

No. A06-0171

State of Minnesota

In the Court of Appeals

In Re the Estate of:

JOHN JOSEPH SULLIVAN:

APPELLANT'S BRIEF

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LEGAL ISSUES

I. Whether the Settlement Agreement, which has been upheld, should be rejected, because of issues that make the Settlement Agreement unjust and unreasonable.

The Trial Court ruled in the negative.

II. Whether the Codicil should be rejected because of the likely possibilities that Appellant's elderly father, decedent, was taken advantage of.

The Trial Court ruled in the negative

III. Whether John Polski's bond, as Personal Representative, should be kept in place.

The Trial Court ruled in the negative.

IV. Whether the trial court erroneously found that Appellant's Will Contest had no legal merit

The Trial Court ruled in the negative.

V. Whether the appellant is eligible to receive Family Allowance as she was a dependent of the deceased.

The Trial Court ruled in the negative.

VI. Whether the trial court erroneously found that the Appellant was not a dependent of the deceased, and whether the trial court erroneously found that the loans/gifts were not made on a regular basis.

The Trial Court ruled in the negative.

VII. Whether attorney Krekelberg should be representing Carol Sullivan, having been a witness to the signing of the Codicil.

The Trial Court ruled in the negative.

ARGUMENT

I. THE TRIAL COURT ERRED IN UPHOLDING THE SETTLEMENT AGREEMENT BECAUSE OF ISSUES THAT MAKE THE SETTLEMENT AGREEMENT UNJUST AND UNREASONABLE.

The procedure for securing court approval of a compromise is as follows:

(1)The terms of the compromise shall be set forth in an agreement in writing which shall be executed by all competent persons and parents acting for any minor child having beneficial interests or having claims which will or may be affected by the compromise.

Minn. Stat. 524.3-1102, Subd. 1. The appellant has a beneficial interest in the Residuary Trust and did not sign the compromise, i.e., the SETTLEMENT AGREEMENT, therefore, the SETTLEMENT AGREEMENT was erroneously upheld by the Trial Court.

(A 73, 76-77) (T 5)

APPELLANT'S RESPONSE TO JUDGE THOMAS M. STRINGER'S LETTER of

January 5, 2006, page 1, paragraph 2. (A 101)

Please see page.3, paragraphs 8 &10, of FINDING OF FACT CONCLUSIONS OF LAW ORDER Nov. 17, 2005:

Let it be stated again herein: 8."Nancy Sullivan did not sign the agreement filed with the Court." (A 6-7, 73) (T 5)

The above statement is undeniably correct.

10. "Nancy Sullivan participated in some of the discussions regarding the objection, but never formally objected to probate of the Will dated July 13, 2001 and the First Codicil to the Will dated July 30, 2003. (A 48-49-50) (T 5) Prior to the filing of the Settlement

Agreement and the Petition for Approval of the Settlement Agreement, Nancy Sullivan did not state in any type of pleadings filed with the Court that she objected to the formal probate of the decedent's Last Will and Testament and First Codicil to the Will. (A 48, 49, 50) Nancy Sullivan only filed with the Court a Demand for Notice dated March 15, 2004." (A 73)

In response to above paragraph 10., and its erroneous statements:

Also, in response to Mr. Reif's erroneous statements: (T 5, lines19-25)

Also, in response to Mr. Krekelberg's erroneous statements: (T 10, lines17-24)

- 1) "I never did and do not now object to the (original) Will of July 13, 2001."
 - a) The Appellant objected to the Codicil of July 30, 2003 and (48, 49, 50, 85-86, 101, 102, 103)
 - b) The Appellant objected to the Settlement Agreement. (A 6-7, 60, 63, 67-69, 85)
 - c) The Appellant feels that the Will of July 13, 2001 should stand as written, as her Father, the decedent, intended. (A 16-17, 85, 101, 104, 105)

- 2) SECOND AMENDED SCHEDULING ORDER-PRETRIAL CONFERENCE, filed March 14, 2005, paragraph 4: "Attorneys for the Objectors advised the Court that both the Will and the Codicil will be challenged at the time of trial." (A 42)

This disclaims and shows to be erroneous: that "Nancy Sullivan only filed with the Court a Demand for Notice dated March 15, 2004." (A 42, 73)

- 3) NANCY SULLIVAN'S ANSWERS TO BLENDED INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS, of February 17, 2005. (A 48) This document in general shows no objection to the

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Will of July 13, 2001, but does show strong objection to the Codicil of July 30, 2003.

(A 48, 49, 50)

This disclaims and shows to be erroneous: that "Nancy Sullivan only filed with the Court a Demand for Notice dated March 15, 2004. (A 73)

4) PETITION OBJECTING TO APPROVAL OF SETTLEMENT AGREEMENT AND FOR FAMILY ALLOWANCE, August 26, 2005.

Page 1, paragraph 3, states the Appellant's objection to the Codicil. (A 60, 42)

Page 1, paragraph 4, John J. Polski, as Personal Representative, should not have filed a petition dated July 29, 2005, for approval of a purported settlement agreement, because not "---all competent persons--- signed it. The Appellant showed dissatisfaction with and did not sign the Settlement Agreement. (A 60)

Page 1, paragraph 5, "Petitioner objects to the approval of the settlement agreement on the grounds that the terms and conditions as set forth in the agreement are not just and reasonable and have not been consented to by Petitioner." (A 60)

See Minn. Stat. 524.3-1102 Subd.3

Page 1. Paragraphs, 3, 5, disclaim and show to be erroneous: that "Nancy Sullivan only filed with the Court a Demand for Notice dated March 15, 2004. (A 60)

4) AFFIDAVIT OF NANCY A. SULLIVAN IN SUPPORT OF PETITION OBJECTING TO APPROVAL OF SETTLEMENT AGREEMENT AND FOR FAMILY ALLOWANCE. Sept. 8, 2005. (A 63-66)

This affidavit disclaims, and shows to be erroneous: that "Nancy Sullivan only filed with the Court a Demand for Notice dated March 15, 2004". (A 73)

APPELLANT’S RESPONSE TO JUDGE THOMAS M. STRINGER’S LETTER, of January 5, 2006, page 4, paragraph 6: (A 104)

Please see page 4, paragraph 11. of FINDING OF FACT CONCLUSIONS OF LAW ORDER, Nov. 17, 2005: “The Settlement Agreement does exclude a provision which allowed for the Trustee, in his sole discretion, to pay any child money from the Residuary Trust for the care, support, maintenance, etc., and that any such payment need not be equal among the children. Rather, the Settlement Agreement required the distributions to the children/beneficiaries **to be equal.**” (A 68)

Reference to: LAST WILL AND TESTAMENT OF JOHN J. SULLIVAN, July 13, 2001, Article VI, A., 3. pages 5 & 6.:

“My Trustee may also pay to or apply for the benefit of any child of mine or child of any deceased child of mine from time to time such sums from the principal of this RESIDUARY TRUST as my Trustee, in its sole discretion deems necessary or advisable, to provide for his or her or their (as appropriate) proper care, support, maintenance, health education, general welfare, reasonable luxuries, (comparable to the standard of living to which he or she or they have become accustomed) including assistance in building or purchasing a home or entering into or managing a business or profession. Such payments need not be equal between my respective children and children of deceased children.” (A 16-17)

The Appellant has a life long crippled condition very much worsened by age, and Post

Polio syndrome, (A 86, 91-97) and the Appellant is completely indigent, on welfare, with very difficult and temporary living conditions, that exacerbate the Appellant's severe walking disabilities horribly. Also, the Appellant's 11 year old pick up truck has become unreliable to drive. (A 63, 64) The Appellant had proper living conditions, health insurance, her own business, e.g., for 4 to 5 years, because of her Father's, the decedent's, generous support which the Appellant was living on, before Carol Sullivan stopped all monies to the Appellant, against her Fathers', the decedent's, wishes. Carol's actions forced the Appellant into bankruptcy and out of her walk-in garage townhouse, which was necessary to her crippled condition. The Appellant had to sell half her possessions and the move hurt her feet greatly because had no money for a full move and had to lift muchly. The Appellant had to move out of her town house at the end of Feb. 2004, two days after her Father, the decedent, died. (A 105)

If anyone is in entitled to, and in need of, proper care, support, maintenance, health, education, general welfare, the Appellant is! (A 105) The Settlement Agreement approved by the Trial Court unjustly and unreasonably disallows proper care and support to the Appellant who is a life-long post-Polio cripple, whom the decedent was in fact supporting, and who is now absolutely indigent, on welfare, not getting proper medical treatment or housing. (A 6-7, 63-65, 86, 89-90, 91-97)

The Will itself is the best evidence of a testator's intention and in this case the testator's intent was to determine the share amounts as appropriate and not necessarily equal. (A 16-17, 65, 104)

*The above shows emphatically that the intent of John Joseph Sullivan's Will has been trashed and emasculated with the Trial Court's acceptance of the Settlement

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Agreement.

