate court to be void.

**B. The probate court lacked jurisdiction to require that Anna’s SSI account be changed from mother as the “representative payee” to the account to be placed into a joint account with father; nor can it be legally done**

Mother likewise asserts that the probate court was without jurisdiction to enter the instruction in paragraph 5 to have Anna’s SSI account to made “joint with the Co-Guardians”. For the same reasons in section A, *supra*, the probate court lacked jurisdiction to enter such an instruction.

Neither father’s motion nor father’s answer in reply, cited case law or statutory law that it is permissible for a “representative payee” account to be joint, even as to co-guardians. **A 134-136.**

Father admittedly knows he cannot be added to the “representative payee” account, which was pointed out to the probate court in mother’s response, quoting father’s own March 19, 2021 email to mother, in which father indicated that from his conversations with “Janis Hall, the banker at Chase”, that he knows that “only one of us is assigned to be on the account with Anna-Mare as per the rules of setup”, and knows that, “Anna cannot have a separate login”. **A 101.**

Likewise, the probate court was informed by mother’s counsel at the June 8, 2021 oral arguments that, “the other part of the order [requested by father] says all bank accounts are to be joint with all co-guardians. [ ] I had contacted [ ] Chase Private Client services, and in fact they will not do that. There [ ] only can be one representative payee. They will not add another person to it[.]” **A 155-156, Tr. 19:22 – 20:2.**

Subsequently the following exchange occurred:

MR. PICARD: Your Honor, she can give him access to the sign-in so that he can monitor that account without being as the named [] on the account itself.

THE COURT: Can she do that, Mr. Warner?

MR. WARNER: It's kind of circumventing what Chase tells you [] shouldn't be doing. . . .

**A 157, Tr. 21:1-7.**

The exchanged with the probate court continued:

THE COURT: The representative payee can only go to one bank?

MR. WARNER: No, Your Honor. What I'm saying is we would be going to multiple banks asking each bank to not comply with the federal law until we found one that did. . . .

**A 158, Tr. 22:9 – 14.**

Whereupon the probate court seemingly admitted a lack of knowledge on the subject stating, "I'll check on my own because I have to do the same thing", but nevertheless indicated that if mother's counsel was "wrong , then I'm going to award sanctions because I shouldn't have to be doing this on my own." **A 158, Tr. 22:22 – 23:2.**

Father's motion did not make a request for an instruction for him to be added as a joint account holder, he only wanted the passwords and access codes. **A 105 ¶ A.** Father's submitted ORDER FOLLOWING HEARING REGARDING MOTION TO COMPEL COMPLIANCE, ET AL (sic), MOTION TO QUASH SUBPOENA, AND MOTOIN TO MODIFY PARENTING TIME" proposed, in part, the probate court entering an order that, "IT IS FURTHER ORDERED co-guardian, ANDREW BAZAKIS, shall be added to a new bank account to be set up for the protected person's benefit by co-guardian, CHRISTY BOMBA. . . ." **A 167.** The probate court then entered the order that, "[a]ll of Anna Bazakis' bank accounts are to be joint with the Co-Guardians." **A 20 ¶ 5.**



Publicly available information from the SSA's website, that the SSA expressly prohibits the representative payee from being in a joint account. A Guide for Representative Payees, p. 6 <https://www.ssa.gov/pubs/EN-05-10076.pdf> ("don't use joint accounts"). Thus, not only did the probate court lack jurisdiction to enter the order, the instruction by the probate court in paragraph 5 cannot be complied with as a matter of law as to SSI monies being deposited into a "representative payee" account.

**C. The probate court was without jurisdiction to enter instructions directing to mother in her capacity as the "representative payee" to perform ministerial acts**

Additionally, the probate court was without jurisdiction to instruct mother, as the "representative payee", to, "*set up a new account at a new bank so that a new password to that new account can be made and given to Father . . . so [to] have access*", A 020 ¶ 2 (emphasis by probate court), and "*shall make a copy of the means of deposit and provide that to [father], in the event direct deposits are made.*" A 020 ¶ 3 (emphasis by the probate court).

The SSA has the sole duty to monitor and take enforcement action as to the "representative payee" and the duty to investigate the "representative payee" is solely that of the Office of the Inspector General – Social Security Administration:

**the 2004 amendments to the Social Security Act enhanced the monitoring of institutional representative payees and made available federal remedies for misuse of benefits**, the rationale underlying the result in *Ecolono* and cases from other jurisdictions which held that state courts possessed subject matter jurisdiction over disputes regarding the allocation of benefits by representative payees no longer exists. **The appropriate forum for seeking review of disputes regarding SSA matters lies within the federal administrative and court systems.**

*In re Ryan W.*, 434 Md App at 600 (emphasis added).

Mother's response in opposition to father's motion likewise pointed out to the probate court that:

BAZAKIS's remedy is not to drag BOMBA before this Court on a meritless and vexatious motion to compel documents and electronically stored information regarding the "representative payee" account, BAZAKIS's sole remedy is under federal law is to first exhaust all administrative remedies before the Social Security Administration, and then if BAZAKIS is unsatisfied with the outcome, and the outcome is judicially reviewable, to take the grievance before the United States District Court for the Eastern District of Michigan, Northern Division. See e.g. *Laurie Q. v Callahan*, 973 F Supp 925, 931 (ND Cal 1997) (noting that, '[p]ermitting plaintiffs to proceed in court without first requiring them to present this specific claim would allow future claimants challenging the designation of a representative payee to circumvent the administrative process and present their claims in federal court without first giving the Commissioner notice and an opportunity to correct the alleged problem.')

Indeed, federal law is clear that any quibbles regarding the 'representative payee' must first be brought to the Social Security Administration, and only the Social Security Administration, and all administrative remedies must be exhausted before the Social Security Administration can an allegedly aggrieved person have their day in court if the SSA's decision is judicially reviewable. See 42 USC 405(g), 405(h) ; see *Heckler v Ringer*, 466 US 602, 627; 104 S Ct 2013; 80 L Ed 2d 622 (1984); see *Mathews v Eldridge*, 424 US 319, 327-28; 96 S Ct 893; 47 L Ed 2d 18 (1976).

**A 034** (citations formatted herein).

Father in reply only filed a "Answer to Counter Statement of Facts", which did not make any arguments in law to the contrary or otherwise. **A 134-136.**

The probate court's instructions improperly placed father in the SSA's and Office of the Inspector General – Social Security Administration' place and stead without the jurisdiction to do so. Likewise, there is no benefit the Anna for her mother to have to do such administrative tasks based on father's baseless request of the probate court to instruct her to do so. Therefore, the probate court's instructions in 1, 2, 3 and 5, **A 020 ¶¶ 1, 2, 3 and 5**, must be held as being void as the probate court was without jurisdiction to enter them.

**II. The probate court's cruel instructions that Anna cannot see her mother on her actual birthday, unless it falls on mother's two-week parenting schedule, and that Anna cannot celebrate Christian Easter with her mother every of year, even though father does not recognize Christian Easter, amounted to a clearly erroneous ruling**

**A. Anna's Birthday**

Since father filed a motion to bring mother before the probate court, mother sought to in accordance with Anna's preference and bests interest to restore the agreement between the parties while in family court that Anna should spend some time with each parent on her actual birthday.

The expert in the field of pediatrics, who has been treating Anna since she was three years old, testified that Anna is, "quite capable of carrying on simple conversations and seems to have a grasp of some basic abstract abilities to answer questions like what, who, and where . . . . When I interviewed her yesterday, she -- she did express a preference to live with her mother preferentially when I talked with her about it" and "I do respect her autonomy and I do think she has the capacity to have opinions". **A 005-008, Tr. 14:5-10, 24-25; Tr. 16:15-18, 19:2-6, 20:, 2-4, 9-10.**

The probate court did not take any testimony from Anna, instead addressing Anna once in closing stating, "[b]ye-bye Anna". **A 009, Tr. 47:19.** In matters "under chapter 6 of the Mental Health Code, the probate court need only give 'due consideration' to the developmentally disabled person's preference." See e.g. *Neal v Neal (In re Neal)*, 230 Mich App 723, 729 n 5; 584 NW2d 654 (1998) (citing MCL 330.1628(2)). No due consideration was performed by the probate court here.

Mother proposed that each co-guardian should be able to have Anna on her birthday for some time, with the majority of the time to be rotated on a yearly basis and requested the probate court to amend the January 5, 2021 Order to be amended by adding:

IT IS FURTHER ORDERED Mother shall have Anna on Anna's birthday from 9:00 a.m. until 7:30 p.m. in Even years and Father will have a like period of time in Odd years if the day falls on the weekend. If the day falls on a school day, the respective parent may pick up Anna after school to celebrate her birthday until 7:30 p.m. This provision for Anna's birthday overrides the January 5, 2020, Order that parenting time shall continue in alternating two week blocks of time as previously ordered. [**A 110 ¶ 12**].

Father's opposition to the mother's motion did not cite anything in the record, and notably no testimony of Anna or the expert in the field of pediatrics was mentioned. **A 131-133.**

The probate court in ruling, likewise without citing to any testimony taken by the probate court stated that:

THE COURT: The birthday I already ruled will not be a holiday. Anna doesn't recognize birthdays so you can celebrate that whenever you want, when it's the two-week schedule.

**A 164, Tr. 28:4-7.**

Common logic should likewise prevail that as soon as one parent wishes Anna happy birthday, Anna will know it is her birthday and know that she is not spending part of that day with both of her parents as she used to when the family court had jurisdiction. That is cruel to Anna.

Furthermore, father seems to forget that Anna is an adult now, not a child. See **A 132 ¶ 9** ("all children enjoy celebrating their birthday two or more times a year"). When kids become adults the days of clowns, bouncy houses, and school age friends joining in the birthday celebration for cake and ice cream fade quickly. Father's opposition does not even mention the type of birthday celebrations Anna has, nor did the probate court bother to inquire with Anna on how celebrates her birthday. Nor did the probate court bother to ask Ana what her preference is in regard to whom she would like to be with on her birthday. The only testimony before the Court regarding Anna's preference, is that she has stated that she prefers to be with her mother. **A 007-008, Tr. 19:2-6, 20:2-4**

#### **B. Easter**

The January 5, 2021 Order stated, "IT IS FURTHER ORDERED Mother shall have Anna for Easter day from 9:00 a.m. until 6:00 p.m. in Even years and Father shall have Anna in Odd years for a like period of time". **A 015**. Mother observes Christian Easter whereas father does not recognize Christian Easter, father recognizes Orthodox Easter. See **A 163, Tr. 27:21-23**.

Historically when the family court had jurisdiction over Anna, mother and father, mother would be with Anna on Christian Easter and Father on Orthodox Easter. As mother informed the

probate court, in future years the schedule will not line up in such a manner whereas Christian Easter and Orthodox Easter overlap seven times in the next 20 years as follows:

- a. April 20, 2025;
- b. April 16, 2028;
- c. April 13, 2031;
- d. April 9, 2034;
- e. April 5, 2037;
- f. April 25, 2038; and
- g. April 21, 2041.

**A 109** (citing [https://en.wikipedia.org/wiki/List\\_of\\_dates\\_for\\_Easter](https://en.wikipedia.org/wiki/List_of_dates_for_Easter)).

Since father filed a motion to bring mother before the probate court, mother sought in accordance with Anna's preference and her bests interest to restore the agreement between the parties while in family court that Anna would celebrate Christian Easter with her mother and Orthodox Easter with her father, and taking into consideration the next 20 years requested the probate court to amend the order to:

Mother shall have Anna for Easter day from 9:00 a.m. until 6:00 p.m. and Father shall have Anna for Orthodox Easter for a like period of time and when Easter and Orthodox Easter are observed on the same Sunday, Father shall first have Anna beginning on April 20, 2025, from 9:00 a.m. until 6:00 p.m. and Mother shall next have Anna beginning on April 16, 2028 from 9:00 a.m. until 6:00 p.m. and shall continue to alternate for the same time, Father April 13, 2031, Mother April 9, 2034, Father April 5, 2037, Mother April 25, 2038, Father April 21, 2041, and shall continue Mother next then Father for years after 2041 when Easter and Orthodox Easter fall on the same Sunday. **A 110 ¶ 8.**

Father opposed the motion for instructions regarding Easter, arguing in part that father, "has not taken the time to map out the next twenty years of his life". **A 132 ¶¶ 6, 7.**

The probate court had the following exchange with father's counsel:

THE COURT: Just a second. All right. So back on December 14, 2020 I believe it was, at least that's the day of the transcript, or not, I indicated that quote, 'on Easter mom will have on even years and dad will have on odd years unless they can agree on Catholic and Greek schedule.' I take it they can't agree on it.

MR. PICARD: Correct.

THE COURT: The order will stay as it is.

**A 163, Tr. 27:18 – 28:1.**

In matters “under chapter 6 of the Mental Health Code, the probate court need only give ‘due consideration’ to the developmentally disabled person's preference. See e.g. *Neal*, 230 Mich App at 729 n 5 (citing MCL 330.1628(2)). No due consideration was performed by the probate court.

The probate court’s instruction deprives Anna from celebrating Christian Easter with mother every year, when father does not recognize that Holy day. The probate court’s ruling was clearly erroneous especially in light that mother was advocating for Anna to at least be with father on every Orthodox Easter, on the chance father decided to observe it, and provided a 20-year alternating schedule when both Christian Easter and Orthodox Easter fell on the same day. And the ruling was not based on Anna, the ruling rewarded father’s objection to a Holy day he does not recognize.

**III. The probate court’s decision to ignore mother’s motions for monetary sanctions for having to respond to parts of father’s motion and father issuing a subpoena to JPMorgan Chase Bank, N.A., was clearly erroneous, and mother requests this Court to rule upon whether sanctions should be imposed against father, and or his counsel, pursuant to MCR 7.216(A)(7)**

The probate court ignored mother’s motion for sanctions for having to respond to parts of father’s motion that were based on misrepresenting the probate court’s order as to mother, and falsely claiming that mother failed to provide the SSA a copy of the co-guardianship order, noted *supra*. Likewise, the probate court ignored mother’s request for sanctions for moving and ultimately prevailing on her motion to quash father’s subpoena to JPMorgan Chase Bank, N.A., **A 20 ¶ 11**, seeking all documents regarding the “representative payee” account established for the benefit of Anna. Given that the probate court did not want to even address the sanction requests,

mother this Court to rule upon whether sanctions should be imposed against father pursuant to MCR 7.216(A)(7). See MCR 7.216(A)(7) (“enter any judgment or order or grant further or different relief as the case may require”); see also *Peterman*, 446 Mich at 182-184 (“assuming, arguendo, that the trial court failed to rule on the issue, plaintiffs should not be punished for the omission of the trial court. \* \* \* When the “plaintiffs raised the issue below and pursued it on appeal . . . [i]n the interest of judicial economy, [the Court can] address the major issues presented.”

#### **A. Motion for Sanctions, Response to Father’s Motion**

On September 14, 2020, mother faxed a copy of the co-guardianship order to the Office of Social Security in Saginaw. **A 061-68.**

Father’s motion stated that, “[t]his Court entered an Order dated January 5, 2021 which, inter alia, **directed Co Guardian, Christy Bomba, to inform** the Office of Social Security to be informed of the two guardians and to split all monies equally between the guardians”. **A 103 ¶ 2** (emphasis added).

The Court’s actual January 5, 2021 order provided:

IT IS FURTHER ORDERED the Office of Social Security shall be informed of the co-guardianship arrangement for Anna and payments, when received, shall be split equally between the guardians. [**A 015**].

First, as mother argued to the probate court, father could have remedied any self-perceived deficiency by sending the August 17, 2020 co-guardianship Order to the Office of Social Security himself. **A 029.** Notably the January 5, 2021 order did not prohibit father from sending the order. Second, mother pointed out to the probate court that father prior to filing the motion, father could of sent a subpoena to the Office of Social Security to determine whether mother submitted the co-guardianship order. **A 030** (citing *Stragapede v City of Evanston*, 125 F Supp 3d 818, 827 (ND Ill 2015)).

Also mother pointed out to the probate court that, that after father filed his motion, mother sent father's counsel an email informing father's counsel that mother was sure she sent the co-guardian order to the SSA office, **A 029-30; A 096**. Nevertheless father would not withdraw this part of his motion. No due diligence on the part of father, or his counsel, was done.

The motion to compel was further without merit as nothing in the January 5, 2021 Order, or even the August 17, 2020 Order, required mother to provide to father with, "all information, passwords and access codes to Father for all Social Security information, including bank account information", **A 105**, as father demanded the probate court to enter such instructions. "[A] court speaks through its written orders and judgments, not through its oral pronouncements." *Davis v Henry (In re Contempt of Henry)*, 282 Mich App 656, 678; 765 NW2d 44, 59 (2009) (citing *Hall v Fortino*, 158 Mich App 663, 667; 405 NW2d 106 (1986)).

Father had knowledge he could not obtain the banking information as evidenced in his March 19, 2021 father sent an email to mother, in which father indicated that he had conversations with "Janis Hall, the banker at Chase", and from those conversations father had knowledge that, "only one of us is assigned to be on the account with Anna-Mare as per the rules of setup", and that he had knowledge that, "Anna cannot have a separate login". **A 101**.

Mother argued that these parts of father's motion requesting instructions violated MCR 1.109(E)(5)(b), (c), and therefore, father and/or his counsel should not have to pay reasonable expenses including reasonable attorney's fees as provided for under MCR 1.109(E)(6).

Sanctions are appropriate whereas here father and his counsel had no reasonable basis to believe that the facts asserted regarding the Court's August 17, 2020 Order in the motion were true, that father could of sent the same co-guardianship order he wrongly claims that mother was exclusively ordered to do, and did no due diligence to determine whether mother indeed did send



the SSA a copy of the co-guardianship order, and did not withdraw the motion after mother's email to father's counsel, sanctions based on these parts of father's motion that were devoid of arguable legal merit were warranted. See *Ford Motor Co v Dep't of Treasury*, 313 Mich App 572, 589; 884 NW2d 587 (2015). Without any monetary deterrent father, and his counsel on his behalf, will more than likely continue in meritless court proceedings against mother; especially knowing that the probate court will look the other way.

Additionally, the trial courts have the inherent authority to sanction litigants and their counsel. *Maldonado v Ford Motor Co*, 476 Mich 372, 376; 719 NW2d 809, 810-11 (2006) (citing *Banta v Serban*, 370 Mich 367, 368; 121 NW2d 854 (1963); *Persichini v Beaumont Hosp*, 238 Mich App.626, 639-640; 607 NW2d 100 (1999); *Prince v MacDonald*, 237 Mich App 186, 189; 602 NW2d 834 (1999)). "This power is not governed so much by rule or statute, but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." *Id.* (citing *Chambers v NASCO, Inc*, 501 US 32, 43; 111 S Ct 2123; 115 L Ed 2d 27 (1991)).

Here, as mother argued to the probate court, father's:

motion was filed against a pro se who had discharged her previous attorney after incurring tens of thousands of dollars of legal fees due to BAZAKIS' [father's] litigation here and before the Friend of the Court, prior to Anna-Marie reaching the age of majority. BAZAKIS' motion here is yet another attempt to inflict financial and emotional injuries on BOMBA [mother], falsely informing the Court she is violating a Court Order and then try to strip co-Guardianship rights of scheduling needed medical appointments for Anna-Marie. Monetary sanctions of reasonable attorney's fees and costs for having to respond to this motion should be imposed. [A 031].

#### **B. Request for Sanctions, Motion to Quash Father's Subpoena**

On May 14, 2021, while father's motion was pending, father issued a subpoena to JPMorgan Bank, N.A., seeking:

[c]opies of monthly banking statements provided or available to customer for any and all accounts including checking, savings, loan balances, certificates of deposit as of the opening of the account and each month thereafter through the date of answering this Subpoena in the name of Anna-Marie Bazakis d/o/b [REDACTED], SS# [REDACTED], individually, jointly or with any third party. [A 126].

Father's subpoena had a return date of June 4, 2021, which was four-days prior to the hearing on father's June 8, 2021 motion to compel mother to provide the banking login and password of the "representative payee" account established for the benefit of Anna.

Mother moved to quash the subpoena as it was not "relevant [information] to any party's claims or defenses", the threshold inquiry under MCR 2.302(B)(1), A 117, as mother was complying with the probate court's order to pay father half of the SSI monies that were electronically deposited by the SSA into the "representative payee" account for the benefit of Anna, and that to determine whether the correct monies were being paid, father (and his counsel) need only look at publicly available information on the SSA's website for the current amount of the monthly benefit, A 091-93 and divide the amount by two to determine if mother was paying father the correct probate court ordered amount.

Mother also pointed out to the probate court that:

the subpoena is illegal as a matter of federal law as it is not being issued by the Office of the Inspector General, Social Security Administration, who has the exclusive jurisdiction over any Social Security fraud investigations. Though the issuance of the subpoena to JPMorgan Chase Bank, N.A., BAZAKIS [father], and his counsel, are engaging in an act that the Office of the Inspector General, Social Security Administration can only do, but only can do in a very limited circumstance as follows:

The Right to Financial Privacy Act, 12 USC 3401 et seq., provides for certain procedures that must be followed when government authorities seek to obtain records relating to customers of financial institutions. As pertinent here, a governmental agency such as the OIG may subpoena the records of a financial institution's customers only 'if there is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry.' 12 USC 3405(1).

**A 118-119** (quoting *Martinez v SSA Office of the Inspector General*, Civil Action No. 19-mc-00004-MSK, 2019 US Dist LEXIS 23008, at \*1 (D Colo Feb. 12, 2019))<sup>6</sup>.

Father's answer to the motion to quash, did not cite any case law or statutory law to the contrary, but instead: (1) misstated the Court's previous order, see **A 128-129 ¶¶ 2, 9**; (2) argued that the probate court has jurisdiction to conduct investigations into a "representative payee" acting in that capacity, see **A 129 ¶ 4**; (3) argued that a co-guardian was provided the authority from the probate court to lead such investigation, see **A 128-129 ¶¶ 2, 5, 10**; and (4) argued that father's need to engage in such investigations of mother using the power of the subpoena "would be eliminated if this Court ordered respondent [father] to be replaced as the protected person's 'representative payee'", see **A 129 ¶ 12**; and (5) that the "Inspector General, and/or the Social Security Administration, have no jurisdiction over a local bank account that may or may not consist of monies from social security payments", see **A 129 ¶ 15**.

Father's answer furthermore made a demand that the probate court enter an award against mother for, "actual costs and attorney fees for having to respond to this matter brought before the Court, and order the immediate transfer from petitioner [mother] to respondent [father] as the 'representative payee' of the protected person." **A 129-130**.

Because there was no merit in father's issuance of the subpoena, its vexatious probing for criminal conduct that does not exist, nor did father even assert in his answer of there being a suspicion of wrongdoing, and the issuance was not legal under federal law, mother requested the probate court to sanction father, and or his counsel, and pay reasonable attorney's fees and costs as provided for under MCR 2.302(C) applying MCR 2.313(A)(5). MCR 2.313(A)(5)(a) provides:

If the motion is granted—. . . —the court may, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising

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<sup>6</sup> *Martinez* is cited because it explains the limitation of the power of the subpoena when financial banking information is sought, as father did here. A copy of *Martinez* is attached. **A 171-172**.

such conduct, or both, to pay to the moving party the reasonable expenses incurred in making the motion, including attorney fees. . . . [MCR 2.313(A)(5)(a)].

Additionally, mother requested monetary sanctions to be imposed against father and or his counsel, under the probate court's inherent authority to sanction litigants and their counsel. A 116, 117 .

The probate court at oral arguments addressed the motion to quash the subpoena and the competing sanctions requests by stating in the entirety, "[t]he Motion to Quash is granted. Now, what would you like to - -", with father's counsel interjecting, "Judge there is the appointment of the new psychiatrist . . . ." A 153, Tr. 17:16-19.

### RELIEF REQUESTED

WHEREFORE the reasons stated herein, this Court should find the instructions probate court regarding mother in her capacity as the "representative payee" under federal law are void, entered without jurisdiction and rule upon mother's two motions for sanctions for reasonable attorney's fees and costs applying MCR 7.216(A)(7). Furthermore, this Court should reverse the probate court's instructions as to Anna's birthday, permitting each co-guardian to spend time with Anna on her actual birthday, and reverse the probate court's instructions regarding Easter, permitting mother to be with Anna on every Christian Easter and father every Orthodox Easter.

Date: August 25, 2021

Respectfully submitted,  
/s/ Curtis C. Warner

Curtis C. Warner (P59915)  
5 E. Market St. Ste. 250  
Corning, NY 14830  
Tel & Fax (888) 551-8685  
cwarner@warner.legal

*Counsel for Christy Bomba*

ADDENDUM TO BRIEF  
PURSUANT TO MCR 7.212(C)(7), (D)(1)

**20 CFR 404.2035 What are the responsibilities of your representative payee?**

A representative payee has a responsibility to —

- (a) Use the benefits received on your behalf only for your use and benefit in a manner and for the purposes he or she determines, under the guidelines in this subpart, to be in your best interests;
- (b) Keep any benefits received on your behalf separate from his or her own funds and show your ownership of these benefits unless he or she is your spouse or natural or adoptive parent or stepparent and lives in the same household with you or is a State or local government agency for whom we have granted an exception to this requirement;
- (c) Treat any interest earned on the benefits as your property;
- (d) Notify us of any event or change in your circumstances that will affect the amount of benefits you receive, your right to receive benefits, or how you receive them;
- (e) Submit to us, upon our request, a written report accounting for the benefits received on your behalf, and make all supporting records available for review if requested by us; and
- (f) Notify us of any change in his or her circumstances that would affect performance of his/her payee responsibilities.

STATE OF MICHIGAN  
IN THE COURT OF APPEALS

IN THE MATTER OF ANNA-MARIE BAZAKIS,  
AN INDIVIDUAL WITH A DEVELOPMENTAL  
DISABILITY,

Court of Appeals No. 358276

Saginaw Probate Court No. 20-140294-DD

\_\_\_\_\_/

On August 25, 2021, I filed via MiFILE, Mother, Christy Bomba's, Brief on Appeal, which will automatically send a copy to counsel for Andrew Bazakis who is a registered MiFILE user, and a copy to the Guardian Ad Litem, whom is not registered, I sent via email under MCR 2.107(G) (effective July 26, 2021) to:

PICARD & MCLEOD, P.L.L.C.  
CHRISTOPHER A. PICARD (P35538)  
Attorney for Andrew Bazakis  
820 N. Michigan Avenue  
Saginaw, Michigan 48602  
(989) 753-4441  
[krpicard84@hotmail.com](mailto:krpicard84@hotmail.com)

OTTO W. BRANDT, JR. (P11129)  
Guardian Ad Litem  
715 Court Street  
Saginaw, Michigan 48602  
(989) 793-4740  
[ottobrandt@yahoo.com](mailto:ottobrandt@yahoo.com)

Date: August 25, 2021

Respectfully submitted,  
/s/ Curtis C. Warner  
Curtis C. Warner

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STATE OF MICHIGAN  
IN THE COURT OF APPEALS

IN THE MATTER OF ANNA-MARIE BAZAKIS,  
AN INDIVIDUAL WITH A DEVELOPMENTAL  
DISABILITY,

Court of Appeals No. 358276

Saginaw Probate Court No. 20-140294-DD

**APPENDIX FOR THE  
BRIEF OF APPELLANT, MOTHER, CHRISTY BOMBA**

<b>DESCRIPTION</b>	<b>Page Nos.</b>
July 22, 2020 Hearing Transcript, Excerpt	<b>A 001-10</b>
November 17, 2020 Order	<b>A 011-13</b>
January 5, 2021 Order	<b>A 014-18</b>
August 4, 2021 Order	<b>A 019-21</b>
Mother's Response in Opposition to Father's Motion; Motion for Sanctions	<b>A 022-102</b>
Father's Motion to Compel Compliance with Court Orders and Set Up Forms of Communication and Orderly Treatment for the Protective Person	<b>A 103-107</b>
Mother's Motion to Amend the January 5, 2021 Order	<b>A 108-114</b>
Mother's Motion to Quash Father's Subpoena to JPMorgan Chase Bank, N.A. and Request for Sanctions	<b>A 115-127</b>
Father's Answer to Motion to Quash Subpoena to Chase Bank	<b>A 128-130</b>
Father's Answer to Motion to Amend the January 5, 2021 Order	<b>A 131-133</b>
Father's Answer to Counter Statement of Facts in Mother's Opposition to Father's Motion to Compel	<b>A 134-136</b>
June 8, 2021, Hearing Transcript	<b>A 137-168</b>

**APPENDIX OF UNPUBLISHED CASES**

<b>CASE</b>	<b>Page Nos.</b>
<i>Abulkhair v. Comm'r of Soc Sec</i> , 450 FApp'x 117 (CA 3, 2011)	<b>A 169-170</b>
<i>Martinez v SSA Office of the Inspector General</i> , Civil Action No. 19-mc-00004-MSK, 2019 US Dist LEXIS 23008 (D Colo Feb. 12, 2019)	<b>A 171-172</b>

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STATE OF MICHIGAN

IN THE PROBATE COURT FOR THE COUNTY OF SAGINAW

IN THE MATTER OF

ANNA MARIE-MARGARET BAZAKIS,                      File No. 20-140294-DD.  
a Developmentally Disabled Individual.  
\_\_\_\_\_ /

HEARING ON PETITIONS TO APPOINT A GUARDIAN OF A PERSON WITH  
A DEVELOPMENTAL DISABILITY

BEFORE THE HONORABLE PATRICK J. McGRAW, PROBATE JUDGE

Saginaw, Michigan - July 22, 2020

APPEARANCES:

For Petitioner: VALERIE A. KUTZ-OTWAY (P73814)  
Christy Bomba Attorney at Law  
4800 Fashion Square Blvd., Suite 4  
Saginaw, MI 48604-2604  
(989) 272-7779

For Petitioner: CHRISTOPHER A. PICARD (P35538)  
Andrew Bazakis Attorney at Law  
820 N. Michigan Avenue  
Saginaw, MI 48602-4321  
(989) 753-4441

For Anna Marie OTTO W. BRANDT, JR. (P11129)  
Bazakis: Attorney at Law  
715 Court Street  
Saginaw, MI 48602-4252  
(989) 793-4740

Reported by: THERESA M. SCHMUDE, CSR-3380  
Certified Shorthand Reporter  
(989) 790-5289



## T A B L E O F C O N T E N T S

## WITNESSES FOR PETITIONER:

## PAGE

MARK ZAROFF

Direct Examination By Ms. Kutz-Otway

5

Cross-Examination By Mr. Picard

10

Cross-Examination By Mr. Brandt

11

RICHARD SOLOMON

Direct Examination By Ms. Kutz-Otway

12

Cross-Examination By Mr. Picard

18

Cross-Examination By Mr. Brandt

29

Redirect Examination By Ms. Kutz-Otway

30

Recross-Examination By Mr. Picard

34

## WITNESSES: RESPONDENT

None

## EXHIBITS:

MARKED

RCVD

None

1                   Saginaw, Michigan.

2                   Wednesday, July 22, 2020 - 11:02 a.m.

3                   THE COURT: The Court will call the case of  
4 Anna Marie Margaret Bazakis. This is file  
5 20-140294-DD.

6                   That is a petition for guardianship. One  
7 petition was filed on or about April 22, '20 by Christy  
8 Bomba asking that she be appointed plenary guardian and  
9 Andrew Bazakis be appointed standby, and a counter  
10 petition was filed on or about February 27 by Andrew  
11 Michael Bazakis asking to be plenary guardian and no  
12 standby was noted on that one.

13                  The Court did receive the objection to the  
14 proposed guardian by Andrew Bazakis so I know this is  
15 going to be contentious as to the guardianship, but  
16 what I propose is letting us go through the  
17 guardianship. I don't think there's an argument that  
18 Anna needs a guardian; that she's developmentally  
19 disabled, and Dr. is on the screen so we can get to  
20 that point. And when we get to the guardianship, we  
21 can start because I don't think I need to keep Dr.  
22 Zaroff in there for that part of the hearing. Is that  
23 fine with everybody?

24                  MR. PICARD: Yes.

25                  MR. BRANDT: Fine, Judge.

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED] it was  
8 consistent with her diagnosis with the autism spectrum  
9 disorder.

10 Q And, Doctor, are you familiar with the statutory  
11 definition of an individual with a developmental  
12 disability?

13 A Yes, I am.

14 Q And does Anna Marie meet that criteria?

15 A Yes, she does. [REDACTED]

16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 Q And in the course of your practice, have you had  
2 occasion to meet one Anna Marie-Margaret Bazakis?

3 A Yeah. I've been following Anna Marie for a long time.

4 Q And how long have you known Anna Marie?

5 A I think it goes back to about age three, if I'm not  
6 mistaken. I was the one who originally diagnosed her  
7 as having autism.

8 Q Okay. Do you remember approximately how old she was at  
9 that time?

10 A I think three years old.

11 Q Three years old.

12 MS. KUTZ-OTWAY: And at this time, Your  
13 Honor, I would ask if counsel Picard and Brandt would  
14 stipulate to the testimony of Dr. Solomon as an expert?

15 MR. BRANDT: I'll so stipulate, Your Honor.

16 MR. PICARD: I have no objection although I'm  
17 not sure -- I mean, do you have a limitation as to what  
18 he's going to be an expert on?

19 MS. KUTZ-OTWAY: He's only going to be  
20 testifying as to Anna Marie's diagnosis, limitations,  
21 preferences in that regard.

22 MR. PICARD: Okay. I -- I understand. I  
23 just -- I have no objection, Your Honor.

24 THE COURT: He'll be testifying as an expert  
25 in the field of pediatrics.

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED] [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 Q And can you speak to her receptive and expressive  
14 language?  
15 A Well, she's quite capable of carrying on simple  
16 conversations and seems to have a grasp of some basic  
17 abstract abilities to answer questions like what, who,  
18 and where. I think when you start to get in to why and  
19 when, her ability to recall details in time, that's  
20 when you start to see her limitations.  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED] [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

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Q

And has Anna Marie expressed a preference to you with regard to guardianship or living arrangements?

A

When I interviewed her yesterday, she -- she did express a preference to live with her mother preferentially when I talked with her about it.

1 [REDACTED]  
2 A She -- it -- it's possible that she was influenced by  
3 being with her mother but her preference seemed pretty  
4 clear and I asked it in different ways. [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 On the other hand, I think she can have preferences and  
10 she can have opinions, um --  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

1 THE COURT: Mr. Brandt, do you have anything  
2 else?  
3 MR. BRANDT: No, Judge.  
4 THE COURT: All right.  
5 MS. KUTZ-OTWAY: Just so I'm clear, Your  
6 Honor, is Mr. Picard preparing -- preparing the order?  
7 MR. PICARD: No. The Judge wanted some  
8 language regarding holidays, etcetera. I'm going to  
9 try getting something put together to send over to you,  
10 Val.  
11 MS. KUTZ-OTWAY: And I'll prepare the order  
12 with regard to the guardianship?  
13 THE COURT: Well, yeah. Do that.  
14 MS. KUTZ-OTWAY: Okay. All right. Thank  
15 you, Your Honor.  
16 THE COURT: All right. We'll be adjourned.  
17 MR. PICARD: Thank you.  
18 MR. BRANDT: Thank you.  
19 THE COURT: Bye-bye, Anna.  
20  
21  
22  
23  
24  
25



1 STATE OF MICHIGAN )  
2 ) SS  
3 COUNTY OF SAGINAW )  
4  
5  
6

7 I certify that this transcript, consisting of 48  
8 pages, is a complete, true and correct transcript of the  
9 Hearing on Petitions for Appointment a Guardian for a Person  
10 with a Developmental Disability and testimony taken in this  
11 case on July 22, 2020, before the Honorable Patrick J.  
12 McGraw, Probate Judge, in Saginaw, Michigan.

