

APPENDIX 1

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

RECEIVED by MSC 5/25/2023 11:26:12 AM

STATE OF MICHIGAN
COURT OF APPEALS

In re Guardianship of ANNA-MARIE MARGARET
BAZAKIS

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

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.¹ 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

¹ 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),² 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*,

² 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).³

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

³ 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).⁴

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,

⁴ 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.⁵

⁵ 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 relevant⁶ 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);⁷ *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

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).

⁶ 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.

⁷ 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).⁸

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.⁹ 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.¹⁰

C. BIRTHDAY VISITATION

⁸ 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).

⁹ 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.

¹⁰ 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).¹¹

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:

¹¹ 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.¹²

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).

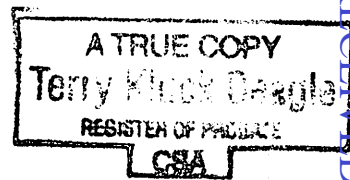
/s/ Christopher M. Murray

/s/ Amy Ronayne Krause

/s/ Colleen A. O'Brien

¹² 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



RECEIVED by MSC 5/25/2023 11:26:12 AM

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

CURTIS C. WARNER P59915
ATTORNEY FOR PETITIONER CHRISTY BOMBA
5 E MARKET ST, STE 250
CORNING NY 14870
888-551-8685
cwarner@warner.legal

OTTO W. BRANDT JR. P11129
GUARDIAN AD LITEM
715 COURT STREET
SAGINAW MI 48602
989-793-4740
ottobrandt@yahoo.com

PICARD & MCLEOD, PLLC
BY : CHRISTOPHER PICARD P35538
ATTORNEY FOR PETITIONER ANDREW BAZAKIS
820 N MICHIGAN AVENUE
SAGINAW MI 48602
989-753-4441
bptm@ameritech.net

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.

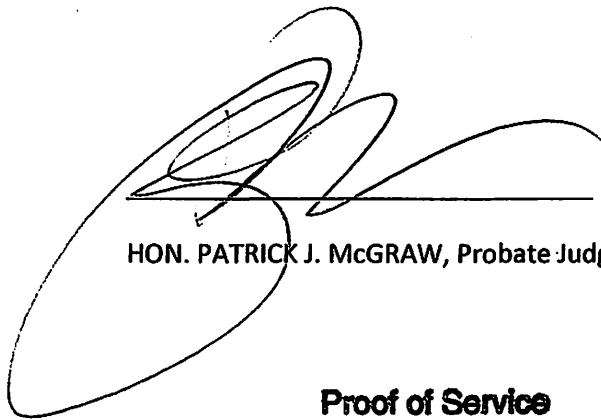
Subsequently the Court directed counsel for Bazakis to prepare an Order reflecting the Court's opinion. Counsel for Bazakis submitted a proposed Order, counsel for Christy Bomba objected and responded and asked that the Motions be set for hearing.

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 Fax
 Hand delivered E-mail
 Other

Signature Cheryl Alden

APPENDIX 3

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] it was
consistent with her diagnosis with the autism spectrum
disorder.

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

A Yes, I am.

Q And does Anna Marie meet that criteria?

A Yes, she does. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[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]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: Mr. Brandt, do you have anything else?

MR. BRANDT: No, Judge.

THE COURT: All right.

MS. KUTZ-OTWAY: Just so I'm clear, Your Honor, is Mr. Picard preparing -- preparing the order?

MR. PICARD: No. The Judge wanted some language regarding holidays, etcetera. I'm going to try getting something put together to send over to you, Val.

MS. KUTZ-OTWAY: And I'll prepare the order with regard to the guardianship?

THE COURT: Well, yeah. Do that.

MS. KUTZ-OTWAY: Okay. All right. Thank you, Your Honor.

THE COURT: All right. We'll be adjourned.

MR. PICARD: Thank you.

MR. BRANDT: Thank you.

THE COURT: Bye-bye, Anna.