Parties are intending to vary the terms of the Residuary Trust under the guise of the SETTLEMENT AGREEMENT merely because they wish to do so. (A 68)

See In Re Estate of Schroeder, 441 N.W. 2d 527, 533 (Minn. Ct. App. 1989)

The following is in response to Mr. Krekelberg's erroneous statement: (T 12, lines 1-2) and, PETITION FOR RECONSIDERATION MOTION, Doctor reports (A 91-97) as evidentiary of Appellant's crippled condition:

The Appellant, at this point is having severe terrible pain in her feet through out the day and nights, and most always, up and down both of her legs as well, keeping her from getting much needed rest as a Post Polio cripple. The long pathway of uneven, rutted, muddy icy terrain that the Appellant must walk up to get to her car is causing further rapid deterioration of the bones in her all ready deteriorated feet. This is causing the ankles, with large metal pins in them, to twist with horrible pain, as the Appellant tries to get to her car. The Appellant was told by the doctors at the Mayo Clinic, Rochester, MN, where she had her surgery in high school, that she should only walk on level surfaces because the normal ankle sideways swivel motion in her feet was no longer possible, the surgery having frozen that mobility from her walking. Also, the Appellant, now with severe arthritis and neurological problems, and bone deterioration, in her feet and legs, cannot lift and carry even a good sized pocketbook or gallon in weight. The Appellant has to pull her groceries down a long embankment, on a plastic toboggan, to her doorway, and this pull on her ankles is further hurting the condition of her feet. All this together with her poorly fashioned shoes, cause severe pain, lasting into the night in

her feet and radiating up both legs. The Appellant cannot wear boots over her feet in the winter because of the severe degeneration of the bones across the tops of her feet. Because of this the cold and ice further exacerbate her painful feet. The Appellant has stayed very light in weight, and has an indigent scholarship of necessity, prescribed by Dr. Bear's office, with the Exeter Hospital gym to exercise her ankles and legs in the hopes of being able to keep some walking abilities. If the Appellant loses all walking abilities, in her destitution, without a decent place to live, and proper medical treatment, and facilities, the Appellant's health will decline even more rapidly than now. (T 22-23, 30-32, 44-45, 56), (A 87, 105)

PETITION FOR RECONSIDERATION MOTION, of Dec. 22, 2005 has included, doctor reports, from doctor Ameglio, Doctor of Orthopaedics, and doctor Logan, Doctor of Neurology. (A 91-97) These reports substantiate the above, and show the Appellant's great need for a walk in garage ranch home, or townhouse rental, and van or mini van with hydraulic hoist with an electric cart. (A 64) The electric cart would help the Appellant to do normal everyday tasks, and to rest her feet and legs, with her now limited capacity to walk. The Appellant also is in great need of special orthopaedic shoes, which is noted in the doctor reports. Because of the Appellant's now destitute circumstances, she can't afford necessary medical services, or medicines, that she should be taking. Included with PETITION FOR RECONSIDERATION MOTION, is also a two, 2 page report entitled: Social security, SSI, Medicaid, Medicare, (A 89-90) This current report shows the Appellant's complete indigent circumstance.

The Appellant's siblings are very well off financially, and they don't need further monies from the Residuary Trust to survive. The Appellant, in fact, is in great need as she is trying

so hard to describe. (T 13, 23, 24-25, 55)

***Therefore, this settlement agreement is unfair and unjust to the Appellant based on the unequal needs and financial circumstances of the Appellant and her siblings.**

Siblings: (T 23-24-25, 55 lines 11-25) (A 86) / Appellant: (T 22-23, 31-32, 44-45, 47) (A 60-62, 87, 89-97, 106)

Making 'all equal' in distribution, the Appellant wouldn't be able to survive even 3 years financially, before being thrown back into welfare again, in her late 60's, with her ever worsening crippled problems. (A 86) (T 11)

The Appellant will need and is asking for \$720,000 over a period of 20 years. That is, \$36,000 per year, times 20 years, \$3000 per month. (A 87)

The Appellant's Social Security Papers she filed to get help from the Government Supplement Security Income, (SSI) show that Appellant is not able to support herself because of her affliction. That is a requirement for receiving SSI assistance. (A 87) The Appellant has included two pages of current history of her Social Security, SSI, Medicaid, and probable future Medicare, pages 1 and 2, as additional information to the PETITION FOR RECONSIDERATION MOTION of December 22, 2005. (A 89-90)

The Appellant mainly worked a small amount of part-time jobs, before the Appellant was married and for awhile when the Appellant was married. This became too much on the Appellant's fastly deteriorating feet, and the Appellant was supported by her husband. The Appellant was divorced in 1991. In most of the Appellant's adult life she has not been able to independently support herself in the working place, due to her severe walking disabilities, along with other related neurological, post-Polio conditions. With no stretch of the imagination has the Appellant been a financially independent woman, especially in these later years, and she is very much in need of further financial help at

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this point, beyond the poverty line of what Appellant is currently subsisting on. (A 76, 87)

***The above shows that the Settlement Agreement is greatly unjust and unreasonable.**

On the grounds of greatly disparate financial and physical need circumstances between Appellant's siblings and Appellant, it is only just and reasonable that the Trustee has a duty to **provide for Appellant's proper care, support, maintenance, health, education, general welfare.** (A 16-17) In regard to the Appellant's crippled condition, and, now, complete destitution, and exceedingly difficult temporary living situation, it is imperative to **provide for Appellant's proper care, support, maintenance, health, education, general welfare, by using money from the decedent's estate.** (A 16-17, 38, 63-66)

- 1) The Appellant's indigent life is becoming increasingly difficult, along with the decline and worsening of her crippled condition and other health difficulties.
(A 63-65)
- 2) The Appellant has been on the list for financial help for low-income housing since 2003, and she is still waiting. This list takes anywhere, from 3 to 5 years to realize help. Should the Appellant receive only an equal distribution from the Residuary Trust, she would be taken off the list. When she in a short time, would be back to indigence, will have to reapply and again start waiting at the bottom of this list for housing help, losing the several years the Appellant has already been waiting.
- 3) **In regard to the Bankruptcy** the Appellant had to file, when Carol Sullivan stopped all financial help to the Appellant, against her Father's, the decedent's, wishes: It is

conceivable that the Personal Representative could come back at the Appellant and successfully claim her share of the Residuary Trust in an adversary proceeding.

- 4) Also, the Appellant is presently hugely in debt, which is mostly due to attorney bills because the Appellant needed her own attorney in this, and mostly regarding her objections to the Settlement Agreement. (T 33-34) (A 69, 89-90)
- 5) Appellant's step-siblings stand to inherit hugely from their Mother, Carol Sullivan. (T 24, 25)
- 6) The Appellant's other three siblings have shared an attorney and costs, which is far less than the Appellant's costs, needing her own attorney to object especially to the Settlement Agreement. (A 69)
- 7) Being out-of-state, has put the Appellant at an expensive disadvantage also, in regard to mailings, phone calls, and the Appellant had to borrow money for the trip to Fergus Falls, MN, for the Hearing of September 12, 2005. (T 34)
- 8) Also, the Settlement Agreement, p.3, paragraph 7, states thus: "The Personal Representative of the Estate of John J. Sullivan shall pay to John Minge, of Peloquin & Minge, P.A., 432 Third Avenue SE, Perham, MN 56573, attorney's fees and costs incurred in challenging the admissibility of the within referenced Last Will and Testament and First Codicil in amount not to exceed \$6,500.00."
The Appellant's Attorney, R. John Bartz, was not offered this \$6,500.00.

It is likely that the Appellant will be Left with Nothing, and Possibly Unpaid

Debt: In response to Mr. Krekelberg's bogus statement that "--there is no showing of there being anything adverse to her by the settlement" (T 10, lines 23-24)

In response to FINDINGS OF FACT CONCLUSIONS OF LAW ORDER, of November 17, 2005, p.10, and its erroneous statement regarding the Appellant: "This change (Settlement Agreement) to the Last Will and Testament of the decedent potentially puts Nancy Sullivan and her siblings in a better position."

(A 80) (T 8, 11)

Considering the blended family with Carol Sullivan and children, Dawn J. Sullivan, Joanna L. Sullivan, Brett D. Sullivan, and Kelly A. Sullivan, and the Appellant's Father's Farm property with at least a value of ten million dollars, approx. 300 acres with lake frontage, and the Appellant's siblings, Timothy J. Sullivan, Michael J. Sullivan, and Patricia Farrell Sullivan, all three of which, are very, very well off; none of the Appellant's siblings or step-siblings need the money to exist on, as the Appellant does; none are indigent and crippled. (T 13, 23, 24 lines 14-17, 25, 55 lines 11-25)

The Appellant cannot believe the total disregard and inhumanity toward their own, their sister; and, the Appellant's stepmother, to the Appellant, her stepdaughter. (A 87, 105)

Please refer to Carol's smear letter of May 22, 2003, sent to all family, attorneys, and J. Polski which the Appellant included with PETITION FOR RECONSIDERATION MOTION, of December 22, 2005 (A 88)

In the last year especially, decedent would often ask Carol to write checks to the Appellant, and she would holler at the decedent "over my dead body" and things, being very mean to the decedent when he would ask her to send the Appellant a check. She would delay or void checks or try to bait the Appellant by sending a check, in her own

hand, without a signature on it as the Appellant was dependant on the checks to pay rent and health insurance and food etc. (A 106)

The Appellant had no money or financial status to make a deposit on another rental, or to move somewhere else, and was frightened beyond words as to how the Appellant could survive day to day, especially in the year of 2003, with Carol ever increasingly making it more and more difficult for the decedent to get his checks to the Appellant so that the Appellant could pay her bills. The Appellant felt as if she was clinging to a piece of drift wood in the middle of the ocean with less and less hope of hanging on, to survive. (A 106)

APPELLANT'S RESPONSE TO JUDGE THOMAS M. STRINGER'S LETTER of December 23, 2005, Dated January 5, 2006 (A 106)

Compared to the Appellant's siblings, if one balances the scale the Appellant's financial and health situation is far worse than the situation of the Appellant's siblings. (A 63-64, 87, 89-97, 104)

Around the same time that Carol was sending the smear letter, (A 88) and making it difficult for the Decedent to send the Appellant checks to help her financially, Kelly Sullivan was given 7 acres of lake shore property, septic system, foundation, and new home, and private road developed, and a new car. Also, a loan of approximately \$200,000. or \$300,000., was taken out by decedent and Carol, for Kelly to start a dress shop in Fergus Falls. (T 24, 55 lines11-25)

Timothy Sullivan some years ago, was given 60 acres with a half mile of lake shore, at a tremendously low rate, by Decedent. This property being a part of Decedent's original 364 acres, with much lake shore. (T 24)

The above exacerbates the situation, to make an even worsened disparity, between the Appellant and her siblings.

