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MERIDIAN, TEXAS

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THE FORT WORTH CLUB BUILDING
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FORTH WORTH TEXAS 76102

THE STATE OF TEXAS

TO ALL PERSONS INTERESTED IN THE ESTATE OF ERNESTINE P KOONSMAN, deceased, Docket No. **P08565** County Court at Law Bosque County, Texas, **RICKEY HERMAN KOONSMAN and MARGARET ANNETTE JONES** filed in the County Court at Law of Bosque County, Texas, on the **8th day of February, 2024**, a **SECOND AMENDED CONTEST OF WILL AND APPLICATION TO PROBATE 1989 WILL AND FOR ISSUANCE OF LETTERS TESTAMENTARY**. Said application will be heard and acted on by said Court **no earlier than 10:00 am** on the **first Monday** next after the expiration of ten days, from the date of posting this citation, the same being the **26th day of February, 2024** at the County Court at Law Judicial Annex in **MERIDIAN, TEXAS**.

All persons interested in said estate are hereby cited to appear before said Honorable Court at said above mentioned time and place by filing a written answer contesting such application should they desire to do so.

The officer executing this citation shall post the copy of the citation at the Courthouse Door of the county in which proceedings are pending, or at the place in or near said Courthouse where public notices customarily are posted, for not less than 10 days before the return day thereof, exclusive of the date of posting and return the original copy of this citation to the Clerk stating in a written return thereon the time when and the place where he posted such copy.

GIVEN UNDER MY HAND AND THE SEAL OF SAID COURT in Meridian, Texas. This the **8th day of February, 2024**.



Tabatha Ferguson

TABATHA FERGUSON
Bosque County Clerk

Wendy Croft

Deputy

OFFICER'S RETURN ON CITATION

Came to hand on the 9 day of Feb, 2024 at
11:43'clock A M. and executed on the 9 day of Feb, 2024
by posting a copy of the within citation for ten days, exclusive of the day of posting,
before the return day hereof, at the County Courthouse door of Bosque County,
Texas, or at the place in or near the said courthouse where public notices customarily are
posted, that is from 2/9, 2024, through 2/26,
2024, inclusive.


CONSTABLE
BOSQUE COUNTY, TEXAS

Printed name: Scott Ferguson

Cause No. P08565

IN THE ESTATE OF § IN THE COUNTY COURT
ERNESTINE P. KOONSMAN, § AT LAW
DECEASED § OF BOSQUE COUNTY, TEXAS

SECOND AMENDED CONTEST OF WILL AND APPLICATION TO PROBATE 1989 WILL, AND FOR ISSUANCE OF LETTERS TESTAMENTARY

TO THE HONORABLE JUDGE OF SAID COURT:

Rickey Herman Koonsman (“Contestant and/or Counter-applicant) and Margaret Annette Jones (jointly, “Contestants”) file this Second Amended Contest of Will and Application to Probate 1989 Will, and for Issuance of Letters Testamentary and would respectfully show the Court as follows:

I. DISCOVERY

- 1. Discovery is intended to be conducted under Level 2 of Tex. R. Civ. P. Rule 190.3.

II. THE DECEDENT

2. **Ernestine P. Koonsman** (“Decedent”) died on April 30, 2023 in McLennan County, Texas. The Decedent was domiciled and had a fixed place of residence in McLennan County, Texas, at the time of her death, but last resided in Bosque County when she had capacity.

III. THE CONTESTANTS

3. Contestant and Counter-applicant **Rickey Herman Koonsman** (last three digits of SSN: 162; last three digits of TXDL: 934) presently resides at 692 CR 2357, Meridian, Bosque County, Texas, 76665 and is the son of the Decedent.

4. Contestant **Margaret Annette Jones** (last three digits of SSN: 143; last three digits of TXDL: 095) presently resides at 513 N. Crockett Street, Granbury, Johnson County, Texas 76048 and is the daughter of the Decedent.

IV.
JURISDICTION AND VENUE

5. This Court has jurisdiction under Chapter 32 of the Texas Estates Code and venue under Chapter 33 of the Texas Estates Code because Decedent was last domiciled in Bosque County when she had capacity to determine her own domicile. Additionally, the Court established and retains jurisdiction over Decedent and her estate by virtue guardianship proceeding initiated prior to Decedent's death as Cause No. G08244.