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

APPENDIX 4

RECEIVED by MSC 5/25/2023 11:26:12 AM

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

- Date of hearing: AUG 17 2020 Judge: Patrick J. McGraw P34430
Bar no.
- 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:

- Notice of hearing was given to or waived by all interested parties.
- 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.
- 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.
- 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.
- 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.
- 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 48804, 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 _____
- 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.

[x] 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

[x] 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.

[x] 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.

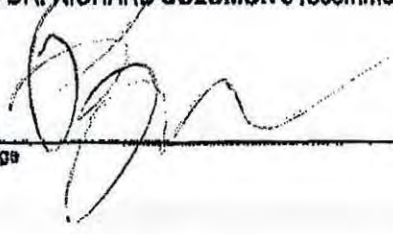
[x] 18. CHRISTY BOMBA and ANDREW BAZAKIS are to share equally in any agreed upon uninsured and/or out of pocket medical costs for ANNA-MARIE MARGARET BAZAKIS.

- [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 & 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

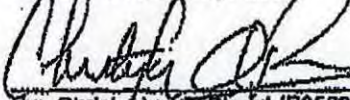
Telephone no.

APPROVED AS TO FORM:

Dated: August 17, 2020

Dated: August 17, 2020

PICARD & McLEOD, PLLC



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



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

APPENDIX 5

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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:

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

For Respondent: CURTIS C. WARNER (P59915)
Attorney at Law
5 E. Market Street, Ste. 250
Corning, NY 14830-2642
(888) 551-8685

Guardian ad: OTTO W. BRANDT, JR. (P11129)
Litem 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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: The order will stay as it is.

MR. PICARD: And the birthday you previously ruled --

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.

MR. PICARD: Thank you, Your Honor.

THE COURT: Anything else?

MR. PICARD: Not from us.

MR. WARNER: No, Your Honor.

THE COURT: Thank you. We'll be adjourned.

MR. PICARD: Thank you.

MR. WARNER: Thank you.

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

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

APPENDIX 6

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)

CURTIS C. WARNER (P59915)
Attorney for Petitioner Christy Bomba
5 E. Market St., Ste. 250
Corning, NY 14870
(888) 551-8685
cwarner@warner.legal

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

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
bptm4@ameritech.net

**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**.¹

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

¹ **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.²

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).³ **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.

² **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.

³ 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

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

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 N

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

APPENDIX 7

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.

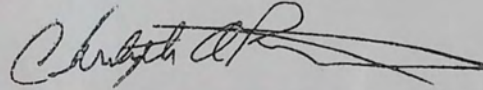
WHEREFORE, Petitioner prays this Court:

- 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



(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

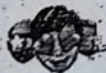
I will call Medicaid again for the 3rd time as it never came. There is no "copy" of a bridge card and we need to discuss that and how we will handle moving forward. Feel free to call me to discuss.. As for taxes, she hasn't earned enough in 2020 SSI yet to file and we did not agree to Mr. Peterson. We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



APPENDIX 8



Securing today
and tomorrow

A Guide for Representative Payees

[SSA.gov](https://www.ssa.gov)



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

Introduction

More than eight million people, who get monthly Social Security benefits or Supplemental Security Income (SSI) payments, 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. This is 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 information on how to be a representative payee. It isn’t intended to answer all questions. For specific information about your situation, you should talk with a 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, we will ask you to complete a form to account for the benefits you have received. For additional information, see our “**Keeping records**” section.

A Protection and Advocacy agency in your state may also contact you to review your receipts and records of income and expenses.

As a representative payee, you'll also need to tell us about changes that may affect the beneficiary's eligibility. To view a list of things you need to inform us about, see our "**Changes to report**" section.

Remember, the law requires representative payees to use the benefits in the beneficiary's best interest. 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 our purposes, a power of attorney isn't an acceptable way to manage a person's monthly benefits. We recognize only 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, we 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. This must be 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 us. We can inform you 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, we 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 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, the installation of a ramp or widening of 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.

- A car — Use funds for a down payment. Use the money for 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 us before you spend the money.