The severe, unmitigated circumstances and needs of the Appellant, as in contrast to her siblings, shows the bizarre and ruthless unconcern of the Trial Court and her family toward the Appellant. The Trial Court erred in upholding the Settlement Agreement in its unconcern for the Appellant who is indigent, and crippled, hugely in need of financial help, in massive contrast to her siblings' very well off life styles. Limiting the distribution to the Appellant to be equal with her siblings and step-siblings fails to protect Appellant's bona fide need for permanent financial assistance, proper housing and transportation, and medical care.

II. THE TRIAL COURT ERRED IN UPHOLDING THE CODICIL, BECAUSE OF THE LIKELY POSSIBILITIES THAT THE APPELLANT'S FATHER WAS TAKEN ADVANTAGE OF REGARDING THE SIGNING OF THE CODICIL.

The Appellant objected to the Codicil of July 30, 2003, (A 33-34, 49) for the reason that the decedent, John J. Sullivan, did not have the testamentary capacity to understand that he was signing a codicil, at 9 am in the morning. The decedent was very groggy and incapacitated mentally in the early am and to about noon, because of the medications he was taking. The decedent had to awake at a very early hour, to travel to his attorney's office in Pelican Rapids or Fergus, for a 9 am meeting. There is no way, in the Appellant's mind, that the decedent could have known what he was signing at that early hour. (A 7-8, 85-86,) (T 46, 28-29)

PETITION FOR RECONSIDERATION MOTION, of December 22, 2005, page 1, paragraphs 1 and 2, page 2, paragraphs 1- 8. (A 86) (T 28 lines 19-23, 29)

Included in this petition is copy of a smear letter, from Carol Sullivan to the Appellant, dated May 22, 2003, attempting defamation of the Appellant, and Carol Sullivan sent this same letter to all siblings, family, attorneys, and Mr. John Polski. (A 87, 104)The second from last paragraph states: "Personally, Nancy, I'm tired of hearing about how hard you work. I'm handling your Dad, trying to keep up with the place here and Arizona, and if you haven't figured it out yet, your Dad's 93, almost "failing"! I fight every day for his health. Do you? Have you any idea what his meds alone are? How many times a day I remind him to take them? How many times a day I repeat business issues? I have calls he can't remember. He has days he doesn't know if it's AM or PM." (A 88)

The above paragraph from Carol Sullivan's signed letter to the Appellant, shows **undeniably that Carol Sullivan thought the decedent mentally incompetent, to make a codicil, back on May 22, 2003.**

The decedent signed the Codicil, on July 30, 2003, two months after Carol wrote this letter to the Appellant, in which she stated his incompetency.

Next, Carol initiated an Emergency Hearing to declare the decedent incompetent, on Oct. 28, 2003 just three months after the decedent signed the Codicil.

Four factors, here,

- 1) Carol's May 22, 2003 letter to the Appellant exclaiming decedent's mental condition is unsound. (A 88)
- 2) Attorney Charles Krekelberg had been sent the letter from Carol, of May 22, 2003, yet allowed the decedent to sign the Codicil. (A 7-8, 86, 103)
- 3) Carol asked for the decedent to be declared incompetent and his medical records show this accordingly. (A 118, 129)
- 4) Carol thinks the Codicil the decedent signed, should be upheld. (A67,-68)

These four factors show conclusively that the Codicil has no grounds for being upheld.

The Trial Court was advised of the medical reports of the decedent, at the hearing on Sept.12, 2005. (T 65-67)

The Appellant fails to see how Carol Sullivan could think that the Codicil should stand after stating to the Appellant in a letter in May, 2003 (A 88) that the decedent had much mental confusion, and then shortly after the decedent signed the Codicil in July, 2003 (A 33-34) take action to declare the decedent incompetent in October, all in 2003.

2

Randy Seiple was the decedent's trusted handyman and friend, and ally, of approximately 15 years or more. Randy did state to the Appellant on many occasions by phone from 2002 through to July or August, 2003, and in a visit with him in Massachusetts, in January of 2003 that he felt the decedent was being controlled by how his medications were given him. Randy felt that perhaps excessive amounts of some meds were given the decedent to control him. APPELLANT'S RESPONSE TO JUDGE THOMAS M.

STRINGER'S LETTER, of December 23, 2005, pages 2 – 7. (A 102-107) (T 26- 29, 58-59, (T 66 lines 17-21) July 30, 2003 Attny.Krekelberg/decedent appointment:

Randy drove the decedent to the appointment on Wed, 9am, July 30, 2003. The decedent had Randy drive him to see attorney Krekelberg about the following: 1. To divorce Carol. 2. To fire his accountant. 3. To change his will. The decedent wanted to put in his Will to give Randy 15% of the take of racehorse winnings.

According to Randy, "all this was refused".

The decedent, the Appellant's Father, told the Appellant that he "wanted to divorce Carol and was turned down". (A102) (T 26-27)

The Appellant feels her Father, the decedent was very possibly taken advantage of because:

For a 9am appointment, the decedent would have had to get up at a very early hour to get to an appointment at attorney Krekelberg's Fergus Falls office. The decedent was sedated, strongly it seems; and in the early morning like this because of the sedation he would have trouble functioning. This early a.m. appointment put the decedent at a tremendous disadvantage cognitively. From around noon, and on he appeared to the

Appellant to be always very alert. Randy also was worried that this early hour appointment was disadvantageous to the decedent, and for this reason he may have been unduly influenced and taken advantage of at his attorney's office. (A 102)

See In Re the Estate of Schroeder, 441 N.W.2d 527, 532 (Minn. App. Ct. 1989).

1) The early hour appointment (As explained above).

2) The decedent's lessened hearing ability.

3) The decedent's failing eyesight.

5) Attorney Charles Krekelberg, the Notary Public for the Codicil, had been sent the letter from Carol of May 22, 2003, yet allowed that the decedent to sign this Codicil.

Attorney Krekelberg had received Carol's letter dated May 22, 2003, attempting defamation of the Appellant and sent to all siblings, family, attorneys, and Mr. Polski.

Please refer to PETITION FOR RECONSIDERATION MOTION, top of page 2, where Carol Sullivan states her belief that the decedent is mentally incompetent. (A 88)

6) Medical reports of the decedent's cognitive abilities dated Sept. 24, 2003, Oct. 9, 28, Nov. 13, 21, 25, 2003. The Trial Court had access to the medical reports of the decedent. (T 66) (A 118, 129)

All of the above conditions it seems could cause the decedent to be in a vulnerable way, in which he could easily have been taken advantage of, when he was at his attorney's Office. Attorney Krekelberg having been sent this letter from Carol Sullivan on May 22, 2003, did still allow for the decedent to sign the Codicil, attorney Krekelberg being present as Notary Public. (A-31)

Also please see PETITION FOR RECONSIDERATION MOTION, of December 22, 2005, pages 1 and 2, starting with paragraph 6, and through to and including paragraph

8 on p.2., which shows possible collusion between Mr.Krekelberg and Carol to have the decedent sign the Codicil of July 30, 2003. (A 85-86)

BLACK'S LAW DICTIONARY, Eighth Edition.

Page 1563. Definition of "undue influence"

1. The improper use of power or trust in a way that deprives a person of free will and substitutes another's objective. Consent to a contract, transaction, or relationship or to conduct is avoidable if the consent is obtained through undue influence.—Also termed implied coercion; moral coercion. (Cases: Contracts key 96. C.J.S. Contracts 4,136, 139-140, 187, 189-194.) Please see additional definition, under "undue influence".
2. Wills & estates. Coercion that destroys a testator's free will and substitutes another's objectives in its place. * When a beneficiary actively procures the execution of a will, a presumption of undue influence may be raised, based on the confidential relationship between the influencer and the person influenced. – Also termed improper influence; (formerly, in both senses) suggestion. See COERCION; DURESS. (Cases Wills key 154. C.J.S. Wills 345.)

Leading up to the signing of the Codicil, were yet other conditions that the Appellant feels shows collusion by family, attorneys and J. Polski, the decedent's accountant and the Appellant's accountant, and now Personal Representative of the decedent's estate and Trustee.

This is discussed below.

*Reasons the decedent told the Appellant he was dissatisfied with Carol's behavior:

(A 8, 103,-104)

The decedent stated to the Appellant that Carol had an apparent mean and nasty disposition toward him.

That Carol would apparently hide papers, pens from the decedent.

That Carol apparently had ripped pages out of a telephone directory.

That Carol had apparently put a block on the phone, and then changed the phone numbers trying to prevent decedent, Appellant's Father, and the Appellant from talking with each other. This also apparently prevented the attorney of the decedent's choice John Bartz from further contacting him.

That Carol was apparently recording decedent's phone conversations with people, and the Appellant, against his or their, or the Appellant's knowledge or agreement to being recorded.

That Carol was apparently making it difficult for the decedent when he wanted to send financial help to the Appellant. Carol would delay or void checks or try to bait Appellant by sending a check, in her own hand, without her signature on it. (T 31, 56 lines 5 - 6)

That Carol was apparently always jealous of the decedent running his business and seemed to want to take over.

That Carol apparently would not get necessary papers for the decedent that he needed to run his business possibly to try to control him.

