

IN THE COURT OF APPEALS OF TENNESSEE, MIDDLE SECTION  
AT NASHVILLE

2010 OCT 28 PM 2:25

APPELLATE COURT CLERK  
NASHVILLE

JOHN DANIEL TATE, )  
)  
Petitioner, )  
)  
v. ) Case No.: \_\_\_\_\_  
) related to  
) Case No.: M2010-01904-COA-R3-CV  
HONORABLE RANDY KENNEDY, )  
Seventh Circuit Court Judge for Davidson )  
County, Tennessee, ) Trial Court Case No. 07P-1654  
)  
)  
Respondent. )

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**AFFIDAVIT OF JOHN DANIEL TATE IN SUPPORT OF  
EMERGENCY PETITION FOR WRIT OF MANDAMUS**

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I, John Daniel Tate, after being duly sworn, depose and state as follows:

1. I am above the age of majority, competent to testify and have personal knowledge of the matters stated herein.

2. On November 2, 2007, while at home at my residence located in Nashville, Tennessee, I was served with a Petition to Appoint a Conservator by a gentleman by the name of Robert Stratton. During that visit, Mr. Stratton also informed me that the court had scheduled a hearing on the Petition for November 14, 2010. Mr. Stratton made no investigation into my personal or financial affairs. Mr. Stratton simply served me with the documents, read some document to me and left.

3. Prior to Mr. Stratton's visit, my older brother had attempted to exert full control over my assets by using a forged Durable Power of Attorney, in direct contravention to my wishes. Back in June of 2007, I had previously granted him this power of attorney to pay my bills while I was out of the country attending a drug and alcohol rehabilitation center. I had a

drug use issue at the time which I recognized and took full responsibility. However, I was never “disabled” or unable to manage my personal and financial affairs. When my brother, David Tate, filed the fraudulent Petition all my bills were current, I had not been arrested or admitted to any emergency room. However, upon my return I discovered that my brother had exceeded the intent of the power of attorney and opened up undisclosed accounts and was transferring all my funds from my checking and savings account into the undisclosed bank account.

4. I protested and verbally revoked the power of attorney and demanded that he relinquish control of my funds back to me but he refused. Instead, he used my money to hire attorney Paul T. Housch, for a retainer fee of \$25,000.00, to file a fraudulent Petition for Conservatorship against me. In their Petition, my brother intentionally exaggerated the extent of my drug use and my physical and mental condition, and painted me as a person completely out of control and on the verge of death. Those allegations were intentionally and knowingly false when made.

5. Despite the fact that my brother had betrayed my trust, and was now seeking to ruin my reputation and financial security, he did not have access to my Vanguard investment accounts, which at the time was worth approximately \$750,000.00. During this time, I had to access my Vanguard account to obtain funds because my brother had taken complete control of my checking and savings accounts.

6. After I was served with the Petition, I immediately attempted to withdraw funds from my Vanguard account to hire a lawyer to defend the Petition. However, when I contacted Vanguard I was told that my accounts had been frozen and I could not access my funds. I was told that Letters of Conservatorship were attached to my Vanguard accounts and that I no longer had any right to direct a distribution of my own money.

7. It was only later that I learned that Judge Randy Kennedy had appointed my brother, David Tate, Temporary Conservator over my person and property back on October 23, 2007, without any notice or service to me. I had no idea that such a thing could happen in America.

8. So there I was, without any access to my own funds to proffer a defense to the fraudulent Petition, I attempted to hire several lawyers but was unable to pay a retainer fee. So, I contact my neighbor Bert L. Denton, who happens to be an attorney and requested his assistance. Mr. Denton told me he would accompany me to the Nov. 14<sup>th</sup> hearing solely for the purpose of requesting a continuance and release of my funds so I could hire a lawyer of my own choosing. I did not have any money to pay Mr. Denton, and I did not know that I needed to hire a court reporter to attend the hearing. When I attended the Nov. 14<sup>th</sup> hearing I requested a reasonable continuance and release of my funds so I could hire a lawyer. Judge Kennedy summarily denied my request for a continuance or to release my funds and proceeded with a hearing against me.

9. Prior to the Nov. 14<sup>th</sup> hearing, I was not provided with a copy of Dr. Kenner's reports or the Guardian Ad Litem's report. It was a complete trial by surprise, without the assistance of counsel, without any advance notice of the evidence that would be offered against me and without having an opportunity to offer rebuttal witnesses. At the conclusion of the hearing, Judge Kennedy ordered his court officers to handcuff me and transport me to Vanderbilt Psychiatric Hospital.

10. It was not until May 24, 2010 that the court terminated the conservatorship. By that time, the court had allowed my brother to completely liquidate my Vangaurd accounts.

11. On Monday, October 4, 2010, I went to the circuit court clerk's office and asked how I could attain copies of the audio recordings from October 23, 2007 and November 14,

2007, hearings that would reflect the record from my conservatorship case. An employee there told me to go to the probate court clerk's office and make this request. I did and was told by an employee in the probate clerk's office that I needed to go to the 6th (sixth) floor to the Court Administrator's Office and ask for Sandy and that she would help me. I was puzzled by the fact the probate court clerk's employee whispered this information to me.