A special note about SSI payments

To continue receiving SSI, a recipient 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 recipient to lose their SSI payments. Any money you don't spend could also count as a resource. Check with us before making major purchases for an SSI recipient.

A special note about children who are blind or have a disability and receive SSI

Sometimes, blind or children with a qualifying disability 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 qualifying disability — such as therapy and rehabilitation, special equipment, and housing modifications.

- Necessary items or services related to the child's qualifying disability, such as legal fees for the child's benefit claim.

You should get approval from us before spending money on any items other than medical treatment, education, jobs training, or personal needs related to the child's disability.

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 way of saving is through 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 and 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 us 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.ssa.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.ssa.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 person with a disability who primarily resides in the same household as the beneficiary.
- The spouse of an individual.

You can use the “***Income and Expenses Worksheet***” on the last page of this publication to keep track of what you spend. When you 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 our annual accounting process, we may select you for an onsite review. Protection and Advocacy agencies in each state that receive annual grants from us may contact you to schedule a review. This is meant 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, we mail 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 recipients in a medical facility

If Medicaid pays more than half the cost for an SSI recipient 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 the recipient’s personal needs. After meeting all the recipient’s needs, you must save any money left over on their behalf.

Changes to report

You need to tell us about any changes that may affect benefit payments. As payee, you’re responsible for repaying money you receive for the beneficiary if you don’t report any of the events listed below. You must tell us if:

- The beneficiary moves.
- The beneficiary starts or stops working, no matter how little the earnings amount.
- The beneficiary’s medical condition improves.
- The beneficiary starts receiving another government benefit or the benefit amount changes.
- The beneficiary travels outside the United States for 30 days or more.
- The beneficiary is imprisoned for a crime that carries a sentence of more than one month.
- The beneficiary is committed to an institution by court order for a crime committed because of a mental impairment.
- Custody of a child beneficiary changes or a child is adopted.
- The beneficiary is entitled as a stepchild, and the parents’ divorce.
- The beneficiary gets married.
- The beneficiary no longer needs a payee.
- The beneficiary dies.

You must also tell us if:

- You're no longer responsible for the beneficiary.
- You move.
- You no longer wish to be payee.
- You're convicted of a felony.
- You're violating a condition of your probation or parole imposed under federal or state law.

You must tell us if you or the beneficiary have an outstanding arrest warrant for a felony in the state where you or the beneficiary live. In states that don't classify crimes as felonies, you must also tell us if you or the beneficiary have an outstanding warrant for a crime punishable by death or imprisonment for more than one year.

A special note about reporting changes for SSI recipients

If the beneficiary gets SSI benefits, you must also report the following changes:

- The beneficiary moves to or from a hospital, nursing home, correctional facility, or other institution.
- A married beneficiary separates from their spouse, or they begin living together again after a separation.
- Someone moves into or out of the beneficiary's household.
- The beneficiary or their spouse has a change in income or resources.

A child's SSI payment amount may change if there are any changes in the family's income or resources.

If you fail to report any actions to us, we may pay the beneficiary too much money. In that case, you may have to return the money the beneficiary wasn't due and the payments may stop. If you intentionally withhold

information to continue to receive payments, you may face criminal prosecution. Criminal penalties can include fines and imprisonment.

Also, payees for people on SSI should remember the limits for savings and resources are \$2,000 for singles and \$3,000 for couples. All interest earned on savings counts toward that limit. Money in a child's dedicated savings account doesn't count toward the resource limit. For more information, see our section titled "**A special note about children who are blind or have a disability and receive SSI.**" Also, read *What You Need to Know When You Get Supplemental Security Income (SSI)* (Publication No. 05-11011).

If you stop being a payee

If you'll no longer be the payee, you must notify us immediately. This is important, because we'll have to select a new payee as soon as possible. When you're no longer responsible for the beneficiary, you must return any benefits, including interest and any cash you have, to us. We'll reissue the funds to the beneficiary or the new payee.