That Carol apparently was drinking too much again.

That Carol was again smoking heavily in the house and that the smoke was affecting the decedent very badly causing him to choke and have difficulty breathing. (T 28)

That Carol was refusing to smoke outside though the decedent was requesting that she do

so. (T 28)

Randy Seiple would tell the Appellant by phone many times that all the above was occurring and he was very concerned about the decedent because of the above situation. The Appellant was certainly worried for the decedent because Randy Seiple, the decedent's dearest friend of over 15 years was complaining about the same that the decedent was telling the Appellant, and also telling the Appellant that he, Randy was being mistreated by Carol Sullivan.

Randy stated to the Appellant that Carol was often times rude, and bad tempered toward himself. Randy told the Appellant that Carol was refusing to pay him \$500. owed him.

(A 104)

The decedent phoned the Appellant soon after he had the appointment on July 30, 2003, with Attorney Krekelberg. The decedent sounded very angry at Mr. Krekelberg.

(T 34, 58)

The decedent told the Appellant that he was denied his request to divorce Carol, fire John Polski, and to change his will for Randy to get 15 % of race horse winnings.

Randy Seiple told the Appellant by phone the same, that the decedent was turned down.

The decedent stated to the Appellant, "Get an Attorney". The decedent again called the Appellant a few days later. The Appellant said, "Do you really want me to get you an

attorney?" The decedent said, "Yes". The Appellant, borrowing \$500. five hundred dollars, from her son, Patrick, secured Attorney R. John Bartz to represent the decedent

(T 58, 59)

Due to Carol Sullivan changing phone numbers and phone companies, Attorney John Bartz could not stay in contact with the decedent to represent him. (A 103)

The above series of events, that both the decedent, and Randy Seiple, the decedent's handy man, his closest friend and ally for at least 15 years, were relating to the Appellant over the years 2002 and 2003, along with the decedent's medical records, (A 118-120, 129-131) cause the Appellant to have the greatest concern that the decedent, the Appellant's Father, was most likely taken undue advantage of in signing THE FIRST CODICIL TO LAST WILL AND TESTAMENT of July 30, 2003. (A 33-36)

III. THE TRIAL COURT ERRED IN REMOVING THE BOND ON JOHN POLSKI, AS PERSONAL REPRESENTATIVE.

John Polski was the decedent's, accountant and also became the Appellant's accountant, at the Appellant's Father's (the decedent's) suggestion. John Polski was the Appellant's accountant from, 1991 to 2003. He was the decedent's accountant from 1978 - .

Within two or three days after receiving Carol Sullivan's smear letter, dated May 22, 2003, (A 88) which she sent to all family and attorneys and John Polski, the Appellant called Mr. Polski two times. The Appellant wanted to find if he had received Carol's smear letter. Mr. Polski told the Appellant he had.

Mr. Polski told the Appellant that the Appellant was considered "---a problem". The Appellant then asked Mr. Polski: "If I'm, (Appellant), considered a problem, how is Kelly Sullivan viewed?" The Appellant also asked if all checks, money to Kelly have been stopped also, and whether Kelly was going to loose her home and possessions as the Appellant was going to. Mr. Polski stated that the Appellant was "---an easy mark", a "scape-goat". Also, Mr. Polski asked the Appellant to try to "---talk Dad, (decedent), into selling his horses". The Appellant refused, telling Mr. Polski that quote: "I, (Appellant), never tell my Father, (decedent), what to do, that that is his business, and that I, (Appellant), don't know anything about horses". Mr. Polski also told the Appellant he doesn't like Randy. (A 104)

Upon Carol Sullivan making it ever increasingly difficult and often impossible for the decedent to send the Appellant financial help, the Appellant asked Mr. Polski if Kelly Sullivan was going to loose her home and possessions too, as the Appellant realized the

Appellant was going to. The Appellant asked Mr. Polski this because in this same time time period, Kelly Sullivan was given 7 1/2 acres of lakeshore, a septic system and well, and foundation and house and car, and loan of \$200,000. to \$300,000. to start a dress shop in Fergus Falls, MN. (T 55 lines 11-25)

* Why the Appellant does not trust Mr. Polski, and insists that the bond not be removed as Personal Representative: (A 13, 42, 45-46, 68)

1) A) Mr. Polski should have conscientiously objected to the Codicil, dated July 30, 2003, as an aggrieved person, because he too was sent the smear letter of May 22, 2003, from Carol Sullivan, stating the decedent's incompetency, yet he allowed the Codicil, and the upholding of the Codicil by the Trial Court, as Personal Representative to the decedent's Will. (A 33-36, 88)

B) Also, Mr Polski must have known about the Emergency Incompetency Hearing of October 28, 2003, in which Carol Sullivan gained temporary guardianship and conservatorship over the decedent, yet he allowed the Codicil, and the upholding of the Codicil by the Trial Court, as Personal Representative to the decedent's Will.
(A 82)

Mr. Polski, as Personal Representative, did not in Good Faith acknowledge the decedent's incapacity to make a Codicil. (A 88, 110, 116-119, 129-131)

2) Mr. Polski should have conscientiously objected to, and not have accepted the Settlement Agreement, and therefore should not have requested the Settlement Agreement to be approved by the Trial Court. As Personal Representative to decedent's Will, Mr. Polski should have insisted on the Will's integrity as the

decedent had stated it. (A 6-7, 18, 67-70, 83, 104, 105)

Mr. Polski, as Personal Representative, did not in Good Faith represent the decedent's Will. (A 6-7, 16-17, 67-70, 83, 104-105)

- 3) Mr. Polski, Personal Representative, should not have accepted and requested the Settlement Agreement to be approved by the Trial Court because not all competent persons were in agreement with and signed the Settlement Agreement, this being necessary for securing court approval. See Minn. Stat. Sec. 524.3-1102

Mr. Polski, as Personal Mr Representative, did not in Good Faith represent the decedent's Will. (A 18, 50)

Other reasons why Appellant does not trust John Polski:

- 4) The decedent told the Appellant shortly before he went to see attorney Krekelberg, on July 30, 2003 that one of the reasons he was seeing attorney Krekelberg was to fire John Polski. Randy Seiple stated the same to the Appellant in a phone conversation. (A 50, 102) (T 26, 28)
- 5) The decedent told the Appellant that he was having a hard time trying to contact Mr. Polski, taking many phone calls to get John Polski to respond. (T 26)
- 6) The decedent would many times tell the Appellant to keep calling Mr. Polski, to have Mr Polski call the decedent. The Appellant was having the same huge difficulties contacting Mr. Polski, who was also her accountant. (T 25-26)
- 7) John Polski didn't prepare, wasn't handling the Appellant's taxes from the year

- 1999 to 2003, going on five years. All the while, he would tell the Appellant that everything was all right. (T 25)
- 8) Mr. Polski ignored an IRS letter to the Appellant, even though the Appellant had immediately, upon receiving it, faxed and sent it to Mr. Polski and called Mr. Polski about the IRS letter. This could have gotten the Appellant into deep tax evasion troubles with the IRS. (A 26)
 - 9) Because the Appellant's taxes hadn't been done by Mr. Polski, from 1999 to 2003, and because he ignored the IRS letter, it cost the Appellant for the bookkeeper, alone, \$981.25. The Appellant sold off her possessions, to in part pay for that, being the Appellant was penniless. (A 34)
 - 10) At one point, the Appellant totally indigent, was refused or rejected from receiving SSI, because Mr. Polski hadn't done the Appellant's taxes for five years. (A 39)
 - 11) October 31, 2003, the Appellant sent John Polski a letter. Quote: "Please send what ever records you have from past to current. I (the Appellant) no longer am in need of your services. Your prompt attention to this is appreciated." No response. (A 27)
 - 12) Mr. Polski tried to manipulate the decedent through the decedent's daughter the Appellant, to sell the decedent's racehorses. (A 104)
 - 13) Mr. Polski tried to persuade the Appellant against Randy Seiple, the decedent's trusted friend of over 15 years, stating to the Appellant that he, Mr. Polski did not like Randy Seiple. (A 104)
 - 14) Mr. Polski, having told the Appellant that she was considered "---an easy mark", a "scape-goat", (A 104) as Personal Representative, shows no concern, what-so-ever, regarding this treatment the Appellant has been suffering at the hands of her

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family. There is obviously no concern regarding the Appellant, because of the family's, and Mr. Polski's, acceptance of the Settlement Agreement. The Appellant is now an out cast due to Carol's smear letter. (A 88) Mr. Polski, due to the attempt to ignore the Appellant, caused the Appellant terrible tax troubles, and expenses, and delay in SSI welfare assistance

As stated in Argument I.:

The Appellant in fact will likely not receive anything from her beloved Father's, (the decedent's) Will.

The Appellant is in great need of permanent financial assistance, and the Settlement Agreement insures against her receiving this, by rejecting, circumventing the testator's unequal distribution clause, for her siblings' own further gain, with out seemingly any care about the terrible circumstances, and consequences to the Appellant, who objected to, and never signed the Settlement Agreement. Minn. Stat. 524.3-1102 (1).

If the trustee disallows this to a life-long post-Polio cripple, whom the decedent was in fact supporting, and who is now absolutely indigent, on welfare, not getting proper medical treatment or housing, **the trustee most probably is misusing his powers as trustee, because of probable collusion and personal vendetta against the Appellant.**

APPELLANT'S RESPONSE TO JUDGE THOMAS M. STRINGER'S LETTER of December 23, 2005, Dated January 5, 2006. (A 105) (T 13, 25-28, 34, 39, 49, 51)

The Appellant states that Carol Sullivan, the Appellant's siblings, the attorneys,

the accountant as Personal Representative, and the Court probably treat their pet dogs, with much greater consideration and kindness than the Appellant has realized in the past while from her family and accountant and siblings, and now regarding the Settlement Agreement! This has been, in the Appellant's estimation, a collusion, a string of events, to ensure that the Appellant does not receive, proper care, support, maintenance, health, education, general welfare.