13  
14 Dated: August 10, 2020.  
15  
16  
17  
18

---

19 Theresa M. Schmude, CSR-3380  
20 Certified Shorthand Reporter  
21 111 South Michigan Avenue  
22 Saginaw, MI 48602  
23  
24  
25

Approved, SCAO

JIS CODE: OAG

STATE OF MICHIGAN  
PROBATE COURT  
SAGINAW COUNTY  
CIRCUIT COURT - FAMILY DIVISION

ORDER APPOINTING GUARDIAN FOR  
INDIVIDUAL WITH A  
DEVELOPMENTAL DISABILITY

FILE NO.  
20-140294-DD

In the matter of ANNA-MARIE MARGARET BAZAKIS, an individual with a developmental disability

1. Date of hearing: AUG 17 2020 Judge: Patrick J. McGraw P34430  
Bar no.
2. Findings of fact are more fully stated on the record regarding the individual's nature and extent of general intellectual functioning, extent of impairment of adaptive behavior, capacity to manage his/her estate and financial affairs, and capacity to care for self by making and communicating responsible decisions concerning his or her person.

## THE COURT FINDS:

3. Notice of hearing was given to or waived by all interested parties.
4. ☒ a. The individual was present at the hearing.  
☐ b. The individual was not present at the hearing. His/her presence was excused upon showing by testimony and affidavit of a  
☐ psychologist, ☐ physical  
☐ physician, that the individual's attendance would subject him/her to serious ☐ emotional harm.
5. Testimony was given by the person who prepared the report or person who performed an evaluation serving, in part, as the basis for the report.
6. Upon the presentation of clear and convincing evidence and ☐ with ☒ without the verdict of a jury, the individual is an individual with a developmental disability and requires guardianship services.
7. The individual named above is ☒ totally ☐ partially without capacity to care for his/her ☒ person ☐ estate as to the following necessary tasks, responsibilities, or judgments but is otherwise legally competent and has the capacity to perform in other areas.
8. The most appropriate and the least restrictive living arrangement suited to the individual's condition is on a two-week rotation between the homes of CHRISTY BOMBA, 5583 Pierce Road, Saginaw, MI 48604, and ANDREW BAZAKIS, 3109 N. River Road, Saginaw, MI 48609, and as set forth in the parties' agreed upon Holiday Parenting Schedule, which is incorporated herein by reference, which shall begin with ANDREW BAZAKIS on Friday, July 24, 2020.
- ☐ The individual presently resides in the following facility \_\_\_\_\_
9. A reasonable effort was made to question the individual and he/she indicated ☒ no preference as to who should be appointed guardian.  
☐ that he/she preferred \_\_\_\_\_ to serve as guardian  
Name (type or print)
- and \_\_\_\_\_ as standby guardian.  
Name (type or print)

(PLEASE SEE OTHER SIDE)

Do not write below this line - For court use only

FILED

AUG 17 2020

MCL 330.1617, MCL 330.1618, MCL 330.1620,  
MCL 330.1623, MCL 330.1626



☐ 10. There is no qualified, suitable individual or agency willing to act as guardian and the appointment of an agency directly providing services to the individual is necessary at present.

11. A reasonable effort was made to orally inform the individual of his/her right to request the guardianship to be dismissed or modified at any time. A written notice of these rights was also served on him/her.

12. Other: The most appropriate and least restrictive educational environment is Heritage High School, with continuation through the Saginaw Intermediate School District through the age of 26.

**IT IS ORDERED:**

13. The petition is ☒ granted. ☐ denied on the merits. ☐ dismissed/withdrawn.

☒ 14. CHRISTY BOMBA and/or ANDREW BAZAKIS, whose addresses and telephone numbers are:

Name (type or print)

5563 Pierce Road, Saginaw, MI 48604 and 3109 N. River Road, Saginaw, MI 48609 (989)860-8091 and (989)274-3427

Address

City

State

Zip

Telephone no.

are appointed

☒ individual

☐ estate

until further order of the court

☒ a. plenary co-guardians of the

☒ an acceptance of appointment.

and shall qualify by filing ☐ a bond in the amount of \$\_\_\_\_\_.

☐ individual

☐ b. partial guardian of the ☐ estate for the term of \_\_\_\_\_ years

☐ an acceptance of appointment.

and shall qualify by filing ☐ a bond in the amount of \$\_\_\_\_\_, and shall have only the following powers:

The individual retains all legal and civil rights except those which have been specifically granted to the partial guardian. After qualification, the guardian shall comply with all relevant requirements under the law.

☐ 15. The guardian is authorized to execute an application to admit the individual named above to

Name of facility

☐ 16. \_\_\_\_\_, whose address and telephone number are

Name (type or print)

Address

City

State

Zip

Telephone no.

is appointed standby guardian. In case of death, incapacity, or resignation of the initially-appointed guardian or an emergency situation during the absence and unavailability of the initially appointed guardian, the standby guardian shall file

☐ an acceptance of appointment

☐ bond in the amount of \$\_\_\_\_\_

and shall assume the powers and duties of the initially-appointed guardian.

☒ 17. CHRISTY BOMBA and ANDREW BAZAKIS are to refrain from any negative communication about the other to or in the presence of ANNA-MARIE MARGARET BAZAKIS.

☒ 18. CHRISTY BOMBA and ANDREW BAZAKIS are to share equally in any agreed upon uninsured and/or out of pocket medical costs for ANNA-MARIE MARGARET BAZAKIS.

- [X] 19. CHRISTY BOMBA and ANDREW BAZAKIS are to share equally in any proceeds received from the Social Security Administration for the benefit of ANNA-MARIE MARGARET BAZAKIS.
- [X] 20. CHRISTY BOMBA and ANDREW BAZAKIS are enjoined from engaging in any negative criticism or communication with persons or entities engaged to provide educational, medical, or therapeutic services for ANNA-MARIE MARGARET BAZAKIS.
- [X] 21. CHRISTY BOMBA and ANDREW BAZAKIS shall work in the best interests of ANNA-MARIE MARGARET BAZAKIS and for her independence, and shall continue with DR. RICHARD SOLOMON's recommendations for medications and treatment.

AUG 17 2020

Date

Judge

CHALGIAN &amp; TRIPP LAW OFFICES, PLLC

Valerie Kutz-Otway

P73814

Attorney name (type or print)

Bar no.

4800 Fashion Square Blvd., Suite 455

Saginaw, Michigan 48604

(989) 272-7779

Address

City

State

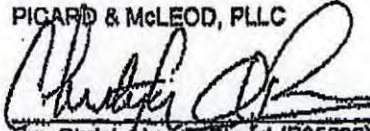
Zip

Telephone no.

APPROVED AS TO FORM:

Dated: August 17, 2020

PICARD &amp; McLEOD, PLLC

  
By: Christopher A. Picard (P35538)  
Attorney for Andrew BazakisDated: August 17, 2020  
OTTO W. BRANDT, JR. (P11129)  
Attorney for Anna-Marie Margaret Bazakis



STATE OF MICHIGAN  
IN THE PROBATE COURT FOR THE COUNTY SAGINAW

IN THE MATTER OF:  
ANNA-MARIE BAZAKIS,  
an individual with a developmental disability

File No. 20-140294-DD

Hon. Patrick J. McGraw (P34430)

VALERIE KUTZ-OTWAY (P73814)  
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(989) 793-4740

PICARD & MCLEOD, P.L.L.C.  
BY: CHRISTOPHER A. PICARD (P35538)  
Attorney for Co-Guardian/Respondent  
820 N. Michigan Avenue  
Saginaw, Michigan 48602  
(989) 753-4441

ORDER REGARDING HOLIDAY PARENTING TIME,  
PICK UP AND DROP OFF AND OBLIGATIONS ARISING  
OUT OF CO-GUARDIANSHIP

AT A SESSION OF SAID COURT HELD IN THE COURTHOUSE,  
IN THE CITY OF SAGINAW, COUNTY OF SAGINAW, STATE  
OF MICHIGAN, ON THIS 3<sup>rd</sup> DAY OF January,  
2021.

PRESENT: HON. PATRICK J. MCGRAW, PROBATE JUDGE

This matter having come before the Court on motion by co-guardian, ANDREW BAZAKIS, both co-guardians being present along with their counsel and the Guardian Ad Litem, and the Court being otherwise advised of the premises;

JAN 14 2021



IT IS HEREBY ORDERED parenting time shall continue in alternating two week blocks of time as previously ordered;

IT IS FURTHER ORDERED all pick up and drop off with Anna shall occur in the back parking lot area of McDonald's Restaurant located on State and Center, Saginaw Township, by the coffee place and both parties shall be prompt at the appointed time unless otherwise agreed by the parties;

IT IS FURTHER ORDERED Father shall have Anna on Father's Day each year and Mother shall have Anna on Mother's Day each year beginning at 9:00 a.m. until 6:00 p.m.

IT IS FURTHER ORDERED beginning on December 22 at 6:00 p.m. through December 24 at 8:00 p.m. Anna shall be with her Mother in Even years and Anna will be with her Father for a like period of time in Odd years;

IT IS FURTHER ORDERED beginning on December 24 at 8:00 p.m. through December 26 at 6:00 p.m. Anna will be with her Father in Even years and Anna will be with her Mother for a like period of time in Odd years;

IT IS FURTHER ORDERED Mother shall have Anna for Thanksgiving day from 9:00 a.m. until 6:00 p.m. in Even years and Father will have a like period of time in Odd years;

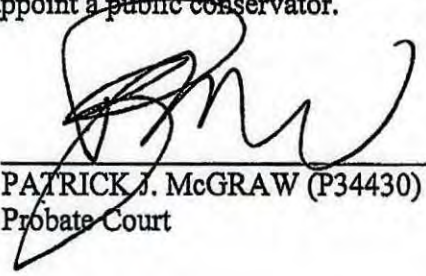
IT IS FURTHER ORDERED Mother shall have Anna for Easter day from 9:00 a.m. until 6:00 p.m. in Even years and Father shall have Anna in Odd years for a like period of time;

IT IS FURTHER ORDERED that the parties shall maintain the normal two week rotation and there will be no special holiday schedule for Spring Break, Labor Day, Memorial Day, July 4<sup>th</sup>, New Year's Eve, New Year's Day, or Halloween;

IT IS FURTHER ORDERED the Office for Social Security shall be informed of the co-guardianship arrangement for Anna and payments, when received, shall be split equally between the guardians;

IT IS FURTHER ORDERED all future applications shall be signed by both guardians and failure to do so shall be deemed a violation of the fiduciary duty created by law and this Court shall consider removal of the offending guardian;

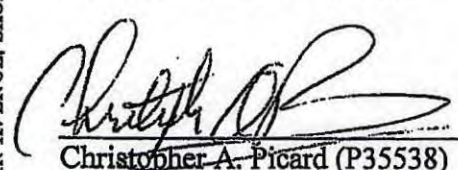
IT IS FURTHER ORDERED that should problems arise in the social security and the moneys received and the payments, this Court will appoint a public conservator.

  
PATRICK J. McGRAW (P34430)  
Probate Court

Countersigned:

\_\_\_\_\_  
Deputy Clerk

APPROVED AS TO FORM:

  
Christopher A. Picard (P35538)  
Attorney for Co-Guardian

SEE ATTACHED  
Valarie Kutz-Otway (P73814)  
Attorney for Co-Guardian

SEE ATTACHED

\_\_\_\_\_  
Otto W. Brandt, Jr. (P11129)  
Guardian Ad Litem

Prepared By:

PICARD & MCLEOD, P.L.L.C.  
BY: CHRISTOPHER A. PICARD (P35538)  
Attorney for Co-Guardian  
820 N. Michigan Ave.  
Saginaw, MI 48602  
(989) 753-4441



IT IS FURTHER ORDERED that should problems arise in the social security and the moneys received and the payments, this Court will appoint a public conservator.

PATRICK J. McGRAW (P34430)  
Probate Court

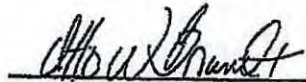
Countersigned:

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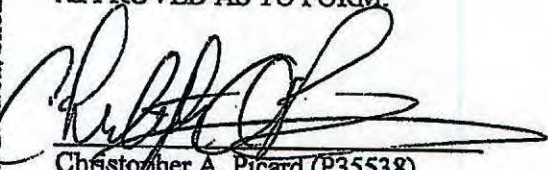
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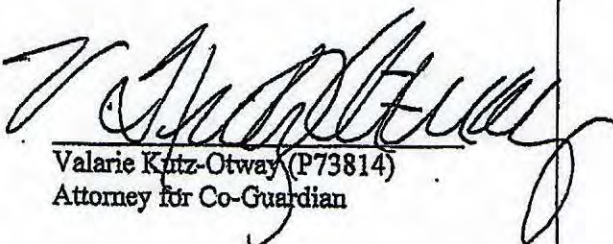
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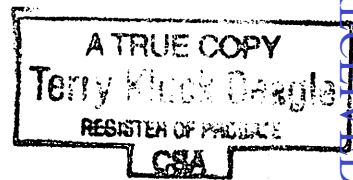
  
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STATE OF MICHIGAN  
IN THE PROBATE COURT FOR SAGINAW COUNTY

IN THE MATTER OF ANNA-MARIE BAZAKIS,  
An individual with a developmental disability

FILE NO. 20-140294-DD  
HON. PATRICK J. McGRAW

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ORDER

AT A SESSION OF SAID COURT, HELD IN THE COURTHOUSE,  
IN THE CITY AND COUNTY OF SAGINAW, STATE OF MICHIGAN,

ON THE 4 DAY OF AUGUST, 2021

PRESENT: HON. PATRICK J. McGRAW, PROBATE JUDGE

This Court held a hearing on Tuesday, June 8, 2021 with all counsel present.

The Court heard various motions on that day including a Motion to Compel, a Response to the Motion to Compel, a Motion to be Compliant with Court Orders, a Motion to Set Up Communications for Yearly Treatment, a Request for Sanctions, a Request for Response to the Motion to Compel, a Motion and Memorandum to Quash. The Court read all documents ahead of time and asked the parties to make their oral arguments on that day regarding their respective motions.

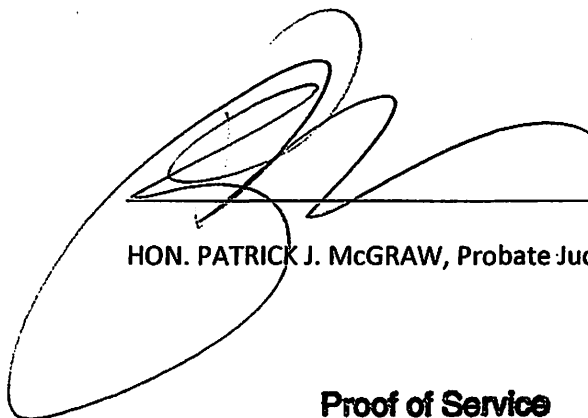
Subsequently the Court directed counsel for Bazakis to prepare an Order reflecting the Court's opinion. Counsel for Bazakis submitted a proposed Order, counsel for Christy Bomba objected and responded and asked that the Motions be set for hearing.

The Court has reviewed the objections and responses over the transcript that was filed. The Court is preparing its own Order in order to make sure that one exists that the Court feels is proper. The Court's reasoning for doing so is for judicial economy and efficiency, the lack of cordiality amongst counsel, the expenses being incurred by the parties due to the ridiculous amount of argument and papers and law filed regarding contents of an order.

**IT IS ORDERED AS FOLLOWS:**

1. Mother Christy Bomba remain as payee.
2. If there is a portal access, Christy Bomba is to provide any type of access she is given to father Andrew Bazakis. ***{In the meantime Mother, Christy Bomba, is to set up a new account at a new bank so that a new password to that new account can be made and given to Father, Andrew Bazakis, so that both parties have access to a new account with a new password that only reflects the account of Anna Marie Bazakis}***
3. If she only receives a check every month from Social Security, then she is to make a photocopy of the check and then provide that photocopy to Mr. Picard and father Andrew Bazakis. Fifty percent of that Social Security check should go to Mr. Picard's ILOTA account or a Zelle whichever Mr. Picard chooses. ***{Mother shall make a copy of the means of deposit and provide that to Andrew Bazakis, in the event direct deposits are made.}***
4. The Medicaid card is to be given to the father, Andrew Bazakis, with proof filed with counsel, the GAL and the Court.
5. All of Anna Bazakis' bank accounts are to be joint with the Co-Guardians.
6. Our Family Wizard is to be used for all communications and also allow the GAL access to Our Family Wizard. The parties will split the cost of setting up Our Family Wizard and any cost associated with using that form of communication.
7. My Chart portal is to be set up with an e-mail address that all parties are to be able to use and access. The parties are to work with the GAL to set that My Chart portal up and not change that e-mail address without a Court Order.
8. Father, Andrew Bazakis, will be responsible for scheduling all medical & dental appointments and follow-ups. Father, Andrew Bazakis, is to inform mother, Christy Bomba of all appointments within 12 hours of being set up or scheduled. Failure to do so by father, Andrew Bazakis, will result in sanctions of \$500 for each violation. ***{Any appointments already set up will remain as scheduled. Mother, Christy Bomba is to provide an email to Mr. Picard immediately of all appointments already set up}***
9. Dr. Solomon will choose the adult psychiatrist.
10. A Bridge card is to be exchanged monthly and only used in the current month, not to be used for anything that is re-loaded during the month should that party happen to have it when it is re-loaded.
11. The Motion to Quash is GRANTED.

12. The Court's prior Order as to Easter will remain.
13. The Court's prior Order on birthdays will also remain.



HON. PATRICK J. MCGRAW, Probate Judge

### Proof of Service

The undersigned certifies that the foregoing instrument was served upon all interested parties and/or attorney(s) to the above cause at their respective addresses disclosed on the pleadings on 8-4-21

By:

☒ U.S. Mail

☐ Hand delivered

☐ Other

☐ Fax

☐ E-mail

Signature



**STATE OF MICHIGAN  
IN THE PROBATE COURT FOR THE COUNTY OF SAGINAW**

IN THE MATTER OF ANNA-MARIE BAZAKIS,  
an individual with a developmental disability

File No. 20-140294-DD

Hon. Patrick J. McGraw (P34430)

---

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**BOMBA'S RESPONSE TO BAZAKIS' MOTION TO  
COMPEL COMPLAINEE WITH COURT ORDERS,  
SET UP FORMS OF COMMUNICATIONS, AND FOR ORDERLY TREATMENT FOR  
THE PROTECTED PERSON;  
AND BOMBA'S REQUEST FOR SANCTIONS**

NOW COMES the petitioner, **CHRISTY BOMBA**, by and through her counsel, and in response to **ANDREW BAZAKIS'** Motion to Compel Compliance with Court Orders and Set Up Forms of Communication and Orderly Treatment for the Protected Person, which she tried to resolve with **BAZAKIS**, through his counsel, without a response from him, states as follows:

**ANSWER**

1. That an order appointing co-guardians was entered in this matter on August 17, 2020.  
**Response: Admitted**

2. This Court entered an Order dated January 5, 2021 which, inter alia, directed Co Guardian, Christy Bomba, to inform the Office of Social Security to be informed of the two guardians and to split all monies equally between the guardians.

**Response:** Denied, in part, that the Order directed BOMBA herself to inform the Office of Social Security, and admitted in part that that the monies shall be split equally between the co-guardians, as the January 5, 2021 Order, in pertinent part in the second to last paragraph, page 2, provides:

**IT IS FURTHER ORDERED** the Office of Social Security shall be informed of the co-guardianship arrangement for Anna and payments, when received, shall be split equally between the guardians.

**(A copy of the Order is attached hereto as Exhibit A).**

3. Social Security refuses to discuss Anna's benefits or disbursements directly with Father because Father is not listed as a co-payee or co-guardian.

**Response: Denied.** If, BAZAKIS called the Office of Social Security, it would not speak with BAZAKIS as he is not the “representative payee” defined under federal law, law that exclusively governs the operation of the SSA, and BAZAKIS is not listed as the first Co-guardian on the Court’ August 17, 2020 Order, paragraph 14.

4. Father cannot gain access to the information on-line provided by Social-Security because Ms. Bomba refuses to give Father website portal access.

**Objection: BOMBA objects to the allegation as it incorrectly infers that BOMBA has access to SSA’ website portal access, she does not, as the application was obtained via the internet and printed. Response: Subject to and upon the Objection, denied.**

5. Father can gain no information relating to his daughter’s social security benefits or payments from the Social Security office directly because Mother initially signed Anna up and is listed as the sole protected payee.

**Response: Admitted that BOMBA initially signed Anna up for SSI benefits. Denied in part and admitted in part that, BOMBA is listed as the “sole protected payee”, as BOMBA is the “representative payee” as that term is used in 20 CFR § 404.2035 and BAZAKIS is not listed as the first Co-guardian on the Court’ August 17, 2020 Order, paragraph 14. BOMBA lacks information knowledge or information sufficient to form a belief as to the truth of the allegation that, “Father can gain no information relating to his daughter’s social security benefits or payments from the Social Security office directly[.]”**

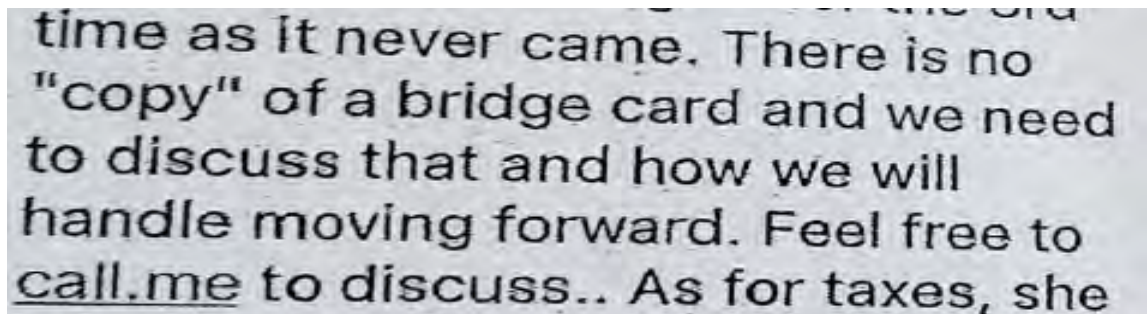
6. Mother has enrolled Anna up for Medicaid but refuses to share a Medicaid card with Father.



**Response:** Admitted that BOMBA “enrolled Anna up for Medicaid”, and denied, that BOMBA, “refuses to share a Medicaid card with Father” as on December 8, 2020 at 1:19 p.m., BOMBA provided BAZAKIS Anna’s Medicaid number, informed BAZAKIS that BOMBA requested another Medicaid card for BAZAKIS, and once received, BOMBA will provide BAZAKIS that card, and on February 15, 2021, BOMBA emailed BAZAKIS, stating in part, “You are correct in that you didn't get a Medicaid card yet. I did call some time ago and it didn't arrive. I'll call Tuesday (today they are closed for President's day) to have one mailed. In the meantime, here is a copy of the card. You can make copies and laminate for others if needed as medical offices only need the # on the front to activate (sic) Medicaid for service. You and I will have original cards.”, and on February 15, 2021, BOMBA emailed BAZAKIS providing a .jpg of the miHealth card.

7. Mother obtained a bridge card for Anna but again has refused to share the benefits with the co-guardian or to offset the value of the bridge card against other benefits available to Anna.

**Response:** Denied. BAZAKIS’ exhibit to the motion even has a text message from BOMBA to BAZAKIS that states in part:



time as it never came. There is no "copy" of a bridge card and we need to discuss that and how we will handle moving forward. Feel free to call me to discuss.. As for taxes, she

BOMBA on May 6, 2021, further proposed to BAZAKIS’ counsel whether BAZAKIS would be willing to exchange the Bridge Card on a monthly basis, even months of the year BAZAKIS would have the card, odd months BOMBA would have the card.

8. Father is denied access to the Anna’s bank account information because Mother refuses to add him to the account and refuses to give him the necessary log in information needed to view account activity on-line.

**Response:** Denied that “Father is denied access to Anna’s bank account information” as BOMBA has provided BAZAKIS’ attorney paper statements of Anna’s account showing the benefits she receives being deposited into the account and the debits made from that account that are subject to this Court’s August 17, 2020 Order ¶ 19. (Exhibit B). Admitted that BOMBA refuses to add BAZAKIS to the account, and further states that the refusal is because with an SSI account there can only be one “representative payee” and Chase Bank, N.A. will only list one “representative payee” on the account and only provide access to the “representative payee”.

9. Father has been blocked from all forms of e-mail communication with Mother which is necessary and will only communicate with him by phone.

**Response:** Admitted in part that BAZAKIS was “blocked” from email communications for a period of time, denied in part as BAZAKIS is not currently “blocked” from sending and receiving email to/from BOMBA, and BAZAKIS has always had the ability to send and receive written text messages to/from BOMBA including phone calls and voice mails.

10. Mother has at various times accused Father of making threatening statements when communicating by phone or verbally face-to-face.

**Response:** Denied.

11. So as to avoid unfounded accusations, Father feels it would be best to confine all communication between the co-guardians through Our Family Wizard that retains the communications and could be accessed by designated third parties, such as the GAL or the Court, itself.

**Objection:** Paragraph 11 does not comport with MCR 2.111(B)(1) in that it does not contain a “statement of the facts”, as the paragraph is nothing more than how BAZAKIS “feels” and makes suggestions on how BAZAKIS desires to have written communications between BAZAKIS and BOMBA memorialized.

12. Anna’s medical information, including in network doctor appointments, are posted on her Covenant MyChart portal.

**Response:** Admitted.

13. Mother has changed the e-mail address assigned to this account multiple times to Mother's address and refuses to give the e-mail address to Father, essentially blocking him from accessing medical data.

**Response:** Denied, the email to the account has changed over time, but that change was not initiated by BOMBA, and furthermore, BAZAKIS prior to this motion being filed, and still now, has access to the medical data posted on Covenant MyChart portal, and was last informed on November 25, 2020, that the issue with the portal is internal requiring as, to BOMBA’s account, “Senior Managers in IT which fixed the issue.” (Exhibit C).

14. Anna has an e-mail address that can be the designated MyChart address which would enable both parents access to pertinent information relating to Anna.

**Response:** Admitted.



15. The co-guardians could still use Our Family Wizard for all information relating to out of network matters.

**Response: BOMBA lacks information knowledge or information sufficient to form a belief as to the truth of the allegation in paragraph 15.**

16. Mother continues to schedule medical appointments in conflict with Father's work schedule and/or fails to timely inform him of the appointments otherwise.

**Response: BOMBA lacks information knowledge or information sufficient to form a belief as to the truth of the allegation in paragraph 16 that "Mother continues to schedule medical appointments in conflict with Father's work schedule", as BAZAKIS has not provided his work / personal schedule to BOMBA. Denied that BOMBA "fails to timely inform [BAZAKIS] of the appointments otherwise", and BOMBA further states that for Covenant doctors, notification is immediately sent electronically to BAZAKIS though MyChart.**

17. To effectively act as co-guardians, both guardians need to have opportunity to attend medical appointments for their daughter and to schedule appointments based on their work schedules and availability.

**Response: Admitted in part as to scheduled medical appointments, denied in part as to emergency medical situations whereas it is sufficient for one co-guardian to attend, but with notice as practically prompt as possible to the other of the emergency medical situation.**

18. Given the persistent, systematic, and unilateral conduct of Mother, Father proposes that the Court assign him sole responsibility relating to scheduling all medical appointments and follow-up treatment and to then timely inform Mother of the same.

**Objection: Paragraph 18 does not comport with MCR 2.111(B)(1) in that it does not contain a "statement of the facts", as the paragraph is nothing more than BAZAKIS suggestions on how BAZAKIS desires to schedule all medical appointments and follow-up treatment and to then timely inform Mother of the same. Denied that BOMBA has engaged in any "persistent, systematic, and unilateral conduct" regarding scheduling of medical appointments.**

19. This Court's Order of August 20 (sic), 2020 states, inter alia, (paragraph# 21), "... and shall continue with Dr. Richard Solomon's recommendations for medications and treatment."

**Response: Admitted as to the language of paragraph No. 21 in the August 17, 2020 Order, quoted above in paragraph 19 is correct.**

20. Dr. Solomon's practice is Developmental Pediatrics and has "graduated" Anna from his care. (See attached letter).

**Response: Denied, that Anna “graduated” from Dr. Solomon’s practice. See attached addendum to letter from Dr. Solomon, (Exhibit D).**

21. The Court’s order needs to be revised so as to have someone other than Dr. Solomon responsible for determining Anna's medication and treatment regime.

**Response: Denied. See attached addendum to letter from Dr. Solomon, (Exhibit D).**

22. Father proposes the responsibility be assigned to Anna's primary care physician, Dr. Jane Castillo.

**Objection: Paragraph 24 does not comport with MCR 2.111(B)(1) in that it does not contain a “statement of the facts”, and is nothing more than BAZAKIS’ proposal.**

23. Further, Anna needs a new psychiatrist who specializes in adults to replace Dr. Regan, Anna’s former pediatric psychiatrist.

**Response: Denied. See attached addendum to letter from Dr. Solomon, (Exhibit D).**

24. Father would suggest Dr. Kai Anderson, or let Dr. Castillo select Anna's psychiatrist.

**Objection: Paragraph 24 does not comport with MCR 2.111(B)(1) in that it does not contain a “statement of the facts”, and is nothing more than BAZAKIS’ opinion.**

#### **BOMBA’S COUNTER - STATEMENT OF FACTS**

1. On September 14, 2020, **BOMBA** faxed a copy of the Court’s August 17, 2020 Order to the Office of Social Security in Saginaw. *See* (Exhibit E, obtained from the Office of Social Security in Saginaw).

2. **BOMBA** voluntarily has provided proof, via bank statements, that **BOMBA** has been providing **BAZAKIS** half of the SSI monies received for the benefit of Anna-Marie, and has been paying **BAZAKIS** as ordered by this Court. (Exhibit F).

3. **BAZAKIS** is an emergency room physician at Covenant HealthCare, <https://www.linkedin.com/in/andrew-m-bazakis-md-facep-06008322/> with a busy schedule that not only includes his responsibilities to the hospital and his patients, he also is the Co-Director EM Stimulation Curriculum, Core Faculty at Central Michigan University College of Medicine, <https://www.cmich.edu/colleges/med/Education/Residency/EM/Pages/FS.aspx> (Core Faculty Pull Down Tab), and he is also a “Life Coach” with cliental. <https://www.noomii.com/users/andrew-bazakis1>

4. Due to **BAZAKIS’** very busy and demanding professional schedule, **BAZAKIS** is periodically unavailable to be in attendance at scheduled medical appointments and has difficulty in making appointments that accommodate his schedule, including but not limited to the current issue of him attempting to rescheduling a neurology appointment, pushing the date back beyond

the date the doctor wants to see Anna-Marie due to a transition of seizure medication. *See e.g.* (Exhibit G) (**BAZAKIS**: “The June 18 appointment is once again while I am working, I’d like to reschedule.”; “Let me know if you have anything the week of June 28.”)

5. **BAZAKIS** has been either forgetful or is too busy with work after being notified of appointments for Anna-Marie, to appear at appointments, for example regarding a sleep study follow up. *See e.g.* (Exhibit H) (**BOMBA** informing **BAZAKIS**, “They want her back next Monday at 3:00 p.m.” later after **BAZAKIS** not appearing at the appointment texting to **BOMBA**, “[a]s I said, I am working. I was in with a patient.”).

6. **BAZAKIS** has not scheduled routine periodic appointments at the conclusion of appointment, for example, scheduling a further six month dental appointment after Anna-Marie had her teeth cleaned. (Exhibit I) (“At her last Dental Cleaning, you didn't schedule a 6mo. appt. She is now scheduled for Tuesday January 5, 2021 at 5pm”).

7. On December 8, 2020, **BOMBA** emailed **BAZAKIS**, “Anna now qualifies for Medicaid. Her Medicaid # [REDACTED]. A card will be arriving to my home shortly and I have a request for another card for you. Once I receive it, I’ll send it to you.” (Exhibit J).

8. On January 29, 2021, the SSA office called **BOMBA**, with the call being overheard by Dawn Cavanaugh who was out walking with **BOMBA**, in which the SSA office confirmed that the SSA office had the co-guardianship paperwork, and further stating that even though a co-guardianship was established, only one payee can be listed on the bank account to receive the SSI monies.

9. On February 15, 2021, **BOMBA** emailed **BAZAKIS**, stating in part, “You are correct in that you didn't get a Medicaid card yet. I did call some time ago and it didn’t arrive. I’ll call Tuesday (today they are closed for President’s day) to have one mailed. In the meantime, here is a copy of the card. You can make copies and laminate for others if needed as medical offices only need the # on the front to activate (sic) Medicaid for service. You and I will have original cards.” (Exhibit K).

10. On February 15, 2021, **BOMBA** emailed **BAZAKIS** providing a .jpg of the miHealth card. *See* (Id., as an attachment)

11. The annual SSI Federal Payment amounts are publicly made available. <https://www.ssa.gov/oact/cola/SSI.html> (“The monthly maximum Federal amounts for 2021 are \$794 for an eligible individual” “Unrounded annual amounts . . . Eligible individual . . . 2020 . . . \$9,407.82”) (Exhibit L)

12. Dr. Solomon added an addendum to his letter stating, “I plan to transfer Ann[a]’s care to Adult Psychiatry. However, until that time I remain Anna’s provider for medications and developmental care.” *See* attached addendum to letter from Dr. Solomon, (Exhibit D).

13. On May 19, 2021, **BOMBA** attempted to resolve this motion by sending an email to **BAZAKIS' counsel**, (Exhibit M), but as of the filing of this motion in the Court's drop-box, neither **BAZAKIS nor his counsel**, has responded to the email.

## ARGUMENT

### I. **BAZAKIS' MOTION TO "COMPEL COMPLIANCE WITH COURT ORDERS" IS WITHOUT MERIT AND VEXATIOUS**

On September 14, 2020, **BOMBA** faxed a copy of the Court's August 17, 2020 Order to the Office of Social Security in Saginaw. See (Exhibit E, obtained from the Office of Social Security in Saginaw). The SSA office confirmed receipt on January 29, 2021 over the phone with **BOMBA**. Since September 14, 2020, the Office of Social Security has been in possession of the very document that **BAZAKIS** seeks to compel **BOMBA** to send to it.

**BAZAKIS** never asked **BOMBA** whether she provided a copy of the Court's August 17, 2020 Order prior to filing his motion to compel, but nevertheless has requested an award of attorney's fees and costs for his motion. (Motion, p. 4 ¶ G).

