

“As Clerk of superior Court I make many judicial decisions on a daily basis. These decisions range from Estates, Incompetency, Foreclosures, Land Partitions, Names Changes, and many more. However, when naming a Guardian for a minor child who has no natural parents, it is a decision that significantly impacts an individual’s life forever. More important than decisions that involve money or property, making the decision of who will be the influencing foundation to develop a child’s inner core is the most important decision I will ever make as a judge.

As the presiding judge I was asked to make such a decision in the lives of two incredibly precious children who have had to deal with the deaths of both of their natural parents. To have peace with my decision, I removed the outside influencing factors and evaluated at the purity of what would be in the children’s best interest in a positive, loving and supportive environment, to develop and mature.

Jack & Sarah Corbett are citizens of Ireland. If the fact pattern were just the opposite, and they were United States citizens I would want to bring these children back to the U.S. where the extended family would be waiting to embrace them. The parents of Sarah and Jack I am almost certain would want their children to be raised in the land of their origin where the culture, religion, customs, and their extended family on both sides are prepared to nurture them in a manner that would be in the children’s best interest. The named Guardians can provide that so after much legal research, deliberation, thought and prayer these children will return to Ireland. “

Brian Shipwash

Davidson County Clerk of Superior Court

NORTH CAROLINA

DAVIDSON COUNTY

FILED

2015 AUG 17 P 4: 16

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
BEFORE THE CLERK
15 E 926

DAVIDSON CO., C.S.C.

IN THE MATTER OF
JACK MICHAEL CORBETT
(MINOR)

TEMPORARY ORDER

The Honorable Clerk of Davidson County Superior Court has determined it is in the best interests of the minor child to appoint applicants Tracey Lynch and David Lynch, paternal aunt and uncle, as guardians of the minor child. A formal order is being prepared for entry by the Clerk.

As a result of the ruling in this matter, the Clerk orders the Davidson County Department of Social Services to take possession of the minor child and deliver him to his guardians.

The Court orders that none of the attorneys involved in representing any of the applicants in this or any other legal proceeding or matter notify anyone of the Clerk's decision, other than the attorneys involved in this proceeding and their immediate and necessary office staff, until such time that the minor child is in the keeping of the Department of Social Services.

The Clerk orders all parties should appear at the District Court setting of the Chapter 50 matter on Thursday, August 20, 2015, and the guardians may not remove the minor child from the state of North Carolina or the United States of America prior to said setting.

Counsel of Molly Martens Corbett shall turn over the minor child's passport to the Clerk of Court's office today.

Local, state and/or federal law enforcement officers shall take whatever measures are reasonably necessary to effectuate this temporary order.

The appointed guardians, Tracey Lynch and David Lynch, shall deliver the minor child Davidson County Courthouse, Courtroom E, on August 18, 2015, at 2:00 p.m. so that applicant Molly Corbett can have an opportunity to be with the minor child for one hour. It is contemplated that immediate family members of Ms. Corbett may attend as well. Davidson County DSS will facilitate.

This 17th day of August 2015.

THE HONORABLE BRIAN SHIPWASH

NORTH CAROLINA)
)
DAVIDSON COUNTY)

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
BEFORE THE CLERK
15 E 927

IN THE MATTER OF
SARAH ALMA CORBETT
(MINOR)

FILED
AUG 14 2015
CLERK OF SUPERIOR COURT
DAVIDSON COUNTY, N.C.

ORDER

THIS MATTER coming on to be heard and being heard before The Honorable Clerk of Superior Court of Davidson County, North Carolina, on August 14, 2015, upon application for guardianship appointment for the minor child SARAH ALMA CORBETT, born September 2, 2006 under N.C.G.S. §35A-1201 *et seq.*;

AND IT APPEARING TO THE COURT that the Court has jurisdiction over the parties hereto, of the subject matter herein, and that the venue is proper as the decedent and beneficiaries were residents of Davidson County, North Carolina, at the time of the decedent's demise.