IV. THE TRIAL COURT ERRONEOUSLY FOUND THAT THE APPELLANT'S WILL CONTEST HAD NO LEGAL MERIT.

The Trial Court found that:

“Additionally, Nancy Sullivan’s will contest does not have legal merit. Nancy based her objection/contest to the Will on an unfounded expectation that in the original will she is entitled to receive a larger sum of money from the Residuary Trust.” FINDINGS OF FACT AND CONCLUSIONS OF LAW ORDER, of November 17 2005. p. 9, paragraph 5 (A 79)

The above is absolutely erroneous, and mistakenly stated. The Appellant is stating again, the Appellant has never and is not now contesting the Will of July 13, 2001. The fact is that the Appellant feels it should be upheld! (A 101, 102)

The Appellant objected to the Codicil of July 30, 2003, and not for the “--- expectation---“ of “---receiving a larger--- sum”. (A 79)

1) The Appellant objected to the Codicil of July 30, 2003, for the reason that the decedent, John J. Sullivan, did not have the testamentary capacity to understand that he was signing a codicil, at 9 am in the morning. The decedent was very groggy and incapacitated mentally in the early am and to about noon, because of the medications he was taking. And because of the decedent’s mental state in the am hours, and especially early am, the Appellant feels very strongly that the decedent was taken advantage of in signing the Codicil of July 30, 2003. The decedent had to awake at a very early hour, to travel to his attorney’s office in Pelican Rapids or Fergus, for a 9 am meeting. There is no way, in the Appellant’s mind, that the decedent could have known what he was

signing at that early hour. Randy Seiple was the decedent's trusted handyman and friend, and ally, of approximately 15 years or more. Randy did state to the Appellant on many occasions by phone from 2002 through to July or August, 2003, and in a visit with him in Massachusetts, in January of 2003 that he felt the decedent was being controlled by how his medications were given him. He felt that excessive amounts of some meds were given the Appellant to control him.

2) The Appellant also strongly feels that the decedent may have been controlled as to how his medications were given him, that he could have been taken advantage of in that way. (A 66, 102)

July 30, 2003 Attny.Krekelberg/decedent appointment: Randy drove the decedent to the appointment on Wed, 9am, July 30, 2003. The decedent had Randy drive him to see attorney Krekelberg about the following: 1. To divorce Carol. 2. To fire his accountant. 3. To change his will. The decedent wanted to put in his Will to give Randy 15% of the take of racehorse winnings.

According to Randy, "all this was refused".

The decedent, told the Appellant that he "wanted to divorce Carol and was turned down". (A 58-59)

3) The decedent could easily have been tricked at Attorney Krekelberg's office because of very poor eyesight and poor hearing. (T 27-29, 30, 46) (A 49)

4) The Appellant feels the decedent may have been taken advantage of at Attorney Krekelberg's office; Attorney Krekelberg having received Carol Sullivan's smear letter of May 22, 2003, (A 88) in which she states the decedent's incompetence, about two months before he, Mr. Krekelberg allowed that the decedent sign the Codicil of July

30,2003. (A 33-36, 49, 86, 103)

APPELLANT’S RESPONSE TO JUDGE THOMAS M. STRINGER’S LETTER of
January 9, 2006, pages 2-7. (A 101-107)

Included in this petition is copy of a smear letter, from Carol Sullivan to the Appellant, dated May 22, 2003, attempting defamation of the Appellant, and Carol Sullivan sent this same letter to all siblings, family, attorneys, and Mr. John Polski. The second from last paragraph states: “Personally, Nancy, I’m tired of hearing about how hard you work. I’m handling your Dad, trying to keep up with the place here and Arizona, and if you haven’t figured it out yet, your Dad’s 93, almost “failing”! I fight every day for his health. Do you? Have you any idea what his meds alone are? How many times a day I remind him to take them? How many times a day I repeat business issues? I have calls he can’t remember. He has days he doesn’t know if it’s AM or PM.” (A 88)

The above paragraph from Carol Sullivan’s signed letter to the Appellant, shows **undeniably that Carol Sullivan thought the decedent mentally incompetent to make a codicil, back on May 22, 2003.**

The decedent signed the Codicil, on **July 30, 2003**, two months **after** Carol wrote this letter to the Appellant, in which she stated his incompetency.

Next, Carol initiated an Emergency Hearing to declare the decedent incompetent, on **Oct. 28, 2003** just **three months after** the decedent signed the Codicil.

The Trial Court was advised of the medical reports of the decedent, used by Carol to establish the decedent’s incompetence at the hearing on Sept.12, 2005.

(A 118-120, 129-131) (T 66)

The Appellant fails to see how Carol Sullivan could think that the Codicil should stand after stating to the Appellant in a letter in May 2003 that the decedent had much mental confusion, and then shortly after the decedent signed the Codicil in July 2003, take action to declare the decedent incompetent in October, all in 2003.

PETITION FOR RECONSIDERATION MOTION, of December 22, 2005, pages 1 and 2, pages 5 and 6. (A 85-86, 89-90) (T 28 lines 19 - 23, 29, 46)

The Trial Court also found that :

“The decedent’s will provides that the trustee, in his discretion, may pay to or apply for the benefit of any child to provide for his or her or their proper care, support, maintenance, etc., and that such payments need to be equal between the children.”

FINDINGS OF FACT AND CONCLUSIONS OF LAW ORDER, of November 17, 2005, p. 9., paragraph 5. Quote: (A 79)

This gross misquote, this terribly mistaken quote, this aberration, defect of focus, by the Trial Court, whether by accident or contrivance, erroneously confuses, muddles the **LAST WILL AND TESTAMENT OF JOHN J. SULLIVAN**, of July 13, 2001, with the **Settlement Agreement!**

Here is the original, correct and accurate quote from the LAST WILL AND TESTAMENT OF JOHN JOSEPH SULLIVAN, of July 13, 2001, Article VI, pages 5-6, paragraph A. (3.) (A 16, 17)

“My trustee may also pay to or apply directly for the benefit of any child of mine or child of any deceased child of mine from time to time such sums from the principal of this RESIDUARY TRUST as my trustee, in its sole discretion, deems necessary or advisable

to provide for his or her or their (as appropriate) proper care, support, maintenance, health, education, general welfare, reasonable luxuries, (comparable to the standard of living to which he or she or they have become accustomed), including assistance in building or purchasing a home or entering into or managing a business or profession. Such payments need NOT be equal between my respective children and children of deceased children. (Emphasis added)

The further quote, directly following the gross misquote, both taken from FINDINGS OF FACT AND CONCLUSIONS OF LAW ORDER, of November 17, 2005, p. 9, paragraph 5, (A 79) goes as follows:

“This clause does not provide Nancy Sullivan with a guaranteed expectation to receive a greater sum of money than any of her siblings.”

* This is true, it does not guarantee the Appellant having an unequal share but does depend on the good and fair judgment of the trustee, as to need, which can be equated with “--- proper care, support, maintenance, health, education, general welfare, ---”,

Quote from: LAST WILL AND TESTAMENT OF JOHN J. SULLIVAN, of July 13, 2001. (A 17)

The Appellant is entitled to receive a larger sum of money because of:

- 1.) the Appellant’s severe crippled affliction, (A 91-97)
- 2.) The Appellant’s hazardous living conditions,
- 3.) Huge disparity between siblings’ financial circumstances, and Appellant’s complete indigence, welfare and food stamps subsistence.

Siblings: (T 23-25, 55 lines 11-25) Appellant: (A 32, 87, 89-90, 106)

4.) Appellant was supported by the decedent, from 2000 to 2003.

Having been reduced to abject poverty, when Carol Sullivan stopped the Appellant's financial support from the decedent, the Appellant was forced out of her townhouse which the Appellant had rented from June 1, 1999, at the end of Feb., 2004, two days after the Appellant's Father's (decedent's) death, February 27, 2004. (A105)

Therein lies Appellant's objection to John Polski, as Personal Representative, and that his bond should not be lifted. (A 7, 50) For the enumerated reasons and explanations why the Appellant is so distrustful of Mr. Polski, as Personal Representative to the LAST WILL AND TESTAMENT OF JOHN J. SULLIVAN, of July 13, 2001, (A 12-32) please see all of ARGUMENT III: THE TRIAL COURT ERRED IN REMOVING THE BOND ON JOHN POLSKI, AS PERSONAL REPRESENTATIVE.

V. THE TRIAL COURT ERRED WHEN IT STATED THAT THE APPELLANT IS NOT ELIGIBLE TO RECEIVE FAMILY ALLOWANCE.

Carol Sullivan claims as her basis for objecting to family allowance, that money the Appellant received was in the form of a loan rather than gratuitous payments. This claim is ludicrous, illogical, and holds no water, because that is what the Appellant was living on to pay rent, health insurance, car insurance, gas and food and rent. Also, the Appellant claims that much of the monies that she received from the decedent were in fact gifts to her. (A 87, 105, 106) (T 13-14, 17, 22, 35-38, 44, 45)
Please see page 5, paragraph 16, of FINDINGS OF FACT CONCLUSIONS OF LAW ORDER, dated November 17, 2005: (A 75)

It is totally irrelevant whether gift or loan, because those monies were obviously used by the Appellant, to survive on. Is the Appellant to be cast aside because of nonsense semantics, attempting to confuse the issue? (A 105-106)

CHAPTER ACT 2 - SCENE 2 OF ROMEO AND JULIET BY WILLIAM

SHAKESPEARE:

"O Romeo, Romeo! Wherefore art thou Romeo?