V.
SERVICE

6. Service of citation upon Nina Diane Richter, a party of record, will be accomplished pursuant to Texas Estate Code Sec. 51.055 by serving her attorney of record, Jessica Hart. Service of Contestant's Counterapplication to Probate Will and for Issuance of Letters Testamentary upon Sherry Mize will be accomplished pursuant to Texas Estate Code Sec. 51.055 by serving her attorney of record, Lisa Jamieson. Kristy Annette Richter, named as a beneficiary under the 1989 Will, can be served at 673 Spanish Trail, Waco, Texas 76712 (254) 366-2910. Applicant requests that all other interested persons, if any, be notified by the customary posting of the will by the Constable.

VI.
FACTS REGARDING WILL CONTEST

7. Decedent died on April 30, 2023. Applicant Nina Diane Richter filed her Application to admit the contested will to Probate on May 5, 2023. That Will was executed on May 20, 2020.

8. The contested will has not been admitted to probate.

9. On June 22, 2018 (almost 2 years before the date of the contested will), Dr. Wm. Lee Carter, a psychologist (who graduated from Baylor University) with 35 years of experience, licensed by the Texas State Board of Examiners and Psychologists and qualified to perform competency/insanity evaluations, performed a psychological evaluation of the Decedent and concluded that she was **“incompetent to make independent decisions”** or conduct **“legal or financial transactions on her own behalf”** due to **“major neurological disorder due to Parkinson’s disease,”** that will only **“worsen with time.”** In Dr. Carter’s opinion, Decedent’s condition is **one that persists** and is the same condition which obtained at the time of the will’s making. In his opinion, Decedent was **of unsound mind and lacked testamentary capacity** to execute a will on May 20, 2020 and suffered from multiple **delusions, believing in a state of supposed facts that did not exist and that no rational person would believe.** Despite Decedent’s obvious progressive mental impairment and the overwhelming evidence that she suffered from a major neurological disorder due to Parkinson’s, Alzheimer’s, and/or dementia, Decedent irrationally believed that she was of perfectly sound mind, refusing to recognize that she was in progressive mental decline. In her weakened condition, this delusion led her to irrationally believe that her doctors and her loved ones, including Contestants, were trying to trick her when they told her truthfully that she was in progressive mental decline and needed help. Such delusions caused her to dispose of her property in a way that she would not have done but for the delusions.

10. On 7/6/2020, (six weeks after the date of the contested will when Decedent was supposedly of “sound mind”) Dr. George Schwartz, a neurologist for Baylor, Scott & White Medical Center examined Decedent and concluded that Decedent suffered from early-onset Parkinson’s disease, head tremor and memory loss, was unable to complete a SLUMS exam, did

not have a grasp for her memory loss, could not manage her own finances, was not safe to drive a car, was unsure why her mother, father, and brother were dead, incorrectly claimed that the only medicine she takes is aspirin, and was unable to give a history because she “could not get the facts straight.” Dr. Schwartze referred Decedent to Dr. Richard Allen Phenis, a member of the Department of Neurology for Baylor, Scott & White Medical Center in Temple, Texas to perform a detailed psychological evaluation which occurred on August 12, 2020.

11. On 7/13/2020 and 7/30/2020 Dr. Heather Marie Derington, DO of Baylor, Scott, & White examined Decedent for memory loss, increased confusion and worsening dementia. She noted that Decedent could not name the month or the President and became very angry when asked any orientation questions accusing her and her daughter of trying to trick her.

12. On August 12, 2020, Dr. Phenis examined Decedent and reported that Decedent had “a history of reported memory loss,” “a history of cognitive problems,” that her daughter reported “that her mother’s cognitive issues **likely began two years ago,**” that she had “changes in motor and sensory functions” that “**began about 10 years ago,**” that she was “unable to complete a SLUMS exam,” that she “appeared disoriented,” that her Insight “Appeared poor, as she denied cognitive problems,” that “Recall of biographical information was poor,” that her “MMSE score was 16/30 (exceptionally low) that she “struggled to name any of her grandchildren, until given several prompts by her daughter,” that her “word list learning” was “exceptionally low,” that her “non-verbal” memory was “exceptionally low,” that her “prospective e memory” was “exceptionally low,” that her performance on an auditory tracking and attention task was “exceptionally low,” that her “Executive function” was “exceptionally low,” that she appears to “have forgotten how to use household appliances,” that she “cannot manage finances on her own,”

that her “Learning/memory and executive functions “were impaired” and that she likely suffered from “Alzheimer’s disease.”