**BAZAKIS'** motion states that, "[t]his Court entered an Order dated January 5, 2021 which, inter alia, **directed Co Guardian, Christy Bomba, to inform** the Office of Social Security to be informed of the two guardians and to split all monies equally between the guardians". (Motion p. 1 ¶ 2) (emphasis added). The Court's actual January 5, 2021 Order provided:

IT IS FURTHER ORDERED the Office of Social Security shall be informed of the co-guardianship arrangement for Anna and payments, when received, shall be split equally between the guardians.

Order, January 5, 2021, p. 2. (Exhibit A).

**BAZAKIS** could have remedied any self-perceived deficiency by sending the August 17, 2020 co-guardianship Order to the Office of Social Security himself, but nevertheless purposefully choose not to, instead filing this meritless and vexatious motion. And even after his counsel was

informed that **BOMBA** was sure she sent the co-guardianship order to the SSA office, (Exhibit M), the motion was not withdrawn.

**BAZAKIS** prior to filing the motion seemingly could of sending a subpoena to the Office of Social Security for a copy of the August 17, 2020 Order **BOMBA** submitted. *See Stragapede v. City of Evanston*, 125 F. Supp. 3d 818, 827 (N.D. Ill. 2015) (“the City also tried to subpoena the Social Security Administration to produce the documents.”). No due diligence was done by **BAZAKIS**.

Not only should the motion to compel be denied, but to avoid needless judicial expenditures and to deter future meritless and vexatious motions, **BAZAKIS** should be required to Show Cause: (a) why **BAZAKIS** did not conduct due diligence in whether a copy of the Court’s August 17, 2020 Order was provided to the Office of Social Security; (2) why **BAZAKIS** decided not to send a copy of the co-guardianship Order to the Office of Social Security, but instead choose to motion to Court to compel; (3) why **BAZAKIS** misrepresented the Court’s Order stating the Court, “**directed Co Guardian, Christy Bomba, to inform** the Office of Social Security to be informed of the two guardians”, (Motion p. 1 ¶ 2) (emphasis added), which served as the basis for **BAZAKIS’** motion; and (4) why **BAZAKIS and/or his counsel** should not have to pay reasonable expenses including reasonable attorney’s fees as provided for under MCR 1.109(E)(6) for having **BOMBA** to have to obtain legal counsel respond to this meritless and vexatious motion that violates the requirements of MCR 1.109(E)(5)(b), (c). Alternatively, **BOMBA** requests this Court to impose sanctions against **BAZAKIS and/or his counsel** for violating MCR 1.109(E)(5)(b), (c) and award **BOMBA’s** reasonable expenses including reasonable attorney’s fees as provided for under MCR 1.109(E)(6).

Sanctions are appropriate whereas here **BAZAKIS and his counsel** had no reasonable basis to believe that the facts asserted regarding the Court's August 17, 2020 Order in the motion were true, or that **BOMBA** did not comply with the August 17, 2020 Order, and because **BAZAKIS'** motion was devoid of arguable legal merit. *See Ford Motor Co v Dep't of Treasury*, 313 Mich App 572, 589; 884 NW2d 587 (2015). Additionally, the "trial courts possess the inherent authority to sanction litigants and their counsel, including the power to dismiss an action. *Banta v Serban*, 370 Mich. 367, 368; 121 N.W.2d 854 (1963); *Persichini v Beaumont Hosp*, 238 Mich. App. 626, 639-640; 607 N.W.2d 100 (1999); *Prince v MacDonald*, 237 Mich. App. 186, 189; 602 N.W.2d 834 (1999). This power is not governed so much by rule or statute, but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases. *See Chambers v NASCO, Inc*, 501 U.S. 32, 43; 111 S. Ct. 2123; 115 L. Ed. 2d 27 (1991)." *Maldonado v Ford Motor Co.*, 476 Mich 372, 376, 719 NW2d 809, 810-11 (2006).

**BAZAKIS'** motion was filed against a *pro se* who had discharged her previous attorney after incurring tens of thousands of dollars of legal fees due to **BAZAKIS'** litigation here and before the Friend of the Court, prior to Anna-Marie reaching the age of majority. **BAZAKIS'** motion here is yet another attempt to inflict financial and emotional injuries on **BOMBA**, falsely informing the Court she is violating a Court Order and then try to strip co-Guardianship rights of scheduling needed medical appointments for Anna-Marie. Monetary sanctions of reasonable attorney's fees and costs for having to respond to this motion should be imposed.

**II. BAZAKIS' MOTION TO "COMPEL" "ALL INFORMATION, PASSWORDS, AND ACCESS CODES TO FATHER FOR ALL SOCIAL SECURITY INFORMATION, INCLUDING BANK ACCOUNT INFORMATION" IS WITHOUT MERIT AND VEXATIOUS**

**BOMBA** is paying **BAZAKIS** 50% of the SSI monies that are being paid into Anna's account to which **BOMBA** is the representative payee of. How much the SSI monthly payments

are is publicly available on the SSA's website. <https://www.ssa.gov/oact/cola/SSI.html> (visited May 25, 2021) (Exhibit L). Furthermore, if there was an accountability concern regarding the amount of money being paid to **BAZAKIS**, his counsel has been provided the very banking information needed to determine that 50% of the SSI monthly maximum amount are being paid by **BOMBA** to **BAZAKIS**, by dividing the amount received by the number 2.

The motion to compel is without merit as nothing in the January 5, 2021 Order, or even the August 17, 2020 Order, required **BOMBA** to provide to **BAZAKIS** "all information, passwords and access codes to Father for all Social Security information, including bank account information". "[A] court speaks through its written orders and judgments, not through its oral pronouncements." *Davis v. Henry (In re Contempt of Henry)*, 282 Mich. App. 656, 678, 765 N.W.2d 44, 59 (2009) (citing *Hall v Fortino*, 158 Mich App 663, 667; 405 NW2d 106 (1986)). Therefore, there was no basis in law or fact to move this Court to "compel", "all information, passwords and access codes to Father for all Social Security information, including bank account information".

Second, it should strike the Court as odd that if **BAZAKIS** was permitted under federal law, which exclusively occupies the administration of the SSA office, to obtain such informational access to the "representative payee" account, **BAZAKIS** would have simply moved this Court to be added as a "co-payee" on the account. Due diligence in communicating with banking entities' legal departments directly or through their branch representatives, would have provided **BAZAKIS** information that under federal law no "co-payees" are permitted on such SSI accounts, just a singular "representative payee", alerting **BAZAKIS** that it was an impossibility for **BAZAKIS** to be added to the account as a "co-payee". Due diligence would have altered **BAZAKIS** that nothing under the federal Act that provides him the relief that he seeks, and



notably, **BAZAKIS** motion to compel fails to set forth any legal authority, but just nakedly requests this Court to indulge his whim.

Indeed as set forth in **BAZAKIS**' own March 19, 2021 email to **BOMBA**, **BAZAKIS** himself contacted "Janis Hall, the banker at Chase", knows from his conversations with Ms. Hall that "only one of us is assigned to be on the account with Anna-Mare as per the rules of setup", and knows that "Anna cannot have a separate login", but nevertheless requests **BOMBA** simply acquiesce to his demands, while noting in part, "[i]f you are still uncomfortable with such a convention then maybe we should seek a legal opinion on this matter and share formal documentation of that opinion." (Exhibit N). This email demonstrates **BAZAKIS**' state of mind, not found in law, and his motion without any case law whatsoever, demonstrates **BAZAKIS**' marching orders to his counsel to improperly vex **BOMBA**.<sup>1</sup>

Furthermore, **BAZAKIS**' motions to compel also request this Honorable Court to impermissibly substitute **BAZAKIS** in place of the Social Security Administration's oversight role, a role that is expressly delegated to the SSA by Congress. "The SSI program, which is administered by the Social Security Administration (SSA), provides federal assistance to low-income individuals who are elderly, blind, or disabled. See 42 U.S.C.S. §§ 1381-1385 (LexisNexis 2010). Although SSI benefits are, in some cases, paid directly to the beneficiary, payments can be made to a duly certified fiduciary—called a 'representative payee'—for the beneficiary's use and benefit' if the Commissioner of the SSA 'determines that the interest of [the beneficiary] . . . would be served thereby.' 42 U.S.C.S. § 405(j), (j)(1)(A); see also 20 C.F.R. § 416.610 ('When payment

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<sup>1</sup> **BAZAKIS** has also issued a subpoena to JPMorgan Chase Bank, N.A., for account information, which **BOMBA** is moving separately to quash.



will be made to a representative payee.’).” *In re Guardianship of Smith*, 2011 ME 51, ¶ 11, 17 A.3d 136, 140 (Maine 2011).

**BAZAKIS’s** remedy is not to drag **BOMBA** before this Court on a meritless and vexatious motion to compel documents and electronically stored information regarding the “representative payee” account, **BAZAKIS’s** sole remedy is under federal law is to first exhaust all administrative remedies before the Social Security Administration, and then if **BAZAKIS** is unsatisfied with the outcome, and the outcome is judicially reviewable, to take the grievance before the United States District Court for the Eastern District of Michigan, Northern Division. *See e.g. Laurie Q. v. Callahan*, 973 F. Supp. 925, 931 (N.D. Cal. 1997) (noting that, “[p]ermitting plaintiffs to proceed in court without first requiring them to present this specific claim would allow future claimants challenging the designation of a representative payee to circumvent the administrative process and present their claims in federal court without first giving the Commissioner notice and an opportunity to correct the alleged problem.”).

Indeed, federal law is clear that any quibbles regarding the “representative payee” must first be brought to the Social Security Administration, and only the Social Security Administration, and all administrative remedies must be exhausted before the Social Security Administration can an allegedly aggrieved person have their day in court if the SSA’ decision is judicially reviewable. *See* 42 U.S.C. §§ 405(g), 405(h) ; *see Heckler v. Ringer*, 466 U.S. 602, 627, 104 S. Ct. 2013, 80 L. Ed. 2d 622 (1984); *see Mathews v. Eldridge*, 424 U.S. 319, 327-28, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976).

There is simply no basis for the motion to compel banking information, except to vex **BOMBA**, as **BOMBA** has been complaint with paragraph 19 of this Court’s August 17, 2020 Order, promptly providing **BAZAKIS’s** counsel half of the monies Anna-Marie has received from

SSA in the “representative payee” account by cashier’s check, including stimulus money and back pay, and *voluntarily* has further provided proof, via bank statements, that **BOMBA** has been providing **BAZAKIS** half of the SSI monies. *See* (Exhibit F). **BAZAKIS** need only look to the monthly amount of SSI benefits on the SSA website, <https://www.ssa.gov/oact/cola/SSI.html> (visited May 25, 2021) (Exhibit L), and divide by two to determine whether he was receiving 50% of the SSI payments.

As forth above in Section I, *supra*, vexatious conduct on the part of **BAZAKIS** should not be permitted by the Court and **BAZAKIS** should be required to Show Cause why sanctions under MCR 1.109(E)(6) should not be imposed by this Court against **BAZAKIS and/or his counsel**, alternatively to sanction **BAZAKIS and/or his counsel** under MCR 1.109(E)(6) for violations of both MCR 1.109(E)(5)(b) and MCR 1.109(E)(5)(c).

### III. BRIDGE CARD

Nothing in the court’s Orders addresses the Bridge Card, but nevertheless **BOMBA** has communicated with **BAZAKIS’** counsel in writing to resolve the matter of the Bridge Card, with no response from **BAZAKIS or his counsel**. *See* (Exhibit M). **BOMBA** proposes that applying equitable principles for the Court to enter an Order to the effect:

IT IS HEREBY ORDERED THAT: BAZAKIS shall on Even months be provided and possess the Bridge Card, and on Odd months BOMBA shall be provided and possess the Bridge Card. For the month that BAZAKIS and BOMBA possess the Bridge Card respectively, no more than one month’s allotment of funds may be expended by either BAZAKIS or BOMBA in total. Currently the monthly benefit is \$185, and as such under this Order, no more than \$185 may be spent during each respective allotted one month possessory time period, regardless when the State adds additional monies to the card.

### IV. MEDICAID CARD

There is nothing in the Court’s Orders that require **BOMBA** to provide Anna-Marrie’s Medicaid card to **BAZAKIS**, but nevertheless, on December 8, 2020, **BOMBA** emailed

**BAZAKIS**, “Anna now qualifies for Medicaid. Her Medicaid # [REDACTED]. A card will be arriving to my home shortly and I have a request for another card for you. Once I receive it, I’ll send it to you.” (Exhibit J). On February 15, 2021, **BOMBA** emailed **BAZAKIS**, stating in part, “You are correct in that you didn’t get a Medicaid card yet. I did call some time ago and it didn’t arrive. I’ll call Tuesday (today they are closed for President’s day) to have one mailed. In the meantime, here is a copy of the card. You can make copies and laminate for others if needed as medical offices only need the # on the front to activate (sic) Medicaid for service. You and I will have original cards.” On February 15, 2021, **BOMBA** emailed **BAZAKIS** providing a .jpg of the miHealth card. *See* (Exhibit K). Once **BOMBA** receives the additional Medicaid card she will provide it to **BAZAKIS**’ counsel. But again, the motion to “compel” should be denied as there is no Order requiring **BOMBA** to have provided **BAZAKIS** a card for a benefit Anna-Marie recently was able to obtain.

#### V. OUR FAMILY WIZARD & THE COVENANT MYCHART PORTAL

**BOMBA** is supportive of **BAZAKIS**’ request that Our Family Wizard be used as the method of communication between **BOMBA** and **BAZAKIS** and does not object to the request to also include the *Guardian Ad Litem*, so long as **BAZAKIS** pays for the services as to **BOMBA**’s and **BAZAKIS**’ use, a service that appears to be free to family law attorneys such as **BAZAKIS**’ counsel. *See* <https://www.ourfamilywizard.com/practitioners>. If this cost shifting / fee service is not feasible, **BOMBA** suggests communication via email, with **BAZAKIS**’ counsel and the *Guardian Ad Litem* being copied on the communication so as not to increase the costs, or use AppClose, which is free. *See* <https://appclose.com/>.

Also **BOMBA** is not opposed to **BAZAKIS**’ request to “[r]equire the parties to maintain Anna’s email address for the Covenant MyChart portal.” (Motion p. 3 ¶ D) (emphasis added).

However the time **BAZAKIS** filed this motion he had access to the portal, and furthermore, the portal is outside of **BOMBA**'s control and is a portal that has had access issues in the past. *See* (Exhibit C). Therefore, no controversy existed and **BAZAKIS**' request is also moot.

#### VI. **BAZAKIS' REQUEST TO SCHEDULE ALL MEDICAL APPOINTMENTS**

**BAZAKIS** is a very busy physician, Co-Director of EM Stimulation Curriculum at CMU, life coach entrepreneur, husband to another wife and father to another child of his own, has demonstrated at times his inability to make appointments within the time frame when Anna-Maria's physicians indicate she should be seen, fails to make follow-up appointments for bi-annual or regular visits, and forgets about appointments that were made, yet he wants sole control over when to schedule appointments. (Counter – Statement of Facts ¶¶ 3-6).

As set forth in her email attempting to resolve this matter, **BOMBA** is willing to give **BAZAKIS** the ultimate control he desires over Anna's medical scheduling, but there should be an accompanying order of consequences to **BAZAKIS**, if **BAZAKIS** fails to make the necessary appointments and/or fails to provide **BOMBA** notice within 24-hours of making any non-emergency appointment utilizing a shared appointments calendar. **BOMBA** suggests the imposition of a sanction of \$1,500 if the Court finds that **BAZAKIS** fails to make the necessary appointments and/or fails to provide **BOMBA** prompt notice of the appointments in the manner the Court approves of, or her reasonable attorney's fees and costs, whichever is greater, and upon a third finding that **BAZAKIS** failed to make the necessary appointments and/or failed to provide **BOMBA** prompt notice of the appointments, that the Court will then in addition to the monetary sanctions, enter an Order that **BAZAKIS** will no longer have sole power to schedule medical appointments. (Exhibit M). However, if this proposed resolution is not acceptable to the Court, given that **BOMBA** has been the primary person to schedule medical appointments and follows

up with them, **BOMBA** alternatively requests that she exclusively schedule all non-emergency medical appointments and will provide **BAZAKIS** notice within 24-hours of making the appointment.<sup>2</sup>

**VII. DR. SOLOMAN SHOULD MAKE THE RECOMMENDATION OF WHOM ANNA-MARIE'S NEXT DOCTOR IS TO ANNA-MARIE'S MEDICATION AND TREATMENT AND HER NEXT PSYCHIATRIC DOCTOR, NOT THE COURT ON THE SUGGESTION OF BAZAKIS, BUT THAT TIME IS NOT NOW**

**BOMBA** opposes **BAZAKIS'** requests for the Court itself to "[a]ppoint a replacement of Dr. Solomon for overall management of Anna's medication and treatment" and "[a]ppoint a psychiatric doctor for Anna". (Motion pp. 3-4 ¶¶ E-F). This Court's August 17, 2020 Order, paragraph 21, provided that, "CHRISTY BOMBA and ANDREW BAZAKIS shall with in the best interest of ANNA-MARIE MARGET BAZAKIS and for her independence, and shall continue with DR. RICHARD SOLOMON's recommendations for medications and treatment." While in Dr. Solomon's March 11, 2021 letter he indicated Anna Bazakis "is now 'graduating' from my practice", Dr. Solomon also indicated that, "I will be transferring care for Ann's psychiatric medications and services to Adult Psychiatry and Family Practice Medicine respectively." (Exhibit D, p. 3).<sup>3</sup> **BOMBA** requests that Dr. Solomon who has been following Anna since she was 3 ½ years old, make the decision on whom he in his professional opinion deems to be the best doctors to refer Anna-Marie to for her medication and treatment and psychiatric treatment.

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<sup>2</sup> **BAZAKIS** could facilitate scheduling around his work schedule if he would post his work / personal schedule when it becomes available on any calendar sharing app that the Court orders the parties to utilize. **BOMBA** will likewise do the same.

<sup>3</sup> The letter from Dr. Solomon was obtained by **BAZAKIS** without providing notice to **BOMBA** of the appointment. On a scheduled follow-up visit, to which **BAZAKIS** was provided notice of but did not attend, Dr. Solomon provided an addendum to the letter adding, "I plan to transfer Ann[a]'s care to Adult Psychiatry. However, until that time I remain Anna's provider for medications and developmental care." (Exhibit D).

## CONCLUSION

WHEREFORE, the reasons set forth in this Response, Petitioner **BOMBA**, prays for this Honorable Court to:

- A. **DENY BAZAKIS'** motion to compel mother "to comply with this Court's previous orders relating to informing the Social Security office of his status as co-guardian" and for **BAZAKIS and/or his counsel** to Show Cause, alternatively to be sanctioned under MCR 1.109(E)(6) awarding **BOMBA** reasonable attorney's fees and costs;
- B. **DENY BAZAKIS'** motion to compel mother, "to provide all information, passwords, and access codes to Father for all Social Security information, including bank account information" and for **BAZAKIS** to Show Cause, **and/or his counsel** to Show Cause, alternatively to be sanctioned under MCR 1.109(E)(6) awarding **BOMBA** reasonable attorney's fees and costs;
- C. Enter an Order that **BOMBA's** 50% payments of the SSI money for Anna-Marie to **BAZAKIS** can be made electronically via Zelle®, a no-cost service, <https://www.zellepay.com/>, directly to **BAZAKIS**, alternatively to **BAZAKIS'** counsel's IOLTA, and for **BAZAKIS** to provide the necessary information to facilitate that reoccurring electronic transfer;
- D. **DENY BAZAKIS'** motion to compel mother, "to provide . . . bridge card";
- E. Enter an Order that: **BAZAKIS** shall on Even months be provided and possess the Bridge Card, and on Odd months **BOMBA** shall be provided and possess the Bridge Card. For the month that **BAZAKIS** and **BOMBA** possess the Bridge Card respectively, no more than one month's allotment of funds may be expended by either **BAZAKIS** or **BOMBA** in total. Currently the monthly benefit is \$185, and as such

under this Order, no more than \$185 may be spent during each respective allotted one month possessory time period, regardless when the State adds additional monies to the card;

- F. **DENY BAZAKIS'** motion to compel mother, "to provide . . . Medicaid card";
- G. Enter an Order that **BOMBA** is to provide **BAZAKIS'** counsel the Medicaid card requested for **BAZAKIS** promptly after receipt by **BOMBA**;
- H. Enter an Order that **BAZAKIS'** to pay for his and **BOMBA's** use of Our Family Wizard, or if free to **BAZAKIS'** counsel, for **BAZAKIS'** counsel to establish the service for **BAZAKIS'** and **BOMBA's** use for free, and that the parties are to use the Our Family Wizard for all non-emergency communications, and to keep an updated calendar three months in advance, that it to be updated promptly if work / personal commitments change to help **BAZAKIS** and **BOMBA** schedule medical appointments for Anna-Marie;
- I. **GRANT BAZAKIS'** motion to "[a]ppoint Father as the sole guardian to schedule all medical appointments and follow-up treatments" and Order that if **BAZAKIS'** imposition of a sanction of \$1,500 if the Court finds that **BAZAKIS** fails to make the necessary appointments and/or fails to provide **BOMBA** notice within 24-hours of making the appointments, or her reasonable attorney's fees and costs, whichever is greater, and upon a third finding that **BAZAKIS** failed to make the necessary appointments and/or failed to provide **BOMBA** prompt notice of the appointments, then in addition to the monetary sanctions, **BAZAKIS** will no longer have sole power to schedule medical appointments; alternatively **DENY** his motion and appoint **BOMBA** as the guardian to schedule all non-emergency appointments;

- J. **DENY BAZAKIS'** motion to, "[r]equire the parties to maintain Anna's email address for the Covenant MyChart portal" as not being in controversy / moot;
- K. **DENY BAZAKIS'** motion for the Court to "[a]ppoint a replacement for Dr. Solomon for overall management of Anna's medication and treatment";
- L. **DENY BAZAKIS'** motion for the Court to "[a]ppoint a psychiatric doctor for Anna";
- M. Enter an Order that Dr. Solomon shall be the person who refers Anna-Marie to another physician for her overall management of her medication and treatment" and to refer her to a "psychiatric doctor" when Dr. Solomon believes those referrals should be made;
- N. **DENY BAZAKIS'** request for this Court to "[g]rant this co-guardian, and the protected person, all other relief deemed fair and equitable and/or otherwise permitted by law, including actual costs and attorney fees for having to bring this matter before the Court."

Respectfully submitted,



By: Curtis C. Warner (P59915)  
For Petitioner Christy Bomba

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## INDEX OF EXHIBITS

- A. January 5, 2021 Order
- B. August 17, 2020 Order
- C. November 25, 2020 email
- D. May 17, 2021 Addendum of Dr. Solomon
- E. May 13, 2021 cover letter from SSA with attached copy of September 14, 2020, 10:20 EDT fax from BOMBA to the Social Security Office of the Court's August 17, 2020 Order.
- F. April / May 2021 Emails (Checks and statements)
- G. MyChart Communications April / May 2021
- H. Text Messages
- I. December 1, 2020 email
- J. December 8, 2020 email
- K. February 12 and 15, 2021 email exchanges
- L. <https://www.ssa.gov/oact/cola/SSI.html>
- M. May 19, 2021 email
- N. March 19, 2021 email

# EXHIBIT A

STATE OF MICHIGAN  
IN THE PROBATE COURT FOR THE COUNTY SAGINAW

IN THE MATTER OF:  
ANNA-MARIE BAZAKIS,  
an individual with a developmental disability

File No. 20-140294-DD

Hon. Patrick J. McGraw (P34430)

VALERIE KUTZ-OTWAY (P73814)  
Attorney for Co-Guardian/Petitioner  
4800 Fashion Square Blvd  
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Saginaw, Michigan 48604  
(989) 272-7779

OTTO W. BRANDT, JR. (P11129)  
Guardian Ad Litem  
715 Court Street  
Saginaw, Michigan 48602  
(989) 793-4740

PICARD & MCLEOD, P.L.L.C.  
BY: CHRISTOPHER A. PICARD (P35538)  
Attorney for Co-Guardian/Respondent  
820 N. Michigan Avenue  
Saginaw, Michigan 48602  
(989) 753-4441

**ORDER REGARDING HOLIDAY PARENTING TIME,  
PICK UP AND DROP OFF AND OBLIGATIONS ARISING  
OUT OF CO-GUARDIANSHIP**

AT A SESSION OF SAID COURT HELD IN THE COURTHOUSE,  
IN THE CITY OF SAGINAW, COUNTY OF SAGINAW, STATE  
OF MICHIGAN, ON THIS 3<sup>rd</sup> DAY OF January,  
2021.

PRESENT: HON. PATRICK J. MCGRAW, PROBATE JUDGE

This matter having come before the Court on motion by co-guardian, ANDREW BAZAKIS, both co-guardians being present along with their counsel and the Guardian Ad Litem, and the Court being otherwise advised of the premises;

JAN 14 2021



IT IS HEREBY ORDERED parenting time shall continue in alternating two week blocks of time as previously ordered;

IT IS FURTHER ORDERED all pick up and drop off with Anna shall occur in the back parking lot area of McDonald's Restaurant located on State and Center, Saginaw Township, by the coffee place and both parties shall be prompt at the appointed time unless otherwise agreed by the parties;

IT IS FURTHER ORDERED Father shall have Anna on Father's Day each year and Mother shall have Anna on Mother's Day each year beginning at 9:00 a.m. until 6:00 p.m.

IT IS FURTHER ORDERED beginning on December 22 at 6:00 p.m. through December 24 at 8:00 p.m. Anna shall be with her Mother in Even years and Anna will be with her Father for a like period of time in Odd years;

IT IS FURTHER ORDERED beginning on December 24 at 8:00 p.m. through December 26 at 6:00 p.m. Anna will be with her Father in Even years and Anna will be with her Mother for a like period of time in Odd years;

IT IS FURTHER ORDERED Mother shall have Anna for Thanksgiving day from 9:00 a.m. until 6:00 p.m. in Even years and Father will have a like period of time in Odd years;

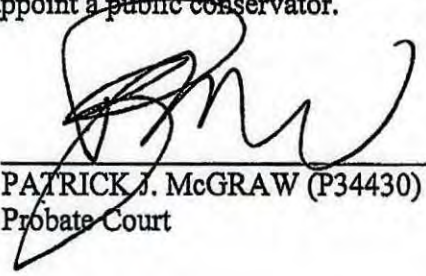
IT IS FURTHER ORDERED Mother shall have Anna for Easter day from 9:00 a.m. until 6:00 p.m. in Even years and Father shall have Anna in Odd years for a like period of time;

IT IS FURTHER ORDERED that the parties shall maintain the normal two week rotation and there will be no special holiday schedule for Spring Break, Labor Day, Memorial Day, July 4<sup>th</sup>, New Year's Eve, New Year's Day, or Halloween;

IT IS FURTHER ORDERED the Office for Social Security shall be informed of the co-guardianship arrangement for Anna and payments, when received, shall be split equally between the guardians;

IT IS FURTHER ORDERED all future applications shall be signed by both guardians and failure to do so shall be deemed a violation of the fiduciary duty created by law and this Court shall consider removal of the offending guardian;

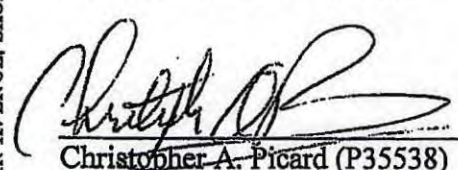
IT IS FURTHER ORDERED that should problems arise in the social security and the moneys received and the payments, this Court will appoint a public conservator.

  
PATRICK J. McGRAW (P34430)  
Probate Court

Countersigned:

\_\_\_\_\_  
Deputy Clerk

APPROVED AS TO FORM:

  
Christopher A. Picard (P35538)  
Attorney for Co-Guardian

SEE ATTACHED  
Valarie Kutz-Otway (P73814)  
Attorney for Co-Guardian

SEE ATTACHED

\_\_\_\_\_  
Otto W. Brandt, Jr. (P11129)  
Guardian Ad Litem

Prepared By:

PICARD & MCLEOD, P.L.L.C.  
BY: CHRISTOPHER A. PICARD (P35538)  
Attorney for Co-Guardian  
820 N. Michigan Ave.  
Saginaw, MI 48602  
(989) 753-4441



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Probate Court


Countersigned:

Deputy Clerk

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Valarie Kutz-Otway (P73814)  
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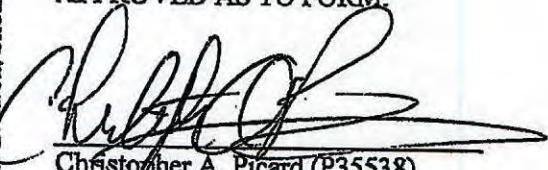
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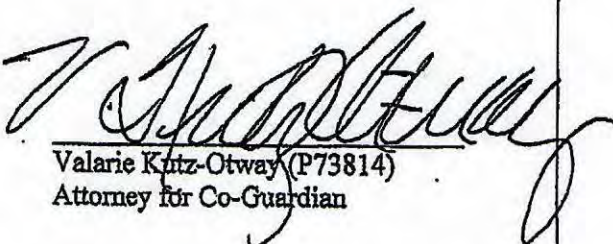
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Probate Court

Countersigned:

Deputy Clerk

APPROVED AS TO FORM:

  
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Attorney for Co-Guardian

  
Valarie Kutz-Otway (P73814)  
Attorney for Co-Guardian

Otto W. Brandt, Jr. (P11129)  
Guardian Ad Litem

Prepared By:

PICARD & MCLEOD, P.L.L.C.  
BY: CHRISTOPHER A. PICARD (P35538)  
Attorney for Co-Guardian  
820 N. Michigan Ave.  
Saginaw, MI 48602  
(989) 753-4441

PICARD & MCLEOD, P.L.L.C., 820 NORTH MICHIGAN AVENUE, SAGINAW, MICHIGAN 48602



## EXHIBIT B

Approved, SCAO

JIS CODE: OAG

STATE OF MICHIGAN  
PROBATE COURT  
SAGINAW COUNTY  
CIRCUIT COURT - FAMILY DIVISION

ORDER APPOINTING GUARDIAN FOR  
INDIVIDUAL WITH A  
DEVELOPMENTAL DISABILITY

FILE NO.  
20-140294-DD

In the matter of ANNA-MARIE MARGARET BAZAKIS, an individual with a developmental disability

1. Date of hearing: AUG 17 2020 Judge: Patrick J. McGraw P34430  
Bar no.
2. Findings of fact are more fully stated on the record regarding the individual's nature and extent of general intellectual functioning, extent of impairment of adaptive behavior, capacity to manage his/her estate and financial affairs, and capacity to care for self by making and communicating responsible decisions concerning his or her person.

## THE COURT FINDS:

3. Notice of hearing was given to or waived by all interested parties.
4. ☒ a. The individual was present at the hearing.  
☐ b. The individual was not present at the hearing. His/her presence was excused upon showing by testimony and affidavit of a  
☐ psychologist, ☐ physical  
☐ physician, that the individual's attendance would subject him/her to serious ☐ emotional harm.
5. Testimony was given by the person who prepared the report or person who performed an evaluation serving, in part, as the basis for the report.
6. Upon the presentation of clear and convincing evidence and ☐ with ☒ without the verdict of a jury, the individual is an individual with a developmental disability and requires guardianship services.
7. The individual named above is ☒ totally ☐ partially ☒ person without capacity to care for his/her ☐ estate as to the following necessary tasks, responsibilities, or judgments but is otherwise legally competent and has the capacity to perform in other areas.
8. The most appropriate and the least restrictive living arrangement suited to the individual's condition is on a two-week rotation between the homes of CHRISTY BOMBA, 5583 Pierce Road, Saginaw, MI 48604, and ANDREW BAZAKIS, 3109 N. River Road, Saginaw, MI 48609, and as set forth in the parties' agreed upon Holiday Parenting Schedule, which is incorporated herein by reference, which shall begin with ANDREW BAZAKIS on Friday, July 24, 2020.
- ☐ The individual presently resides in the following facility \_\_\_\_\_
9. A reasonable effort was made to question the individual and he/she indicated ☒ no preference as to who should be appointed guardian.  
☐ that he/she preferred \_\_\_\_\_ to serve as guardian  
Name (type or print)
- and \_\_\_\_\_ as standby guardian.  
Name (type or print)

(PLEASE SEE OTHER SIDE)

Do not write below this line - For court use only

FILED

AUG 17 2020

MCL 330.1617, MCL 330.1618, MCL 330.1620,  
MCL 330.1623, MCL 330.1626



☐ 10. There is no qualified, suitable individual or agency willing to act as guardian and the appointment of an agency directly providing services to the individual is necessary at present.

11. A reasonable effort was made to orally inform the individual of his/her right to request the guardianship to be dismissed or modified at any time. A written notice of these rights was also served on him/her.

12. Other: The most appropriate and least restrictive educational environment is Heritage High School, with continuation through the Saginaw Intermediate School District through the age of 26.

**IT IS ORDERED:**

13. The petition is ☒ granted. ☐ denied on the merits. ☐ dismissed/withdrawn.

☒ 14. CHRISTY BOMBA and/or ANDREW BAZAKIS, whose addresses and telephone numbers are:

Name (type or print)

5563 Pierce Road, Saginaw, MI 48604 and 3109 N. River Road, Saginaw, MI 48609 (989)860-8091 and (989)274-3427

Address

City

State

Zip

Telephone no.

are appointed

☒ individual

☐ estate

until further order of the court

☒ a. plenary co-guardians of the

☒ an acceptance of appointment.

and shall qualify by filing ☐ a bond in the amount of \$\_\_\_\_\_.

☐ individual

☐ b. partial guardian of the ☐ estate for the term of \_\_\_\_\_ years

☐ an acceptance of appointment.

and shall qualify by filing ☐ a bond in the amount of \$\_\_\_\_\_, and shall have only the following powers:

The individual retains all legal and civil rights except those which have been specifically granted to the partial guardian. After qualification, the guardian shall comply with all relevant requirements under the law.

☐ 15. The guardian is authorized to execute an application to admit the individual named above to

Name of facility

☐ 16. \_\_\_\_\_, whose address and telephone number are

Name (type or print)

Address

City

State

Zip

Telephone no.

is appointed standby guardian. In case of death, incapacity, or resignation of the initially-appointed guardian or an emergency situation during the absence and unavailability of the initially appointed guardian, the standby guardian shall file

☐ an acceptance of appointment

☐ bond in the amount of \$\_\_\_\_\_

and shall assume the powers and duties of the initially-appointed guardian.

☒ 17. CHRISTY BOMBA and ANDREW BAZAKIS are to refrain from any negative communication about the other to or in the presence of ANNA-MARIE MARGARET BAZAKIS.

☒ 18. CHRISTY BOMBA and ANDREW BAZAKIS are to share equally in any agreed upon uninsured and/or out of pocket medical costs for ANNA-MARIE MARGARET BAZAKIS.