12. I did as they said and went to the Court Administrator's office and asked for Sandy. I informed Sandy of the audio recording I was trying to acquire. She told me to speak to Ted Wallace. Sandy told me where his office was and I went there. I told Ted Wallace that I was requesting copies of the audio recording of October 23, 2007, hearing and November 14, 2007. I explained that there was no transcript and that I had been instructed to request the audio recordings. Ted Wallace was very helpful and led me to believe it would be no problem, but that he needed the Case Number. I did not have it with me at the time, so he instructed me to call him with the Case Number.

13. On Tuesday, October 5, 2010, I called Ted Wallace and told him my Case Number, 07P-1654. Again, he led me to believe it would be no problem getting these recordings. On Wednesday, October 6, 2010, Mr. Wallace called me back and explained that there would be a charge of \$25/disc, requiring two discs for the two different hearings, equaling \$50.00. This conversation gave me the impression that he had already found the recordings and it was just a matter of transferring them to a disc. I agreed to pay the \$50.00 for the audio recordings of the two hearings and he told me he would call me when they were ready. I did not hear back from Mr. Wallace after that and began to wonder if I would actually get my copy of these two hearings. I had planned on making another trip to the court house to ask for my copies in person if I did not hear from Mr. Wallace.

14. Approximately one year prior to this, my attorney, Michael Hoskins, had told me of his efforts to attain the audio recordings of these two important hearings in my case. He explained that he had made a written request for these recordings and after three phone calls to Judge Kennedy's assistant, Kitty, he finally heard back from her saying she had told him "they don't exist." I remember being discouraged knowing this would create a great expense to my estate requiring discovery and depositions. It also was explained to me that the lack of a record of these hearings would make my appeal more challenging. It also complicated my T.R.A.P. 10 Appeal.

15. On the afternoon of Monday, October 19, 2010, I got an urgent message from my attorney, Michael Hoskins. I returned his call immediately and he explained that he had met with Ted Wallace while at the courthouse, and Mr. Wallace gave him the copy he had made for me of the October 23, 2007, ex parte hearing. Mr. Hoskins seemed very excited to have this recording and came to my house that evening for us to view it. As it turned out, it was an audio/video recording. Mr. Hoskins told me that Mr. Wallace had told him he would have the a/v recording of the November 14, 2007, hearing as soon as he could get it from Judge Kennedy's office.

16. On Friday, October 22, 2010, Mr. Hoskins called me to tell me that he had spoken to Mr. Wallace. He explained that Mr. Wallace informed him that Judge Kennedy's office told him the recording "didn't exist." I was disappointed. I called Mr. Wallace on the afternoon of Monday, October 25, 2010, and asked him myself if I would be able to get the audio/video recording for the November 14, 2007, hearing. Mr. Wallace was very nice, but seemed frustrated, and told me he had been told to tell me that I would have to call Kitty in Judge

Kennedy's office. He gave me the number I needed to call. I immediately called for Kitty in Judge Kennedy's office. I recorded the conversation and this is the transcript of that phone call:

Monday, October 25, 2010, at 4:02 p.m.

Kitty: "This is Kitty Lammers."

Danny Tate: "Hey, Kitty, this is, uh, Danny Tate".

Kitty: "Yes, sir."

Danny Tate: "How you doing?"

Kitty: "Good, how are you?"

Danny Tate: "I'm good. I talked to Ted over in the, uh, administrator's office and he told me to call you about getting a video recording of a particular court date."

Kitty: "Well, he did. He came here this morning and asked Judge Kennedy while he was standing here, but your request was denied."

Danny Tate: "Oh, was it?"

Kitty: "We don't have to provide those..."

Danny Tate: "Oh, I see..."

Kitty: "That's only for the judges to be able to look at the court hearings if we need to, but they're are not for public consumption."

Danny Tate: "I got ya. Alright, well thank you, Kitty."

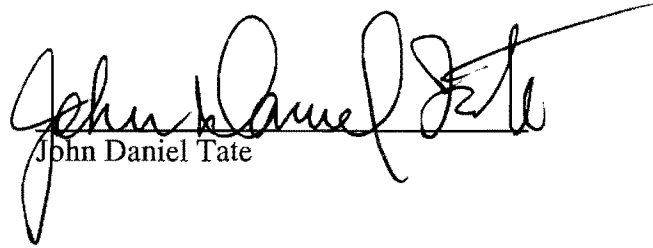
Kitty: "OK, take care."

Danny Tate: "Alright, bye-bye."

17. As a result of this conversation, I believed that there was, in fact, an audio/video recording of this Nov. 14<sup>th</sup> hearing, but that my request was denied.

18. Yesterday, October 27, 2010, I related this information to my attorney, Michael Hoskins. This Affidavit was given on the 28th day of October, 2010.

FURTHER AFFIANT SAYETH NOT

  
John Daniel Tate

**VERIFICATION**

Personally appeared before me, John Daniel Tate, the above named affiant, who, being sworn by me, states that the statements contained in the foregoing affidavit are true to the best of his knowledge, information and belief.

Sworn to and subscribed before me on this 28<sup>th</sup> day of October, 2010.

  
Notary Public

My commission Expires Jan. 21, 2013