AND IT FURTHER APPEARING TO THE COURT that the parties presented evidence and witnesses before the court. With no remaining witnesses or evidence on the matter, the court ordered that a Guardian Ad Litem be appointed for the child. The Court, after review of the testimony, evidence presented and relative case law decided that a Guardian Ad litem was not necessary for the Court to determine the best interest of the child. No closing arguments were heard and the Court entered a Temporary Order on August 17, 2015 appointing David Lynch and Tracey Lynch as Guardians and directing the Davidson County Department of Social Services to pick up the minor child and deliver her to her appointed guardians David and Tracey Lynch, immediately and while a formal order was being prepared which fully addresses all matters decided by the Honorable Clerk of Court. This is that formal order.

After considering the testimony offered, the evidence presented, and the applicable North Carolina General Statutes and secondary sources of case law on the subject, the Court makes the following:

FINDINGS OF FACT

1. The present proceeding was initiated by Molly Paige Corbett on August 4, 2015, for appointment of guardian of the person of minor SARAH ALMA CORBETT, born 9/2/06.
2. A second application for appointment of guardian of the person of minor SARAH ALMA CORBETT, born 9/2/06, was received by the Court on August 7, 2015, from TRACEY LYNCH and DAVID LYNCH, paternal aunt and uncle.
3. The matter was brought before the Court for hearing on August 14, 2015, before the Honorable Clerk of Superior Court. Both applicants were before the Court and given an opportunity to testify and present evidence and information to the Court.
4. The decedent Jason Paul Corbett (hereinafter referred to as the “decedent”) was a citizen of Ireland.
5. The minor child SARAH ALMA CORBETT is also a citizen of Ireland (hereinafter referred to as the “minor child”).
6. The minor child’s mother, Margaret Fitzpatrick Corbett, also a citizen of Ireland, died on November 21, 2006.
7. On April 11, 2007, the decedent prepared a will and executed same in the presence of two witnesses, naming his sister Tracey Lynch and her husband David Lynch as Testamentary Guardians for the minor child should the decedent die while the minor child was still a minor. Tracey Lynch and David Lynch are citizens of Ireland.
8. The paternal and maternal relatives of the minor child are Irish citizens and predominantly live in County Limerick, Ireland.
9. The named God Parent of the minor child, Lynn Shanahan, resides in County Limerick, Ireland.
10. Upon the passing of the minor child’s mother in 2006, the decedent established a practice of utilizing au pairs to assist in the day-to-day care of managing the house and assisting with the minor child at his home in Ireland.
11. In April of 2008, Molly Martens Corbett (hereinafter referred to as “Molly Corbett”) arrived in Ireland to act as an au pair for the decedent’s family.

12. Molly Corbett was the fourth au pair utilized for the minor child's care since the death of the minor child's biological mother.

13. At some point between 2008 and 2011, the decedent and Molly Corbett became intimately involved and her role in the relationship changed from au pair to girlfriend.

14. In April of 2011, the decedent moved his family along with Molly Corbett to the United States of America.

15. In June of 2011, the decedent and Molly Corbett were married.

16. Molly Corbett, as the step-mother of the minor child, acted as the mother figure in the household and has been very active in the minor child's life both with school and extracurricular activities, and the child referred to her as mother or mom.

17. In June/July of 2013, Molly Corbett confided to a family friend, Lynn Shanahan, that Molly Corbett had sought legal advice regarding custody of the minor child in case of divorce.

18. On March 31, 2014, the decedent obtained on behalf of the minor child Sarah Corbett a permanent resident green card under the E10 status as a Child of a priority worker classified as E11, E16, E12, E17, E13, or E18.

19. On March 31, 2014, the decedent obtained a permanent resident green card under the E18 status as Priority worker – certain multinational executive or manager.

20. The Corbett family has travelled back and forth to Ireland for extended visits and vacations as well as hosted the family from Ireland for the same in the United States of America consistently since the move from Ireland.

21. There were regular and consistent communications between the families in Ireland and the Corbetts in the United States of America.

22. In the fall of 2014, Molly Corbett spoke to an attorney about her rights to the children.

23. On August 2, 2015, the decedent died and a criminal investigation is incomplete and ongoing.

24. On August 13, 2015, the decedent's last will and testament was presented to and reviewed by the Court.

25. On August 13, 2015, the Will of Jason Corbett dated April 11, 2007, was probated.

26. In the Will of Jason Corbett dated April 11, 2007, the decedent named David Lynch (the decedent's brother-in-law) and Lynn Shanahan as Executors and Trustees for the testamentary trust established by the will.