If the beneficiary dies

If the beneficiary dies, you must give any saved benefits to the legal representative of the estate. Otherwise, the savings must be managed according to state law. If you need information about state law, contact the probate court or an attorney.

When a person who receives Social Security benefits dies, no check is payable for the month of death, even if they die on the last day of the month. You must return any check received for the month the beneficiary died. An SSI check, however, is payable the month of death. But you must return any SSI checks that come after the month of death.

Medicare and Medicaid

Payees may need to help beneficiaries get medical services or treatment. This is a requirement for the payees of children receiving SSI. You should keep a record of medical services and medical expenses not covered by Medicare and Medicaid. For information about Medicare coverage, read *Medicare* (Publication No. 05-10043).

If the beneficiary has low income and few resources, the state may pay Medicare premiums and some out-of-pocket medical expenses. A person may qualify even if their income or resources are too high for SSI. For information, contact the state or local medical assistance (Medicaid) agency or social services office.

The beneficiary may also be able to get *Extra Help* paying for the annual deductibles, monthly premiums, and prescription co-payments related to the Medicare prescription drug program. The beneficiary may qualify for *Extra Help* if they have limited resources and income. These resource and income limits usually change each year.

Beneficiaries will automatically get *Extra Help* and don't have to apply if:

- They have both Medicaid with prescription drug coverage and Medicare.
- They have Medicare and Supplemental Security Income.
- The state pays for their Medicare premiums.

For more information about getting *Extra Help* with Medicare prescription drug plan costs, call our toll-free number, or visit our website. You can also help the beneficiary apply for *Extra Help* online at Social Security's website.

Contacting Social Security

There are several ways to contact us, such as online, by phone, and in person. We're here to answer your questions and to serve you. For more than 85 years, Social Security has helped secure today and tomorrow by providing benefits and financial protection for millions of people throughout their life's journey.

Visit our website

The most convenient way to conduct Social Security business is online at **www.ssa.gov**. You can accomplish a lot.

- Apply for *Extra Help* with Medicare prescription drug plan costs.
- Apply for most types of benefits.
- Find copies of our publications.
- Get answers to frequently asked questions.

When you create a personal *my* Social Security account, you can do even more.

- Review your *Social Security Statement*.
- Verify your earnings.
- Get estimates of future benefits.
- Print a benefit verification letter.
- Change your direct deposit information.
- Request a replacement Medicare card.
- Get a replacement SSA-1099/1042S.
- Request a replacement Social Security card, if you meet certain requirements.

Access to your personal *my* Social Security account may be limited for users outside the United States.

Call us

If you cannot use our online services, we can help you by phone when you call your local Social Security office or our National toll-free 800 Number. We provide free interpreter services upon request. You can find your local office information by entering your ZIP code on our office locator webpage.

You can call us at **1-800-772-1213** — or at our TTY number, **1-800-325-0778**, if you're deaf or hard of hearing — between 8:00 a.m. – 7:00 p.m., Monday through Friday. **Wait times to speak to a representative are typically shorter Wednesdays through Fridays or later in the day.** We also offer many automated telephone services, available 24 hours a day, so you do not need to speak with a representative.

If you have documents we need to see, remember that they must be original or copies that are certified by the issuing agency.

Income and Expenses Worksheet

Month and year	Amount of Social Security benefits or SSI payments received	Expenses for food and housing	Expenses for clothing, medical/dental, personal items, recreation, miscellaneous

Totals for report period	\$ _____	\$ _____ Put this figure on line 3B of Form SSA-623	\$ _____ Put this figure on line 3C of Form SSA-623
Show the total of any benefits you saved for the beneficiary, including any interest earned.			\$ _____ Put this figure on line 3D of Form SSA-623

For extra worksheets, please copy this page before you use it or contact your local Social Security office to get more copies.