Deny thy father and refuse thy name;

And I'll no longer be a Capulet.

ROMEO

(aside) Shall I hear more, or shall I speak at this?

JULIET

'Tis but thy name that is my enemy;

Thou art thyself, though not a Montague.
What's Montague? it is nor hand, nor foot,
Belonging to a man. O, be some other name!

What's in a name? that which we call a rose

By any other name would smell as sweet;

So Romeo would, ere he not Romeo call'd

Retain that dear perfection which he owes

With out that title. Romeo, doff thy name,

And for that name which is no part of thee

Take all myself.

What's in a name? That which has been support, if called another name, e.g., if the support is called a loan, or if the support is called a gift, that which the Appellant was indeed using to live off of for almost four consecutive years, is still support!

This is why Carol Sullivan's and the Trial Court's argument that the financial help from the decedent are loans, not support, is ridiculous, and doesn't compute. A deduction cannot be made that because something is one thing, that it can't also, at the same time be another as well. (T 13, 14)

SUPPORT CAN OBVIOUSLY AND EMPHATICALLY. BE IN THE FORM OF A LOAN, A GIFT, A JOB, ETC.! (A 87)

THE AMERICAN HERITAGE DICTIONARY Second College Edition, 1976 ©, p.

1222. Definition of "support" "3. Maintenance or subsistence."

APPELLANT'S RESPONSE TO JUDGE THOMAS M. STRINGER'S LETTER of
December 23, 2005, Dated January 5, 2006. (A 105-106)

The Appellant will need and is asking for \$720,000 over a period of 20 years. That is, \$36,000 per year times 20 years, at \$3000 per month.

The Appellant's Social Security Papers that the Appellant filed to get help from the Government Supplement Security Income, (SSI) shows that the Appellant is unable to support the Appellant's self, because of her affliction. That is a requirement for receiving SSI assistance. The Appellant has included a history of, and current amounts that the Appellant is receiving from Social Security, SSI, medicaid, and probable future Medicare.

PETITION FOR RECONSIDERATION MOTION, of December 22, 2005. (A 87)

PETITION OBJECTING TO APPROVAL OF SETTLEMENT AGREEMENT AND

+FOR FAMILY ALLOWANCE, of August 26, 2005. Quote: (A 60-63)

6. "Prior to the death off the above named decedent, Petitioner (Appellant) was being supported by the decedent."
7. "That decedent's estate is solvent."
8. "That a reasonable and necessary family allowance of \$54,000 should be paid from the estate to and for the use and benefit of Petitioner (Appellant)."

WHEREFORE, your petitioner (Appellant) requests the Order of this Court

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fixing a time and place for hearing on this petition, and that after the time required for any notice has expired, upon proof of notice, and hearing, the Court enter a judicial order formally denying the approval of the settlement agreement and directing payment of a family allowance from the estate in the amount of \$54,000 to be paid in periodic installments of \$3,000 per month to Petitioner (Appellant) for 18 months, and granting such other and further relief as may be proper.

NOTICE TO SPOUSE AND CHILDREN AND AFFIDAVIT OF MAILING, of August 10, 2004. (A 37-39)

“Adult Children of Decedent:”

“7. If you were being supported by Decedent, the right to family allowance from the Estate under Minnesota Statutes 524.2-404 of up to \$1,500 (or more if authorized by the Court) per month for one year if the Estate is insolvent or for 18 months if the Estate is solvent.”

Minn. Stat. 524.2-404, Family Allowance. Quote:

“(a) In addition to the right to the homestead and exempt property, the decedent’s surviving spouse and minor children whom the decedent was obligated to support, and children who were in fact being supported by the decedent, shall be allowed a reasonable family allowance in money out of the estate for their maintenance as follows:

- (1) for one year if the estate is inadequate to discharge allowed claims: or
 - (2) for 18 months if the estate is adequate to discharge allowed claims.
- (b) The amount of the family allowance may be determined by the personal representative in an amount not to exceed \$1,500 per month.

- 5
- (c) The family allowance is payable to the surviving spouse, if living; otherwise to the children, their guardian or conservator, or persons having their care and custody.
 - (d) The family allowance is exempt from and has priority over all claims.
 - (e) The family allowance is not chargeable against any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession or by way of elective share. The death of any person entitled to family allowance does not terminate the right of that person to the allowance.
 - (f) The personal representative or an interested person aggrieved by any determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which may include a family allowance other than that which the personal representative determined or could have determined.”

(T 13, 14) MR. BARTZ: “And then turning to her (Appellant’s) allowance request, she’s a 64-year-old invalid person who’s one of eight children. Unlike her (Appellant’s) family members, she’s in need of permanent financial assistance from the estate. (Please see Appellant’s medical reports: (A 89, 97)

And her father (decedent) was supporting her for four, five years; be it a loan, gift, whatever you want to call it, she (the Appellant) was using that money to live off of. And she’s still in need of that, and she’s requesting that award today.” (T13-14)

(T 17) THE COURT: “What is the offer of proof that you can make? What would she tell us?” (T 35-37) (A 87)

(T 17) MR. BARTZ: “Well, in regard to the family allowance she can establish the

solvency of the estate, and the fact that she had been supported by her father through the years.”

The Appellant did certainly receive monies for almost four consecutive years, on a consistent basis, except when Carol Sullivan, wife of the decedent, and step-mother to the Appellant, would apparently interfere, as she often did, and much against the decedent’s wishes, to prevent the Appellant from receiving checks.

Totals per year:

Year 2000: Months 2, 2, 3, 4, 5, 8, 9, 10, 12, 12, Appellant received support	\$44,504
Year 2001: Months 1, 2, 3, 4, 5, 8, 12, Appellant received support	21,720
Year 2002: Months 1, 3, 5, 10, 11, 12, 12, Appellant received support	35,700
Year 2003: Months 1, 3, 4, 6, 8, Appellant received support	17,000

(A 105) (T 36)

Having been reduced to abject poverty, the appellant was forced out of her townhouse which the Appellant had been renting from June 1, 1999; at the end of Feb., 2004, two days after the Appellant’s Father’s (decedent’s) death, February 27, 2004. (A104)

In the last year of Appellant being supported by the decedent especially, the decedent would often ask Carol to write the checks to the Appellant, the decedent was having trouble seeing. Carol, the decedent’s wife, would holler at the decedent “over my dead body” and things, being very mean to the decedent when he would ask her to send the Appellant a check. Carol would delay or void checks or try to bait the Appellant, by sending a check, in her own hand, without her signature on it as the Appellant was

dependant on the checks to pay rent and health insurance and food, et cetera.

Carol Sullivan stopped all financial help to the Appellant against the decedent's wishes in August, 2003. (A 87, 106) (T 36)

The Appellant had no money or financial status to make a deposit on another rental, or to move somewhere else, and was frightened beyond words as to how the Appellant could survive day to day, especially in the last year of 2003, with Carol ever increasingly making it more and more difficult for the decedent to get his checks to the Appellant so that the Appellant could pay her bills. The Appellant felt as if she were clinging to a piece of drift wood in the middle of the ocean with less and less hope of hanging on, to survive. (A 106)

The facts and evidence stated here show most absolutely, and definitively, that the Appellant was being financially helped, supported by the decedent, on a regular basis, for going on four years, and therefore the Appellant because of her extreme indigence, hazardous living conditions, and as a severely crippled invalid, should be eligible to receive Family Allowance.

Minn. Stat. 524.2-404 (A 105-106) (T 14)

VI. THE TRIAL COURT ERRED BOTH, WHEN IT FOUND THAT THE APPELLANT WAS NOT A DEPENDENT OF THE DECEASED, AND WHEN IT FOUND THE LOANS/GIFTS WERE NOT MADE ON A CONSISTENT (REGULAR) BASIS.

The Trial Court found that she (the Appellant) has been financially independent from her father (the decedent) for most of her majority years.”

FINDINGS OF FACT CONCLUSIONS OF LAW ORDER, November 17, 2005. Page 6, paragraph 19. (A 76)

“---she has been financially independent from her father (the decedent) for most of her majority years.”

This statement is misrepresenting of what was happening: The Appellant mainly worked a small amount of part-time, jobs before the Appellant was married and for awhile when the Appellant was married. This became too much on the Appellant’s fastly deteriorating feet, and the Appellant was supported by her husband. The Appellant was divorced in 1991. The Appellant was dependent in marriage, and after divorce, the Appellant received inheritance from her Mother’s estate, which carried the Appellant through to about 2000. The decedent was supporting the Appellant financially from 2000 to 2003. (A 35-38, 60-63, 87, 105-106) (T 12, 13)

The Appellant’s Social Security Papers that the Appellant filed to get help from the Government Supplement Security Income, (SSI) show that the Appellant is unable to support the Appellant’s self, because of her affliction. That is a requirement for receiving SSI assistance. (A 87)

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In most of the Appellant's adult life, the Appellant has not been able to independently support herself in the working place, due to the Appellant's severe walking disabilities, along with other related neurological, post-Polio conditions. With no stretch of the imagination has the Appellant been a financially independent woman, especially in these later years, and the Appellant is very much in need of further financial help at this point, beyond the poverty line of what the Appellant is currently subsisting on. (A 89-90)
PETITION FOR RECONSIDERATION MOTION, of December 22, 2005. Page 3, paragraph 3. (A 87)

APPELLANT'S RESPONSE TO JUDGE THOMAS M. STRINGER'S LETTER, of December 23, 2005, Dated January 5, 2006: (A 106)

The Trial Court also found:

"The loans were not made on a regular payment schedule, but were issued when Nancy Sullivan requested a loan."

