

**97PR1719 (11/20/03)**

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PROBATE COURT, CITY AND COUNTY OF DENVER, COLORADO

Case No. 97PR1719

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IN THE MATTER OF THE ESTATE OF

Jonathan A. Laundry

Minor/Protected Person. \_\_\_\_\_

ORDER RE: MOTION FOR ATTORNEY FEES

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THIS MATTER comes before the Court on the Conservator's Motion for Award of Attorney's Fees. While the Conservator is clearly entitled to reimbursement of his attorney fees and costs from the protected person's estate pursuant to C.R.S. §15-14-417, he does not seek that; he wants his fees to be paid by the former conservator, his ex-wife, Claudia Cooper.

The Court found and concluded that Claudia Cooper violated this Court's Order (directing that preservation of the principal of the minor's estate was of paramount importance) by investing the minor's estate in mutual funds with unacceptably high risk profiles, thereby losing substantial value. The Court now concludes that the portion of her defense that consisted of her claim that the Growth Fund of America and the SMALLCAP World Fund satisfied the Court's Order to conserve the estate was substantially groundless. Her own expert witness testified that these mutual funds were appropriate only for investors "able to tolerate potentially wide price fluctuations. . ." and provided no additional diversity.

The balance of her defense, that Daniel Laundry was not a suitable replacement candidate for conservator, was not frivolous or groundless, and while the Court specifically found that the relationship between Claudia Cooper and Daniel Laundry remains substantially vexatious, the Court here finds that the defense (i.e., "the court should not replace me with him" or "the devil you know, . . . etc.") was not persuasive but does not meet the criteria of C.R.S. 13-17-102(4) as a substantially vexatious defense.

The Court has considered many factors, including the following, in making this Order: the expert witness available to Claudia Cooper and to her counsel confirmed the testimony of the expert who testified on behalf of Daniel Laundry, i.e., that the risk profile of the investments that failed was not preservation of principal. This evidence was available to Claudia Cooper and to her counsel before trial and should have signaled to them that the defense was without factual support. The statement by Daniel Laundry that Claudia Cooper was given free legal services was not refuted and the Court has considered the extent to which this could have influenced litigation strategy. Daniel Laundry does not have access to free legal services and he was seeking to protect the remaining principal of the minor's account in the future. Daniel Laundry prevailed on his claims and Claudia Cooper was

removed as conservator; Daniel Laundry was appointed as successor conservator. Finally, the Court has considered that the other source for reimbursement of the fees, the minor's account, would further economically damage the minor's estate. See *In re the Marriage of Aldrich*, 945 P.2d 1370 (1997) [citing the factors the Court must consider is assessing attorney fees].

ACCORDINGLY, Claudia Cooper is hereby ORDERED to pay the expert witness fees of Daniel Laundry and to pay his reasonable and necessary attorney fees to the extent her defense was based on the claim that the investments were designed to insure the preservation of principal. If absolutely necessary, the Court will hold a brief, additional hearing to arrive at the appropriate allocation of the attorney fees.

November 20, 2003

C. Jean Stewart  
Judge, Probate Court