- [X] 19. CHRISTY BOMBA and ANDREW BAZAKIS are to share equally in any proceeds received from the Social Security Administration for the benefit of ANNA-MARIE MARGARET BAZAKIS.
- [X] 20. CHRISTY BOMBA and ANDREW BAZAKIS are enjoined from engaging in any negative criticism or communication with persons or entities engaged to provide educational, medical, or therapeutic services for ANNA-MARIE MARGARET BAZAKIS.
- [X] 21. CHRISTY BOMBA and ANDREW BAZAKIS shall work in the best interests of ANNA-MARIE MARGARET BAZAKIS and for her independence, and shall continue with DR. RICHARD SOLOMON's recommendations for medications and treatment.

AUG 17 2020

Date

Judge

CHALGIAN &amp; TRIPP LAW OFFICES, PLLC

Valerie Kutz-Otway

P73814

Attorney name (type or print)

Bar no.

4800 Fashion Square Blvd., Suite 455

Saginaw, Michigan 48604

(989) 272-7779

Address

City

State

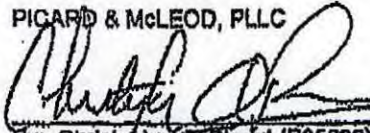
Zip

Telephone no.


APPROVED AS TO FORM:

Dated: August 17, 2020

PICARD &amp; McLEOD, PLLC

  
By: Christopher A. Picard (P35538)  
Attorney for Andrew Bazakis

Dated: August 17, 2020

  
OTTO W. BRANDT, JR. (P11129)  
Attorney for Anna-Marie Margaret Bazakis

# EXHIBIT C



From: **Andy Bazakis** <[annabazakisdad@gmail.com](mailto:annabazakisdad@gmail.com)>  
Date: Wed, Nov 25, 2020 at 10:00 AM  
To: Christy Bomba <[bombafamilyof5@gmail.com](mailto:bombafamilyof5@gmail.com)>  
Cc: Annie Bazakis <[besbesh77@yahoo.com](mailto:besbesh77@yahoo.com)>

Anna's MyChart had the same password issue again. I set it to [REDACTED] we have been doing.

Also, why is her logon "[REDACTED]" That's not Anna's name at all.

Andy

-----  
From: **Christy Bomba** <[bombafamilyof5@gmail.com](mailto:bombafamilyof5@gmail.com)>  
Date: Wed, Nov 25, 2020 at 10:09 AM  
To: Andy Bazakis <[annabazakisdad@gmail.com](mailto:annabazakisdad@gmail.com)>  
Cc: Annie Bazakis <[besbesh77@yahoo.com](mailto:besbesh77@yahoo.com)>

Good morning,

Than you for the update on the password. It's a constant struggle with her account. I've had the same problem with my own account for over 2 years and I finally had to elevate it to a Senior Managers in IT which fixed the issue.

As for the log-in, Anna has had a My Chart for as long as it existed as she has been a patient which has been all of her life. It was set up by PIP with the both of us invited to sign-up and you never accepted the invitation over several years.

Happy Thanksgiving!

Christy

-----  
From: **Christy Bomba** <[bombafamilyof5@gmail.com](mailto:bombafamilyof5@gmail.com)>  
Date: Wed, Nov 25, 2020 at 10:19 AM  
To: Andy Bazakis <[annabazakisdad@gmail.com](mailto:annabazakisdad@gmail.com)>  
Cc: Annie Bazakis <[besbesh77@yahoo.com](mailto:besbesh77@yahoo.com)>

Okay...tried your new password in a couple of different ways and it didn't work so I "changed" it to [REDACTED]. Please note the [REDACTED] is uppercase and the the two [REDACTED] are lowercase with a space in between the [REDACTED] and [REDACTED] as it appears in your email below. The password is case sensitive.

On Wed, Nov 25, 2020, 10:00 AM Andy Bazakis <[annabazakisdad@gmail.com](mailto:annabazakisdad@gmail.com)> wrote:

-----  
From: **Andy Bazakis** <[annabazakisdad@gmail.com](mailto:annabazakisdad@gmail.com)>  
Date: Wed, Nov 25, 2020 at 1:18 PM  
To: Christy Bomba <[bombafamilyof5@gmail.com](mailto:bombafamilyof5@gmail.com)>  
Cc: Annie Bazakis <[beshbesh77@yahoo.com](mailto:beshbesh77@yahoo.com)>

Still had the same problem. Reset once again to [REDACTED] So long as the software allows, I think we should stick to this password. In my experience, you can escalate these things all the way to the top and they don't always get resolved.

Andy



# EXHIBIT D



**The Ann Arbor Center  
For Developmental &  
Behavioral Pediatrics**

Richard Solomon, MD  
3031 Miller Road  
Ann Arbor, MI 48103

office@aacenter.org  
ph (734) 997-9088  
fax (734) 997-9211  
www.aacenter.org

March 11, 2021  
May 17, 2021 Addendum

**RE: BAZAKIS, ANNA MARIE**  
**DOB: 05/04/2002**

To Whom It May Concern:

Anna Bazakis is a now 19-year-old young woman, whom I have been following since she was 3-1/2 years old. She is now "graduating" from my practice, and I am summarizing her history with this dictation.

I diagnosed Anna as having an autism spectrum disorder, regarding which she has had special education services and an Individualized Education Plan (IEP) through the Genesee Intermediate School District throughout her educational life including special education preschool. Anna received special education services throughout elementary and high school.

Anna has characteristics of autism including delays in language, problems with social interaction, repetitive interests and some sensory issues. In terms of her language, she began to develop language fairly early, but was delayed. She showed echolalia and over time her language became progressively more functional to the point where she can now easily answer the simple "WH"-questions like "What", "Where" and "Who," and she can answer most "Why" and "When" questions, as long as they are not too abstract. In short, she is fairly functional with her language skills and has excellent receptive language, good expressive language, but she still would be diagnosed as having significant cognitive impairments in terms of her overall academic ability. Socially, Anna was initially quite self-absorbed with significant difficulties with social interaction. She began to show more pretend play, sustained engagement, and capacity to interact with improved peer-to-peer interaction when she was 7-8 years of age. She continued to grow socially and now is beginning to participate in work activities. She is functional and interactive with only occasional outbursts of difficulties.

Behaviorally, Anna did well early on, had difficulties with behavior through her adolescent years. She became quite obsessive, anxious, and could have tantrums and some aggressive episodes when things did not go her way. Anna was placed on Zoloft in 2012 at low doses, but gradually over the years this has been increased to 150 mg. with good effect. She had a trial of BuSpar for a period of time, but this was ineffective for her anxiety. In 2015 she was started on a trial of Risperdal, but this was also discontinued, I believe due to side effects and weight gain.



RE: BAZAKIS, ANNA MARIE  
DOB: 05/04/2002  
March 11, 2021  
Page 2

Anna also suffered from some inattention, impulsivity, distractibility and fidgetiness, for which she was prescribed Methylphenidate in 2011. This was discontinued after a year, as it seemed to not be particularly helpful. She was tried on Vyvanse in 2015, but this also was not really successful in helping with her inattention.

Anna's characteristic dominating interests have evolved over time. She was a collector of Barbie dolls. She used to write in her notebooks and this continues. She likes to color, dance, and collect dolls, regarding which she has a huge collection. She also loves watching videos and playing on her iPad.

**PAST MEDICAL HISTORY:** Past medical history reveals that Anna had a ventricular septal defect that was stable creating no immediate problems, but she is followed by Cardiology on a regular basis. In May of 2015, she had her first seizure when she was just transitioning into puberty at about 13 years of age and, subsequently, she has been followed by Child Neurology and now Adult Neurology. An MRI was done in December, 2020 which was negative. She is on Vimpat 300 mg. twice a day and actually had recent surgeries in December of 2020 and January of 2021. These are grand mal, often grand mal in type, and have been happening once to twice a year on average.

**REVIEW OF SYSTEMS:** Review of systems reveals obsessive-compulsive tendencies and disorder, and anxiety when she is under stress or has demands placed upon her. Loud noises bother her. Her sleep requires melatonin. She eats what she likes, though her diet is limited. Anna has been noted to have an elevated cholesterol level.

**MEDICATIONS:** Vimpat 300 mg. b.i.d. for seizures, history of Clonazepam for restless leg syndrome which she has been weaned off by January, 2021 and Sertraline 100 mg. tablets 1-1/2 tablets daily for anxiety, Clonidine 0.1 mg tablets to help calm her in the morning and at night to help her sleep, which was discontinued in 2018. She also takes 200 mg. of Co-Q-10, oral B12 and melatonin 20 mg. at bedtime.

**SOCIAL HISTORY:** Social history reveals that Anna's parents have been divorced for nearly 10 years. A recent court hearing resulted in essentially a 50/50 co-guardianship arrangement between the parents. After the divorce both parents remarried and have biological children with their current spouses, as well as stepchildren. There are no major stressors on either family system that keep the families from caring for Anna. Socially, Anna has matured and is now working helping preschool children. She has done other jobs that show me that she can function in work settings with supervision. She does not drive, nor is she capable of driving safely; however, she is quite capable of caring for her basic needs of self-care, to shower, dress herself, and even do some simple cooking.

**ASSESSMENT:** My assessment is that Anna Marie Bazakis is a nearly 19-year-old girl with the following problems:

1. Moderately severe autism spectrum disorder.
2. Obsessive-compulsive disorder with anxiety.
3. Seizure disorder.
4. History of ventricular septal defect, asymptomatic and clinically insignificant.
5. Possible elevated cholesterol level.

RE: BAZAKIS, ANNA MARIE  
DOB: 05/04/2002  
March 11, 2021  
Page 3

I will be transferring care for Anna's psychiatric medications and services to Adult Psychiatry and Family Practice Medicine respectively. Until the transition plans are complete, I remain Anna's provider for medications and developmental care. I remain available for any questions regarding her care and would be happy to share her medication tracking sheets with her caretakers.

Sincerely,



Richard Solomon, M.D.  
Medical Director  
RS/tsl

**ADDENDUM, May 17, 2021**

I plan to transfer Ann's care to Adult Psychiatry. However, until that time I remain Anna's provider for medications and developmental care.

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RECEIVED by MCOA 8/25/2021 10:13:23 PM

# EXHIBIT E



**Social Security Administration  
Supplemental Security Income**

SOCIAL SECURITY ADMIN  
611 E. GENESEE AVE  
SAGINAW, MI 48607-1566  
Date: May 13, 2021  
BNC#: 21D1963K29315-DC  
RLY

CHRISTY BOMBA FOR  
ANNA-MARIE BAZAKIS  
5563 PIERCE RD  
SAGINAW, MI 48604-9234

Dear CHRISTY BOMBA

Enclosed document as requested.

If you have any questions, you should call, write, or visit any Social Security office. If you visit an office, please bring this letter. It will help us answer your questions.

*Social Security Administration*



**FAX COVER SHEET**

TO	
COMPANY	
FAX NUMBER	18339022662
FROM	Christy Bomba
DATE	2020-09-14 10:20:35 EDT
RE	SSI- Order and Letters of Guardianship-Anna-Marie Bazakis

**COVER MESSAGE**

Good Morning Regina,

Per your VM, I've attached the documents you requested. I apologize for the delay as I just received them on Friday. Please feel free to contact me at 989/860-8091 if you have additional questions.

Thank you,

**Christy A Bomba, MPA CTRS**

Manager, Program Implementation and Engagement  
National MS Society

Phone: 989-249-1184- press option #2 , Ext. 26373

Fax: 989-393-6063

**Includer, Arranger, Woo, Positivity, Communication**



**Connect to an MS Navigator** — They are highly skilled, compassionate professionals who can connect you to the information, resources and support needed. These supportive partners help navigate the challenges of MS unique to each



situation. To connect with an MS Navigator call 1-800-FIGHT-MS,  
Email, or Live Chat

Learn more about COVID-19 at the National MS Society's Website:  
<http://www.nationalmssociety.org/COVID19>

Do your part to #StoptheSpread of COVID-19 - Let's  
all #Flattenthecurve

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RECEIVED by MCOA 8/25/2021 10:13:23 PM



Aug-17-2020 10:29 AM The Otways

989 781 7075

#1656 P 2 / 7

Approved, B.O.A.O.

JIS CODE: OAG

STATE OF MICHIGAN  
PROBATE COURT  
SAGINAW COUNTY  
CIRCUIT COURT - FAMILY DIVISIONORDER APPOINTING GUARDIAN FOR  
INDIVIDUAL WITH A  
DEVELOPMENTAL DISABILITYFILE NO.  
20-140294-DDIn the matter of ANNA-MARIE MARGARET BAZAKIS, an individual with a developmental disability

1. Date of hearing: AUG 17 2020 Judge: Patrick J. McGraw P34430  
Berns.
2. Findings of fact are more fully stated on the record regarding the individual's nature and extent of general intellectual functioning, extent of impairment of adaptive behavior, capacity to manage his/her estate and financial affairs, and capacity to care for self by making and communicating responsible decisions concerning his or her person.

## THE COURT FINDS:

3. Notice of hearing was given to or waived by all interested parties.
4. ☒ a. The individual was present at the hearing.  
☐ b. The individual was not present at the hearing. His/her presence was excused upon showing by testimony and affidavit of a  
☐ psychologist, ☐ physical  
☐ physician, that the individual's attendance would subject him/her to serious ☐ emotional harm.
5. Testimony was given by the person who prepared the report or person who performed an evaluation serving, in part, as the basis for the report.
6. Upon the presentation of clear and convincing evidence and ☐ with ☒ without the verdict of a jury, the individual is an individual with a developmental disability and requires guardianship services.
7. The individual named above is ☒ totally ☒ person ☐ partially without capacity to care for his/her ☐ estate as to the following necessary tasks, responsibilities, or judgments but is otherwise legally competent and has the capacity to perform in other areas.

8. The most appropriate and the least restrictive living arrangement suited to the individual's condition is on a two-week rotation between the homes of CHRISTY BOMBA, 5583 Pierce Road, Saginaw, MI 48604, and ANDREW BAZAKIS, 3109 N. River Road, Saginaw, MI 48609, and as set forth in the parties' agreed upon Holiday Parenting Schedule, which is incorporated herein by reference, which shall begin with ANDREW BAZAKIS on Friday, July 24, 2020.

☐ The individual presently resides in the following facility \_\_\_\_\_

9. A reasonable effort was made to question the individual and he/she indicated ☒ no preference as to who should be appointed guardian.

☐ that he/she preferred \_\_\_\_\_ to serve as guardian

Name (type or print)

and \_\_\_\_\_ as standby guardian.

Name (type or print)

(PLEASE SEE OTHER SIDE)

Do not write below this line - For court use only

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AUG 17 2020

MCL 330.1617, MCL 330.1618, MCL 330.1620,  
MCL 330.1623, MCL 330.1626

Pg 600 (8/08) ORDER APPOINTING GUARDIAN FOR INDIVIDUAL WITH DEVELOPMENTAL DISABILITY

A 064

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RECEIVED by MCOA 8/25/2021 10:13:23 PM



[ ] 10. There is no qualified, suitable individual or agency willing to act as guardian and the appointment of an agency directly providing services to the individual is necessary at present.

11. A reasonable effort was made to orally inform the individual of his/her right to request the guardianship to be dismissed or modified at any time. A written notice of these rights was also served on him/her.

12. Other: The most appropriate and least restrictive educational environment is Heritage High School, with continuation through the Saginaw Intermediate School District through the age of 26.

**IT IS ORDERED:**

13. The petition is ☒ granted, ☐ denied on the merits, ☐ dismissed/withdrawn.

☒ 14. CHRISTY BOMBA and/or ANDREW BAZAKIS, whose addresses and telephone numbers are:  
Name (type or print)  
5563 Pierce Road, Saginaw, MI 48604 and 3109 N. River Road, Saginaw, MI 48609 (989)860-8091 and (989)274-3427  
Address City State Zip Telephone no.  
are appointed

☒ a. plenary co-guardians of the ☒ individual ☐ estate until further order of the court

and shall qualify by filing ☒ an acceptance of appointment.  
☐ a bond in the amount of \$\_\_\_\_\_.

☐ b. partial guardian of the ☐ individual ☐ estate for the term of \_\_\_\_\_ years

and shall qualify by filing ☐ an acceptance of appointment.  
☐ a bond in the amount of \$\_\_\_\_\_, and shall have only the following powers:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The individual retains all legal and civil rights except those which have been specifically granted to the partial guardian. After qualification, the guardian shall comply with all relevant requirements under the law.

[ ] 15. The guardian is authorized to execute an application to admit the individual named above to

Name of facility \_\_\_\_\_

[ ] 16. \_\_\_\_\_, whose address and telephone number are  
Name (type or print)

Address City State Zip Telephone no.  
is appointed standby guardian. In case of death, incapacity, or resignation of the initially-appointed guardian or an emergency situation during the absence and unavailability of the initially appointed guardian, the standby guardian shall file

☐ an acceptance of appointment  
☐ bond in the amount of \$\_\_\_\_\_  
and shall assume the powers and duties of the initially-appointed guardian.

☒ 17. CHRISTY BOMBA and ANDREW BAZAKIS are to refrain from any negative communication about the other to or in the presence of ANNA-MARIE MARGARET BAZAKIS.

☒ 18. CHRISTY BOMBA and ANDREW BAZAKIS are to share equally in any agreed upon uninsured and/or out of pocket medical costs for ANNA-MARIE MARGARET BAZAKIS.



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Aug. 17. 2020 10:30 AM The Otways

989 781 7075

#1656 P 4/ 7

- [X] 19. CHRISTY BOMBA and ANDREW BAZAKIS are to share equally in any proceeds received from the Social Security Administration for the benefit of ANNA-MARIE MARGARET BAZAKIS.
- [X] 20. CHRISTY BOMBA and ANDREW BAZAKIS are enjoined from engaging in any negative criticism or communication with persons or entities engaged to provide educational, medical, or therapeutic services for ANNA-MARIE MARGARET BAZAKIS.
- [X] 21. CHRISTY BOMBA and ANDREW BAZAKIS shall work in the best interests of ANNA-MARIE MARGARET BAZAKIS and for her independence, and shall continue with DR. RICHARD SOLOMON's recommendations for medications and treatment.

AUG 17 2020

Date

Judge

CHALGIAN &amp; TRIPP LAW OFFICES, PLLC

Valerie Kutz-Otway

P73814

Attorney name (type or print)

Bar no.

4800 Fashion Square Blvd., Suite 455

Saginaw, Michigan 48604

(889) 272-7779

Address

City

State

Zip

Telephone no.

APPROVED AS TO FORM:

PICARD &amp; McLEOD, PLLC

Dated: August 17, 2020By: Christopher A. Picard (P35638)  
Attorney for Andrew BazakisDated: August 17, 2020OTTO W. BRANDT, JR. (P11129)  
Attorney for Anna-Marie Margaret Bazakis

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Approved, BGAO

JIS CODE: LOG

STATE OF MICHIGAN  
PROBATE COURT  
COUNTY SAGINAW

LETTERS OF GUARDIANSHIP OF  
INDIVIDUAL WITH  
DEVELOPMENTAL DISABILITY

FILE NO.  
20-140294-DD

In the matter of ANNA-MARIE MARGARET BAZAKIS, an individual with a developmental disability  
First, middle, and last name

TO:

Name, address, city, state, and zip

CHRISTY BOMBA and/or ANDREW BAZAKIS  
5563 Pierce Road 3109 N. River Road  
Saginaw, MI 48604 Saginaw, MI 48609  
(989) 860-8091 (989) 274-3427

Guardian's telephone nos.

(989) 860-8091 (989) 274-3427

You have been appointed and have qualified as ☐ partial guardian ☐ estate  
☒ plenary co-guardians of the ☒ person of the individual  
named above. By this instrument you are granted authority to perform all acts permitted or required by statute, court  
rules, and order of this court unless limited below.

☐ The guardian's authority is limited to those acts specifically set forth below:

The order appointing you as guardian expires on N/A

Date

AUG 25 2020

Date  
CHALGIAN & TRIPP LAW OFFICES, PLLC

Valerie Kutz-Otway

Attorney name (type or print)

4800 Fashion Square Blvd., Suite 455

Address

Saginaw, Michigan 48604

City, state, zip

(989) 272-7779

Telephone no.

P73814

Bar no.

Judge Patrick J. McGraw

P34430

Bar no.

SEE NOTICE OF DUTIES ON SECOND PAGE

I certify that I have compared this copy with the original on file and that it is a correct copy of the whole of such original,  
and on this date, these letters are in full force and effect.

Date

Deputy probate register/clerk

FILED

Do not write below this line for court use only

PROBATE COURT  
SAGINAW CO. MICH

REGISTER

PC 862 (12/18) LETTERS OF GUARDIANSHIP OF INDIVIDUAL WITH DEVELOPMENTAL DISABILITY

MCR 5.202, MCR 5.402(F)

140294

A 067

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RECEIVED by MCOA 8/25/2021 10:13:23 PM



**AS REQUIRED BY MICHIGAN COURT RULES YOU ARE NOTIFIED:**

You are required to file with this court a written report on the indicated form(s) and at the indicated times. Forms are available at the court.

**CHANGE OF ADDRESS:** You are required to promptly inform the court of any change in the ward's address within 14 days of the change. You are also required to keep the court and interested persons informed in writing within 7 days of any change in your address.

**[ ] ANNUAL REPORT:**

Your annual report on the condition of the individual with developmental disability is due on \_\_\_\_\_ of each year. (Use form PC 863.)

Date

8/25

**[ ] ACCOUNTS:** You must file with this court once a year, either on the anniversary date of your letters of guardianship or on another date you choose (you must notify the court of this date) or more often if the court directs, a complete itemized accounting of your administration of the trust. On termination of the individual's disability, you shall account to the court or to the individual or that individual's successors. The accounts must be served on the required persons at the same time they are filed with the court, along with proof of service. (Use form PC 583 or PC 584: "Account.")

**[ ] INVENTORY:** You are required by law to prepare an inventory of the assets of the estate that you have been given authority over within 60 days from the date of your appointment. You must also provide the name and address of each financial institution listed on your inventory at the time the inventory is presented to the court. The address for a financial institution shall be either that of the institution's main headquarters or the branch used most frequently by the guardian.

**DEATH OF WARD:** If the ward dies during the guardianship, you must give written notification to the court within 14 days of the individual's date of death. If accounts are required to be filed with the court, a final account must be filed within 60 days of the date of death.

**DELEGATION OF DUTIES:** You are required by law to notify the court when you delegate duties under a durable power of attorney.

**ATTENTION:** The above provisions are reporting duties only and are not the only duties required of you. These mandatory provisions are specified in court rules adopted by the Michigan Supreme Court. Your failure to comply may require the court to appoint a special fiduciary in your place and to suspend your powers. This may result in your removal as fiduciary. The court is prohibited by statute from giving you legal advice.

**KEEP THIS NOTICE FOR FUTURE REFERENCE**

# EXHIBIT F



PICARD & MCLEOD, P.L.L.C.  
Christopher A. Picard  
820 N. Michigan Avenue  
Saginaw, Michigan 48602

Wednesday May 5, 2021

**By Hand Delivery**

Mr. Picard,

Pursuant to the Court's Orders, enclosed is a Chase Cashier's Check # 9029516605 for Andrew Bazakis. It reflects 50% of Anna-Marie's SSI money in the amount of \$397.00. Also, enclosed, is a copy of the bank statement of April 2021 bank statement showing the SSI money for Anna-Marie being deposited into the account as well as the stimulus money which was provided last month to you in a Cashier's Check. Enclosed, I have provided a screenshot of the most recent SSI deposit with a 50/50 split reflected in that screenshot and correlates with the Cashier's Check that is enclosed

Can Andrew Bazakis please provide me an accounting on what he has spent the monies on that I have previously provided him for the benefit of Anna-Marie? You may send an email to me regarding the accounting to [bombafamilyof6@gmail.com](mailto:bombafamilyof6@gmail.com).

So I read your motion, disagree with things you state in it, but have some questions that may work towards resolving the motion:

1. Can you please provide a copy of Andrew Bazakis' work schedule to me for reference if a doctor's appointment for Anna-Marie needs to be scheduled prior to the Court hearing? I understand that his work schedule is available three months in advance. You may email a copy to me at [bombafamilyof6@gmail.com](mailto:bombafamilyof6@gmail.com).
2. I looked at the Our Family Wizard website and it indicates that family law practitioners can get a free account. <https://www.ourfamilywizard.com/practitioners> Would this be a free service that your office will be setting up if the Court approves of the use of Our Family Wizard?
3. Would Andrew Bazakis be willing to exchange the Bridge Card on a monthly basis, even months of the year he would have it, odd months I would have it?

Feel free to email me your answers at [bombafamilyof6@gmail.com](mailto:bombafamilyof6@gmail.com).

Also, although information previously provided, enclosed please find a screenshot of the Medicaid Card until the hard copy arrives in the mail.

Thank you,

Christy A Bomba

Encl. Cashier's Check, April Bank Statement, Screen Shot of SSI deposit, copy of Medicaid Card

Thursday April 8, 2021

Mr. Picard,

Enclosed is a Chase Cashier's Check-9039612740 for Andrew Bazakis in the amount of \$2,692.00 and copies of bank statements. From February 9 to current date, this is 50% of what Andy is entitled to regarding Anna-Marie's SSI to support her. This includes the 50% of the \$1,400 stimulus check that was electronically deposited on 4/7/2021 and not reflected on the copies of the statements enclosed as the stimulus check was deposited this week.

Prior to the stimulus check, I've attempted to send a Zelle request via email for him to accept on 2/10/21 but he did not accept and Zelle automatically cancelled the request on 2/26/21. Again, I attempted to send a Zelle request on 3/5/21 via email and he did not accept and Zelle automatically cancelled on 3/22/21. He was aware of the Zelle requests via email and his email response back to me was that he would not accept.

I offered another option on 3/14/21 of providing monthly bank statements with Zelle requests. Zelle is fee free for both of us and transfers happen in real time/same day and can be set up automatically. I provided the contact information to Andy regarding the Chase Banker who was willing to set it up Zelle with him and his information would remain private. He chose not to participate in this option.

Therefore, I'm providing a Cashier's Check along with the bank statements since the inception of the account. Once again, the bank statements do not reflect the \$1,400 deposited (as it was received on 4/7/21) but his portion of Anna's Stimulus check (\$700.00) is included in the cashier check amount.

Thank you in advance for providing the check to Andy. I can continue to provide Cashier Checks every month and provide on Friday to whoever picks up Anna at McDonalds to begin his parenting time. I would just ask that whoever picks up Anna sign a receipt that a check of the amount stated was received and I would be happy to have a carbon copy available to that person to provide to Andy.

Thank you,

Christy A Bomba

# EXHIBIT G



**Monika**

RE: Visit Follow-Up Question

5/4/21 7:04 PM

Unfortunately that week is booked. I'm pretty open on June 28 or 29, July 1 or 2. Anything then?

Andy

----- Message -----

From:Monika

Sent:5/3/2021 10:18 AM EDT

To:AnnaMarie Margaret Bazakis

Subject:RE: Visit Follow-Up Question

Good Morning Andy,  
Yes we have openings the week of June 18 th. What day/time would work best for you both?

Thank you,  
~Monika,

----- Message -----

From:AnnaMarie Margaret Bazakis

Sent:4/28/2021 5:45 AM EDT

To:Monika

Subject:RE: Visit Follow-Up Question



Andy

----- Message -----

From:Monika

Sent:5/3/2021 10:18 AM EDT

To:AnnaMarie Margaret Bazakis

Subject:RE: Visit Follow-Up Question

Good Morning Andy,  
Yes we have openings the week of June 18  
th. What day/time would work best for you  
both?

Thank you,  
~Monika,

----- Message -----

From:AnnaMarie Margaret Bazakis

Sent:4/28/2021 5:45 AM EDT

To:Monika

Subject:RE: Visit Follow-Up Question

I'm sorry! this is Andy (Dad). Let me know if  
you have anything the week of June 28. If so,  
I'll contact Anna's mother and offer a  
re-schedule if there is a day that works for  
both of us. Thank you!

----- Message -----

From:Monika





I'll contact Anna's mother and offer a re-schedule if there is a day that works for both of us. Thank you!

----- Message -----

From:Monika

Sent:4/27/2021 11:37 AM EDT

To:AnnaMarie Margaret Bazakis

Subject:RE: Visit Follow-Up Question

Thank you for your message, just for clarification, which parent am I speaking with?

Thank you.

----- Message -----

From:AnnaMarie Margaret Bazakis

Sent:4/26/2021 4:23 PM EDT

To:Vessela I Giger-Mateeva, MD

Subject:Visit Follow-Up Question

The June 18 appointment is once again while I am working. I'd like to reschedule.

Thank you

# EXHIBIT H

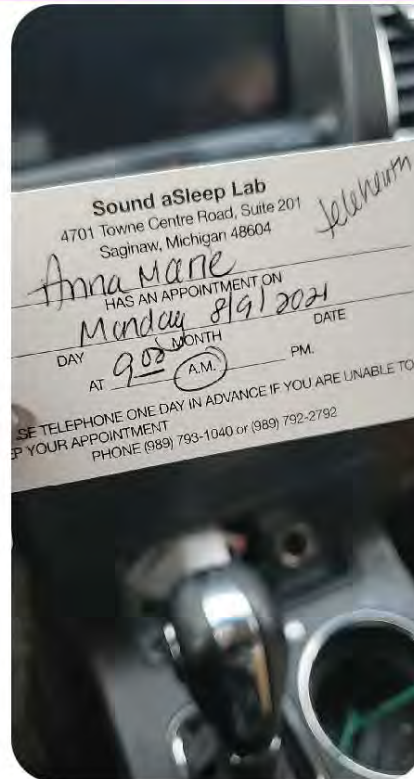


AB

Andy Bazakis



See copied and pasted text above. We tried to call you on speaker phone and it rang twice and you put it through VM.



As I said, I am working. I was in with a patient. I will get a hold of Dr. Saini

This is in park my text messages are not helpful. If you want to be sure in the future, please send an email. Thanks.

AB



SMS



# EXHIBIT I

From: Christy Bomba <bombafamilyof5@gmail.com>  
Date: Tue, Dec 1, 2020 at 10:42 AM  
Subject: Re: Anna's time at home  
To: Andy Bazakis <annabazakisdad@gmail.com>

Andy,

Since you decided on 10/30 to complete your parenting time at 6pm we will keep to that schedule for both parenting schedules for consistency. Anna will be at our home and you may pick her up for the start of your parenting time one week from this Friday at our house at 6pm. I'll have her meds for you. If you haven't provided Anna her shoes this week or next at school while she is there in the morning, please bring her shoes with you. If you want to call McDonalds on State St. your "home base" at the end of your parenting time for Anna to be picked up ....that is your choice.

Again, this shouldn't be an issue since you have called me to drop her off at the house instead of McDonalds a number of times and have successfully done so each time with no incidents. You have picked up medication out of my mailbox for her on more than one occasion...successfully, etc, etc.

Per referral, we have a Telehealth video appt with Sound Asleep on Thursday 12/03 at 3:30pm. They will text a link for you to join just before the appt.

At her last Dental Cleaning, you didn't schedule a 6mo. appt. She is now scheduled for Tuesday January 5, 2021 at 5pm

Enjoy your day,



# EXHIBIT J

**Subject:** Medicaid

**Date:** Tuesday, December 8, 2020 at 1:19:41 PM Eastern Standard Time

**From:** Christy Bomba

**To:** Andy Bazakis, Theodore Bomba

Andy,

Anna now qualifies for Medicaid. Her Medicaid # [REDACTED]. A card will be arriving to my home shortly and I have a request for another card for you. Once I receive it, I'll send it to you.

Thanks!

# EXHIBIT K

From: **Christy Bomba** <[bombafamilyof5@gmail.com](mailto:bombafamilyof5@gmail.com)>  
Date: Mon, Feb 15, 2021 at 3:05 PM  
Subject: Re: SSI  
To: Andy Bazakis <[annabazakisdad@gmail.com](mailto:annabazakisdad@gmail.com)>

Good Afternoon Andy,

See below responses as needed are highlighted.

On Fri, Feb 12, 2021 at 12:03 PM Andy Bazakis <[annabazakisdad@gmail.com](mailto:annabazakisdad@gmail.com)> wrote:  
Christy,

This week you informed me that Anna's SSI went through, reported a bank account established in your name for receipt of funds and repeatedly prompted me to accept a Zelle transfer based on your calculation as you see fit unilaterally. Please be aware that it seems you are in a hurry to push this arrangement into being.

In consideration of the court's order that Anna's SSI benefits be divided equally I propose the following:

1. I ask that you immediately share all information and documents regarding Anna's SSI- **final response: all documents were provided at the last hearing**
2. You stated that all of Anna's SSI application was processed online. I ask that you share immediately Anna's login and password information from [ssa.gov](https://ssa.gov). See the attached screen shot for the logon screen. **Final Response: As stated in previous emails: Initial application-May 2020 Remaining communication was mail and phone calls. No online account created..**
3. If there are any other websites related to Anna's finances, I ask you to share the logins and passwords for each and every one.
4. I propose that any bank account in receipt of Anna's SSI check have all three of our names on it with a shared login and password in the interest of transparency. **Please reference SSA website on your request as the Federal Govt. has requirements and laws on how SSI accounts are to be set up for SSI recipients (one payee) in order to receive payments. You may also contact the bank officer as well for verification as I offered to send her card but you have not accepted. Second request...if you would like the contact information please let**

me know. What you propose is not legally warranted by the Federal Govt.

5. Your email stated a back payment of \$2382 at a rate of \$794/month. Anna turned 18 on May 4<sup>th</sup>. If February is not considered, then this suggests a total of \$7146. If there are any unstated considerations accounting for this gap, please share documentation of those. You are partially correct. Based on my understanding the \$2,382 is the first of 3 back pays. Each back pay arrives every 6 months until SSA is caught up. Based on what SSA shared via phone, at the bank, the same amt. will arrive again electronically in 6 months. Then the next and final 6 month payment will have a bit less. There is a formula they use based on the date of filing and when child support ended....then..there is a SS deduction in the first two months after child support ends. I asked why...and the representative didn't know why...it's just been handled this way for years...was the response.

6. Please share an image of the actual check sent to Anna from the government that you stated in your email "cleared". I have a copy of the check the bank provided me when it was deposited...however....I was advised NOT to scan/copy and email a federal check over the internet. However, I'm more than happy to show you a xerox copy of the check next Friday at McDonalds. **Let me know if you want Ted/me to bring it to show you ONLY.**

You applied for Anna's SSI unilaterally and the information involved is known only to you and thus for you have refused to share. I am concerned about incomplete and unverified information being provided to the government. The SSI application was filed in May 2020 and you have been provided all the information up to the last hearing. The Psych report, which you wouldn't share with me, was mandatory for SSA to keep her application active. I sought the documents through the courts as you refused to provide. So you are aware that report was filed in order for her to qualify. You are also aware that the Psych report was incomplete as an IQ test was required and not done when you had Anna tested. As you are aware, the School Psycholoigist administered the IQ test and it was sent to SSA and you received a copy. What incomplete or unverified information are you concerned about? You have all the documents to review from the last hearing to review incomplete and unverified information. The Federal Govt. would not be issuing Anna's approval of SSI until ALL information is verified and complete...hence my



response to the Psych report and IQ test above. As you are aware, they are in receipt of the co-guardianship paperwork.