27. In the Will of Jason Corbett dated April 11, 2007, the decedent appointed David Lynch and his wife Tracey Lynch (the decedent's sister) to be the Guardians of the decedent's children.

28. The decedent would not consent to a step-parent adoption even though Molly Corbett expressed a desire to adopt the child. A step-parent adoption under N.C.G.S §48-4-101 would have required decedent's consent while he was living and competent.

29. Under NCGS 35A-1225, parents are presumed to know the best interest of their minor children, and a testamentary recommendation of guardian shall be a strong guide for the clerk in appointing a guardian unless the clerk finds that a different appointment is in the minor's best interest.

30. David and Tracey Lynch, have maintained an ongoing relationship with the minor child and have a suitable home and familial support to give the minor child a nurturing environment to deal with the deaths of both of their parents and maintain the Irish culture and heritage in a manner consistent with their natural parent's.

31. The proposed Testamentary Guardians have already arranged schooling and counseling for the minor child in anticipation of her return to Ireland.

32. The Court finds that appointing applicant Molly Corbett instead of applicants Tracey and David Lynch would not be in the minor child Sarah's best interests in light of all facts and circumstances.

33. The minor child has no natural guardian under NCGS §35A-1201.

34. This Court has original jurisdiction under NCGS §35A-1203 to appoint a guardian for the minor child because she has no natural guardian.

35. Based upon all the facts, evidence, governing statutes and surrounding case law, including but not limited to the testamentary wishes of the decedent, the Court finds appointing the named Guardians, David and Tracey Lynch, as the Guardian of the minor child Sarah will be in the minor child's best interest.

36. The Court finds that guardianship of the person means a guardian appointed solely for the purpose of performing duties relating to the care, custody and control of the minor child, and not appointed for the purpose of managing the property, estate, and business affairs of the ward.

37. Pursuant to NCGS §35A-1203 and NCGS §35A-1207 it is proper for the Clerk to retain jurisdiction following the appointment of the guardians herein in order to ensure compliance with the clerk's order and the orders of the Superior Court, and may consider any matter pertaining to the guardianship including motions in the cause.

Based on the above Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

1. The minor child's welfare is paramount in the decision as to who will serve as her guardian until the minor child reaches the age of majority.

2. Pursuant to NCGS §35A-1201(6), "Minors, because they are legally incompetent to transact business or give consent for most purposes, need responsible, accountable adults to handle property or benefits to which they are entitled. Parents are the natural guardians of the persons of their minor children, but unemancipated minors, when they do not have natural guardians, need some other responsible accountable adult to be responsible for their personal welfare and for personal decision-making on their behalf...when they do not have natural guardians, need some other responsible accountable adult to be responsible for their personal welfare and for personal decision making on their behalf."

3. Pursuant to NCGS §35A-1203, "The clerk has original jurisdiction to appoint guardians of the estate for minors, to appoint guardians of the person or general guardians for minors who have no natural guardian and of related proceedings."

4. Pursuant to N.C. Gen. Stat. § 35A-1225, "Parents are presumed to know the best interest of their children. Any parent may be last will and testament recommend a guardian for any of his or her minor children, whether born or en ventre sa mere, for such time as the child remains under 18 years of age, unmarried, and unemancipated, or for any less time. Such will may be made without regard to whether the testator is an adult or a minor. If both parents make

such recommendations, the will with the latest dater shall, in the absence of other relevant factors, prevail. In the absence of a surviving parent such recommendation shall be a strong guide for the clerk in appointing a guardian but the clerk is not bound by the recommendation if the clerk finds that a different appointment is in the minor's best interest...."

5. The Court concludes that appointing the named Guardians, David and Tracy Lynch, as guardian of the minor child Sarah will be in the minor child's best interests.

6. The Court concludes that appointing applicant Molly Corbett instead of applicants Tracey and David Lynch would not be in the minor child Sarah's best interests in light of all facts, evidence, and relevant statutory authority.

