

FILED

**IN THE SEVENTH CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE  
AT NASHVILLE**

2010 DEC -7 PM 4:17

RICHARD R. ROOKER, CLERK

CRM D.C.

**IN RE: CONSERVATORSHIP OF JOHN** )  
**DANIEL TATE,** )  
**RESPONDENT-APPELLANT** )  
 )  
v. )  
 )  
**DAVID E. TATE,** )  
**PETITIONER-APPELLEE** )

**Case No. 07P-1654**

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**STATEMENT OF THE ISSUES PRESENTED ON APPEAL**

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Respondent-Appellant, John D. Tate (“Respondent”), pursuant to Tenn. R. App. P. 24(c), hereby gives notice of the issues he intends to present on appeal.<sup>1</sup>

1. Whether the entire proceeding is void for lack of jurisdiction, where the trial court proceeded without any summons having ever been issued by the trial court clerk and served on Respondent.
2. Whether the trial court denied Respondent due process of law when it transferred away Respondent’s civil and property rights during the October 23, 2007 *ex parte* hearing before Respondent had been served any notice of the proceeding.
3. Whether the trial court’s *ex parte* October 23, 2007 Order Appointing Temporary Conservator is void, and should be vacated, for lack of personal jurisdiction over Respondent.
4. Whether the trial court’s *ex parte* October 23, 2007 Order Appointing Temporary Conservator must be vacated as plain error where the hearings was held, and the order was entered, in direct contravention of the express statutory prohibitions stated at Tenn. Code Ann. §§ 34-1-108 (a)-(b), 34-3-106(4), and 34-1-126.
5. Whether the trial court’s *ex parte* October 23, 2007 Order Appointing Temporary Conservator must be vacated as fatally defective where it states that it was entered based on the “testimony of Petitioner in open court,” where the courtroom audio/video recording of the hearing, first released by the trial court on October 19, 2010, reveals that Petitioner was neither called as a witness nor sworn at the October 23, 2007 hearing.

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<sup>1</sup> The Statement of the Evidence was inadvertently mis-cited as filed pursuant to “Tenn. R. Civ. P. 24(c), and the Tennessee Court of Appeals November 22, 2010 Order” but is intended as filed pursuant to “Tenn. R. App. P. 24(c) and the Tennessee Court of Appeals November 2, 2010 Order.”

6. Whether the Temporary Letters of Conservatorship, entered on October 23, 2007, must be vacated as void for the reasons stated in issues 1-5.

7. Whether the trial court's "Order Directing Medical Examination," entered on October 23, 2007, must be vacated as fatally defective, facially invalid and in direct contravention to Tenn. R. Civ. P. 35.01, where it did not specify the time, place, manner, conditions and scope of the examination to which Respondent would be subjected.

8. Whether it was plain error for the trial court to appoint Petitioner's hand-picked expert witness, Dr. William Kenner, to examine Respondent instead of appointing of Respondent's own physician, Dr. Lucas Van Orden, as required by Tenn. Code Ann. 34-3-105(a).

9. Whether the trial court abused its discretion in denying Respondent's motion for a continuance made at the November 14, 2007 hearing.

10. Whether the November 14, 2007 Order Appointing [Temporary] Conservator, should be vacated where the trial court proceeded with the hearing in spite of the fact that Respondent (a) had not been previously served with a copy of the Physician's Report used against him, (b) has not been previously served with a copy of the Guardian Ad Litem's Report used against him, (c) was not allowed to conduct any discovery, (d) had no advance notice of the witnesses who would be testifying against him, (e) was not afforded sufficient time to prepare for trial, (f) was not afforded adequate time to present witnesses in his defense, and (g) was not afforded effective assistance of counsel.

11. Whether the trial court's November 14, 2007 Order Appointing [Temporary] Conservator must be vacated as fatally defective when it states that it was entered based on the "testimony of Petitioner in open court," where the courtroom audio/video recording of the hearing, first released by the trial court on November 4, 2010, reveals that Petitioner was neither called as a witness nor sworn at the November 14, 2007 hearing.

12. Whether the trial court's November 14, 2007 Order Appointing [Temporary] Conservator must be vacated as fatally defective where it states that it was entered based on the "testimony of the Guardian Ad Litem," when the courtroom audio/video recording of the hearing, first released by the trial court on November 4, 2010, reveals that Guardian Ad Litem was neither called as a witness nor sworn at the November 14, 2007 hearing.