FINDINGS OF FACT CONCLUSIONS OF LAW ORDER, November 17, 2005. (A 76)

This statement is erroneous. The decedent would ask the Appellant what the Appellant needed consistently, and the Appellant would tell the decedent that she, the Appellant, would call back in a day or so and let the decedent know what she, the Appellant needed. The Appellant never asked the decedent for a loan, rather the Appellant told the decedent each time what the Appellant needed to survive on. (A 106) (T 35)

The decedent was always calling and checking whether the Appellant had enough money, asking what the Appellant needed at the time. (T 35)

PETITION OBJECTING TO APPROVAL OF SETTLEMENT AGREEMENT AND

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FOR FAMILY ALLOWANCE, of August 26, 2005. Quote:

6. "Prior to the death off the above named decedent, Petitioner (Appellant) was being supported by the decedent." (T 35)

(T 13, 14) MR. BARTZ: "And then turning to her (Appellant's) allowance request, she's a 64-year-old invalid person who's one of eight children. Unlike (Appellant's) family members, she's in need of permanent financial assistance from the estate. Siblings: (T 23 lines 12-21, 24 lines 1-24, 25 lines 1-6, 55 lines 17-23)

Appellant: (T 22-23, 30-32) (A 60-62, 63-66, 86-87, 89-97)

And her father (decedent) was supporting her for four, five years; be it a loan, gift, whatever you want to call it, she (the Appellant) was using that money to live off of. And she's still in need of that, and she's requesting that award today."

(T 17) THE COURT: "What is the offer of proof that you can make? What would she tell us?" (T 35, 36, 37) (A)

(T 17) MR. BARTZ: "Well, in regard to the family allowance she can establish the solvency of the estate, and the fact that she had been supported by her father through the years." (T 24)

The Appellant did certainly receive monies for almost four consecutive years, on a consistent basis, except when Carol Sullivan, wife of the decedent, and step-mother to the Appellant, would apparently interfere, as she often did, and much against the decedent's wishes, to prevent the Appellant from receiving checks.

Carol Sullivan stopped all financial help to the Appellant against the decedent's wishes in August, 2003. (A 87, 106)

	Totals per year:
Year 2000: Months 2, 2, 3, 4, 5, 8, 9, 10, 12, 12, Appellant received support	\$44,504
Year 2001: Months 1, 2, 3, 4, 5, 8, 12, Appellant received support	21,720
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Year 2003: Months 1, 3, 4, 6, 8, Appellant received support	17,000

(A 106) (T 36)

(T 35, lines 23, 24) Appellant answering a question from

Mr. Bartz, stated “---it was just very informal. It was – it was consistent but informal.”, explaining the pattern of how the Appellant received financial help/support from her Father, the decedent.

(T 37, lines 13-15) Mr. Reif Q: “Now what you’re telling us that the payments, however, were inconsistent in amount and the dates received?” The Appellant answered “Sure. They were just not formal at all.”

When the Appellant replied to Mr. Reif, the Appellant meant that the checks weren’t all the same amount, and she did not receive them on the same date monthly.

This line of questioning was obviously to trick the Appellant into answering badly, to put the Appellant into jeopardy, to trick and confuse the Appellant, to try to discredit the Appellant, from the fact that she was receiving, on a very regular basis, long term, financial support from the decedent.

The Appellant had already stated that “---it was consistent, but informal.”, the way the Appellant was receiving her checks from the decedent. (T 35, lines 23, 24)

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The Appellant was receiving financial help/support on a most regular basis, every month or month and a half, as is shown in the above financial chart of roughly four years' support, from the (decedent).

As is shown here, the monies were certainly provided on a consistent basis and in amounts for the Appellant to survive on.

In response to:

(T 17) THE COURT: "What is the offer of proof that you can make?"

And in response to the erroneous statement from the Trial Court:

FINDINGS OF FACT CONCLUSIONS OF LAW ORDER, November 17, 2005.

Page 6, paragraph 19. (A 76)

"Nancy Sullivan was not a dependent of the decedent prior to the decedent's death."

Because of :

- 1) the evidence of the amounts,
- 2) and the evidence of the consistency of the payments,
- 3) over a long term of almost four years,
- 4) to the Appellant, with a severe crippled condition,
- 5) that made it impossible to support herself,
- 6) and who absolutely dependent on the decedent's financial support to survive,

this shows conclusively, that the Appellant was indeed dependent on the decedent who provided the Appellant with regular consistent financial support, from 2000 through to August of 2003.

WAS NOT A DEPENDENT OF THE DECEASED, AND WHEN IT FOUND
THAT THE LOANS/GIFTS WERE NOT MADE ON A CONSISTENT (REGULAR)
BASIS.

VII. THE TRIAL COURT ERRED IN ALLOWING ATTORNEY
KREKELBERG TO REPRESENT CAROL SULLIVAN, HAVING BEEN WITNESS
TO THE SIGNING OF THE CODICIL.

The Appellant objected to the Codicil of July 30, 2003, for the reason that the decedent, John J. Sullivan, did not have the testamentary capacity to understand that he was signing a codicil, at 9 am in the morning. The decedent was very groggy and incapacitated.

(A 7, 85-86)

1) Carol Sullivan sent a smear letter to the Appellant, dated May 22, 2003, and in it exclaimed about decedents deteriorated mental condition. (A 88)

2) Attorney Charles Krekelberg, among others, had been sent the letter from Carol, of May 22, 2003, in which Carol Sullivan stated the decedent's mental condition was unsound. (A 88, 118, 120, 129, 131)

When on July 30, 2003, the decedent traveled to see attorney Krekelberg, Attorney Krekelberg apparently refused the decedent's wishes to: divorce Carol Sullivan, to fire John Polski, Personal Representative, and to change the Will for Randy Seiple to receive 15 % of all racehorse winnings, but allowed that the decedent sign the Codicil, and witnessed the signing of the Codicil. (A 86)

The Appellant strongly feels Carol Sullivan and attorney Krekelberg had undue-influence over the decedent.

The Appellant feels the decedent was hoodwinked, by Carol Sullivan, wife of the

decedent, and Attorney Krekelberg, in allowing the decedent to sign the Codicil, and Carol Sullivan, in demanding that the Codicil stand though she clearly stated the decedent's incompetence in her smear letter of May 30, 2003. (A 88)

The decedent called the Appellant soon after his meeting with Attorney Krekelberg and asked for the Appellant to get him an attorney. (T 58-59)

The decedent contacted attorney John Bartz.

Carol put a block on the Appellant's phone and Carol changed her phone numbers, preventing Attorney John Bartz from further contacting the decedent. (A 103)

At the hearing at Fergus Falls, MN, Court House regarding the probate of THE LAST WILL AND TESTAMENT OF JOHN J. SULLIVAN, of July 13, 2001, Attorney Krekelberg was found to be representing Carol Sullivan, and he stated that he also had and is still representing the Petitioners as well, (A 40) (T10) in violation of Rule 3.7 of the Minnesota Rules of Professional Conduct.

This all smacks of at least conflict of interest on attorney Krekelberg's part. This also smacks of probable collusion with the decedent's wife, Carol Sullivan, and Personal representative to the Will, John Polski, to contrive the will, not according to his client's wishes, the decedent, but for the gain of the decedent's wife, Carol Sullivan and for John Polski, Personal Representative to the Will. in anticipation of the decedent's demise, and for their financial gain. It is apparent and clear to the Appellant that the decedent, because of his infirmities, was taken tremendous advantage of here.

CONCLUSION

The reason the Appellant was compelled to come before the Court of Appeals, to request a reversal of the Trial Court's decision and a new trial, though Pro Se, is because of the magnitude of erroneous statements without evidence to back them up, and numerous mistakes, that the Appellant found, much to the Appellant's dismay, in the Trial Court's FINDINGS OF FACT AND CONCLUSIONS OF LAW ORDER, of November 17, 2005. The resulting outcome apparently based on these numerous erroneous statements, and mistakes is very much to the detriment of the Appellant, bringing hopeless disaster to the life of the crippled and now indigent Appellant, and only enhances and adds to the well off financial situations of her siblings and her step-siblings. Further more, the Appellant strongly believes that an evidentiary string of events, does unequivocally show collusion, a ganging-up on, and a fencing off, of the Appellant. This to try to keep the Appellant from receiving much needed support from Family Allowance and from the Will of July 13, 2001, as it was originally written.

- I. The findings of the Trial Court are clearly erroneous in upholding of the Settlement Agreement, because of issues that make the settlement agreement unjust and unreasonable.
- II. The findings of the Trial Court are clearly erroneous in its upholding of the Codicil because of the likely possibilities that Appellant's elderly father, decedent, was taken advantage of.
- III. The findings of the Trial Court are clearly erroneous when it rules that John Polski's bond, as Personal Representative, should be kept in place.

- IV. The findings of the Trial Court are clearly erroneous when it states that the Appellant's Will Contest has no legal merit.
- V. The findings of the Trial Court are clearly erroneous when it states that the Appellant is not eligible to receive Family Allowance, as she was a dependant of the deceased.
- VI. The findings of the Trial Court are clearly erroneous when it finds that the Appellant was not a dependent of the deceased, and that the loans/gifts were not made on a regular basis.
- VII. The Trial Court should not have allowed attorney Krekelberg to represent Carol Sullivan, attorney Krekelberg having been a witness to the signing of the Codicil.