As to a bridge card, I am not aware of how that would be split in half. If Anna is granted bridge card money, I would then propose that you keep the card and the difference of half its value be accounted for in the amount sent to Anna's account with me from her SSI check. Let me know your thoughts on this strategy. What you are proposing is fraud and I will not participate in fraud or any other action that will jepordize Anna's future or opportunities.

I have contacted my accountant regarding any tax related issues Anna's SSI brings to the table as well as Anna's tax filing. I will share any and all information I come across on this. matter. I would invite you to join me with Lief Peterson in filing Anna's taxes. I would caution you against using the same accountant you used in 2003 as, if he was provided with all of the pertinent facts and/or did not perform due diligence, he filed your taxes fraudulently that year. I was contacted by the IRS at that time and made aware requiring a correction. If he did perform due diligence and was not accurately informed, then I suppose that false filing was on you. No need to worry about that incident in any case; it all turned out fine and while you are fortunate the feds didn't audit you, the statute of limitations is up by now. What you just wrote is defamation of character without proof. Based on this response, it's clearly best we use an independent accountant with no relationship to either one of us for Anna's taxes. More to come on this at a later date.

As you are aware, I was informed after the fact not by you but by Valley OB/Gyn's accounting personnel that Anna was enrolled in Medicaid. I have yet to be sent a Medicaid card for her. Joint guardianship would demand that each of us be provided with a health insurance card. Please provide one so soon as you have it available. You are correct in that you didn't get a Medicaid card yet. I did call some time ago and it didn't arrive. I'll call Tuesday (today they are closed for President's day) to have one mailed. In the meantime, here is a copy of the card. You can make copies and laminate for others if needed as medical offices only need the # on the front to activate Medicaid for service. You and I will have original cards.

Another set of considerations are the bookkeeping requirements regarding Anna's SSI, let's share any information we each find on this so as to follow government guidelines. Check the SSA website and/or call SSA for more information and to get your questions answered. It's more along the lines of "room and board" but I would encourage you to dig deeper to better educate yourself. Sometimes they audit randomly...and other times not. It's best to keep up to date and keep receipts that are applicable.

Allow me to once again clearly state: *I do not consent to or agree with the arrangement you have unilaterally created and are currently pushing with the account in your name only with Zelle transfers as you alone see fit.* In resolving these matters, I do not feel that we have a sufficient level of trust in our relationship to make business decisions over the phone. If you want to keep the current account you have, then I ask to put *all of our names* on the account for Anna you have established, share all passwords and logins, and from that account we can then in a transparent manner transfer the agreed upon amounts to an account Anna has with you and another she has with me. *Transparency and clarity are in my opinion essential to a cooperative effort as to Anna's business affairs.* Please reference SSA website to educate yourself on your request as the Federal Govt. has laws and the final say on this and how accounts are to be set up for SSI recipients and ONE payee in order to receive payments. You may also contact the bank officer as well for verification as I offered to send her business card but you have not accepted as of yet. Third request...if you would like her business card please let me know. Zelle is easy, automatic, and effortless for everyone and all banks and credit unions use it. Again, please check with your banker and become knowledgeable on this. Also, you CAN'T electronically transfer the Social Security \$ to an account that has Anna's name or SS# on it as you reference above. You REALLY need to read up and educate yourself on SSI!!!. This has to be transferred into YOUR account. Otherwise, you will cause Anna financial problems and potentially delay and/or termination of services. It's the understanding that an adult child receiving SSI cannot live or work independently so they are provided SSI \$\$ to support their living expenses where they reside. PLEASE Take the time you need to figure ALL OF THIS out properly and your 1/2 of the money will be waiting for you when you are ready to receive it. As for your stated trust issues...they don't have a place in holding back Anna and her future nor as being used as a crutch or a control method. Our joint focus should be on building Anna's future as she is out of childhood and into adulthood and building her opportunities moving forward.

Lastly,,and a final on this.... these matters involve Anna, you and me....not Annie or others. Moving forward, any emails concerning Anna's SSI, Medicaid, medical etc. or any other personal/sensitive matters regarding Anna will be between you and me. If others are added to these types of emails, I will not respond back to the email. If it

**has to do with logistics of picking up/dropping off, school, Special events, etc. both step-parents may be involved in the email/text exchange.**

If you don't wish to go this route and wish to propose another strategy, please do. I'm willing to hear about alternatives.

Wishing you a great weekend,

Andy

On Wed, Feb 10, 2021 at 2:04 PM Christy Bomba <[bombafamilyof5@gmail.com](mailto:bombafamilyof5@gmail.com)> wrote:  
Andy,

Review my emails and feel free to call me with questions as I really don't have a lot of time to engage in lengthy emails when we can discuss some of these things by phone as SS is complete.

If there are questions SSA related I would recommend going to the website. If they are related to cash distribution via bank I can take a pic of the bank officers business card to answer any questions with Zelle as all banks use it...or just consult with your bank regarding Zelle as this is widely used for scenarios such as ours.

Take Care,

Christy

On Wed, Feb 10, 2021, 12:47 PM Andy Bazakis <[annabazakisdad@gmail.com](mailto:annabazakisdad@gmail.com)> wrote:  
Christy,

As I have been in the hospital taking care of patients, I cannot jump to respond at a moments notice to every email you send. I certainly hope you understand.

I'm not sure why you were so anxious to do this at this very second. I will be sending an email in the next couple of days. I do not agree with the mechanism that you have proposed and there are a number of unanswered questions.

As of now I will not be accepting your demand for Zelle transfer.

Andy

On Feb 10, 2021, at 09:00, Christy Bomba <[bombafamilyof5@gmail.com](mailto:bombafamilyof5@gmail.com)> wrote:

Good Morning,

I haven't heard back regarding text, email or phone call re: past emails or any questions you may have.. Just a FYI, when a check arrived from the Dept. of Treasury, there wasn't a letter or anything to accompany it.

Also, Social Security doesn't split checks and has the co-guardianship papers on file. They rely on the parents to distribute the funds and expense the funds appropriately (living expenses etc. as listed by what is appropriate by the Social Security office).

The original application filed in May 2020 had the information needed to issue a check. On the check, it had my name on it on behalf of Anna as they don't put 2 parent names on the check (only one payee and the bank account has to be listed as one payee on behalf of Anna in order to receive payments from SSA). They run a full background check on the payee before issuing a check on behalf of Anna and requiring electronic deposits moving forward. I learned this while at the bank setting up an account specifically for this \$\$ to be deposited and transferred. I wanted to talk through this with you via phone in case you had questions or we could clear up any concerns you may have.

I'm transferring 1/2 the amount out today into my own personal account.. Let me know if you want your phone number or email entered to be used to receive notification to send the other 1/2 where you will accept and have it deposited into the account of your choice. It cannot be put in an account for Anna (ie her SS # on it). This process above doesn't involve any account information shared with me and it's private for both of us. I've offered in the previous email if you would like the name of the bank officer who set up the account and if you prefer to speak with her....I'll take a pic of her business card and send as I mentioned you may have questions. Just let me know

Once you let me know re: phone or email notification I'll set up an automatic split for the 5th of every month for each of us if that date works for you. This way we don't have to think about it or its forgotten. It will just happen moving forward. Again, call, text, or email. Looking forward to hearing from you.

Thanks!

On Tue, Feb 9, 2021, 12:20 PM Christy Bomba <[bombafamilyof5@gmail.com](mailto:bombafamilyof5@gmail.com)> wrote:  
...is complete. You need to set up Zelle through app store and connect to your bank account you want the \$ deposited in. Once you compete that, I will set up automated splits every month via your phone # or email (your choice) where you will accept the \$ to put in your account.

First check of \$2382 (back pay) arrived and deposited today will split when you set up Zelle and the check clears as early as tomorrow.

Starting March 1st...Anna will receive \$794.00 a month which we will split 50/50 via Zelle.

Let me know when you are set up!

--

Christy A. Bomba

"Be Silly, Be Honest, Be Kind"

-Ralph Waldo Emerson



# EXHIBIT L

# Social Security

## SSI Federal Payment Amounts For 2021

Automatic Determinations  
Cost-of-Living Adjustment  
SSI Annual Report

Maximum Federal Supplemental Security Income (SSI) payment amounts increase with the cost-of-living increases that apply to Social Security benefits. The latest such increase, 1.3 percent, becomes effective January 2021.

SSI payment standards, 1975 & later

**SSI amounts for 2021**

The monthly maximum Federal amounts for 2021 are \$794 for an eligible individual, \$1,191 for an eligible individual with an eligible spouse, and \$397 for an essential person.

In general, monthly amounts for the next year are determined by increasing the *unrounded annual amounts* for the current year by the COLA effective for January of the next year. The new unrounded amounts are then each divided by 12 and the resulting amounts are rounded down to the

next lower multiple of \$1.

### Calculation details

Recipient	Unrounded annual amounts for—		Monthly amounts for 2021
	2020	2021 <sup>a</sup>	
Eligible individual	\$9,407.82	\$9,530.12	\$794
Eligible couple	14,110.18	14,293.61	1,191
Essential person	4,714.70	4,775.99	397
<sup>a</sup> The unrounded amounts for 2021 equal the unrounded amounts for 2020 increased by 1.3 percent.			

### Payment reduction

The monthly amount is reduced by subtracting monthly countable income. In the case of an eligible individual with an eligible spouse, the amount payable is further divided equally between the two spouses. Some States supplement SSI

RECEIVED by MSC 8/1/2022 3:34:06 PM

RECEIVED by MCOA 8/25/2021 10:13:23 PM

benefits.

**A 093**

# EXHIBIT M



From: **Christy Bomba** <[bombafamilyof6@gmail.com](mailto:bombafamilyof6@gmail.com)>  
Date: Wed, May 19, 2021 at 10:48 AM  
Subject: Follow Up -Motion and email  
To: Burkhart, Picard, Tiderington, & McLeod <[bptm4@ameritech.net](mailto:bptm4@ameritech.net)>

Mr. Picard,

I have not had a response from you regarding the proposed joint motion to amend the Court's January 5, 2021 Order regarding Easter and Anna's birthday that I emailed you on May 6 and followed up via email on May 11th. Will you please let me know whether Andy will agree to the proposed motion or whether Andy will not agree to the proposed motion so I may discuss it with the court?

Likewise, you have not responded to my May 6 letter I personally delivered to your office in which I stated in part:

"Can Andrew Bazakis please provide me an accounting on what he has spent the monies on that I have previously provided him for the benefit of Anna-Marie? You may send an email to me regarding the accounting to [bombafamilyof6@gmail.com](mailto:bombafamilyof6@gmail.com).

So I read your motion, disagree with things you state in it, but have some questions that may work towards resolving the motion:

1. Can you please provide a copy of Andrew Bazakis' work schedule to me for reference if a doctor's appointment for Anna-Marie needs to be scheduled prior to the Court hearing? I understand that his work schedule is available three months in advance. You may email a copy to me at [bombafamilyof6@gmail.com](mailto:bombafamilyof6@gmail.com) .

2. I looked at the Our Family Wizard website and it indicates that family law practitioners can get a free account. <https://www.ourfamilywizard.com/practitioners> Would this be a free service that your office will be setting up if the Court approves of the use of Our Family Wizard?
3. Would Andrew Bazakis be willing to exchange the Bridge Card on a monthly basis, even months of the year he would have it, odd months I would have it?"

Again, I have read the motion and take it seriously and would like to reach an agreement with Andy before having to go into court and further would like to point out some things to you.

First, I do not see where in the January 5, 2021 Order that it says that I am to notify the SSA office of the co-guardianship order, Andy could of done it. Did you check with the SSA office if they have a copy of the co-guardianship order? Did you try to send them a subpoena, as I just got a copy of a subpoena you issued to Chase Bank? I am sure I sent them a copy shortly after the co-guardianship order was entered last year. Please let me know what you have done and why you think you can bring such a motion.

Second, I do not see in any of the Orders that requires me to provide, "all information, passwords and access codes to Father for all Social Security information, including bank account information", so I do not know how I can be compelled to provide this information that was not ordered. Also Andy knows from his conversation with Janis Hall at Chase that only one person can be assigned to the account, only one person can have a login. Also SSA only has one person to be the representative payee and I am the only person that is responsible to the SSA and for properly making sure the monies go to Anna's benefit, not Andy. I have also provided you statements of the money coming in from SSI and the stimulus check that you can use to confirm that 50% is

being paid. The amount of monthly SSI of the SSA's website so Andy and you should know how much is paid out each month. So other than to harass me and to meet Andy's control needs, I do not know why he needs the information you are asking the court to compel.

Third again, as to the Bridge Card, would Andy be willing to physically take the card for the even months and I will physically have it for the odd months, and only spend up to the one month total amount of \$185 for each month one has the card, regardless when the state adds money to the card? Please let me know if Andy will agree to this.

Fourth, I keep telling Andy that I will give him a Medicaid Card when his arrives. He has the card number, a copy of the card, and I will give the second card to him once it comes. AGAIN, I will provide Andy his card once the card arrives.

Fifth, again, Our Family Wizard looks like it costs money for each person to use. I am not willing to pay for it, but will agree to use it if Andy pays both for his and my use of it. It also looks that you can get it free, but I am not sure. I found a free app that appears to do the same things. <https://appclose.com/> I would be willing to go the free route and use this app. I also would be fine in emailing you, copying Andy, for all non-emergency communications and for Andy to email you and copy me likewise. If it is an emergency he needs to text me or call me and I will do the same for him., and if I don't pick up he is to call Ted, and if I cannot get ahold of Andy in an emergency I will reach out to Annie. Please let me know if Andy will agree to this and that Andy would put on it his work schedule within 72 hours of him knowing his work schedule.

Sixth, I am fine with Andy scheduling all medical and follow up medical appointments within 48hrs after attending that appt or an appointment needs to be made by referral or jointly agreed by both parents and he references the joint calendar with our availability so long as he provides me notice within 24

hours after he makes the appointment either via email to you with me copied on it or through the free app or Family Wizard, if it does not cost me anything to use. However, since Andy has a history of not showing up to appointments, forgetting appointments, frequently reschedules, and not attending follow up appointments, I would like an Order to include an agreement that if Andy fails to attend an appointment he scheduled, fails to make a follow up appointment, fails to make a needed appointment, reschedules, or fails to notify me promptly of an appointment within 24 hours, that he has to pay me \$1,500 as liquidated damages for each breach of the agreement if found by the court to be in breach, or if I hire an attorney my attorney's reasonable attorney's fees and costs, whichever amount is greater. Also if the court finds that Andy breached the agreement three times, that the Order will state that Andy will then be removed as the co-guardian for making all medical appointments and I am then the sole guardian to make all of Anna's medical appointments giving Andy notice within 72 hours of making the appointment.

Seventh, I was unaware that Andy scheduled an appointment with Dr. Solomon. Anna is still following up with him according to Dr. Solomon's office and we had an appointment with him on Monday, with an invite to Andy who was a no show. Dr. Solomon was unaware that his letter was going to be used in a motion before the Court.

Eighth, why did you subpoena Chase Bank as the motion to compel asks for the same documents, or am I missing something? I gave you the same documents you sent a subpoena for showing the amount of money coming in so you can divide by two to see that Andy is getting his 50%. This just looks like Andy wants to audit me, which I find to be harassing. The amount of money that the SSA office sends each month is on their website, and I have given you checks for Andy for half of what I get as ordered by the court. So other than harassing me what is the purpose? I do not think the subpoena is proper as you are asking for information Andy talked to Chase about to which they would not give him. Please let me know the reasons and if you cannot tell me why, or don't have a good or legal reason to do so, I ask that you tell Chase that you are taking back the subpoena and let me know that you took back the subpoena.

Please let me know Andy's positions on all of these matters as soon as possible by email at [bombafamilyof6@gmail.com](mailto:bombafamilyof6@gmail.com)

Sincerely,

Christy Bomba



# EXHIBIT N

From: **Andy Bazakis** <[annabazakisdad@gmail.com](mailto:annabazakisdad@gmail.com)>  
Date: Fri, Mar 19, 2021 at 8:08 AM  
Subject: Re: SSI  
To: Christy Bomba <[bombafamilyof5@gmail.com](mailto:bombafamilyof5@gmail.com)>

Christy

Allow to reiterate:

As to the bank account you set up for Anna's SSI, I did discuss our situation at length with Janis Hall, the banker at Chase you referred me to. She and I spoke multiple times on the day referenced in my previous email. As the account is set up, only one of us is assigned to be on the account with Anna-Marie as per the rules of setup. In the interest of transparency, I would propose that both of us have access to the account in terms of being able to see all activity. A shared login and password for the bank's online banking website would allow this. From my discussion with Janis Hall at Chase, Anna cannot have a separate login so this would involve you sharing a login with me in your name. That said, all Chase accounts for the same owner are linked online and I don't find it appropriate for one of us to have access to the personal finances of the other. If you have no other accounts at Chase, this should not be a problem, you can go ahead and share your logon and password. If you already do, or subsequently do establish one or more accounts at Chase, then we have a few options as I see it:

1. Pick a different bank where neither of us has an account and transfer everything for Anna to that one.
2. Keep Chase for Anna if you wish to change your banking accounts to another institution for your own privacy

If you can think of another option, I am open to other considerations.

As to the check photocopy made out to you from the state on Anna's behalf, I understand that you are under the impression that:

- Photocopying of any government check is illegal
- Providing me with any such a copy of a check is illegal
- Your refusal to provide me with any such document is because of the above

It is my understanding is that a real size, double sided color copy of a check (that could be used as a duplicate to be cashed fraudulently) is not allowed but a single-sided, black and white copy is entirely legal. Janis Hall confirmed this in my conversation with her. If it makes you feel better to write

"COPY" or "VOID" in large letters on a check copy, then that would be fine for me. If you are still uncomfortable with such a convention then maybe we should seek a legal opinion on this matter and share formal documentation of that opinion. *I am asking, once again, in consideration of the co-guardianship order, that you provide me with copies of all such documents related to Anna as you and only you currently have access.*

As to Anna's details provided to the social security administration, I once again ask the following:

- I have asked for all passwords and logons for Anna's social security issues. Please provide those. If there is no login information, then please share how all of that information for Anna could have been submitted electronically without creating some form of an account.
- The information provided to the government for Anna's SSI has not been disclosed to me. At no time was I included in this process. Please provide all such information and documents.
- Please let me know if you have applied on Anna's behalf or assisted Anna in applying for any further government benefits, programs, stimulus checks, etc.

It appears you do not wish to allow me to see the account Anna's SSI is deposited in. Please help me understand why.

Thank you.

Andy

**STATE OF MICHIGAN  
IN THE PROBATE COURT FOR THE COUNTY SAGINAW**

IN THE MATTER OF ANNA-MARIE BAZAKIS,  
an individual with a developmental disability

File No. 20-140294-DD

Hon. Patrick J. McGraw (P34430)

---

CHRISTY BOMBA  
In Pro Per, Petitioner

OTTO W. BRANDT, JR. (P11129)  
Guardian Ad Litem  
715 Court Street  
Saginaw, Michigan 48602  
(989) 793-4740

PICARD & MCLEOD, P.L.L.C.  
BY: CHRISTOPHER A. PICARD (P35538)  
Attorney for Petitioner Andrew Bazakis  
820 N. Michigan Avenue  
Saginaw, Michigan 48602  
(989) 753-4441

---

**MOTION TO COMPEL COMPLIANCE WITH  
COURT ORDERS AND SET UP FORMS OF COMMUNICATION  
AND ORDERLY TREATMENT FOR THE PROTECTED PERSON**

NOW COMES the Petitioner, ANDREW BAZAKIS, by and through his attorney, CHRISTOPHER A. PICARD, and in support of said motion state as follows:

1. That an order appointing co-guardians was entered in this matter on August 17, 2020.
2. This Court entered an Order dated January 5, 2021 which, inter alia, directed Co-Guardian, Christy Bomba, to inform the Office of Social Security to be informed of the two guardians and to split all monies equally between the guardians.
3. Social Security refuses to discuss Anna's benefits or disbursements directly with Father because Father is not listed as a co-payee or co-guardian.
4. Father cannot gain access to the information on line provided by Social Security because Ms. Bomba refuses to give Father website portal access.



5. Father can gain no information relating to his daughter's social security benefits or payments from the Social Security office directly because Mother initially signed Anna up and is listed as the sole protected payee.
6. Mother has enrolled Anna up for Medicaid but refuses to share a Medicaid card with Father.
7. Mother obtained a bridge card for Anna but again has refused to share the benefits with the co-guardian or to offset the value of the bridge card against other benefits available to Anna.
8. Father is denied access to the Anna's bank account information because Mother refuses to add him to the account and refuses to give him the necessary log in information needed to view account activity on-line.
9. Father has been blocked from all forms of e-mail communication with Mother which is necessary and will only communicate with him by phone.
10. Mother has at various times accused Father of making threatening statements when communicating by phone or verbally face-to-face.
11. So as to avoid unfounded accusations, Father feels it would be best to confine all communication between the co-guardians through Our Family Wizard that retains the communications and could be accessed by designated third parties, such as the GAL or the Court, itself.
12. Anna's medical information, including in network doctor appointments, are posted on her Covenant MyChart portal.
13. Mother has changed the e-mail address assigned to this account multiple times to Mother's address and refuses to give the e-mail address to Father, essentially blocking him from accessing medical data.
14. Anna has an e-mail address that can be the designated MyChart address which would enable both parents access to pertinent information relating to Anna.
15. The co-guardians could still use Our Family Wizard for all information relating to out of network matters.
16. Mother continues to schedule medical appointments in conflict with Father's work schedule and/or fails to timely inform him of the appointments otherwise.
17. To effectively act as co-guardians, both guardians need to have opportunity to attend medical appointments for their daughter and to schedule appointments based on their work schedules and availability.



18. Given the persistent, systematic, and unilateral conduct of Mother, Father proposes that the Court assign him sole responsibility relating to scheduling all medical appointments and follow-up treatment and to then timely inform Mother of the same.
19. This Court's Order of August 20, 2020 states, inter alia, (paragraph # 21), "...and shall continue with Dr. Richard Solomon's recommendations for medications and treatment."
20. Dr. Solomon's practice is Developmental *Pediatrics* and has "graduated" Anna from his care. (See attached letter).
21. The Court's order needs to be revised so as to have someone other than Dr. Solomon responsible for determining Anna's medication and treatment regime.
22. Father proposes the responsibility be assigned to Anna's primary care physician, Dr. Jane Castillo.
23. Further, Anna needs a new psychiatrist who specializes in adults to replace Dr. Regan, Anna's former pediatric psychiatrist.
24. Father would suggest Dr. Kai Anderson, or let Dr. Castillo select Anna's psychiatrist.

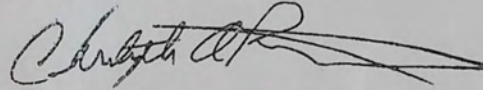
WHEREFORE, Petitioner prays this Court:

- A. Compel Mother to provide all information, passwords, and access codes to Father for all Social Security information, including bank account information, bridge card and Medicaid card, for their daughter, Anna, and to comply with this Court's previous orders relating to informing the Social Security office of his status as co-guardian;
- B. Require the parties to join Our Family Wizard, or something similar, to communicate regarding their daughter, and include access to the information to the GAL;
- C. Appoint Father as the sole guardian to schedule all medical appointments and follow-up treatments, with appropriate communication to the Mother regarding appointments and medical treatment;
- D. Require the parties to maintain Anna's e-mail address for the Covenant MyChart portal;
- E. Appoint a replacement for Dr. Solomon for overall management of Anna's medication and treatment;

F. Appoint a psychiatric doctor for Anna;

G. Grant this co-guardian, and the protected person, all other relief deemed fair and equitable and/or otherwise permitted by law, including actual costs and attorney fees for having to bring this matter before the Court.

PICARD & McLEOD, PLLC



CHRISTOPHER A. PICARD (P35538)  
Attorney for Petitioner Andrew Bazakis

Dated: April 27, 2021

PICARD & McLEOD, P.L.L.C., 820 NORTH MICHIGAN AVENUE, SAGINAW, MICHIGAN 48602



Verizon VPN

19:51

100%



(989) 860-8091

Today 14:57

I still have need of a copy of Anna's Medicaid card as well as her bridge card. It is also time to file taxes and I would like to get the appropriate paperwork to Mr. Peterson to take care of that for her. Please pass that along. Thank you.

Today 16:10

I will call Medicaid again for the 3rd time as it never came. There is no "copy" of a bridge card and we need to discuss that and how we will handle moving forward. Feel free to call me to discuss.. As for taxes, she hasn't earned enough in 2020 SSI yet to file and we did not agree to Mr. Peterson. We can discuss further in a phone call.

How is Anna? I would like to hear how she is doing.

She's doing great! See you at 6



Text Message



**STATE OF MICHIGAN  
IN THE PROBATE COURT FOR THE COUNTY OF SAGINAW**

IN THE MATTER OF ANNA-MARIE BAZAKIS,  
an individual with a developmental disability

File No. 20-140294-DD

Hon. Patrick J. McGraw (P34430)

---

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BY: CHRISTOPHER A. PICARD (P35538)  
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bptm4@ameritech.net

---

**MOTION AND MEMORANDUM TO AMEND THE  
JANUARY 5, 2021 ORDER**

**MOTION**

NOW COMES the Petitioner, CHRISTY BOMBA, by and through her undersigned counsel, and motions this Honorable Court to Amend the January 5, 2021 Order Regarding Holiday Parenting Time, as there are two separate and distinct Easters observed by the Petitioners, amending the Order so that each Petitioner can have Anna on each respective Holy day, further providing a rotating scheduled on the years that Easter and Orthodox Easter fall on the same Sunday, and to have Anna on her birthday from 9:00 a.m. to 6:00 p.m., alternating years with Father having her on odd years, followed by Mother having her on even years for the same period

of time. BOMBA also seeks an Order that the monthly 50% payment made to BAZAKIS are done electronically, not by cashier's check, so not to reduce Anna's SSI benefits.

In in support of this motion BOMBA states as follows:

1. On January 5, 2021 the Court on motion by co-guardian BAZAKIS, heard from the Petitioners and subsequently entered an Order setting forth dates in which the co-guardians would respectively be with Anna.

2. In part the January 5, 2021 Order states in part, "IT IS FURTHER ORDERED Mother shall have Anna for Easter day from 9:00 a.m. until 6:00 p.m. in Even years and Father shall have Anna in Odd years for a like period of time".

3. BOMBA observes the Christian Easter, which this year was on April 4, 2021.

4. BAZAKIS observes the Greek Orthodox Easter, which this year was on May 2, 2021.

5. Under the current Order, BOMBA on Easter and BAZAKIS on Orthodox Easter were with Anna.

6. In future years the schedule will not line up in such a manner whereas BOMBA on Easter and BAZAKIS on Orthodox Easter would be with Anna respectively.

7. Easter and Orthodox Easter overlap seven times in the next 20 years as follows:

- a. April 20, 2025;
- b. April 16, 2028;
- c. April 13, 2031;
- d. April 9, 2034;
- e. April 5, 2037;
- f. April 25, 2038; and
- g. April 21, 2041.

[https://en.wikipedia.org/wiki/List\\_of\\_dates\\_for\\_Easter](https://en.wikipedia.org/wiki/List_of_dates_for_Easter)



8. BOMBA requests that the January 5, 2021 Order regarding Easter to be amended as follows:

IT IS FURTHER ORDERED Mother shall have Anna for Easter day from 9:00 a.m. until 6:00 p.m. and Father shall have Anna for Orthodox Easter for a like period of time and when Easter and Orthodox Easter are observed on the same Sunday, Father shall first have Anna beginning on April 20, 2025, from 9:00 a.m. until 6:00 p.m. and Mother shall next have Anna beginning on April 16, 2028 from 9:00 a.m. until 6:00 p.m. and shall continue to alternate for the same time, Father April 13, 2031, Mother April 9, 2034, Father April 5, 2037, Mother April 25, 2038, Father April 21, 2041, and shall continue Mother next then Father for years after 2041 when Easter and Orthodox Easter fall on the same Sunday.

9. The Order is silent as to Anna's Birthday.

10. Under the current Order BAZAKIS had Anna on her birthday in 2021.

11. Each co-guardian should be able to have Anna on her birthday for some time, with the majority of the time to be rotated on a yearly basis.

12. BOMBA requests that the January 5, 2021 Order to be amended by adding:

IT IS FURTHER ORDERED Mother shall have Anna on Anna's birthday from 9:00 a.m. until 7:30 p.m. in Even years and Father will have a like period of time in Odd years if the day falls on the weekend. If the day falls on a school day, the respective parent may pick up Anna after school to celebrate her birthday until 7:30 p.m. This provision for Anna's birthday overrides the January 5, 2020, Order that parenting time shall continue in alternating two week blocks of time as previously ordered.

13. BOMBA requests this Court to enter an Order that BOMBA's 50% payments of the SSI money for Anna-Marie to BAZAKIS can be made electronically via Zelle®, a no-cost service, <https://www.zellepay.com/>, directly to BAZAKIS, alternatively to BAZAKIS' counsel's IOLTA, and for BAZAKIS to provide the necessary information to facilitate that reoccurring electronic transfer.

14. BAZAKIS has previously rejected this form of payment even though eventually by not using it, the monetary benefit to Anna-Marie will eventually be reduced by JPMorgan Chase Bank, N.A. for the use of cashier's checks.

14. On May 6, 2021, BOMBA sent BAZAKIS's counsel a proposed joint motion regarding Easter and Anna's Birthday, and followed up her request for a joint motion on May 14, 2021, but as of the filing of this motion in the Court's drop box, has not received any response.

#### **PRAYER FOR RELIEF**

WHEREFORE, Petitioner BOMBA prays this Court made the following amendments to the January 5, 2021 Order as follows:

Amending,

IT IS FURTHER ORDERED Mother shall have Anna for Easter day from 9:00 a.m. until 6:00 p.m. in Even years and Father shall have Anna in Odd years for a like period of time[;]

with:

IT IS FURTHER ORDERED Mother shall have Anna for Easter day from 9:00 a.m. until 6:00 p.m. and Father shall have Anna for Orthodox Easter for a like period of time and when Easter and Orthodox Easter are observed on the same Sunday, Father shall first have Anna beginning on April 20, 2025, from 9:00 a.m. until 6:00 p.m. and Mother shall next have Anna beginning on April 16, 2028 from 9:00 a.m. until 6:00 p.m. and shall continue to alternate for the same time, Father April 13, 2031, Mother April 9, 2034, Father April 5, 2037, Mother April 25, 2038, Father April 21, 2041, and shall continue Mother next then Father for years after 2041 when Easter and Orthodox Easter fall on the same Sunday.

Adding:

IT IS FURTHER ORDERED Mother shall have Anna on Anna's birthday from 9:00 a.m. until 7:30 p.m. in Even years and Father will have a like period of time in Odd years if the day falls on the weekend. If the day falls on a school day, the respective parent may pick up Anna after school to celebrate her birthday until 7:30 p.m. This provision for Anna's birthday overrides the January 5, 2020, Order that parenting time shall continue in alternating two week blocks of time as previously ordered.

Further adding:

BAZAKIS within 7-days of this Order shall provide BOMBA the necessary information to facilitate that reoccurring electronic transfer by Zelle® and if BAZAKIS refuses to do so, BAZAKIS' counsel within 14-days of this Order shall provide BOMBA the necessary information to facilitate that reoccurring electronic transfer by Zelle® to BAZAKIS' counsel's IOLTA.

Respectfully submitted,



By: Curtis C. Warner (P59915)  
For Petitioner Christy Bomba

Curtis C. Warner (P59915)  
5 E. Market St., Ste. 250  
Corning, NY 14870  
(888) 551-8685  
cwarner@warner.legal

### MEMORANDUM IN SUPPORT

#### BOMBA'S ATTEMPTS TO OBTAIN CONCURRENCE IN THE MOTION

On May 6, 2021, BOMBA, emailed a proposed copy of a joint motion to BAZAKIS' counsel and stated:

Mr. Picard,

Please accept the proposed motion and order to amend the January 5, 2021 Order as an attempt to equally give each parent time with Anna-Marie on their respective Easter Holy day, and to have her for some time on her birthday. I hope that will resolve this issue of parent time as it sets forth a fair and equal manner and is important to and in the best interests of Anna-Mare. Please let me know if this is acceptable to Andy and I will sign the motion. If you have any proposed changes, please email those changes back for my consideration.

On May 11, 2021, BOMBA, emailed BAZAKIS' counsel and stated:

Mr. Picard,

I'm following up on the email and attachment below. Did you have an opportunity to discuss the proposed motion with Andy for agreement or if he has any proposed changes? If I don't hear back, I'll move forward with filing the motion with the court.

On May 14, 2016, BOMBA phoned BAZAKIS' counsel's office to follow up with her May 6, 2021 email, and was informed that Mr. Picard was unable to speak with BOMBA unless BAZAKIS was present. Neither BAZAKIS nor his counsel has responded to the proposed joint

motion regarding Easter and Anna's birthday that mirrors the proposed amendments requested here for these special days.

### ARGUMENT

Alternating birthdays yearly for a child is a common recommendation. *See Bielaska v Orley*, Nos. 173666; 174949; 175287, No. 175388, 1996 Mich. App. LEXIS 1175, at \*7 n.11 (Ct. App. July 19, 1996) ("The friend of the court recommended defendant be awarded custody, that plaintiff be granted visitations on Saturday from 10 a.m. to 6 p.m. until the older child reaches age two, and then on alternate weekends and holidays, birthdays, etc.") Although Anna has reached the age of majority, due to her disability she is childlike.

Likewise, equal time for Easter is a common order. *See Selvaggio v Cole-Adams*, No. 204580, 1998 Mich. App. LEXIS 1128, at \*8 (Ct. App. Oct. 27, 1998) ("The court awarded plaintiff visitation the second week of the Christmas school holidays and ordered that the parties split Easter."). Here the amendment proposes that each co-guardian celebrate the Christian and Orthodox Easters respectively with Anna so she can celebrate both Holy days.

The proposed three amendments to the January 5, 2021 Order proposed here are reasonable, equitable and to the benefit of Anna.

**WHEREFORE**, Petitioner BOMBA prays this Court made the following amendments to the January 5, 2021 Order as follows:

Amending,

IT IS FURTHER ORDERED Mother shall have Anna for Easter day from 9:00 a.m. until 6:00 p.m. in Even years and Father shall have Anna in Odd years for a like period of time[;]

with:

IT IS FURTHER ORDERED Mother shall have Anna for Easter day from 9:00 a.m. until 6:00 p.m. and Father shall have Anna for Orthodox Easter for a like period of time and when Easter and Orthodox Easter are observed on the same Sunday, Father shall first have

Anna beginning on April 20, 2025, from 9:00 a.m. until 6:00 p.m. and Mother shall next have Anna beginning on April 16, 2028 from 9:00 a.m. until 6:00 p.m. and shall continue to alternate for the same time, Father April 13, 2031, Mother April 9, 2034, Father April 5, 2037, Mother April 25, 2038, Father April 21, 2041, and shall continue Mother next then Father for years after 2041 when Easter and Orthodox Easter fall on the same Sunday.