Notes

Notes



Securing today
and tomorrow

Social Security Administration | Publication No. 05-10076
March 2022 (Recycle prior editions)
A Guide for Representative Payees
Produced and published at U.S. taxpayer expense

APPENDIX 9

Message Report

Generated: 05/22/2023 at 11:24 AM by Christy Bomba

Number of messages: 1

Timezone: America/New_York

Parents: Christy Bomba, Andrew Bazakis

Child(ren): Anna-Marie Bazakis

Third Party: Annie Bazakis

Message 1 of 1

Sent: 04/28/2023 at 05:30 PM
From: Andrew Bazakis
To: Christy Bomba (*First Viewed: 04/28/2023 at 05:53 PM*)
Marisa Copes
Subject: Re: medicaid

Christy,

Thank you for your patience with my delayed response to your demand. This whole situation seems rather strange to me as I have never signed Anna up for Medicaid or a Bridge card, so I am bewildered as to why my phone and email address are on Anna's MyBridges account. I also have, as has been noted in court document do not feel comfortable with the collection of public food assistance money on Anna's behalf, a concern shared by my legal counsel.

Given this, and the events of the past, I found it necessary to seek legal advice prior to proceeding. In that, I ask that within the next seven days that you:

1. Please share Anna's login and password information for her MiBridges account, so that I too – as Anna's Co-Guardian, may see what is happening.
2. Please share the login and password for all of her public money related accounts such as her SSI logon detailed in previous messaging, so that I too – as Anna's Co-Guardian, may see what is happening.
3. Please share Anna's case state of Michigan Case number. Apparently, she has a case number with the State of Michigan Health and Human Services which has not been shared with me. As Anna's Co-Guardian, I too, should be given this information.
4. Please share the online banking and password for Anna's account used exclusively for her public monies. I do not feel the need to be a joint holder but in the interest of transparency, as Anna's Co-Guardian, I would appreciate being able to see what is happening.

Please forward that information to me once you have used the PIN to access Anna's account. The PIN I was sent is: 1234274.

I once again am asking in good faith that you share this information about our daughter.

Thank you and once again, my apologies for the delay. I hope you can understand my skepticism and concern.

Andy

APPENDIX 10

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 Co-Guardian Ms.
Bomba
5 E. Market St. Suite 250
Coming, NY 14830
(888) 551-8685

OTTO W. BRANDT, JR. (P1 1129)
Attorney for Anna-
Marie Bazakis
715 Court Street
Saginaw, Michigan 48602
(989) 793-4740

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

FILED
Probate Court

LG

**STIPULATION AND
AGREED ORDER**

AT A SESSION OF SAID COURT HELD IN THE COURTHOUSE,
IN THE CITY OF SAGINAW, COUNTY OF SAGINAW, STATE
OF MICHIGAN, ON THIS 30 DAY OF MARCH 2022

PRESENT: HON. PATRICK J. MCGRAW, PROBATE JUDGE

ON THE STIPULATION OF THE CO-GUARDIANS:

WHEREAS the parties agree and stipulate that Paragraph 10 of the August 4, 2021 Order should be struck in its entirety.

IT IS HEREBY ORDERED: Paragraph 10 of the August 4, 2021 Order is struck in its entirety.

IT IS FURTHER ORDERED: That the Bridge card shall remain with Mother at all times to use for the benefit of Anna-Marie Margret Bazakis.

ENTERED: March 22, 2022

Countersigned:

Deputy Clerk

SO STIPULATED:

Curtis C. Warner

Curtis C. Warner (P59915)
Attorney for Co-Guardian
Ms. Bomba
5 E. Market St.
Suite 250
Corning, NY 14830
(888) 551-8685
cwarner@warner.legal

Patrick J. McGraw

HON. PATRICK J. McGRAW (P34430)
Probate Court Judge

Date

Christopher A. Picard

PICARD & MCLEOD, P.L.L.C.
BY: CHRISTOPHER A. PICARD (P35538)
Attorney for Co-Guardian Dr. Bazakis
820 N. Michigan Avenue
Saginaw, Michigan 48602
(989) 753-4441
bptm4@ameritech.net

RECEIVED by MSC 5/25/2023 11:26:12 AM

APPENDIX 11



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.¹ *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).

¹The 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

End of Document