

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

PB 2009-070493

01/30/2012

HONORABLE JOSE S. PADILLA

CLERK OF THE COURT  
D. Berkland  
Deputy

IN THE MATTER OF

JOHN D AND JEAN MACHARDY TRUST

DECEASED.

WILLIAM G FAIRBOURN  
BRETT W JOHNSON  
JAMES E PADISH  
WILLIAM F KING  
ANDREW P GORMAN

AG - ELDER ABUSE CENTRAL  
REGISTRY  
COUNTY ATTORNEY-CV DIV-LEGAL  
SRVCS

MINUTE ENTRY

1:40 p.m. This is the time set for Hearing re: MacHardy Trust. Petitioner, Craig MacHardy, is present and is represented by counsel, James Padish and counsel, Andrew Gorman. Respondent, whose presence has been waived, is represented by counsel, Bill King.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Discussion is held.

Counsel for Petitioner makes an oral motion that the Court enter judgment against Jane A. Mueller in the amount of \$1,264,014.78, plus statutory interest, plus judgment for attorney's fees. Counsel requests that Craig MacHardy be named as sole trustee of the John and Jean MacHardy Trust.

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Counsel for Petitioner requests that the Court refer the above-captioned cause to the county attorney's office for criminal prosecution.

Oral argument is presented.

The Court having considered the argument presented.

The Court advises counsel that because there has been a finding of financial exploitation by Jane Mueller against John D. and Jean MacHardy, the Court has an obligation, pursuant to A.R.S. 46-457, to report this to the Office of the Attorney General / Adult Protective Services Registry / and the County Attorney's Office. Accordingly,

**IT IS ORDERED** referring the above captioned matter to the Office of the Attorney General for inclusion in the Adult Protective Services Registry and the Office of the County Attorney to investigate the findings of financial exploitation by Jane Mueller against John D. and Jean MacHardy. (The Court is not making a recommendation that the office pursues litigation – this decision is for the charging attorneys should they find it is warranted to pursue the Court's finding.)

With regard to attorney's fees and costs,

**IT IS ORDERED** awarding Petitioner, Craig John MacHardy, his attorney's fees and costs upon submission of a *China Doll Affidavit* on or before **February 6, 2012**. Any objection thereto shall be filed by **February 13, 2012**.

With regard to the issue surrounding forfeiture of inheritance,

**IT IS FURTHER ORDERED** appointing Craig John MacHardy shall be the sole administrator and/or trustee of the John D. and Jean MacHardy Trust.

**IT IS FURTHER ORDERED** removing Jane Mueller as trustee of the John D. and Jean MacHardy Trust for any purpose whatsoever and forfeiting any and all interest that Jane Mueller may have in the Trust.

**THE COURT FINDS** there was testimony throughout the trial that the actions taken by Jane Mueller at any particular stage in this case – some of which were the result of having consulted an Arizona lawyer – some of which may have been through consulting banking personnel – the Court does not find that she has a defense to that. Whether the county attorney would accept such defense as sufficient to negate the criminal intent, the Court leaves this decision up to the Office of the County Attorney.

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As far as damages,

**THE COURT FINDS** the underlying amount of \$632,007.39 was misappropriated; therefore, it is appropriate to implement double damages. Accordingly,

**IT IS ORDERED** entering judgment in favor of the John D. and Jean MacHardy Trust and against Defendant, Jane A. Mueller, in the amount of \$1,264,014.78.

**IT IS FURTHER ORDERED** that counsel for Petitioner shall provide the form of judgment to the Court on or before **February 20, 2012**.

**IT IS FURTHER ORDERED** affirming prior order wherein all bank accounts, savings accounts – any accounts at all which Ms. Mueller may have either in her name that any financial institution has or is holding for the benefit of Ms. Mueller are frozen, subject to further Court order.

Counsel for Defendant advises the Court that Ms. Mueller is currently receiving social security from her husband and also has a 401k account in her name.

The Court advises counsel that Ms. Mueller must document separate accounts as to the social security income and her 401k account. The Court adds that Ms. Mueller may utilize her social security on her own as long as she does not co-mingle said money with any account that is being held for her benefit as a result of proceeds received from the MacHardy Trust. As far as the 401k, this would be subject to whether assignment or garnishment is a matter of whatever the document states. If she purchased a 401k with any of the assets from the MacHardy Trust, they too are frozen.

**IT IS FURTHER ORDERED** signing this minute entry as a formal Order of the Court this 30<sup>th</sup> day of January 2012.

/s/ Hon. Jose S. Padilla

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Honorable Jose S. Padilla  
Superior Court Judge

2:14 p.m. Matter concludes.