Adding:

IT IS FURTHER ORDERED Mother shall have Anna on Anna's birthday from 9:00 a.m. until 7:30 p.m. in Even years and Father will have a like period of time in Odd years if the day falls on the weekend. If the day falls on a school day, the respective parent may pick up Anna after school to celebrate her birthday until 7:30 p.m. This provision for Anna's birthday overrides the January 5, 2020, Order that parenting time shall continue in alternating two week blocks of time as previously ordered.

Further adding:

BAZAKIS within 7-days of this Order shall provide BOMBA the necessary information to facilitate that reoccurring electronic transfer by Zelle® and if BAZAKIS refuses to do so, BAZAKIS' counsel within 14-days of this Order shall provide BOMBA the necessary information to facilitate that reoccurring electronic transfer by Zelle® to BAZAKIS' counsel's IOLTA.

Respectfully submitted,



By: Curtis C. Warner (P59915)  
For Petitioner Christy Bomba

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**STATE OF MICHIGAN  
IN THE PROBATE COURT FOR THE COUNTY OF SAGINAW**

IN THE MATTER OF ANNA-MARIE BAZAKIS,  
an individual with a developmental disability

File No. 20-140294-DD

Hon. Patrick J. McGraw (P34430)

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**MOTION AND MEMORANDUM  
TO QUASH THE SUBPOENA ISSUED BY  
BAZAKIS TO JPMORGAN CHASE BANK, N.A.**

**MOTION**

NOW COMES the Petitioner CHRISTY BOMBA, as the “representative payee” as defined in as that term is used in 20 CFR § 404.2035 of a JPMorgan Chase Bank, N.A. account established for the benefit of the developmentally disabled individual, Anna-Maire, by and through her undersigned counsel, and motions this Honorable Court under MCR 2.302(C) to quash the May 14, 2021 Subpoena issued to JPMorgan Chase Bank, N.A., seeking:

[c]opies of monthly banking statements provided or available to customer for any and all accounts including checking, savings, loan balances, certificates of deposit as of the

opening of the account and each month thereafter through the date of answering this Subpoena in the name of Anna-Marie Bazakis d/o/b [REDACTED], SS# [REDACTED], individually, jointly or with any third party.

A redacted copy of the subpoena is attached as (Exhibit A).

BOMBA, as the “representative payee”, also requests an award of sanctions of reasonable attorney’s fees and costs under MCR 2.302(C), MCR 2.313(A)(5) and/or the Court’s inherent authority, be imposed against BAZAKIS and/or BAZAKIS’ counsel for having to move to quash this motion.

WHEREFORE, BOMBA as the “representative payee” requests this Court to quash the subpoena and enter an award of reasonable attorney’s fees and costs as a sanction to be imposed against BAZAKIS and/or BAZAKIS’ counsel.

Respectfully submitted,



By: Curtis C. Warner (P59915)  
For Petitioner Christy Bomba

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Corning, NY 14870  
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cwarner@warner.legal

## MEMORANDUM IN SUPPORT

### INTRODUCTION

As noted in BOMBA’S Response to BAZAKIS’ pending motion to compel:

BOMBA is paying BAZAKIS 50% of the SSI monies that are being paid into Anna’s account to which BOMBA is the representative payee of. How much the SSI monthly payments are is publicly available on the SSA’s website. <https://www.ssa.gov/oact/cola/SSI.html> (visited May 25, 2021) (Exhibit L). Furthermore, if there was an accountability concern regarding the amount of money being paid to BAZAKIS, his counsel has been provided the very banking information needed to determine that 50% of the SSI monthly maximum amount are being paid by BOMBA to BAZAKIS, by dividing the amount received by the number 2.

## ARGUMENT

A subpoena can be issued in a pending probate matter. *Brown v. Townsend (In re Brown)*, 229 Mich. App. 496, 582 N.W.2d 530, 531 (Mich. Ct. App. 1998) (subpoena issued for an individual “to give a statement regarding her knowledge of the facts of the accident”), app. denied, 459 Mich. 976, 593 N.W.2d 547 (Mich. 1999). “Documents containing records of depositor's accounts are business records of the bank and are not private papers of the depositor.” *Eyde v. Eyde*, 172 Mich. App. 49, 56, 431 N.W.2d 459, 462 (1988) (citing *United States v Miller*, 425 U.S. 435; 96 S Ct 1619; 48 L Ed 2d 71 (1976)).

However, like all other discovery, a subpoena is subject to the constraints of the scope of discovery set forth in MCR 2.302(B). MCR 2.302(B)(1) provides:

In General. Parties may obtain discovery regarding any non-privileged matter that is relevant to any party's claims or defenses and proportional to the needs of the case, taking into account all pertinent factors, including whether the burden or expense of the proposed discovery outweighs its likely benefit, the complexity of the case, the importance of the issues at stake in the action, the amount in controversy, and the parties' resources and access to relevant information. Information within the scope of discovery need not be admissible in evidence to be discoverable. [MCR 2.302(B)(1)].

If the discovery sought is not within the scope of discovery, a Protective Order can be sought and sanctions under MCR 2.313(A)(5) to be imposed as follows:

(C) Protective Orders. On motion by a party or by the person from whom discovery is sought, and on reasonable notice and for good cause shown, the court in which the action is pending may issue any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following orders:

- (1) that the discovery not be had; \* \* \*
- (4) that certain matters not be inquired into. . . .

. . . . The provisions of MCR 2.313(A)(5) apply to the award of expenses incurred in relation to the motion.

MCR 3.202(C)(1), (4).

The SSI program, which is administered by the Social Security Administration (SSA), provides federal assistance to low-income individuals who are elderly, blind, or disabled. See 42 U.S.C.S. §§ 1381-1385 (LexisNexis 2010). Although SSI benefits are, in some cases, paid directly to the beneficiary, payments can be made to a duly certified fiduciary—called a ‘representative payee’—for the beneficiary’s use and benefit’ if the Commissioner of the SSA ‘determines that the interest of [the beneficiary] . . . would be served thereby.’ 42 U.S.C.S. § 405(j), (j)(1)(A); see also 20 C.F.R. § 416.610 (‘When payment will be made to a representative payee.’).” *In re Guardianship of Smith*, 2011 ME 51, ¶ 11, 17 A.3d 136, 140 (Maine 2011). BOMBA as the “representative payee” appointed by the SSA is seeking to quash the subpoena as there is no “relevant [information] to any party’s claims or defenses” as BOMBA is paying BAZAKIS 50% of the SSI monies as Ordered by the Court, voluntarily providing documentation to BAZAKIS’ attorney so that he can look at publicly available information on the SSA’s website of the amount of the monthly benefit so that he can divide by two to see if 50% is being paid to BAZAKIS.

Additionally, the subpoena is illegal as a matter of federal law as it is not being issued by the Office of the Inspector General, Social Security Administration, who has the exclusive jurisdiction over any Social Security fraud investigations. Though the issuance of the subpoena to JPMorgan Chase Bank, N.A., BAZAKIS, and his counsel, are engaging in an act that the Office of the Inspector General, Social Security Administration can only do, but only can do in a very limited circumstance as follows:

The Right to Financial Privacy Act, 12 U.S.C. § 3401 et seq., provides for certain procedures that must be followed when government authorities seek to obtain records relating to customers of financial institutions. As pertinent here, a governmental agency such as the OIG may subpoena the records of a financial institution’s customers only ‘if there is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry.’ 12 U.S.C. § 3405(1).

*Martinez v. SSA Office of the Inspector Gen.*, Civil Action No. 19-mc-00004-MSK, 2019 U.S. Dist. LEXIS 23008, at \*1 (D. Colo. Feb. 12, 2019).

Even if BAZAKIS, and his counsel, could act in the OIG's place and stead, which they certainly cannot:

The RFPA provides that the government may obtain records by an administrative subpoena only if:

a copy of the subpoena [sic] or summons has been served upon the customer or mailed to his last known address on or before the date on which the subpoena [sic] or summons was served on the financial institution together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry[. . . .]

12 U.S.C. § 3405(2). To demonstrate substantial compliance, the government 'need not set forth the specific provision of law that the customer may have violated or detail the evidence that spurred the investigation.' Nicksolat, 2017 U.S. Dist. LEXIS 164097, 2017 WL 4443410, at \*4. Instead, 'all that matters is that the customer be given notice of the thrust of the government's investigation, such that she has the opportunity to file a motion to quash.' *Id.*

*Anomnachi v. SSA*, 290 F. Supp. 3d 30, 35-36 (D.D.C. 2017).

Here BAZAKIS' subpoena does not provide, "notice which shall state with reasonable specificity the nature of the law enforcement inquiry" as required under the RFPA. Nor could he.

Even the grounds upon which a subpoena issued by the OIG are narrowly tailored around the requirements of the RFPA:

There are only three grounds on which a district court may quash a subpoena: '(1) the agency's inquiry is not a legitimate law enforcement inquiry [;] (2) the records requested are not relevant to the agency's inquiry[;] or (3) the agency has not substantially complied with the RFPA.' *Sandsend Fin. Consultants, Ltd. v. Fed. Home Loan Bank Bd.*, 878 F.2d 875, 882 (5th Cir. 1989); see also 12 U.S.C. § 3405; *In re Bank United F.S.B. (10061) Coral Gables, Fla.*, 2012 U.S. Dist. LEXIS 58145, 2012 WL 1225931, at \*4 (N.D. Cal. April 11, 2012) (stating that the movant bears the burden of proving that the subpoena is overbroad or otherwise not in accordance with the requirements of the RFPA.); *Nimmer v. Securities and Exchange Commission*, 2011 U.S. Dist. LEXIS 81870, 2011 WL 3156791 at \*1 (D. Neb. July 26, 2011) ('The customer must state either the reasons the financial records are not relevant to a legitimate law enforcement inquiry, or that the Government authority has not substantially complied with the RFPA.') (citing 12 U.S.C. § 3410).



*Gutierrez v. SSA Office of the Inspector Gen.*, No. 2:15-mc-0075-TLN-KJN PS, 2015

U.S. Dist. LEXIS 118055, at \*4-6 (E.D. Cal. Sep. 1, 2015).

Even if BAZAKIS was the OIG, none of the three mandatory factors for a federal court to evaluate have been met here.

BAZAKIS, and his counsel, further should know that they cannot use this Court, absent a waiver of the SSA's sovereign immunity, to obtain what they desire directly from the SSA.

Under the SSA regulations promulgated to implement the restrictions contained in the Privacy Act, see 20 C.F.R. §§ 401.100, 401.110, state courts are not courts of competent jurisdiction,

It is the view of SSA that under the Privacy Act the Federal Government has not waived sovereign immunity, which precludes state court jurisdiction over a Federal agency or official. Therefore, SSA will not honor state court orders as a basis for disclosure.

20 C.F.R. § 401.180(d).

*In re Johnson*, No. 2:18mc5, 2018 U.S. Dist. LEXIS 239332, at \*15 (E.D. Va. June 8, 2018) (citing 20 C.F.R. § 401.180(d)).

So BAZAKIS, not being able to get anywhere with the SSA, and hedging his bet that the Court will deny his pending motion to compel BOMBA to provide to BAZAKIS "all information, passwords and access codes to Father for all Social Security information, including bank account information is simply attempting to vex and annoy BOMBA by going on a fishing expedition. Under such circumstances the Court would be well within its discretion to quash the subpoena. *See Fette v. Peters Constr. Co.*, 310 Mich. App. 535, 871 N.W.2d 877, 2015 Mich. App. LEXIS 1089 (Mich. Ct. App. 2015); *see also Eyde v. Eyde*, 172 Mich. App. 49, 431 N.W.2d 459, 1988 Mich. App. LEXIS 580 (Mich. Ct. App. 1988), app. denied, 432 Mich. 857, 1989 Mich. LEXIS 171 (Mich. 1989).

Because there is no merit in the issuance of the subpoena, it is vexatious probing for criminal conduct that does not exist, and indeed it violates controlling federal law for BAZAKIS' counsel to have issue the subpoena, BAZAKIS' and/or BAZAKIS' counsel should be sanctioned and required to pay BOMBA's reasonable attorney's fees and costs as provided for under MCR 2.302(C) applying MCR 2.313(A)(5). MCR 2.313(A)(5)(a) provides:

If the motion is granted—. . . —the court may, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct, or both, to pay to the moving party the reasonable expenses incurred in making the motion, including attorney fees. . . . [MCR 2.313(A)(5)(a)].

Additionally, the “trial courts possess the inherent authority to sanction litigants and their counsel, including the power to dismiss an action. *Banta v Serban*, 370 Mich. 367, 368; 121 N.W.2d 854 (1963); *Persichini v Beaumont Hosp*, 238 Mich. App. 626, 639-640; 607 N.W.2d 100 (1999); *Prince v MacDonald*, 237 Mich. App. 186, 189; 602 N.W.2d 834 (1999). This power is not governed so much by rule or statute, but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases. See *Chambers v NASCO, Inc*, 501 U.S. 32, 43; 111 S. Ct. 2123; 115 L. Ed. 2d 27 (1991).” *Maldonado v Ford Motor Co.*, 476 Mich 372, 376, 719 NW2d 809, 810-11 (2006). Here, there was no basis of fact or law for the subpoena for bank records to issue, especially because BAZAKIS and his counsel are not the SSA' Office of the Inspector General.

### CONCLUSION

WHEREFORE, BOMBA as the “representative payee” requests this Court to quash the subpoena and enter an award of reasonable attorney's fees and costs as a sanction to be imposed against BAZAKIS and/or BAZAKIS' counsel.

Respectfully submitted,



By: Curtis C. Warner (P59915)

For Petitioner Christy Bomba

Curtis C. Warner (P59915)  
5 E. Market St., Ste. 250  
Corning, NY 14870  
(888) 551-8685  
cwarner@warner.legal

# EXHIBIT A

PICARD & McLEOD, P.L.L.C.  
ATTORNEYS AT LAW

820 NORTH MICHIGAN AVENUE • SAGINAW, MICHIGAN 48602  
PHONE: (989) 753-4441 • FAX: (989) 753-7560 • E-MAIL: BPTM4@AMERITECH.NET

CHRISTOPHER A. PICARD  
TIMOTHY R. McLEOD

THOMAS D. BURKHART (1950-2014)  
JAMES TIDERTON (1948-2019)

May 14, 2021

JPMorgan Chase Bank, N.A.  
Mail Code: IN1-4054  
7610 West Washington Street  
Indianapolis, IN 46231

**Certified Mail/Return Receipt Requested**

Re: Anna-Marie Bazakis, an individual with a developmental disability

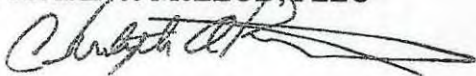
To Whom it May Concern:

Enclosed please find a subpoena to produce information to my office on or before June 4, 2021 in the above matter. Should you have any questions please feel free to contact my office.

Thank you for your attention to this matter.

Sincerely,

PICARD & McLEOD, PLLC



CHRISTOPHER A. PICARD

CAP:krq

Enclosure

CC: Andrew Bazakis  
Christy Bomba

RECEIVED by MSC 8/1/2022 3:34:06 PM

RECEIVED by MCOA 8/25/2021 10:13:23 PM



RECEIVED by MSC 8/1/2022 3:34:06 PM

RECEIVED by MCOA 8/25/2021 10:13:23 PM

Original - Return  
1st copy - Witness  
2nd copy - File  
3rd copy - Extra

Approved, SCAO

<b>STATE OF MICHIGAN</b> <b>JUDICIAL DISTRICT</b> <b>JUDICIAL CIRCUIT</b> <b>Saginaw COUNTY PROBATE</b>	<b>SUBPOENA</b> <b>Order to Appear and/or Produce</b>	<b>CASE NO.</b> <b>20-140294-DD</b>
--	--	--

Police Report No. (if applicable) Court Address 111 S. Michigan Avenue, Saginaw, MI 48602 Court telephone no. (989) 790-5320

Plaintiff(s) Petitioner(s)  <input type="checkbox"/> People of the State of Michigan <input type="checkbox"/> _____ <input type="checkbox"/> Civil <input type="checkbox"/> Criminal	Defendant(s) Respondent(s)  Charge:
<input checked="" type="checkbox"/> Probate In the matter of <u>Anna-Marie Bazakis, an individual with a devlopmental disability</u>	

In the Name of the People of the State of Michigan. TO: JPMorgan Chase Bank,N.A  
Mail Code IN1-4054  
7610 West Washington Street  
Indianapolis, IN 46231

If you require special accommodations to use the court because of disabilities, please contact the court immediately to make arrangements.

**YOU ARE ORDERED:**

<input checked="" type="checkbox"/> 1. to appear personally at the time and place stated below: You may be required to appear from time to time and day to day until excused.		
<input type="checkbox"/> The court address above <input checked="" type="checkbox"/> Other: 820 N. Michigan Avenue, Saginaw, MI 48602		
Day Friday	Date June 4, 2021	Time 11:00 a.m.

- ☐ 2. Testify at hearing.  
☒ 3. Produce/permit inspection or copying of the following items: See attached.

- ☐ 4. Testify as to your assets, and bring with you the items listed in line 3 above.  
☐ 5. Testify at deposition.  
☐ 6. MCL 600.6104(2), 600.6116, or 600.6119 prohibition against transferring or disposing of property attached.  
☒ 7. Other: in lieu of appearing in person, you may mail/fax or email the documents to our office. Fax No.(989) 753-7560 email: bptm4@ameritech.net

<input checked="" type="checkbox"/> 8. Person requesting subpoena Christopher A. Picard Address 820 N. Michigan Avenue City Saginaw	Telephone no. (989) 753-4441 State MI Zip 48602
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**NOTE:** If requesting a debtor's examination under MCL 600.6110, or an injunction under item 6, this subpoena must be issued by a judge. For a debtor examination, the affidavit of debtor examination on the other side of this form must also be completed. Debtor's assets can also be discovered through MCR 2.305 without the need for an affidavit of debtor examination or issuance of this subpoena by a judge.



**FAILURE TO OBEY THE COMMANDS OF THE SUBPOENA OR APPEAR AT THE STATED TIME AND PLACE MAY SUBJECT YOU TO PENALTY FOR CONTEMPT OF COURT.**

5-14-21  
Date

Attorney Christopher A. Picard

P35538  
Bar no.

Court use only	
<input type="checkbox"/> Served	<input type="checkbox"/> Not Served

Attachment to Subpoena to: Chase Bank  
In the Matter of Anna-Marie Bazakis, an individual with a developmental disability  
Dated: May 14, 2021

3. PRODUCE:

Copies of monthly bank statements provided or available to customer for any and all accounts including checking, savings, loan balances, certificates of deposit as of the opening of the account and each month thereafter through the date of answering this Subpoena in the name of Anna-Marie Bazakis d/o/b, [REDACTED], SS# [REDACTED], individually, jointly or with any third party.

RECEIVED by MSC 8/1/2022 3:34:06 PM

RECEIVED by MCOA 8/25/2021 10:13:23 PM



**PROOF OF SERVICE****SUBPOENA**  
Case No. 20-140294-DD

**TO PROCESS SERVER:** You must make and file your return with the court clerk. If you are unable to complete service, you must return this original and all copies to the court clerk.

**CERTIFICATE / AFFIDAVIT OF SERVICE / NON-SERVICE**☐ **OFFICER CERTIFICATE**

OR

☐ **AFFIDAVIT OF PROCESS SERVER**

I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party [MCR 2.104(A)(2)], and that: (notary not required)

Being first duly sworn, I state that I am a legally competent adult who is not a party or an officer of a corporate party, and that: (notary required)

☐ I served a copy of the subpoena, together with

Attachment

☐ personal service☐ registered or certified mail (copy of return receipt attached)

on:

Name(s)

Complete address(es) of service

Day, date, time

☐ I have personally attempted to serve the subpoena and required fees, if any, together with on the following person and have been unable to complete service.

Attachment

Name(s)

Complete address(es) of service

Day, date, time

Service fee	Miles Traveled	Mileage fee	Total fee
\$		\$	\$

Signature

Title

Subscribed and sworn to before me on \_\_\_\_\_, \_\_\_\_\_ County, Michigan.  
Date

My commission expires: \_\_\_\_\_ Signature: \_\_\_\_\_

Date

Deputy court clerk/Notary public

Notary public, State of Michigan, County of \_\_\_\_\_

**ACKNOWLEDGMENT OF SERVICE**

I acknowledge that I have received service of the subpoena and required fees, if any, together with:

Attachment

on

Day, date, time

on behalf of

Signature

**AFFIDAVIT FOR JUDGMENT DEBTOR EXAMINATION**

I request that the court issue a subpoena which orders the party named on this form to be examined under oath before a judge concerning the money or property of:  
for the following reasons:

Signature

Subscribed and sworn to before me on \_\_\_\_\_, \_\_\_\_\_ County, Michigan.  
Date

My commission expires: \_\_\_\_\_ Signature: \_\_\_\_\_

Date

Deputy court clerk/Notary public

Notary public, State of Michigan, County of \_\_\_\_\_

MCR 2.105

**STATE OF MICHIGAN  
IN THE PROBATE COURT FOR THE COUNTY SAGINAW**

IN THE MATTER OF ANNA-MARIE BAZAKIS,  
an individual with a developmental disability

File No. 20-140294-DD

Hon. Patrick J. McGraw (P34430)

---

CURTIS C. WARNER (P59915)  
Attorney for Petitioner Christy Bomba  
5 E. Market St.  
Suite 250  
Corning, NY 14870  
(888) 551-8685

OTTO W. BRANDT, JR. (P11129)  
Guardian Ad Litem  
715 Court Street  
Saginaw, Michigan 48602  
(989) 793-4740

---

PICARD & MCLEOD, P.L.L.C.  
BY: CHRISTOPHER A. PICARD (P35538)  
Attorney for Petitioner Andrew Bazakis  
820 N. Michigan Avenue  
Saginaw, Michigan 48602  
(989) 753-4441

---

**ANSWER TO MOTION TO QUASH  
SUBPEONA TO CHASE BANK**

NOW COMES the Respondent, ANDREW BAZAKIS, by and through his attorney, CHRISTOPHER A. PICARD, and in answer to said motion state as follows:

1. Move to strike as said pleading is not properly formatted consistent with court rule.
2. Said motion has no basis in law or fact in that this Court ordered both guardians to have access to SSI information which would include bank information. Petitioner only began providing bank information to respondent **after** the motion was filed and still refuses direct access by the co-guardian to the bank information.
3. Petitioner argues that the Inspector General, acting on behalf of the Social Security

Administration, is the sole investigative authority to access the bank account records for possible fraud.


4. Petitioner's argument means this Court is precluded from reviewing records when determining whether a guardian or conservator has abused authority and violated a fiduciary duty.
5. This Court would be abrogating its' rights, authority, and duty if petitioner's argument is accepted as true.
6. Petitioner's argument, at best, involves investigation for criminal fraud.
7. Respondent's subpoena has not been issued in a criminal investigation.
8. Respondent is not acting as a law enforcement agency.
9. The Court has empowered the co-guardians to equal access to information relating to the protected person.
10. The subpoena attempts to exercise the rights, duties, and obligations of the respondent.
11. Petitioner desires to operate unilateral of the co-guardian and only provide selective information at her choosing.
12. This issue could and would be eliminated if this Court ordered respondent to be replaced as the protected person's "representative payee."
13. The subpoena was directed to a bank and not to the Social Security Administration where other monies may or may not be deposited for the benefit of the protected person from time to time.
14. The sources of the monies deposited in the bank are indistinguishable and lose their individuality upon deposit.
15. Inspector General, and/or the Social Security Administration, have no jurisdiction over a local bank account that may or may not consist of monies from social security payments.

WHEREFORE, Respondent prays this Court deny all relief requested by Petitioner, and Grant this respondent and the protected person, all other relief deemed fair and equitable and/or otherwise permitted by law, including actual costs and attorney fees for having to respond to this matter brought before the



Court, and order the immediate transfer from petitioner to respondent as the "representative payee" of the protected person.

Dated: June 3, 2021

  
CHRISTOPHER A. PICARD (P35538)  
Attorney for Respondent Andrew Bazakis

PICARD & McLEOD, P.L.L.C., 520 NORTH MICHIGAN AVENUE, SAGINAW, MICHIGAN 48602

STATE OF MICHIGAN  
IN THE PROBATE COURT FOR THE COUNTY SAGINAW

IN THE MATTER OF ANNA-MARIE BAZAKIS,  
an individual with a developmental disability

File No. 20-140294-DD

Hon. Patrick J. McGraw (P34430)

---

CURTIS C. WARNER (P59915)  
Attorney for Petitioner Christy Bomba  
5 E. Market St.  
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OTTO W. BRANDT, JR. (P11129)  
Guardian Ad Litem  
715 Court Street  
Saginaw, Michigan 48602  
(989) 793-4740

---

PICARD & MCLEOD, P.L.L.C.  
BY: CHRISTOPHER A. PICARD (P35538)  
Attorney for Petitioner Andrew Bazakis  
820 N. Michigan Avenue  
Saginaw, Michigan 48602  
(989) 753-4441

---

ANSWER TO MOTION TO AMEND  
THE JANUARY 5, 2021 ORDER

NOW COMES the Respondent, ANDREW BAZAKIS, by and through his attorney, CHRISTOPHER A. PICARD, and in answer to said motion state as follows:

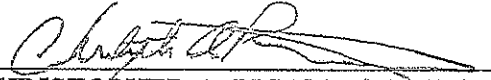
1. Admit and affirmatively state the order was the result of this Court's ruling given the fact the co-guardians were unable to reach agreement. Further, the facts and circumstances have not changed since the last hearing and order and this motion is not a timely motion for reconsideration.
2. Admit and affirmatively state said order speaks for itself.
3. Admit.
4. Admit.

5. Deny as untrue. Further the parties tried to discuss possible modification of said order but this respondent abandoned the idea upon petitioner demonstrating total inflexibility in her position and therefore this respondent accepts the Court's schedule without change.
6. Neither admit nor deny as this respondent has not taken the time to map out the next twenty years of his life.
7. Neither admit nor deny as this respondent has not taken the time to map out the next twenty years of his life.
8. Respondent requests this Court deny the proposed change.
9. Admit and this Court purposely omitted Anna's birthday as it was an issue at the last Court hearing and this Court so ruled because the Court and the GAL recognized that Anna struggles with short term transitions and all children enjoy celebrating their birthday two or more times in a year. Further there has been no change of circumstances to merit a review of the schedule and this motion is a feigned attempt to file an untimely motion for reconsideration.
10. Admit.
11. Deny as such a proposal is disruptive to the continuity intended by the current order and further, Anna is oblivious of the specific calendar date at any given time so her birthday can and has been celebrated multiple times a year, as has other holidays, to the great enjoyment of Anna.
12. Respondent request this Court deny the proposed change.
13. Neither admit nor deny but if respondent were added to Anna's account no costs would be incurred and there is no court order mandating the monies be paid by cashier check.
14. Deny as written and affirmatively state that no one ever mandated cashier checks.
15. Admit that petitioner forwarded papers to respondent's attorney who declined communicating directly with petitioner, in pro per, but upon information and belief, petitioner was informed that respondent was not interested in any modification of the existing order because petitioner wanted to bootstrap Easter Sunday with alternating Anna's birthday. That an order appointing co-guardians was entered in this matter on August 17, 2020.

WHEREFORE, Respondent prays this Court deny all relief requested by Petitioner, and Grant this respondent and the protected person, all other relief deemed fair and equitable and/or otherwise permitted by law, including actual

costs and attorney fees for having to respond to this matter brought before the Court.

Dated: June 3, 2021



CHRISTOPHER A. PICARD (P35538)  
Attorney for Respondent Andrew Bazakis

**STATE OF MICHIGAN  
IN THE PROBATE COURT FOR THE COUNTY SAGINAW**

IN THE MATTER OF ANNA-MARIE BAZAKIS,  
an individual with a developmental disability

File No. 20-140294-DD

Hon. Patrick J. McGraw (P34430)

---

CURTIS C. WARNER (P59915)  
Attorney for Petitioner Christy Bomba  
5 E. Market St.  
Suite 250  
Corning, NY 14870  
(888) 551-8685

OTTO W. BRANDT, JR. (P11129)  
Guardian Ad Litem  
715 Court Street  
Saginaw, Michigan 48602  
(989) 793-4740

---

PICARD & MCLEOD, P.L.L.C.  
BY: CHRISTOPHER A. PICARD (P35538)  
Attorney for Petitioner Andrew Bazakis  
820 N. Michigan Avenue  
Saginaw, Michigan 48602  
(989) 753-4441

---

**ANSWER TO COUNTER STATEMENT  
OF FACTS BY RESPONDENT**

NOW COMES the Petitioner, ANDREW BAZAKIS, by and through his attorney, CHRISTOPHER A. PICARD, and in answer to said motion state as follows:

1. Neither admit nor deny as being outside the personal knowledge of this petitioner and further, the attached documents do not clearly indicate what was actually faxed to Social Security Administration.
2. Deny in that respondent did not "voluntarily" produce any records until after a motion was filed and only then did she begin to "create" the illusion of transparency.
3. Admit but affirmatively state he can, and has, accommodated his schedule with his daughter's medical needs when given adequate notice.



4. Deny as untrue in that petitioner can, and has, accommodated his schedule with his daughter's medical needs when given adequate notice.
5. Deny as untrue.
6. Deny as untrue.
7. Admit the e-mail but affirmatively ask why respondent did not request 2 cards in the first instance?
8. Neither admit nor deny as being outside the personal knowledge of this petitioner.
9. Admit that respondent began communication with petitioner after multiple requests for information before the date of said e-mail by respondent.
10. Admit that respondent sent the front side of the Medicaid card but omitted the backside that contains vital information regarding potential monies for other services which the protected person may be eligible to receive.
11. Admit but said information is generic in content and does not include particular other benefits that the protected person may be enrolled in by respondent.
12. Admit an addendum has been added subsequent to the filing of the motion by petitioner but said addendum only confirms what petitioner alleged, that being Anna needs to be assigned a new doctor.
13. Admit said respondent has tried to communicate directly with counsel but affirmatively state that counsel will not interact with pro per without the client being present and said information was communicated to respondent by counsel's secretary.

WHEREFORE, Petitioner prays this Court:

- A. Compel Mother to provide all information, passwords, and access codes to Father for all Social Security information, including bank account information, bridge card and Medicaid card, for their daughter, Anna, and to comply with this Court's previous orders relating to informing the Social Security office of his status as co-guardian;
- B. Require the parties to join Our Family Wizard, or something similar, to communicate regarding their daughter, and include access to the information to the GAL;
- C. Appoint Father as the sole guardian to schedule all medical appointments and follow-up treatments, with appropriate communication to the Mother regarding

appointments and medical treatment;

- D. Require the parties to maintain Anna's e-mail address for the Covenant MyChart portal;
- E. Appoint a replacement for Dr. Solomon for overall management of Anna's medication and treatment;
- F. Appoint a psychiatric doctor for Anna;
- G. Grant this co-guardian, and the protected person, all other relief deemed fair and equitable and/or otherwise permitted by law, including actual costs and attorney fees for having to bring this matter before the Court.

PICARD & McLÉOD, PLLC



CHRISTOPHER A. PICARD (P35538)  
Attorney for Petitioner Andrew Bazakis

Dated: June 3, 2021

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STATE OF MICHIGAN  
IN THE PROBATE COURT FOR THE COUNTY OF SAGINAW  
  
IN THE MATTER OF  
  
ANNA-MARIE MARGARET BAZAKIS, File No. 20-140294-DD  
A Developmentally Disabled Ind.  
\_\_\_\_\_ /

MOTION TO COMPEL, REQUEST FOR SANCTIONS AND MOTION AND  
MEMORANDUM TO QUASH  
  
BEFORE THE HONORABLE PATRICK J. MCGRAW, PROBATE JUDGE  
(via Zoom)  
Saginaw, Michigan - June 8, 2021

APPEARANCES:

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I N D E X

WITNESSES: PETITIONER

None

WITNESSES: RESPONDENT

None

EXHIBITS:

None

MARKED

RCVD

1                   Saginaw, Michigan.

2                   Tuesday, June 8, 2021 -- 9:02 a.m.

3                   THE COURT: The Court will call the case of  
4 Anna-Marie Bazakis, file 20-140294-DD. The Court has  
5 before it today a Motion to Compel, a Response to the  
6 Motion to Compel Compliant with Court Orders, Set up  
7 Form of Communications for Yearly Treatment, Bomba's  
8 Request for Sanctions, Bomba's Response to Motion to  
9 Compel, Motion and Memorandum to Quash. And the Court  
10 has reviewed all the documents, and if the parties  
11 would like to put their appearances on, you may.

12                  MR. PICARD: Christopher Picard on behalf of  
13 Andrew Bazakis who's seated to my left.

14                  MR. WARNER: Good morning, Your Honor.  
15 Curtis Warner on behalf of Christy Bomba.

16                  MR. BRANDT: May it please the Court, Otto  
17 Brandt, guardian ad litem for Anna-Maria.

18                  THE COURT: All right. I believe,  
19 Mr. Picard, you might have filed the first motion; is  
20 that right?

21                  MR. PICARD: I did, Your Honor, and I note  
22 the Court's had -- that the Court reads through all the  
23 documentation, so I will defer to the Court asking any  
24 specific questions it wants to, but the only thing I'd  
25 like to do is point out the specific things that are



1 being asked for at this point in time.

2 THE COURT: Well, let -- let me start you  
3 with --

4 MR. PICARD: Yes.

5 THE COURT: -- the social security issue.  
6 Why don't you talk about that and what you feel has to  
7 be done in that regard as to one person being a payee  
8 or two people dealing with social security or access.

9 MR. PICARD: I --

10 THE COURT: You need to be --

11 COURT CLERK: Pardon the interruption. I  
12 have a Cece Corley waiting to enter our Zoom room. Is  
13 anyone familiar with that name?

14 MR. WARNER: No, I am not.

15 COURT CLERK: Okay.

16 THE COURT: That's -- that's on another file.

17 COURT CLERK: All right. Thank you.

18 THE COURT: Go ahead.

19 MR. PICARD: As it relates to the social  
20 security, while one person may have to be the  
21 designated protected payee per the social security  
22 rules and regulations, that does not mean that my  
23 client could not be provided with the -- to be able to  
24 access the information himself by being given the  
25 appropriate password, and that is effectively being

1 blocked by Miss Bomba. And this argument that they're  
2 trying to make here about only being one person, does  
3 not preclude more than one person having access to get  
4 the information from the -- the web site, and if that's  
5 the case, then since we've had to fight trying to get  
6 information from her, until we filed the motion, she  
7 was shutting him down completely. What we would ask is  
8 that the Court direct that he be named as the protected  
9 payee and change her and he'll access her the  
10 information. The -- the same thing relates to the bank  
11 accounts, by the way. There is nothing stopping her  
12 from providing him with the password so that he can  
13 access the bank account information directly, and again  
14 I emphasize that -- that nothing was given to him until  
15 after this motion was filed and now she's trying to  
16 create this illusion of transparency.