13. Applicant and her sister Sherry Mize enabled Decedent’s delusions by intentionally trying to minimize the seriousness of Decedent’s condition and by being less than candid in describing Decedent’s condition to her doctors, which is apparent from the records and noted by the providers.

14. Based on information and belief, Contestants believe that upon receiving this evaluation of incapacity from Dr. Carter, Decedent was further evaluated by a neurologist in Temple, Texas, who likewise declined to certify her as competent to handle her own affairs.

15. On May 20, 2020, at a time when Decedent no longer possessed testamentary capacity, Decedent executed the contested will which is the subject of this suit.

16. The contested will was executed at a time when Decedent lacked testamentary capacity and suffered from multiple delusions. Decedent was unduly influenced by others, including applicant Nina Diane Richter, who had an informal fiduciary relationship with Decedent.

17. The contested will is invalid and should not be admitted to probate.

VII. **WILL CONTEST**

18. Contestants allege that the contested will should be set aside because Decedent lacked testamentary capacity to make a will at the time it was executed and suffered from one or more insane delusions, and that such delusions caused her to dispose of her property in a way that she would not have done but for the delusions. At the time the will was signed, Decedent lacked sufficient mental ability to understand that she was making a will, sufficient mental ability to understand the effect of her act in making the will, sufficient mental ability to understand the general nature and extent of her property, sufficient mental ability to know her next of kin and natural

objects of her bounty and their claims on her, and sufficient memory to collect in her mind the elements of the business to be transacted and to be able to hold the elements long enough to perceive their obvious relation to each other and to form a reasonable judgment as to these elements.

19. Additionally, and/or alternatively, Contestants allege that the contested will should be set aside because Decedent, who suffered from progressive dementia and Parkinson's disease, and/or Alzheimer's disease, and was dependent on the Applicant for her care, was unduly influenced to sign the contested will by the compulsion and arguments of others, including Applicant who had an informal fiduciary relationship with Decedent. Such efforts to obtain the contested will were of such strength as to overcome Decedent's desires and her free agency to make the contested will, in part, due to her inability to resist them through weakness, fear, and confusion resulting from her diminished cognitive ability.

20. Contestants brought this contest in good faith and for just cause and request an award of expenses, including reasonable and necessary attorneys' fees pursuant to Sec. 352.052 (b) and (c) of the Texas Estate Code.

VIII.
BURDEN OF PROOF AND PRESUMPTION OF INVALIDITY

21. Under Texas law, the Proponent of the contested will which has not been admitted to probate has the burden of proof to establish the elements required for a valid will, **including testamentary capacity** of the Decedent at the time the will was executed.

22. Furthermore, because Applicant had a **fiduciary relationship** with the Decedent, the contested will is presumed invalid, and Applicant bears the burden to produce evidence showing an absence of undue influence.

IX. Application to Probate 1989 Will and for Issuance of Letters Testamentary

23. **Rickey Herman Koonsman** (“Second Applicant”) presently resides at 692 CR 2357, Meridian, Bosque County, Texas, 76665. The last three digits of his SSN are 162; and the last three digits of his TXDL are 934) Counterapplicant is the son of the Decedent and in accordance with Tex. Estates Code Sec. 256.052 makes this Application to Probate the 1989 Will.

24. **Ernestine P. Koonsman**, (“Decedent”) died on April 30, 2023 in McLennan County, Texas. The Decedent was domiciled and had a fixed place of residence in McLennan County, Texas, at the time of her death, but last resided in Bosque County when she had capacity, which gives this Court venue and jurisdiction. Decedent’s SS# and DL# were previously provided by Applicant Nina Diane Richter in her Application to Probate Will filed with the Court.