The Appellant has show a pattern of behavior, or series of events by which Carol Sullivan, wife of the deceased, and Appellant's siblings, excluded and ostracized the Appellant from her Dad the decedent, and family, and attorneys, and accountant, and how Carol Sullivan and siblings defamed and vilified the Appellant and even tried to put the Appellant in jail. Carol Sullivan forced the Appellant into bankruptcy by making it difficult and impossible for the decedent to continue his support of the Appellant, and finally, Carol Sullivan cut off all checks to the Appellant, in August 2003. The Appellant also has identified a series of events that strongly point to collusion between Carol Sullivan, John Polski, attorney Krekelberg and Family, to take control of the decedent, by for example, cutting off all communications between the decedent and the Appellant. Carol Sullivan also, the Appellant feels, denied the decedent his Constitutional right to council of his own choosing.

In Argument IV., the Appellant states that she feels strongly that the decedent was easily taken advantage of by Carol Sullivan and Attorney Krekelberg, because of decedent's infirmities; also she states how this very likely occurred.

The Appellant, in other words feels that the decedent was hoodwinked into signing the FIRST CODICIL TO THE LAST WILL AND TESTAMENT, of July 30, 2003.

Looking back at the string of events, especially in the years, 2003, 2004, the Appellant believes it very likely, that others, besides the Appellant's Father, decedent John Joseph Sullivan and Attorney Krekelberg, knew about the contents of the LAST WILL AND TESTAMENT OF JOHN J. SULLIVAN, of July 13, 2001, regarding, especially, the following. Paragraph: A (3) of ARTICLE VI:

“My trustee may also pay to or apply for the benefit of any child of mine or child of any deceased child of mine from time to time such sums from the principal of this RESIDUARY TRUST as my trustee, in its sole discretion, deems necessary or advisable, to provide for his or her or their (as appropriate) proper care, support, maintenance, health, education, general welfare, reasonable luxuries, (comparable to the standard of living to which he or she or they have become accustomed) including assistance in building or purchasing a home or entering into or managing a business or profession. **“Such payments need not be equal between my respective children.”**”

Emphasis added.

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Also the Appellant believes it very likely, that others, besides the Appellant's Father, decedent, John Joseph Sullivan and Attorney Krekelberg, knew of Minn. Stat.

524.2-404. Family Allowance.

These others may be: Carol J. Sullivan, wife of the deceased, John J. Sullivan, John Polski, Personal Representative to the LAST WILL AND TESTAMENT OF JOHN J. SULLIVAN, of July 13, 2001, and all siblings.

As previously stated, Carol Sullivan, wife of the decedent,

- 1) succeeded in destroying contact between the Appellant and her Father the decedent by putting a block on the phone, and changing phone numbers.
- 2) succeeded in keeping Attorney John Bartz from further contact with the decedent, by the same, changing phone numbers, thereby denying the decedent his Constitutional rights to an attorney of his own choosing.
- 3) tried to vilify Appellant, through sending the smear letter, of May 22, 2003, to all family, Mr. Polski, and attorneys.
- 4) Wrongfully taped conversations between the Appellant's Father, the decedent, and Appellant, and possibly others, without the Appellant's, or decedent's or possible others' knowledge or consent, as Carol so stated in her smear letter, sent to the Appellant, of May 22, 2003.
- 5) John Polski didn't prepare and wasn't handling the Appellant's taxes, all the while telling the Appellant that everything was all right.
- 6) John Polski ignored an IRS letter sent to the Appellant, which could have caused severe tax evasion problems with the IRS for the Appellant, and did cause a rejection

in SSI financial help. Later the Appellant finally received the SSI help. The Appellant incurred heavy expenses, to have her tax information done correctly.

- 7) In a phone conversation, two or three days after the Appellant received the 'smear letter' of May 22, 2003, Mr. Polski, stated to the Appellant that the Appellant is considered "--- a problem", "---an easy mark" a "scape-goat".
- 8) In the last year especially, the decedent, with failing eye sight, would ask Carol Sullivan, the decedent's wife, to write a check to the Appellant. Carol Sullivan would holler at the decedent "over my dead body" and things, being very mean to decedent.
- 9) Carol Sullivan would delay, or void checks, or try to bait the Appellant by sending a check without her signature on it, as the Appellant was dependant on the checks to pay rent and health insurance and food, etc.
- 10) Carol stopped all checks to the Appellant in August 2003.
- 11) This forced the Appellant into bankruptcy, and complete destitution.
- 12) Carol Sullivan and probably siblings, and attorneys, tried to have the Appellant put in jail.

Not having had the taxes done, delayed SSI help and incurred further bills, and Appellant suffered terribly, physically in the move, her invalid feet, ankles and legs, tremendously worsening. The Appellant, now totally indigent, is Pro Se, making it extremely hard to come forward here, regarding her request and absolute immediate need of Family Allowance, and urgent necessary help from the Will, for proper housing and other needs, for her proper care regarding her affliction and now, destitution.

The Appellant feels absolutely, that the above egregious string-of-events were, with deliberation brought upon the Appellant. This being to vilify her, to use her as a scapegoat, and to try to interrupt, and finally stop all checks to the Appellant, against the decedent's wishes so that The Appellant could be kept from getting necessary help from the Family Allowance or from the Will.

The Appellant feels certain that Carol Sullivan's plan was to try to block, interrupt and break the consistent pattern of support that the decedent was providing the Appellant. This due to the probability that Carol knew the contents of the LAST WILL AND TESTAMENT OF JOHN J. SULLIVAN, of July 13, 2001, and knew of Minn. Stat.524.2-404 Family Allowance.

Also it appears that Carol Sullivan's attempt to vilify the Appellant, was to throw contempt onto her crippled step-daughter instead of upon herself. This would be true regarding Mr. Polski, attorneys and siblings, also.

It appears that Carol Sullivan tried to vilify the Appellant and tried to stop the decedent from sending regular support to the Appellant, by, for example, refusing to write checks, delaying and voiding checks, and by sending an unsigned apparent 'bait' check, all this to it seems, try to make the support look to be irregular, and inconsistent. Carol Sullivan finally did stop the decedent's support, in August 2003, very much against the decedent's wishes. Now after the decedent's demise, Carol Sullivan is trying to erroneously state that the money was given not in a consistent pattern, and therefore not as support:

- 1) Carol now is trying to state erroneously therefore, that the Appellant has no claim to Family Allowance.

- 2) Carol is trying to state, erroneously, therefore, that the Appellant can not claim necessary help from the Will, for proper housing, and other needs for her proper care, regarding her affliction.
- 3) In forcing Appellant into bankruptcy and hopefully out of the townhouse, that the Appellant was renting and into complete indigence, as soon as she could, Carol most probably tried to keep Appellant from stating that that was her life style, for five years. The Appellant left the townhouse, two days after the Appellant's dear Father, the decedent, died.
- 4) Carol and family and accountant and attorneys, in ruining her step-daughter's reputation beyond belief, and forcing her into bankruptcy, now are trying to use that to justify the ostracizing, abandonment of the Appellant.
- 5) Upon the decedent's death, Carol and Appellant's siblings are agreeing to the upholding of the Codicil, and the Settlement Agreement. The Settlement Agreement guarantees, if accepted, upheld, to keep the Appellant from asking for what would be "---necessary or advisable to provide for his or her or their (as appropriate) proper care, support, maintenance, health, education, general welfare, reasonable luxuries (comparable to the standard of living to which he or she or they have become accustomed), including assistance in building or purchasing a home or entering into or managing a business or profession."
- 6) Next Carol offers payment of legal service costs; a bribe, to the siblings of the decedent's first marriage except for the Appellant. Appellant again being sorely mistreated in her indigence, because the Appellant completely disagrees with the acceptance of the Codicil and of the Settlement Agreement.

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Carol's siblings stand to inherit hugely, and Appellant's siblings are all three tremendously well off financially. None of the siblings are destitute and on welfare and crippled as the Appellant is.

The above egregious string-of-events, shows apparent obvious collusion, and horrible treatment proscribed to the Appellant, in order to block the Appellant from attaining much needed financial help in respect to the Appellant's severe, crippled condition.

The Trial Court committed clear error in failing to properly take into account, issues that make the Settlement Agreement absolutely unjust and unreasonable. Also, the Trial Court erred in upholding the Codicil, not properly taking into account the strong likelihood that the Appellant's elderly Father, decedent, was taken advantage off. The Trial Court abused its discretion by allowing John Polski's bond, as Personal Representative to be dropped, because among other things, Mr. Polski accepted the Settlement Agreement, without all siblings signing the Settlement Agreement. Also the Trial Court abused its discretion for allowing attorney Krekelberg to represent Carol Sullivan, being in direct conflict of interests because attorney Krekelberg was witness to the signing of the Codicil and because he was also representing the Appellant's siblings, as well. The Trial Court committed clear error in failing to see that the Appellant's Will contest had legal merit, making a completely erroneous statement about the Appellant's expectations of sums of money, by confusing the Will, Codicil, and Settlement Agreement. The Trial Court committed clear error when it stated the Appellant is not eligible to receive Family Allowance. The findings of the Trial Court are clearly

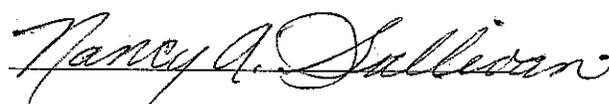
erroneous when it states that the Appellant was not a dependent of the deceased, and when it states that the loans were not made on a regular basis.

The Appellant respectfully requests that this Court reverse the Trial Court's decision to uphold the Settlement Agreement and deny Family Allowance to the Appellant.

At a minimum, this Court should remand for further findings relative to the large number of issues, so primary to this case.

Dated: *March 1, 2006*

Respectfully submitted,



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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).