17 THE COURT: All right. Mr. Warner, if you'd  
18 just respond to those issues.

19 MR. WARNER: Yes, I'd like to do it in  
20 reverse order. First of all, Your Honor, on Exhibit F,  
21 the second letter is April 8 which the Court can take  
22 judicial notice that was filed 19 days before this  
23 motion in which Miss Bomba did provide the bank  
24 statements, so Mr. Picard's statement to this Court is  
25 absolutely incorrect and it is in the record.

1           Second of all, as far as the representative  
2           payee goes, there is an administrative procedure for  
3           persons being the representative payee. The social  
4           security office only selects one person to be the  
5           representative payee. It's an administrative decision.  
6           If Mr. Bazakis would like to be the representative  
7           payee, he needs to petition the Social Security  
8           Administration. The Social Security Administration is  
9           established by federal law, it has federal regulations.  
10          The probate court is a court of specific jurisdiction,  
11          not of general jurisdiction. It would violate the  
12          supremacy clause of the United States of America in  
13          which a probate court would be able to order a person  
14          to be the representative payee when there's specific  
15          federal law and guidelines and administrative  
16          procedures that need to be followed and there are  
17          reasons for this.

18                THE COURT: I don't -- I don't want to get  
19                into all that --

20                MR. WARNER: Okay.

21                THE COURT: -- that doesn't bother me.

22                MR. WARNER: I was just --

23                THE COURT: What about access to the web  
24                site. That's all.

25                MR. WARNER: As -- as Miss Bomba has

1 indicated on multiple times before this motion, the  
2 application was obtained on line and sent in the mail.  
3 This is during Covid time so things are a little bit  
4 different there. There is no passwords to access it.  
5 Also it would undermine --

6 THE COURT: Whoa. Whoa. Whoa. So you're  
7 saying she doesn't have any password to access the  
8 social security account?

9 MR. WARNER: That is correct.

10 THE COURT: How does she access it?

11 MR. WARNER: They just send checks and calls.  
12 She calls regina over at the social security office if  
13 she has any questions. For example, she was able to  
14 obtain the fax that she had sent in of the  
15 co-guardianship order.

16 THE COURT: Okay. Then I -- you're dealing  
17 with a different social security than I do. I deal  
18 with the same thing. I've got a DD relative and we can  
19 share the information on the web. I don't go to the  
20 local here and I've been fighting with them all over  
21 the United States when there's a problem. But there  
22 should be more than one way to access it and they don't  
23 just let you log in to someone's account without a  
24 password.

25 MR. WARNER: Miss Bomba can explain further.

1 THE COURT: No, you're the lawyer. I need  
2 you to tell me, you know, why -- why you think you  
3 can't log into it without a password. I have to do  
4 that.

5 MR. WARNER: Your Honor, this application was  
6 set up and the application was set up during Covid time  
7 when things were operating a little bit differently,  
8 people were remotely, and what I have heard from  
9 Miss Bomba is that she does not have a password to log  
10 in to a social security account --

11 THE COURT: So you're telling me --

12 MR. WARNER: -- with the Social Security  
13 Administration.

14 THE COURT: So you're telling me anybody can  
15 get into that account?

16 MR. WARNER: No, I'm not telling -- in fact  
17 no one can and there hasn't been any access to it  
18 because it's been done over the phone by Miss Bomba and  
19 the checks are showing up. It's been by written  
20 communications. It is -- it is a little --

21 THE COURT: I find that hard to believe  
22 because I've dealt with -- I don't like this Covid  
23 excuses. I'm telling you that right now. I've dealt  
24 with social security for the last year during Covid  
25 nationally because of problems I've had with them with



1 a DD child, and I've had problems but I can't access it  
2 without passwords so I don't know what's going on with  
3 your situation and that's what I need to find out is  
4 how are you doing this as a representative payee and  
5 dealing with one person locally only.

6 MR. WARNER: Your Honor, I've stated what  
7 I've been told by Miss Bomba as far as my understanding  
8 of what she has informed me, and if there, you know,  
9 the only thing to do is bring in the Social Security  
10 Administration here, make a statement on this file.

11 THE COURT: So Miss Bomba gets no -- nothing  
12 in writing, everything's just a check, and everything  
13 comes over the phone?

14 MR. WARNER: As far as what has been  
15 happening is that the checks have been coming in, she's  
16 received phone calls from Gina in the Social Security  
17 Administration. That is my understanding of what has  
18 been going on and, for the record, Miss Bomba is on the  
19 Zoom call and I know you instructed me to inform you,  
20 but she is here available to clarify or answer any  
21 other questions that the Court may have. I'm going on  
22 what she has told me and what we've indicated within  
23 the brief.

24 THE COURT: Okay. Mr. Picard, do you want to  
25 proceed on other things then or what would you --

1 MR. PICARD: Again, Your Honor --

2 THE COURT: And I don't need a big argument  
3 or anything unless you --

4 MR. PICARD: No, I understand that. I  
5 understand that. Your Honor, the -- getting timely  
6 information as to the minor -- or, I'm sorry, to the  
7 protected person's medical appointments etcetera. For  
8 whatever reason Miss Bomba keeps changing the My Chart,  
9 where they send the notifications, to Bomba family of  
10 five at gmail dot com where as both parties have common  
11 access to her student account which could be used which  
12 -- which is Bazakis Ann zero zero at student dot STCS  
13 org. If that was done, my client at least could have  
14 access to timely -- when appointments are scheduled and  
15 if there are conflicts, they can communicate as I  
16 propose through Family Wizard. Alternatively, my  
17 client could -- could be responsible for scheduling all  
18 the appointments. They suggest that he's so overly  
19 busy but let's keep in mind that Miss Bomba not only  
20 works a full time job herself but she's a guardian to a  
21 sister who has cerebral palsy and is far more demanding  
22 on her time than is Anna and she also has another child  
23 she's raising, so actually my client who only has this  
24 one adult protected person, actually has the ability to  
25 -- to devote more time to those type of matters than

1 can Miss Bomba. And so we're asking first off that the  
2 My Chart appointments be emailed through the account  
3 that both parties have and not through her family  
4 account because she won't give the password so we can  
5 get into it, and that all communications between these  
6 parties that are not otherwise medically communicated  
7 through the My Chart account, that the parties use --  
8 set up a Family Wizard account.

9 THE COURT: Okay. So it's my understanding  
10 that Mr. Warner didn't have a problem with Family  
11 Wizard as long as it was free, but the My Chart portal  
12 is the issue as to again the email address so everybody  
13 can log into that including the guardian ad litem. So,  
14 Mr. Warner, do you have a solution on that as to one  
15 address that won't be changed for My Chart portal for  
16 Anna?

17 MR. WARNER: I mean that's not -- that's not  
18 an issue. It's been an IT issue and not a purposeful  
19 manipulation, Your Honor, but that's not a problem as  
20 we can set up one email account for that. That's  
21 reasonable.

22 THE COURT: What would it be or you have to  
23 set up a new one?

24 MR. WARNER: We can put it in the order  
25 exactly -- well, probably not put in an order but we

1 can agree that there is one email address that can be  
2 -- we can set that up, Your Honor, I think with  
3 Mr. Picard.

4 MR. PICARD: Well, if we use the student one,  
5 Your Honor, they both know it, they both use it, and  
6 it's already set up.

7 THE COURT: Okay. But what student is that?  
8 I mean is that Transition Center or something?

9 MR. PICARD: It's through the Township  
10 schools, Your Honor, with follow.

11 THE COURT: What school is she at?

12 MR. PICARD: Heritage.

13 THE COURT: So it's a Heritage account? Is  
14 that going to expire when she graduates?

15 MR. PICARD: Yeah.

16 THE COURT: So I think, so I don't have to  
17 deal with this again, I'd rather have a different email  
18 account.

19 MR. PICARD: That's fine. That's fine.  
20 However, Judge, you also -- you made the comment that  
21 Family Wizard is free. Well, it isn't free.

22 THE COURT: Someone made a comment that's the  
23 only reason I'm saying that. Someone made a comment  
24 that as a family law attorney you have access to that  
25 and could get it for free. I don't know where it came

1 from.

2 MR. PICARD: I don't know if I do or not but  
3 I mean I -- I don't think I should be the person  
4 creating an account. I mean they can have an account.

5 THE COURT: So what do you do in all other  
6 cases where you ask the court to set up Family Wizard.

7 MR. PICARD: The parties have to set it up.

8 THE COURT: Through the attorneys. I take it  
9 the attorneys set it up because the parties don't get  
10 along.

11 MR. PICARD: Well, I've never had one where  
12 I've ever had to set it up. They have been given the  
13 web page information in order to do it and the judge --  
14 and the judge expects it to be done and I've never had  
15 had a problem with the parties setting up because they  
16 set up independently. They both have to sign in and  
17 engage the service.

18 THE COURT: So do you have that information  
19 as to how to do it?

20 MR. PICARD: I don't have it immediately in  
21 front of me but yes I can get it for you.

22 THE COURT: So you could get that to both  
23 parties and that could be set up by both of them --

24 MR. PICARD: Yes.

25 THE COURT: -- easily?



1 MR. PICARD: Yes.

2 THE COURT: Mr. Warner.

3 MR. WARNER: Your Honor, there's just the  
4 payment. The app that we suggest is App Close in our  
5 brief. It is one that is used by the family courts in  
6 Wayne County. I've talked to a practitioner who does  
7 family law there and it had input and development from  
8 family law attorneys in Wayne County and that one is  
9 free and the parties can set it up with each other and  
10 provide notice on it of any appointments we would hope  
11 within 24 hours of the appointments.

12 MR. PICARD: Judge, I don't know anything  
13 about that particular account. I am familiar with the  
14 Family Wizard as far as it retains records. Mr. Brandt  
15 could be, as GAL, if he ever needed to access it, it  
16 would be available, and neither party can -- can scrub  
17 it or purge it. That's why it was -- it's so popular  
18 with the Saginaw County Friend of the Court. And  
19 seriously the cost of it is under 200 or 200 a year and  
20 that could come out of the protected person's proceeds.

21 THE COURT: Okay. Anything else that there's  
22 a big disagreement on or you want to talk about? Let  
23 me start with Mr. Warner this time.

24 MR. WARNER: As far as the disagreements  
25 there's -- as far as the scheduling, Your Honor, our

1 position is that we're trying to avoid coming back. I  
2 mean Miss Bomba does not want to be here back in front  
3 of the court. She wants to move on with her life and  
4 have things resolved, and she attempted to resolve this  
5 with Mr. Picard before. If Mr. Bazakis does feel that  
6 he does have the time and ability and energy to do this  
7 even though he has dropped the ball on occasion, for  
8 him to be the person who does schedule this, to  
9 schedule the appointments as needed. I mean there's,  
10 for example, a neurological appointment that needs to  
11 be followed up, but there has to be consequences if he  
12 doesn't do it and there has been to be continued back  
13 and forth until, you know, it comes to -- boils to a  
14 point where the services are needed for Anna-Marie and  
15 we have to come back to the court to get him to  
16 schedule these.

17 And there's -- I mean I don't want to really  
18 quibble but Miss Bomba is not employed currently due to  
19 Covid downsizing but, you know, she does have the time.  
20 Mr. Bazakis is an emergency room physician, instructor  
21 at Central Michigan, now he wants to be, you know, a  
22 scheduling secretary. But if he wants to take that on,  
23 he can do that, but we would just hope that it would be  
24 done in a fair manner and with notice to Miss Bomba,  
25 and if there are any appointments that are not kept or

1 if the scheduling is not done, is that there be some  
2 sort of consequence.

3 THE COURT: All right. You -- I have at  
4 least seven to ten items that were addressed in your  
5 proofs and I've heard a little bit from you today. Why  
6 don't I do this, both of you start writing and I'm  
7 going to tell you what I'll order and, then, you tell  
8 me if you see a problem with one of them, not arguing  
9 with what I did but how to do it.

10 Number 1 payee, mom will remain. If there is  
11 a portal access she's to give that, but if what she  
12 says is true that she just gets a check every month  
13 from social security and that's all she gets from  
14 social security, she's to make a photocopy of the check  
15 and then 50 percent of that should go to Mr. Picard's  
16 IOLTA account or be a Zelle whichever Mr. Picard  
17 chooses or some other easy pay so there's no problems  
18 or contact with each other.

19 Two, the Medicaid card is to be given to the  
20 father, proof filed with counsel, GAL, and court.

21 Three, all Anna's bank accounts are to be  
22 joint with both co-guardians.

23 Next our Family Wizard is to be used for all  
24 communications and the GAL access too. The parties are  
25 to split the cost of that.

1           Next My Chart portal is to be set up with an  
2 email address by the parties with all three including  
3 the GAL. The parties to work with the GAL to set up  
4 and not change that address without court order.

5           Since the parties did suggest dad schedule a  
6 medical, dental, and follow ups, he will. He is to  
7 inform the mom within 12 hours of any appointments that  
8 he has set up or scheduled. Failure to do so will  
9 result in sanctions \$500 for each violation.

10          Next Dr. Solomon will choose the adult  
11 psychiatrist.

12          Next a Bridge card is to be exchanged  
13 monthly, only used in the current months, not to use  
14 anything that is reloaded during that month should the  
15 party happen to have it.

16          The Motion to Quash is granted. Now, what  
17 would you like to --

18          MR. PICARD: Judge there is the appointment  
19 of the new psychiatrist Dr. Regan is also a pediatric  
20 and we would suggest either Dr. Anderson or let Dr.  
21 Castia --

22          DR. BAZAKIS: Castillo.

23          MR. PICARD: -- Castillo do the selection as  
24 to the child's -- I'm sorry, the protected person's  
25 doctor.

1 THE COURT: I probably said Dr. Solomon will  
2 choose the adult psychiatrist.

3 MR. PICARD: Pardon?

4 THE COURT: I said Dr. Solomon will choose  
5 the adult psychiatrist.

6 MR. PICARD: Okay. But we also need someone,  
7 since Dr. Solomon is leaving the -- being involved, the  
8 order had appointed him the authority to determine  
9 Anna's medication and treatment regime, so we need  
10 someone else to take on that role so that the parents  
11 can't be fighting between the two of them and I did  
12 suggest her primary physician Dr. Castillo.

13 THE COURT: I think Dr. Solomon said he's  
14 going to keep doing that until he gets a new adult  
15 psychiatrist and then that new adult psychiatrist will  
16 just continue.

17 MR. PICARD: Okay. I'm -- I didn't read it  
18 that way, that additional responsibility, so okay.

19 THE COURT: Let me make sure.

20 MR. PICARD: Theresa --

21 THE COURT: He said that in the letter -- Dr.  
22 Solomon says on page three, March 11, 2021, "I will be  
23 transferring care for Anna's psychiatric medications  
24 and services to adult psychiatry and family practice --  
25 practice medicine respectfully. Until the transition



1 plans are complete, I remain her provider for  
2 medications and developmental care. I plan..., " and  
3 then he goes in the addendum, "...I plan to transfer  
4 Anna's care to adult psychiatry. However, until that  
5 time, I remain Anna's provider for adult medication and  
6 developmental care." So he's going to take care of it  
7 all.

8 MR. PICARD: All right.

9 MR. WARNER: Your Honor, this is Curtis  
10 Warner. As far as the first order is the copy of the  
11 check, I guess I said it colloquially when she gets the  
12 check. It's actually a direct electronic deposit from  
13 the Social Security Administration that comes into the  
14 account, so I'm sorry if I used the colloquially check.  
15 It's a direct deposit, so she wouldn't be able to make  
16 a copy of any actual check.

17 THE COURT: She can make a copy of the  
18 deposit as it goes in.

19 MR. WARNER: Yes. Yes.

20 THE COURT: Email that.

21 MR. WARNER: Yes, she can and she's been  
22 doing that, and the other part of the order says all  
23 bank accounts are to be joint with all co-guardians.  
24 I -- I had contacted the Chase Private Client services,  
25 and in fact they will not do that. There -- their's

1 only can be one representative payee. They will not  
2 add another person to it, so that is problematic. I  
3 mean we can try to do the order. We could send an  
4 order to Chase Bank but Chase Bank might not -- might  
5 refuse to do it, so I just wanted --

6 THE COURT: That's true. If they do refuse  
7 to do it, what I do is I go to another bank.

8 MR. WARNER: Again, it's our position is it's  
9 federal law and it can't be done under federal law but,  
10 and I don't want to have to keep going to bank to bank  
11 to bank to find one that -- and in my research and  
12 opinion in talking with bank, at least Chase Bank, it  
13 can't be done.

14 THE COURT: Is this only for the  
15 representative payee social security account?

16 MR. WARNER: That is correct, Your Honor.

17 THE COURT: And nothing else is in there at  
18 all?

19 MR. WARNER: Correct, Your Honor. It is --  
20 it is just an account that is set up for Anna-Marie  
21 Bazakis with Christy Bomba being the representative  
22 payee. It's a separate account.

23 THE COURT: So the money goes in and comes  
24 right out?

25 MR. WARNER: That is correct.

1 MR. PICARD: Your Honor, she can give him  
2 access to the sign-in so that he can monitor that  
3 account without being as the named -- named on the  
4 account itself.

5 THE COURT: Can she do that, Mr. Warner?

6 MR. WARNER: It's kind of circumventing what  
7 Chase tells you you shouldn't be doing. I mean, the  
8 other -- You can look at it, this is a discovery issue.  
9 What -- what is the issue here. The Court has ordered  
10 50 percent. All they need to do is look at the social  
11 security website, see what the payment is supposed to  
12 be, see what the amount of money they receive month is,  
13 and divide by two. And all -- all they need to do is  
14 to -- equal those moneys up.

15 Now, she's also been providing statements  
16 about the stimulus checks that have come in. She's  
17 provided documentation to show that there is only  
18 50 percent that is -- is going there, so what -- the  
19 whole thing is trying to circumvent. And this  
20 monitoring is really something the office of the  
21 inspector general does if they believe there is a crime  
22 that is involved, and they also with like subpoenas  
23 they target the specific reasons for it.

24 Here, you know, before -- on April 8 before  
25 the motion's filed, Miss Bomba was already being

1 transparent, she was doing what she was supposed to do  
2 and showing -- they didn't want to come back to  
3 court -- that's she's giving 50 percent and including  
4 bringing up the stimulus checks and showing him that  
5 she'd done that and also showing that to be 50 percent.  
6 So the -- that part of the order you're unfortunately  
7 asking something that can't be done, Your Honor, and  
8 the banks won't do it.

9 THE COURT: The representative payee can only  
10 go to one bank?

11 MR. WARNER: No, Your Honor. What I'm saying  
12 is we would be going to multiple banks asking each bank  
13 to not comply with the federal law until we found one  
14 that did. A guy could be just going down this rabbit  
15 hole asking bank after bank after bank and I think  
16 maybe the easiest way to do is submit the order to one  
17 of these banks, to Chase and maybe one other bank and  
18 see if they'll do it, but if they don't, then submit,  
19 you know, a follow up supplement to the Court with the  
20 letters saying they can't comply with the order, Your  
21 Honor.

22 THE COURT: Why don't you do that. Send it  
23 to them and in the meantime I'll check on my own  
24 because I have to do the same thing and I'll make sure  
25 that -- I'll see from my stand point and if you're

1 wrong, then I'm going to award sanctions because I  
2 shouldn't have to be doing this on my own.

3 MR. WARNER: Well again, Your Honor -- Your  
4 Honor, as I said, I talked to Chase Bank and --

5 THE COURT: It's okay. I understand. I  
6 understand.

7 MR. WARNER: I would say that's due  
8 diligence. I can continue to keep trying every single  
9 bank that's out there, Your Honor and --

10 THE COURT: No. No, I don't --

11 MR. WARNER: -- are serious, and I mean I  
12 really -- I really have done my due diligence on this  
13 to try --

14 THE COURT: I didn't say you didn't do your  
15 due diligence. I'm just saying I will do mine.  
16 Mr. Picard, anything else?

17 MR. PICARD: I was just going to say, Your  
18 Honor, even if she was the only one named on the  
19 account, if she gave him the password so he could  
20 access the on-line, as a co-guardian he would be doing  
21 his due diligence.

22 MR. WARNER: The password, because she has  
23 multiple Chase accounts, would give her -- her own  
24 account. The other thing to do would be to set up  
25 another bank account in a neutral bank so there is no



1 -- and that can be done.

2 THE COURT: Why don't you do that then. Why  
3 don't we make that the order. You set up a new account  
4 at a neutral bank and this information is shared that  
5 way.

6 MR. WARNER: Okay.

7 MR. PICARD: Thank you.

8 THE COURT: Mr. Picard, you're going to do  
9 the order?

10 MR. PICARD: I'm going to do the order.  
11 Miss Schmude, I would appreciate -- there's a lot here.  
12 I'd appreciate the transcript and just tell me what the  
13 cost is.

14 THE COURT: And will you provide one to  
15 Mr. Warner also, Theresa?

16 COURT REPORTER: Yes, Judge.

17 THE COURT: So there won't be any argument on  
18 the order that way. Mr. Brandt, I left you out of  
19 this.

20 MR. BRANDT: I would request a copy of the  
21 transcript as well, Judge, and I like the idea of a  
22 second account.

23 THE COURT: Thank you.

24 MR. WARNER: Now, the only thing with the  
25 second account, too, is we're going to have to work

1 with the Social Security Administration to set up the  
2 change, and so that -- that is -- Miss Bomba's going to  
3 have to contact the Social Security Administration  
4 office to see how that change in account process can be  
5 set up, so she'll have to call in and so it might take  
6 some time but I'm sure Miss Bomba will get on that  
7 right away, Your Honor.

8 THE COURT: Yup, it will take some time. All  
9 right. Anything else?

10 MR. WARNER: Also one other thing, Your  
11 Honor, as far as the scheduling of appointments, there  
12 are certain appointments that are already previously  
13 scheduled. If we could just have those to remain as is  
14 and not rescheduled for the medical appointments.

15 THE COURT: Mr. Picard, can you put that in  
16 the order?

17 MR. PICARD: I'm sorry, Your Honor. Got  
18 dragged into another question.

19 THE COURT: Any and all appointments for Anna  
20 that are already scheduled dentist, doctors, etcetera,  
21 shall remain.

22 MR. PICARD: Well, do we have a list of them  
23 because we -- I mean -- I can put it in the order,  
24 Judge, but rhetorically since we haven't been allowed  
25 to do many of them ourselves.

1 THE COURT: Well, let's not argue. What are  
2 scheduled, if any. Miss Bomba, do you know what's  
3 scheduled? You're on mute.

4 MS. BOMBA: Yes, Your Honor. I actually have  
5 the current list here and I'm more than willing to  
6 provide that.

7 THE COURT: Why don't you email that to  
8 Mr. Picard right now and he can get it to his client  
9 right away.

10 MS. BOMBA: Yes, sir.

11 THE COURT: Do you have Mr. Picard's email?

12 MS. BOMBA: Yes, sir, I do.

13 THE COURT: Okay. And then you'll  
14 incorporate that, Mr. Picard?

15 MR. PICARD: I will, Your Honor. And I hope  
16 the Court can appreciate that from your years of  
17 private practice that I do not wish to engage in direct  
18 communication with Miss Bomba unless my client is  
19 present at the time so that it's not subject to  
20 misinterpretation or what have you. It's just not  
21 appropriate.

22 THE COURT: I agree, but I'm not going to --

23 MR. PICARD: I know.

24 THE COURT: -- get into that today.

25 MR. PICARD: I understand.

1 THE COURT: She has counsel right now. You  
2 can communicate through counsel but I've asked her to  
3 send that to you directly here today.

4 MR. PICARD: Thank you.

5 MR. WARNER: Your Honor, the other motions  
6 that we do have up is the motion to amend the order  
7 regarding the Easter -- the difference between the  
8 Christian Easter and the Orthodox Easter. We've  
9 provided a 20-year plan, and then also moving forward  
10 so that Anna-Marie can celebrate both holy days with  
11 each of the parents on the respective holy day. And  
12 then we also have the request for the birthdays for  
13 each parent to have time with her on the birthday,  
14 because as the current schedule goes, Mr. Bazakis does  
15 get Anna-Marie on her birthdays, on her actual  
16 birthday.

17 MR. PICARD: May I respond?

18 THE COURT: Just a second. All right. So  
19 back on December 14, 2020 I believe it was, at least  
20 that's the day of the transcript, or not, I indicated  
21 that quote, "on Easter mom will have on even years and  
22 dad will have on odd years unless they can agree on  
23 Catholic and Greek schedule." I take it they can't  
24 agree on it.

25 MR. PICARD: Correct.

1 THE COURT: The order will stay as it is.

2 MR. PICARD: And the birthday you previously  
3 ruled --

4 THE COURT: The birthday I already ruled will  
5 not be a holiday. Anna doesn't recognize birthdays so  
6 you can celebrate that whenever you want, when it's the  
7 two-week schedule.

8 MR. PICARD: Thank you, Your Honor.

9 THE COURT: Anything else?

10 MR. PICARD: Not from us.

11 MR. WARNER: No, Your Honor.

12 THE COURT: Thank you. We'll be adjourned.

13 MR. PICARD: Thank you.

14 MR. WARNER: Thank you.

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1 STATE OF MICHIGAN )  
2 ) SS  
3 COUNTY OF SAGINAW )  
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5  
6  
7

8 I certify that this transcript, consisting of 29  
9 pages, is a complete, true and correct transcript of the  
10 Motion to Compel, Request of Sanctions, and Motion and  
11 Memorandum to Quash and testimony taken in this case on June  
12 8, 2021, before the Honorable Patrick J. McGraw, Probate  
13 Judge, in Saginaw, Michigan.

14  
15 Dated: June 8, 2021.  
16  
17  
18

19 Theresa M. Schmude

20 Theresa M. Schmude, CSR-3380  
21 Certified Shorthand Reporter  
22 111 South Michigan Avenue  
23 Saginaw, MI 48602  
24  
25

STATE OF MICHIGAN  
IN THE PROBATE COURT FOR THE COUNTY SAGINAW

IN THE MATTER OF:  
ANNA-MARIE BAZAKIS,  
an individual with a developmental disability

File No. 20-140294-DD

Hon. Patrick J. McGraw (P34430)

---

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---

**ORDER FOLLOWING HEARING REGARDING MOTION TO COMPEL  
COMPLIANCE, ET AL, MOTION TO QUASH SUBPEONA, AND MOTION TO  
MODIFY PARENTING TIME**

AT A SESSION OF SAID COURT HELD IN THE COURTHOUSE,  
IN THE CITY OF SAGINAW, COUNTY OF SAGINAW, STATE  
OF MICHIGAN, ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_,  
2021.

PRESENT: HON. PATRICK J. MCGRAW, PROBATE JUDGE

This matter having come before the Court on motions by co-guardian, ANDREW BAZAKIS and co-guardian, CHRISTY BOMBA, both co-guardians being present along with their counsel and the Guardian Ad Litem, and the Court being otherwise advised of the premises;

IT IS HEREBY ORDERED the motion to quash bank subpoena is granted;

IT IS FURTHER ORDERED the motion to change parenting time is denied;

IT IS FURTHER ORDERED co-guardian, CHRISTY BOMBA, shall remain the protected person's payee for purposes of the Social Security Administration however, she shall provide co-guardian, ANDREW BAZAKIS, portal access to the account and shall provide the current medical card to ANDREW BAZAKIS, forthwith and proof of turning the card over filed with counsel, GAL, and Court. If BOMBA cannot access or create a portal for the protected person's account, and the only benefits received consist of the monthly payment, then BOMBA shall provide BAZAKIS a copy of the bank deposit from Social Security, and each month provide directly to BAZAKIS 50% of the proceeds through ZELLE;

IT IS FURTHER ORDERED co-guardian, ANDREW BAZAKIS, shall be added to a new joint bank account to be set up for the protected person's benefit by co-guardian, CHRISTY BOMBA and, if that is not possible, then BAZAKIS shall be provided all information necessary for him to inspect and review account activity. If BOMBA maintains that she is unable to set up a joint account and this Court finds that adding BAZAKIS to the account is possible, then BOMBA shall be subject to sanctions yet to be determined by this Court;

IT IS FURTHER ORDERED the guardians shall exchange the protected person's Bridge Card monthly, and it shall only be used in the current months, not to use anything that is reloaded during that month should the party happen to have it.

IT IS FURTHER ORDERED the guardians shall enroll in Family Wizard and provide access to this account for the Guardian Ad Litem. The guardians shall equally share the cost for this service. The guardians shall use Family Wizard for all communication relating to the protected person exclusive of the medical information contained on the protected person's MyChart account through Covenant Hospitals.

IT IS FURTHER ORDERED the guardians shall select a password for the protected person's MyChart account and neither party shall change it without order by this Court. The GAL shall be provided the password and full access to this account. If the guardians cannot agree on the password then the GAL shall select the password.

IT IS FURTHER ORDERED that Dr. Richard Solomon shall select the new psychiatrist for the protected person and the psychiatrist shall be responsible for final determination for all medications and treatment of the protected person as Dr. Solomon was directed in this Court's Order of August 20, 2020.

IT IS FURTHER ORDERED co-guardian, ANDREW BAZAKIS, shall assume the responsibility to schedule all medical appointments for the protected person. ANDREW

BAZAKIS shall have a 12 hour window to send notification to the other co-guardian of the date and time of the appointment through either MyChart or Family Wizard. Failure to timely notify the co-guardian of any scheduled appointments shall result in fines and sanctions of \$500.00 per occurrence.

IT IS FURTHER ORDERED that all appointments previously scheduled as of the date of this hearing, to wit: June 9, 2021, shall be kept unless changed by mutual agreement of the co-guardians.

IT IS FURTHER ORDERED that all other issues pled in either party's prayer for relief and not specifically raised at the hearing, i.e. attorney fees, sanctions, and the like, this Court makes no determination or ruling thereon.

PATRICK J. MCGRAW (P34430)  
Probate Court

Countersigned:

Deputy Clerk

APPROVED AS TO FORM:

Christopher A. Picard (P35538)  
Attorney for Co-Guardian

Curtis C. Warner (P59915)  
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Otto W. Brandt, Jr. (P11129)  
Guardian Ad Litem

Prepared By:

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Positive

As of: August 24, 2021 11:44 PM Z

## Abulkhair v. Comm'r of Soc. Sec.

United States Court of Appeals for the Third Circuit

October 20, 2011, Submitted for Possible Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6; November 3, 2011, Opinion Filed

No. 11-3314

### Reporter

450 Fed. Appx. 117 \*; 2011 U.S. App. LEXIS 22316 \*\*

ASSEM A. ABULKHAIR, Appellant v. COMMISSIONER OF SOCIAL SECURITY

**Notice:** NOT PRECEDENTIAL OPINION UNDER THIRD CIRCUIT INTERNAL OPERATING PROCEDURE RULE 5.7. SUCH OPINIONS ARE NOT REGARDED AS PRECEDENTS WHICH BIND THE COURT.

PLEASE REFER TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

**Subsequent History:** US Supreme Court certiorari denied by Abulkhair v. Astrue, 2012 U.S. LEXIS 2369 (U.S., Mar. 26, 2012)

**Prior History:** **[\*\*1]** On Appeal from the United States District Court for the District of New Jersey. (D.C. Civil No. 2-10-cv-00550). District Judge: Honorable Katharine S. Hayden.

Abulkhair v. Comm'r of the SSA, 355 Fed. Appx. 603, 2009 U.S. App. LEXIS 23445 (3d Cir. N.J., 2009)

**Counsel:** ASSEM A. ABULKHAIR, Plaintiff - Appellant, Pro se, Clifton, NJ.

For COMMISSIONER SOCIAL SECURITY, Defendant - Appellee: Tomasina DiGrigoli, Esq., Karla J. Gwinn, Esq., Social Security Administration, Office of General Counsel - Region II, New York, NY; Anthony J. LaBruna, Jr., Esq., Office of United States Attorney, Newark, NJ.

**Judges:** Before: AMBRO, JORDAN and VANASKIE, Circuit Judges.

### Opinion

**[\*117]** PER CURIAM

On August 2, 2011, the District Court denied appellant Abulkhair's motion to enforce its order of November 1, 2010. Abulkhair appealed. We will summarily affirm.

The multi-year history of this litigation need not be recapitulated, as the parties—our primary audience—are undoubtedly familiar with Abulkhair's long struggle to obtain Social Security benefits. Following many years of litigation, and at least one appearance before this Court (see generally *Abulkhair v. Comm'r*, 355 F. App'x 603 (3d Cir. 2009)), Abulkhair received a favorable decision from the District Court. Observing that "an inordinate length of time, stretching back almost two decades, **[\*\*2]** has passed without full resolution of plaintiff's application for disability benefits," the District Court:

**[\*118] ORDERED** that the decision of the Appeals Council dated May 24, 2007 is reversed and as a consequence, the Commissioner's final decision denying benefits is reversed; and . . .

**ORDERED** that plaintiff's application for retroactive benefits between September 11, 1992 and August 12, 1997 is granted.

Order 7-8, ECF No. 16. The decision granted relief in what was referred to as "Application I," which covered Social Security benefits from the abovementioned 1992 to 1997 time period, and did not otherwise appear to address "Application II," a second Social Security benefits application that was filed in 1997.<sup>1</sup>

The record indicates that the Social Security Administration ("Administration") then contacted Abulkhair and arranged a payment schedule. In its letter, the Administration informed Abulkhair that it owed him \$28,979.93 in back payments, but "[b]ecause of the large amount, the law says we cannot pay all of the money in one lump sum. Instead, we must pay it in up

<sup>1</sup>The District Court's order suggests that "Application II" was approved in April 2004. See Order 4.

to three installments, [\*\*3] six months apart." The first payment would arrive on January 15, 2010, with the second following in six months. The letter further explained to Abulkhair the limited exceptions to the above rule.

Apparently dissatisfied with the arrangement, Abulkhair filed a "Motion to Enforce Judgment," ECF No. 17, on January 18, 2011. He raised three complaints with the Administration's post-judgment conduct: 1) the Administration had failed to justify why it could not pay him in a lump sum, and Abulkhair believed there to be no actual restriction on its ability to do so; 2) the Administration failed to grant him interest on the back payments; and 3) the Administration had failed "to refund the due amount of \$4,107.00 that was wrongly recouped by the State without any agreement and to pay the unpaid benefits for December 01, January 02, February 02, March 02 and June 02 under (Application II)." The District Court denied relief on August 2, 2011, and this timely appeal followed.

We have appellate jurisdiction pursuant to 28 U.S.C. § 1291, but our jurisdiction extends only to the denial of Abulkhair's "Motion to Enforce Judgment," and not to the District Court's original order granting relief.<sup>2</sup> "This [\*\*4] court has recognized the propriety of motions to enforce a judgment previously entered by the court and has held that they may be made at any time after the entry of judgment." Union Switch & Signal Div. Am. Standard, Inc. v. United Elec., Radio & Mach. Workers, Local 610, 900 F.2d 608, 615 (3d Cir. 1990). The disposition of such a motion is reviewed for abuse of discretion. Id.