13. Whether the trial court's November 14, 2007 Order Appointing [Temporary] Conservator must be vacated as fatally defective where it states the that "the Respondent is a 'disabled person' under T.C.A. § 34-1-101(7) and in need of the full supervision, protection and assistance of the court by reason of Respondent's mental illness," when the courtroom audio/video recording of the hearing, first released by the trial court on November 4, 2010, reveals that the evidence was grossly deficient and amounted to mere speculation.

14. Whether the trial court erred in entering its November 14, 2007 Order Appointing [Temporary] Conservator, when it categorically ignored its affirmative duty to investigate whether there were least restrictive alternatives as required by Tenn. Code Ann. § 34-1-127.

15. Whether the trial court's November 14, 2007 Order Appointing [Temporary] Conservator, must be vacated as fatally defective where it fails the state the legal standard for a finding of disability required Tenn. Code Ann. § 34-1-126 and when the courtroom audio/video recording of the hearing, first released by the trial court on November 4, 2010, reveals that the trial court made so specific ruling at the hearing.

16. Whether the November 14, 2007 Supplemental Order is void and/or violated due process where no Petition for Involuntary Commitment was ever filed and served on Respondent and Respondent had no notice that by attending the November 14, 2007 hearing he might be subject to immediate involuntary commitment.

17. Whether the November 14, 2007 Supplemental Order must be vacated as without judicial authority, where the trial court committed plain an palpable error when it involuntarily committed Respondent in direct contravention to the express statutory prohibitions stated at Tenn. Code Ann. §§ 33-6-502 and 33-6-503.

18. Whether on November 14, 2007, the trial court erred in admitting the Physician's Report of Dr. Kenner into evidence when it was untimely filed, in express contravention of its own order and failed to meet the statutory requirements provided at Tenn. Code Ann. § 34-3-105(c).

19. Whether the trial court erred when it entered its "Order," on December 13, 2007, denying Respondent's (first) Motion to Remove or Replace Temporary Conservator.

20. Whether the trial court erred when it entered its "Order," on January 17, 2008, denying Respondent's (second) Motion to Remove or Replace [Temporary] Conservator.

21. Whether the trial court erred when it entered its "Emergency Order," on January 17, 2008, when the trial court had no authority to order involuntary commitment based solely on the statements of Petitioner's counsel and unattested hearsay allegations of Petitioner.

22. Whether the trial court erred when it entered its "Order to Show Cause," on January 24, 2008, when the Petition for Contempt was unsupported by sworn affidavit(s), and it is complete nonsense for a court to hold one in contempt whom it has already been determined to be a fully disabled person.

23. Whether the trial court erred when it entered its "Order," on July 24, 2009, approving the Temporary Conservator's proposed plan of treatment.

24. Whether the trial court erred when it entered its "Order," on December 18, 2009, denying Respondent's Motion to Set Aside its October 23, 2007 Order Appointing Temporary Conservator.

25. Whether the trial court erred when it entered its "Order," on March 8, 2010, denying Respondent's Motion to Alter or Amend its December 18, 2009 Order.

26. Whether the trial court erred when it entered the Final Order (prepared by Petitioner's counsel), on June 7, 2010, in direct contradiction to its oral pronouncement of the termination of the Temporary Conservatorship at the May 24, 2010 final hearing.

27. Whether the trial court erred on June 11, 2010, when it denied Respondent's Motion to Charge Costs of the Proceeding to Petitioner and Motion for Discretionary Costs.

28. Whether the trial court erred on entering several "Orders" on June 18, 2010 which allowed the former Temporary Conservator to continue to disburse Respondent's assets and improperly charged additional fees and expenses to Respondent.

29. Whether the trial court abused its discretion when it entered an "Order," on September 7, 2010, denying Respondent's Motion for Relief from Judgment.

Respectfully submitted,



Michael G. Hoskins (BPR No. 024507)  
Law Office of Michael G. Hoskins, P.C.  
3200 West End Ave., Suite 500  
Nashville, TN 27203  
telephone: (615) 783-1757  
facsimile: (615) 866-5816  
email: [mgh@michaelghoskins.com](mailto:mgh@michaelghoskins.com)

*Attorney for Respondent, John Daniel Tate*

**CERTIFICATE OF SERVICE**

I hereby certify that on December 7, 2010, a true copy of the foregoing Statement of Issues Presented on Appeal has been served *via hand delivery* to the following:

Mr. Paul T. Housch, Esq.  
Attorney at Law  
Washington Square, Suite 310  
222 Second Avenue North  
Nashville, TN 37201

*Attorney for Temporary Conservator, David E. Tate*

  
Michael G. Hoskins