25. Four years have not elapsed since Decedent’s death and prior to this Application.

26. The Decedent left a valid written will (“1989 Will”), duly executed on December 1, 1989, copy of which is filed herewith¹, which appointed **Rickey Herman Koonsman** (“Counterapplicant) (as Independent Executor in the event that Durwood Koonsman was unable, failed, or refused to serve as Independent Executor. Because Durwood Koonsman was divorced from the Decedent prior to her death, Pursuant to Texas Estates Code §123.001, he is disqualified from serving as Independent Executor.

27. The 1989 Will was executed by Decedent with the formalities required by law, and when the Decedent was over eighteen years of age and of sound mind. The subscribing witnesses to the will were **Marsha J. Bloxon** and **Marie E. Delgado**, residents of Johnson County, Texas (“Witnesses”). The Decedent and the Witnesses executed a self-proving affidavit before a Notary Public in and for the State of Texas, **Connie Riley Teague**, on December 1, 1989.

¹ Second Applicant expects to file the original of the 1989 Will with the County Clerk shortly.

28. The 1989 Will provided that no other action in this Court shall be had in the settlement of the Estate other than the probating and recording of such Will and the return of an Inventory, Appraisalment, and List of Claims of the Estate.

29. The 1989 Will provided that no bond would be required.

30. No child or children were born to or adopted by Decedent after the making of the 1989 Will.

31. The marriage of Decedent to Durwood Koonsman, was dissolved, disqualifying him from receiving a bequest under the 1989 Will as a matter of law. He makes no claim against the Estate.

32. The 1989 Will did not name as a devisee a governmental agency the State of Texas, or a charitable organization.

33. The Applicant, Rickey Herman Koonsman is not disqualified from accepting Letters Testamentary.

34. At the time of the Decedent's Death, she was seized and possessed of real and/or personal property of the probable value in excess of \$1,000,000.

35. After a diligent search, Contestants believe that the 1989 will is the only original will in existence other than the May 20, 2020 will offered by Applicant, which Contestants believe to be invalid because of lack of testamentary capacity and/or undue influence, resultantly rendering it's "revocation clause" to be invalid.

36. A necessity exists for the administration of the Estate.

X.
ATTORNEY'S FEES

37. Contestants hired Moses, Palmer, & Howell, LLC to represent them in this matter, to contest the contested will, and to defend the last lawfully executed will, if one exists.

Contestants request that their reasonable and necessary attorney's fees and expenses incurred in this proceeding be paid by the Estate.

XI.
INTEREST

38. Contestants seek recovery of prejudgment and post-judgment interest at the highest rate allowed by law.

XII.
JURY DEMAND

39. Contestants respectfully request trial by jury.

XIII.
NOTICE OF INTENT TO USE DOCUMENTS PRODUCED IN DISCOVERY

40. Defendant hereby gives notice of intent to utilize all documents produced in discovery by Applicant at any pretrial proceeding or in the trial of this matter and the authenticity of such items is self-proven per the Texas Rules of Civil Procedure, 193.7.

XIV.
PRAAYER

WHEREFORE, PREMISES CONSIDERED, Contestants / Second Applicant pray that upon final hearing or trial, the Court grant all of the requested relief including, but not limited to:

- a. Setting aside the May 20, 2020 contested will and declaring it to be invalid and/or void;
- b. Admitting the 1989 Will to probate;
- c. Take no action in the settlement of said Estate other than the probating and recording of the 1989 Will, and return of inventory, Appraisement, and List of Claims of the Estate, or an Affidavit in Lieu of Inventory, Appraisement and List of Claims, as required by law;

- d. Issue Letters Testamentary to Rickey Herman Koonsman and Order that they be appointed Independent Executor without bond; and that no other action be taken;
- e. Alternatively, in the event that the Court finds that the Decedent died intestate, that the Court award $\frac{1}{4}$ of the estate to each Contestant according to Texas Estate Code Sec. 201.001(b);
- f. Awarding to Contestants / Second Applicant expenses, including reasonable and necessary attorney's fees pursuant to Sec. 352.052 (b) and (c) of the Texas Estate Code; and
- g. Granting such other and further relief to which Contestant may be entitled.

Respectfully submitted,

/s/ Clay Humphries

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ATTORNEYS FOR CONTESTANTS