Having reviewed the record, we are in full accord with the District Court. [\*\*5] None of the Administration's attempts to [\*119] fulfill its obligations to Abulkhair violated either the letter or spirit of the District Court's order. Its installment payment plan was implemented pursuant to governing regulations and internal directives. See, e.g., 20 C.F.R. § 416.545(a). Nor was Abulkhair entitled to interest on his past-due amount, as "in the absence of a specific provision in a

contract or statute, or express consent by Congress, interest does not run on a claim against the United States." VGS Corp. v. U.S. Dep't of Energy, 808 F.2d 842, 845 (Temp. Emer. Ct. App. 1986); see also Library of Congress v. Shaw, 478 U.S. 310, 314-15, 106 S. Ct. 2957, 92 L. Ed. 2d 250 (1986); Arnesen v. Principi, 300 F.3d 1353, 1358-59 (Fed. Cir. 2002).<sup>3</sup> Finally, the refund that Abulkhair requested was related to "Application II," which was not the subject of the District Court's original order. Accordingly, it was outside the scope of a proper motion to enforce the judgment.

Therefore, as this appeal presents no substantial question, we will summarily affirm the judgment of the District Court. Murray v. Bledsoe, No. 10-4397, 650 F.3d 246, 2011 U.S. App. LEXIS 11702, at \*3 (3d Cir. June 10, 2011); see also Third Cir. L.A.R. 27.4; I.O.P. 10.6.

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<sup>2</sup>The District Court's original order was entered on November 1, 2010. However, it did not comply with the strictures of Fed. R. Civ. P. 58(a), also known as the "Separate Judgment Rule." See LeBoon v. Lancaster Jewish Cmty. Ctr. Ass'n, 503 F.3d 217, 224 (3d Cir. 2007); In re Cendant Corp. Secs. Litig., 454 F.3d 235, 242 (3d Cir. 2006). Under the combined operation of Fed. R. Civ. P. 58(c)(2)(B) and Fed. R. App. P. 4(a)(1)(B), Abulkhair had 210 days in which to file a notice of appeal if he was unsatisfied with the District Court's resolution of his claim. His notice of appeal was not within this window and, accordingly, we cannot exercise jurisdiction over the original District Court order. See Bowles v. Russell, 551 U.S. 205, 214, 127 S. Ct. 2360, 168 L. Ed. 2d 96 (2007).

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<sup>3</sup>We take judicial notice that the Administration discusses on its website its inability to pay interest on back benefits. See Social Security Online Frequently Asked Questions, Collecting Interest on Back Benefit Checks, [http://ssa-custhelp.ssa.gov/app/answers/detail/a\\_id/186/~/collecting-interest-on-back-benefit-checks](http://ssa-custhelp.ssa.gov/app/answers/detail/a_id/186/~/collecting-interest-on-back-benefit-checks) [\*\*6] (last visited Oct. 14, 2011). Of course, nothing in the District Court's original order can be construed to mandate the payment of interest on what Abulkhair was owed.





Neutral

As of: August 25, 2021 1:08 PM Z

**Martinez v. SSA Office of the Inspector Gen.**

United States District Court for the District of Colorado

February 12, 2019, Decided; February 12, 2019, Filed

Civil Action No. 19-mc-00004-MSK

**Reporter**

2019 U.S. Dist. LEXIS 23008 \*; 2019 WL 9244884

DEANNA MARTINEZ,<sup>1</sup> Movant, v. SOCIAL SECURITY ADMINISTRATION OFFICE OF THE INSPECTOR GENERAL, Respondent.

**Subsequent History:** Appeal dismissed by Martinez v. SSA Office of the Inspector Gen., 2020 U.S. App. LEXIS 5497 (10th Cir. Colo., Feb. 24, 2020)

**Counsel:** [\*1] Deanna Martinez, Petitioner, Pro se, Pueblo, CO.

Ernest Lave, Petitioner, Pro se, Pueblo, CO.

**Judges:** Marcia S. Krieger, Chief United States District Judge.

**Opinion by:** Marcia S. Krieger

**Opinion****OPINION AND ORDER DENYING MOTION TO QUASH SUBPOENA**

**THIS MATTER** comes before the Court pursuant to Ms. Martinez's Motion (# 1) challenging a subpoena issued by the Respondent ("OIG") on Minnequa Works Credit Union, where Ms. Martinez maintains a bank account.

The Right to Financial Privacy Act, 12 U.S.C. § 3401 *et seq.*, provides for certain procedures that must be followed when government authorities seek to obtain records relating to customers of financial institutions. As pertinent here, a governmental agency such as the OIG may subpoena the records of a financial institution's customers only "if there is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry." 12 U.S.C. § 3405(1). If the agency does elect to subpoena customer records, it is

required to inform the customer of this fact via a notice containing specific information. 12 U.S.C. § 3405(2). A customer receiving such notice may, within a specified time frame, move to quash the subpoena or enjoin the agency from obtaining the records. 12 U.S.C. § 3410(a). After hearing from the agency in response, the Court [\*2] is obligated to determine whether: (i) the movant is the customer to whom the requested records pertain, and (ii) whether there is a "demonstrable reason to believe that the law enforcement inquiry is legitimate and a reasonable belief that the records sought are relevant to that inquiry." 12 U.S.C. § 3410(c).

Here, OIG has indicated that it is engaged in an investigation into whether Ms. Martinez fraudulently obtained Supplemental Security Income ("SSI") payments by concealing information about her marriage and assets. A claimant's eligibility for SSI benefits is means-tested based on the assets available to the applicant and, if married, to the applicant's spouse. *See* 20 C.F.R. § 416.1205. Such an inquiry is legitimately within the scope of the OIG's enforcement powers, and thus, the Court finds that there is a demonstrable reason to believe that the OIG's inquiry is legitimate. 5 U.S.C. § 6(a)(2). Moreover, the OIG indicates that it is conducting its investigation based on a tip from its local field office that Ms. Martinez may actually be fraudulently concealing her marital status and assets. Admittedly, this explanation is highly general and conclusory, but a customer challenge proceeding under the Right to Financial Privacy Act "is [\*3] not akin to an application for a warrant," and does not require particular specificity. All that is necessary is that the OIG has "a good reason to investigate." *Nicksolat v. U.S. Dept. of Transportation*, 277 F. Supp. 3d 122, 128 (D.D.C. 2017). Here, information from an agency's own local office regarding a belief that Ms. Martinez was engaging in fraud is enough to meet the minimal standards required by the Act. Thus, the Court finds that there is a reasonable basis to believe that the OIG's inquiry into Ms. Martinez is legitimate, rather than commenced in bad faith for the sheer purpose of intimidation or harassment. *See e.g. Feiner v. U.S. S.E.C.*, 914 F. Supp. 2d 474, 477 (S.D.N.Y. 2012).

There can be little argument that inquiry into Ms. Martinez's

<sup>1</sup>The Court has previously denied (# 7) the motion to the extent it was asserted by Ms. Martinez's co-movant, Ernest Lave.

financial records would be relevant to an inquiry into whether she misrepresented her available assets in order to obtain or retain SSI payments for which she is otherwise ineligible. This is enough to justify the subpoena, and the Court need not consider whether the OIG can justify the subpoena on the alternative basis that the records would be relevant to inquiry into whether Ms. Martinez is actually married to the account's joint holder, Mr. Lave. Accordingly, the Court finds that the OIG has demonstrated a basis to believe that its inquiry regarding Ms. Martinez is legitimate [\*4] and that there is a reasonable belief that the records the OIG seeks are relevant to that inquiry.<sup>2</sup>

Accordingly, Ms. Martinez's Motion (# 1) is **DENIED**. Also pending are motions by both Ms. Martinez and Mr. Lave to proceed without the payment of fees or costs (# 10, 11). The Court **GRANTS** those motions pursuant to 28 U.S.C. §1915(c). There being no other matters requiring adjudication herein,<sup>3</sup> the Clerk of the Court shall close this case.

Dated this 12th day of February, 2019.

**BY THE COURT:**

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<sup>2</sup> Although the Court denies the motion on its merits, it would also deny it on the alternative grounds that Ms. Martinez did not timely file the instant motion. The Act requires that the movant file her motion within 10 days of service of the notice of subpoena or within 14 days of the subpoena's mailing. Here, the record reflects that Ms. Martinez was aware of the subpoena by at least December 20, 2018, as on that date, she wrote a letter to someone expressing her desire to file a motion under the Act. *Docket* # 1-2 at 12-13. By all appearances, Ms. Martinez sent that letter to the OIG, but did not immediately file her motion with the Court; instead, she commenced this action on January 25, 2019, more than a month later. Giving due regard to Ms. Martinez's *pro se* status and her unfamiliarity with the law, and thus affording her the liberal construction of her pleadings required by *Haines v. Kerner*, 404 U.S. 519, 520-21, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972), the Court nevertheless finds that Mr. Martinez's motion was untimely. Ms. Martinez was specifically instructed by the OIG that she must "file the motion and sworn statement by mailing or delivering them to the Clerk of any of [several] United States District Courts." Ms. Martinez has offered nothing more than the simple statement that her failure to do so promptly was "not intentional," but has not elaborated.

<sup>3</sup> Although the Court previously denied Mr. Lave's motion on January 29, 2019, due to the lack of any sworn statement from him as required by 12 U.S.C. §3410(a), on February 11, 2019, Mr. Lave, filed, without further explanation, a sworn statement (# 8, 9) ostensibly signed by him on January 2, 2019. To the extent this statement constitutes a request by Mr. Lave for reconsideration of the Court's January 29, 2019 Order, the Court denies it. Mr. Lave's motion is untimely for the same reasons discussed above.

/s/ Marcia S. Krieger

Marcia S. Krieger

Chief United States District [\*5] Judge

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**APPENDIX 3**

# EXHIBIT F



Securing today  
and tomorrow

# A Guide for Representative Payees

**SocialSecurity.gov**



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## What's inside

Introduction	1
Helping you manage your new responsibility	1
How you must use monthly benefits	3
How to handle a large payment of past-due benefits	3
How to hold funds	6
Changes to report	10
Medicare and Medicaid	12
Contacting Social Security	14

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## Introduction

More than eight million people, who get monthly Social Security or Supplemental Security Income (SSI) benefits, need help managing their money.

In these cases, we can appoint a relative, friend, or other interested party to serve as the “representative payee.” We thoroughly investigate those who apply to be representative payees to protect the interests of Social Security beneficiaries, because a representative payee receives the beneficiary’s payments and is given the authority to use them on the beneficiary’s behalf.

If you agree to serve as a representative payee, you’ve taken on an important responsibility that can make a positive difference in the beneficiary’s life.

With certain exceptions, a payee may not collect a fee for services provided to the beneficiary. You can’t collect a fee for services from the beneficiary, unless Social Security allows it, or you’re the legal guardian authorized by a court to charge a guardian fee.

This booklet provides basic information on how to be a representative payee and isn’t intended to answer all questions. For specific information about your situation, you should talk with a Social Security representative at your local Social Security office.

## Helping you manage your new responsibility

As a representative payee, you must know what the beneficiary’s needs are so you can decide the best use of benefits for their care and well-being. This is especially important if the beneficiary doesn’t live with you.

Each year, Social Security will ask you to complete a form to account for the benefits you’ve received. You can either fill out the form and return it to Social Security or go online at [www.socialsecurity.gov/myaccount/rep-payee.html](http://www.socialsecurity.gov/myaccount/rep-payee.html)

to file the report. You can use the worksheet on pages 16-17 to keep track of what you spend. You may also be contacted by a Protection and Advocacy agency in your state to review your receipts and records of income and expenses.

As a representative payee, you'll also need to tell Social Security about changes that may affect the beneficiary's eligibility. A list of these changes is on page 10.

Remember, the law requires representative payees to use the benefits properly. If a payee misuses benefits, they must repay the misused funds. A payee who's convicted of misusing funds may be fined and imprisoned.

***NOTE:*** *We appoint a representative payee to manage Social Security and SSI funds only. A payee has no legal authority to manage non-Social Security income or medical matters. A representative payee, however, may need to help a beneficiary get medical services or treatment.*

Family members often use a power of attorney as another way to handle a family member's finances. For Social Security purposes, a power of attorney isn't an acceptable way to manage a person's monthly benefits. Social Security recognizes only the use of a designated representative payee for handling the beneficiary's funds.

### **A special note about children who get Supplemental Security Income (SSI) payments**

If you're a payee for a child receiving SSI payments, you must seek treatment for the child's medical condition when it's necessary. If you don't get medical treatment for the child, Social Security may appoint a new representative payee.

## How you must use monthly benefits

First, you must take care of the beneficiary's day-to-day needs for food and shelter. Then, you must use the money for the beneficiary's medical and dental care that's not covered by health insurance. You can also pay for the beneficiary's personal needs, such as clothing and recreation. You must save any money left after you pay for the beneficiary's needs, preferably in U.S. Savings Bonds or an interest-paying bank account, insured under either federal or state law.

If the beneficiary is in a nursing home or institution, use their benefits to pay the fees. In this case, you should set aside a minimum of \$30 each month to use for the beneficiary's personal needs.

If the beneficiary is in an institution and gets Medicaid, or is a member of a family on Temporary Assistance for Needy Families (TANF), contact Social Security about using benefits for the family.

You may not take a fee from the beneficiary for your services as a representative payee. If you have questions about this, contact your local Social Security office.

## How to handle a large payment of past-due benefits

In certain instances, Social Security will pay past-due benefits all at once in a lump sum, which may be a large amount. First, you must spend the money on the beneficiary's current needs such as rent and a security deposit, food, or furnishings. After paying these expenses, you may spend the money to improve the beneficiary's daily living conditions or for better medical care. Spend the money wisely. You should use the money in the beneficiary's best interests. Then, if there's money left



over, you must save it, preferably in U.S. Savings Bonds or an interest-paying bank account, insured under either federal or state law.

### **Improve daily living conditions**

After you've provided for the beneficiary's basic needs, you may spend the money to improve the beneficiary's daily living conditions or for better medical care.

You may decide to use the beneficiary's funds for major health-related expenses, if they're not covered by the beneficiary's health insurance. Examples of these expenses are reconstructive dental care, a motorized wheelchair, rehabilitation expenses, or insurance premiums.

You could use the money to arrange for the beneficiary to go to school or get special training.

You may also spend some of the money for the beneficiary's recreation, such as movies, concerts, or magazine subscriptions.

### **Special purchases**

You may want to make some of the following special purchases for the beneficiary.

- A home — Use funds for a down payment. Use the money for payments on a house owned by the beneficiary.
- Home improvements — Pay for repairs and changes to make the beneficiary's home safer and more accessible; for example, install a ramp or widen doorways for wheelchair access.
- Furniture — Buy furniture for the beneficiary's personal use. You can buy items such as a television the beneficiary can share with others in the household.



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- Furniture — Buy furniture for the beneficiary's personal use. You can buy items such as a television the beneficiary can share with others in the household.

- A car — Use funds for a down payment. Use the money for monthly car payments as long as the car is used for and owned by the beneficiary.

If you're not sure if it's okay to use money for a specific item (for example, paying a bill owed before you became payee), contact Social Security before you spend the money.

### **A special note about SSI beneficiaries**

To continue receiving SSI, a beneficiary must not have resources worth more than \$2,000 (\$3,000 for couples). We don't count all resources; however, some items you buy could cause the beneficiary to lose their SSI benefits. Any money you don't spend could also count as a resource. Check with us before making major purchases for an SSI beneficiary.

### **A special note about blind or disabled children receiving SSI**

Sometimes, blind or disabled children will receive large, past-due SSI payments covering more than six months of benefits. Usually, these payments must go directly into a separate banking account. We call this a "dedicated account" because funds in this account are only for certain expenses related to the child's disability. The child's dedicated account must be separate from other accounts. Except for certain past-due payments, no other funds may be put into the account. We don't count money in the dedicated account as a resource, and we don't count interest earned on the money as income or as a resource. You can only use money in a dedicated account for the following expenses:

- Medical treatment and education or job skills training.
- Personal needs related to the child's disability — such as therapy and rehabilitation, special equipment, and housing modifications.

- Necessary items or services related to the child's disability, such as legal fees for the child's benefit claim.

You should get approval from us before spending money on the items listed above.

You must keep a record of all money taken from this account. Save the receipts for all items or services bought because we'll review these records at least once a year. If you knowingly use money from the dedicated account for anything other than the expenses listed above, you must repay us from your own funds. If you have questions about dedicated accounts, contact us.

## How to hold funds

The Treasury Department requires all federal benefit payments to be made using a form of electronic payment. We recommend that you hold benefits in a checking or savings account to protect against loss or theft. Also, don't mix the beneficiary's funds with your own or other funds.

You must save any money left over after meeting the beneficiary's day-to-day and personal needs. The preferred ways of saving is U.S. Savings Bonds or an interest-paying bank account that's insured under either federal or state law. Interest earned belongs to the beneficiary.

The checking or savings account title must show the beneficiary's ownership of the funds and show you as the financial agent. Neither you as the payee, nor another third party, can have any ownership of the account. The beneficiary must never have direct access to the account. Any account title (under state law) that shows beneficiary ownership of the account with you as the financial agent is acceptable. Don't use joint accounts. We recommend that you title the account in one of the following ways:

- (Beneficiary's name) by (your name), representative payee.
- (Your name), representative payee for (beneficiary's name).

Your bank will provide help if you have more questions.

### **An exception for parents and spouses who are representative payees**

A common checking account for all family members living in the same household who receive benefits may show a parent or spouse as the owner of the account. Children's savings, however, must be in separate savings accounts for each child, showing the child as the account owner.

### **Organizations that serve as payees**

Sometimes nursing homes or other organizations place funds for several beneficiaries in a single checking or savings account known as a "collective account." This is usually acceptable, but special rules apply to these accounts:

- Account titles must show the funds belong to the beneficiaries and not the representative payee.
- The account must be separate from the organization's operating account.
- Any interest earned belongs to the beneficiaries.
- There must be proper procedures to document credits and debits with clear, current records of each beneficiary's share.
- The organization must make the account and supporting records available to us when we ask for them.
- The organization must obtain approval from Social Security before establishing the account.



Some examples of collective account titles are:

- “Sunnydale Nursing Home for Social Security beneficiaries.”
- “Sunnydale Nursing Home Resident Trust Account.”

If you have any questions about collective accounts, contact us.

You’ll need approval from us first, if your organization serves as payee and wants to charge a beneficiary for the cost of past care. We also need to approve any decision to “pool” the funds of several beneficiaries for an item such as a television that will benefit the group.

More information about being a payee is available in the *Guide for Organizational Representative Payees* available at [www.socialsecurity.gov/payee](http://www.socialsecurity.gov/payee) or from any local Social Security office. You can also order a copy by calling 1-800-772-1213 (TTY 1-800-325-0778).

### Keeping records

As a representative payee, you’re responsible for keeping records and reporting on how you spend the benefits by completing a *Representative Payee Report* (Form SSA-623, SSA-6230, or SSA-6233). We’ll mail the proper form to you once a year. You can also file the report online at [www.socialsecurity.gov/myaccount/rep-payee.html](http://www.socialsecurity.gov/myaccount/rep-payee.html).

You must complete the report unless you are exempt. The following types of payees are exempt from the annual accounting requirements:

- A natural or adoptive parent of a minor child who primarily resides in the same household as the beneficiary.
- A legal guardian of a minor child who primarily resides in the same household as the beneficiary.

- A natural or adoptive parent of a disabled individual who primarily resides in the same household as the beneficiary.
- The spouse of an individual.

You may choose to use the worksheet on pages 16-17 to help you keep track of the money you spend. When you need to fill out the *Representative Payee Report*, you can add the amounts in each column of your worksheet and put the totals on the accounting form. If you need extra worksheets, call 1-800-772-1213 (TTY 1-800-325-0778).

To supplement Social Security's annual accounting process, we may select you for an onsite review. Protection and Advocacy agencies in each state that receive annual grants from Social Security may contact you to schedule a review to ensure satisfactory oversight of funds and performance of payee duties.

### **Paying income tax**

Some people who get Social Security benefits have to pay federal income tax on them. At the beginning of each year, Social Security mails each beneficiary a *Social Security Benefit Statement* (Form SSA-1099) that shows the total benefits they received during the previous year. Give this statement to the beneficiary's tax preparer to determine if any taxes are due on the benefits.

### **A special note about SSI beneficiaries in a medical facility**

If Medicaid pays more than half the cost for an SSI beneficiary in a medical facility, we limit SSI payments to \$30 a month, plus any extra money the state pays. We also apply this limit to children under age 18, if private health insurance — or both private insurance and Medicaid — pay more than half the cost of their care in a medical facility. You must use the entire payment for



**APPENDIX 4**



Cited

As of: August 1, 2022 5:16 PM Z

## Michalik v. Jp Morgan Chase Bank

Court of Appeals of Michigan

October 9, 2012, Decided

No. 305073

### Reporter

2012 Mich. App. LEXIS 1931 \*; 2012 WL 4801078

ARTHUR MICHALIK, Plaintiff-Appellant, v JP MORGAN CHASE BANK, d/b/a CHASE BANK, Defendant-Appellee, and WENDY PALUMBO-GARWOOD and SANDRA PALUMBO, Defendants.

**Notice:** THIS IS AN UNPUBLISHED OPINION. IN ACCORDANCE WITH MICHIGAN COURT OF APPEALS RULES, UNPUBLISHED OPINIONS ARE NOT PRECEDENTIALLY BINDING UNDER THE RULES OF STARE DECISIS.

**Prior History:** [\*1] Wayne Circuit Court. LC No. 09-013382-CB.

**Judges:** Before: FORT HOOD, P.J., and METER and MURRAY, JJ.

### Opinion

PER CURIAM.

Plaintiff appeals as of right from a default judgment entered against defendant Wendy Palumbo-Garwood (defendant Garwood) in this action for breach of fiduciary duty against defendant Garwood, conspiracy to defraud and conversion against defendant Garwood and defendant Sandra Palumbo, and conversion, breach of contract, and negligence against defendant JP Morgan Chase Bank (defendant Bank). On appeal, plaintiff challenges an earlier order granting defendant Bank's motion for summary disposition that it brought pursuant to MCR 2.116(C)(8) and (C)(10). We reverse the grant of summary disposition and remand for further proceedings.

Plaintiff argues that the trial court erred by granting defendant Bank's motion for summary disposition because defendant Bank was strictly liable to plaintiff in connection with payment on a check made payable to plaintiff that was endorsed by defendant Garwood with plaintiff's forged signature.

This Court reviews de novo a trial court's granting of summary disposition. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999), superseded by statute on [\*2] other grounds as stated in *McLichey v Bristol West Ins Co*, 408 F Supp 2d 516 (WD Mich, 2006). A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual sufficiency of the claim.<sup>1</sup> *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). The party moving for summary disposition must specifically identify the matters that have no issues of disputed fact. *Coblentz v Novi*, 475 Mich 558, 569; 719 NW2d 73 (2006). Then, the party opposing the motion has the burden of showing, through documentary evidence, that a genuine issue of disputed fact exists. *Smith*, 460 Mich at 455. This Court considers only "what was properly presented to the trial court before its decision on the motion." *Pena v Ingham Co Rd Comm*, 255 Mich App 299, 310; 660 NW2d 351 (2003). We must review a "motion brought under MCR 2.116(C)(10) by considering the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party." *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). "Affidavits, depositions, admissions, and documentary evidence offered in support of or in opposition to a motion based on subrule [(C)(10)] shall only be [\*3] considered to the extent that the content or substance would be admissible as evidence to establish or deny the grounds stated in the motion." MCR 2.116(G)(6). "There is a genuine issue of material fact when reasonable minds could differ on an issue after viewing the record in the light most favorable to the nonmoving party. *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008).

<sup>1</sup> The trial court did not specify under which rule, MCR 2.116(C)(8) or (C)(10), it granted defendant Bank's motion for summary disposition. However, plaintiff and defendant Bank both referenced and relied on documentary evidence to support their positions with regard to the motion. Therefore, the trial court seemingly granted summary disposition pursuant to MCR 2.116(C)(10). Cf. *Wormsbacher v Seaver Title Co*, 284 Mich App 1, 3 n 2; 772 NW2d 827 (2009).

On November 29, 2007, defendant Garwood deposited a check for \$19,962.19, payable to the order of plaintiff, from Detroit Laborers' Defined Contribution Plan, into her joint account with plaintiff (the Account) at defendant Bank. The check was plaintiff's payout from his retirement annuity fund. Defendant Garwood deposited the check into the Account [\*4] and immediately withdrew \$5,000 in cash. The check was endorsed by plaintiff's signature, which defendant Garwood allegedly forged, and defendant Garwood's signature.

The trial court ruled as follows regarding defendant Bank's motion for summary disposition:

The [c]ourt finds that under the circumstances here the plaintiff did receive the proceeds of the check and looking at plaintiff's complaint and I know it was prepared by prior counsel but, none the less [sic], you're charged with notice of the pleadings that were filed and prepared by prior counsel and in looking at plaintiff's complaint the plaintiff states that the account was his jointly with the defendant and that's at paragraph 12. In the same paragraph, plaintiff states that Garwood was his agent and was authorized to use the account for bill paying. Further, under these circumstances and in light of the code Article 3 Section 307 we think that would probably apply here. That section provides that an agent that signs the plaintiff's name creates a presumption that a signature was authorized. Under these circumstances we believe that the bank's motion should be granted and the plaintiff's motion denied. That's my ruling.

"A [\*5] check is considered the personal property of the designated payee." *Pamar Enterprises, Inc v Huntington Banks of Mich*, 228 Mich App 727, 734; 580 NW2d 11 (1998). Furthermore, the Uniform Commercial Code (UCC) provides:

The law applicable to conversion of personal property applies to instruments. An instrument is also converted if it is taken by transfer, other than a negotiation, from a person not entitled to enforce the instrument or a bank makes or obtains payment with respect to the instrument for a person not entitled to enforce the instrument or receive payment. An action for conversion of an instrument may not be brought by (i) the issuer or acceptor of the instrument or (ii) a payee or endorsee who did not receive delivery of the instrument either directly or through delivery to an agent or a co-payee. [MCL 440.3420(1).]

"A conversion action may be brought by the intended payee against either the depository bank or the drawee bank." *Pamar Enterprises, Inc*, 228 Mich App at 734.

To establish liability for conversion on the part of a defendant bank, the plaintiff is required to prove that the instrument at issue was paid on a forged endorsement. *Grosberg v Mich Nat'l Bank-Oakland*, 420 Mich 707, 714; 362 NW2d 715 (1984). [\*6] Even if such a showing is made, the defendant bank will not be liable beyond the proceeds from the instrument remaining in its hands, if the bank has dealt with the instrument in good faith and in accordance with reasonable commercial standards. *Id.*

A forged endorsement is a form of unauthorized signature. *Id.* at 714. However, under the UCC:

If a person acting, or purporting to act, as a representative signs an instrument by signing either the name of the represented person or the name of the signer, the represented person is bound by the signature to the same extent the represented person would be bound if the signature were on a simple contract. If the represented person is bound, the signature of the representative is the "authorized signature of the represented person" and the represented person is liable on the instrument, whether or not identified in the instrument. [MCL 440.3402(1).]

"Usually and ordinarily the nature and extent of the authority of an agent and whether the act or contract in controversy was within the scope of his authority are, under the evidence, questions of fact to be determined by the jury or other trier of facts . . . ." *Renda v Int'l Union, United Auto, Aircraft & Agricultural Implement Workers of America*, 366 Mich 58, 95; 114 NW2d 343 (1962) [\*7] (internal quotation marks and citation omitted). "Agents have the implied power to carry out all acts necessary in executing [the principal's] expressly conferred authority. . . . Whether the act in question is within the authority granted depends upon the act's usual or necessary connection to accomplishing the purpose of the agency." *Slocum v Littlefield Pub Sch, Bd of Ed*, 127 Mich App 183, 194; 338 NW2d 907 (1983) (internal quotation marks and citations omitted). "The power of an agent to [e]ndorse cannot be implied from the fact that the agent, without the knowledge or consent of his principal, [e]ndorsed checks in the principal's name and misapplied the proceeds." *Kay v Wayne Co*, 274 Mich 90, 95; 264 NW 300 (1936). "[T]he principal is not bound where the agent exceeds the scope of his apparent authority. . . ." *Modern Globe, Inc v 1425 Lake Drive Corp*, 340 Mich 663, 667; 66 NW2d 92 (1954) (internal quotation marks and citation omitted).

The parties do not dispute that defendant Garwood was plaintiff's "bill paying agent." Plaintiff referred to defendant Garwood as his "bill paying agent" in his complaint. In lieu of paying plaintiff rent, defendant Garwood was supposed to pay plaintiff's [\*8] utility and cable bills. Defendant Garwood

paid some of plaintiff's bills online, from the Account. The evidence that defendant Garwood was plaintiff's "bill paying agent," however, does not automatically imply that endorsing plaintiff's signature to checks made payable solely to him was within the scope of defendant Garwood's authority as plaintiff's "bill paying agent."

Additionally, defendant Bank's Account Rules and Regulations, in relevant part, provide:

Each joint owner appoints each of the others as his/her agent and attorney in fact with power to endorse and deposit items payable to him/her in the joint account. If you establish a joint account without the signature of the other joint owner, you agree to hold us harmless for our reliance upon your designation of the other as joint owner.

If you have opened the account as a Representative Payee for receipt of federal benefits on behalf of a beneficiary, you agree that you will cause to be deposited into the Account only those benefits payable to the beneficiary.

Although the parties did not dispute in the trial court that the Account was a "joint account," there was evidence that it was a representative-payee account. In August [\*9] 2007, plaintiff opened the Account with defendant Garwood at defendant Bank for the sole benefit of defendant Garwood, in order for defendant Garwood to deposit her Social Security Income checks. Plaintiff was the representative payee for defendant Garwood on the Account. The Account was titled "Wendy R. Garwood By Arthur Michalik Rep Payee." Plaintiff also filled out paperwork with the Social Security Administration to be defendant Garwood's representative payee for her benefits.

Defendant Bank's Account Rules and Regulations appear to differentiate between traditional joint accounts and representative-payee accounts. The rules do not indicate that for representative-payee accounts the payee appoints the beneficiary as his or her agent and attorney in fact with power to endorse and deposit into the account items payable to the payee. On the contrary, under defendant Bank's rules, representative payees agree to cause only benefits payable to the beneficiary to be deposited into representative-payee accounts. There are genuine questions of fact regarding whether the Account was a traditional joint account or a representative-payee "joint account" and whether plaintiff appointed defendant [\*10] Garwood his agent with authority to endorse his name on checks payable to him pursuant to defendant Bank's Rules and Regulations.

"The mitigation of damages defense provides that the liability of a drawee or depository bank in a conversion action brought by an intended payee is reduced to the extent the intended

payee receives the proceeds of the check applied to the specific obligation the check was intended to discharge. The defense is intended to prevent the unjust enrichment of the intended payee." *Pamar Enterprises, Inc.*, 228 Mich App at 736-737 (internal citations omitted).

Genuine questions of fact exist with regard to whether plaintiff actually received the entire proceeds from the check. Although defendant Garwood deposited the \$19,962.19 check into the Account, she immediately withdrew \$5,000 in cash. Also, while the check was deposited into the Account, there are questions of fact regarding the proper characterization of the Account and regarding plaintiff's interests in the Account. If the Account was established for the sole benefit of defendant Garwood, plaintiff arguably did not receive the funds from the check merely because the check was deposited into the Account.

The [\*11] grant of summary disposition to defendant Bank is reversed and this case is remanded for further proceedings. We do not retain jurisdiction.

/s/ Karen M. Fort Hood

/s/ Patrick M. Meter

/s/ Christopher M. Murray

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**APPENDIX 5**



Neutral

As of: August 1, 2022 5:56 PM Z

## **Embler v. Astrue**

United States Court of Appeals for the Ninth Circuit

November 15, 2011<sup>\*\*</sup>, Submitted, Portland, Oregon; November 22, 2011, Filed

No. 10-36099

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<sup>\*\*</sup> The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).



**Reporter**

459 Fed. Appx. 608 \*; 2011 U.S. App. LEXIS 23433 \*\*

LIONEL L. EMBLER, Petitioner - Appellant, v. MICHAEL J. ASTRUE, Commissioner, Social Security Administration, Respondent - Appellee.

**Notice:** PLEASE REFER TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

**Prior History:** [\*\*1] Appeal from the United States District Court for the Eastern District of Washington. D.C. No. 2:09-cv-00208-CI. Cynthia Imbrogno, Magistrate Judge, Presiding.

Embler v. Astrue, 2010 U.S. Dist. LEXIS 107149 (E.D. Wash., 2010)

**Disposition:** AFFIRMED.

**Counsel:** For LIONEL L. EMBLER, Petitioner - Appellant: Rebecca Mary Coufal, Attorney, Rebecca M. Coufal, Attorney at Law, Spokane, WA.

For MICHAEL J. ASTRUE, Commissioner of Social Security, Respondent - Appellee: Franco Luciano Becia, Esquire, Assistant Regional Counsel, SSA - SOCIAL SECURITY ADMINISTRATION, Office of the General Counsel, Seattle, WA; Frank A. Wilson, USSP - OFFICE OF THE U.S. ATTORNEY, Spokane, WA.

**Judges:** Before: FISHER, PAEZ, and CLIFTON, Circuit Judges.

## Opinion

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[\*608] MEMORANDUM\*

Lionel L. Embler appeals from the district court's judgment that affirmed the final decision by the Commissioner of Social Security denying his application for Supplemental Security Income (SSI). We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo the district court's judgment upholding the denial of benefits, *Valentine v. Comm'r Soc. Sec. Admin.*, 574 F.3d 685, 690 (9th Cir. 2009), [\*\*2] and we affirm the district court.

The ALJ properly concluded that Mr. Embler's own income exceeded the SSI eligibility threshold based on the

commingling of resources between Mr. Embler and his ex-wife, Ms. Audrey Embler. Mr. Embler's March 2006 application for SSI indicated that Mr. and Ms. Embler co-owned at least one joint bank account at the time of Mr. Embler's application. According to 20 C.F.R. § 416.1208(c)(1), joint ownership of an account by a claimant and non-claimant creates a presumption that all funds in the joint account belong to the claimant. Mr. Embler, the claimant, failed to rebut that presumption as provided for under 20 C.F.R. § 416.1208(c)(4). [\*609] Therefore, all funds in the joint account were considered to be Mr. Embler's. Similarly, the counted value of the benefits (food, clothing, and shelter) Mr. Embler received from cohabitating with Ms. Embler was his income. 20 C.F.R. § 416.1130. Together, the in-kind benefits from cohabitation, the income in the joint account, and the Social Security benefits Mr. Embler was already receiving exceeded the SSI income eligibility threshold.

The ALJ's calculations involved income and resources the Social Security regulations ascribe [\*\*3] to Mr. Embler. This determination of income was supported by substantial evidence in Mr. Embler's March 2006 application, Mr. Embler's failure to submit requested documents to rebut the presumption that he owned all funds in the joint bank account, and testimony by Mr. and Ms. Embler regarding their living situation. The deeming regulations delineated in 20 C.F.R. §§ 416.1160-1169 did not factor into the ALJ's calculations or decision to deny benefits. No income of Ms. Embler's was deemed to Mr. Embler in accordance with those provisions. Therefore, the ALJ did not err when he did not consider the source of Ms. Embler's income or her status under the deeming regulations.

**AFFIRMED.**

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\*This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.