7. The Court would appoint David and Tracy Lynch even in absence of the testamentary declaration by the decedent.

8. The Appointment of Guardianship should be enforced by this court.

9. Chapter 35A, Article 8 sets out the Powers and Duties of Guardian of the Person, including general guardians exercising authority as guardian of the person. Pursuant to the N.C.G.S. § 35A-1241, which is within Article 8, the guardian of the minor is entitled to custody of that minor. The very nature of the guardianship, and the relation of guardian and ward, gives to the guardian this right.

10. Pursuant to NCGS §35A-1203 and NCGS §35A-1207 it is proper for the Clerk to retain jurisdiction following the appointment of the guardians herein in order to ensure compliance with the clerk's order and the orders of the Superior Court, and may consider any matter pertaining to the guardianship including motions in the cause.

NOW, THEREFORE, based on the Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. That applicants Tracey Lynch and David Lynch, paternal aunt and uncle of the minor child SARAH ALMA CORBETT, born 9/2/06, are hereby appointed guardian of the person of SARAH ALMA CORBETT, born 9/2/06.

2. That the Application for Guardianship after consideration of all evidence including the testamentary recommendation be accepted and Letters of General Guardianship be issued to David and Tracey Lynch pursuant to N.C. Gen. Stat. § 35A-1206 immediately to serve without bond.

3. That the Davidson County Department of Social Services (DSS) take control of the minor child and that the minor child be placed in to the Testamentary Guardians' sole custody, care and control. This was done by way of the aforementioned Temporary Order entered on August 17, 2015.

4. That Molly Corbett is to assist in the exchange by presenting to DSS the children's clothing, personal property, and passport/green cards.

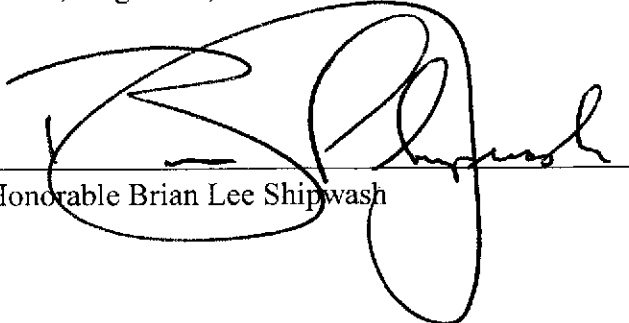
5. That any law enforcement having jurisdiction in the domicile of the minor child are ordered to assist DSS in gaining custody of the child if requested.

6. That, due to the Court's concern of the reaction of parties the Court orders that this decision and order is to remain sealed, and only made public once the children are in the custody of DSS. This occurred on August 17, 2015.

7. That this Court retains jurisdiction to ensure compliance with the clerk's order and the orders of the Superior Court, and may consider any matter pertaining to the guardianship including motions in the cause.

8. That all parties should appear at the District Court setting of the Chapter 50 matter on Thursday, August 20, 2015, and the guardians may not remove the minor child from the State of North Carolina or the United States of American prior to said setting. Should the Chapter 50 matter be dismissed the court directs the passports be turned over to the legal Guardians the Minor

This 18th day of August 2015, *nunc pro tunc*, August 17, 2015.


The Honorable Brian Lee Shipwash

NORTH CAROLINA)
)
DAVIDSON COUNTY)

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
BEFORE THE CLERK
15 E 926

IN RE: JACK MICHAEL CORBETT,)
 a Minor.)

NORTH CAROLINA)
)
DAVIDSON COUNTY)

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
BEFORE THE CLERK
15 E 927

IN RE: SARAH ALMA CORBETT,)
 a Minor.)

**MOTION FOR RECONSIDERATION
AND MOTION FOR STAY**

NOW COMES Applicant Molly Corbett, by and through counsel, and moves the Honorable Clerk of Davidson County Superior Court as follows:

1. As a result of statements made by Tracey Lynch and David Lynch contending that they were the guardians of Sarah and Jack, Molly Corbett filed an Application for Appointment of Guardian of the Person of Sarah and Jack on or about August 4, 2015.

2. Based on the statements made by Tracey Lynch to the minor child, Jack, in a telephone conversation that she was flying to the United States to remove Jack and his sister, Applicant Molly Corbett filed a Complaint for custody and an emergency order in the District Court of Davidson County at 9:51 a.m. on August 5. Shortly after, Applicant Molly Corbett learned that Tracey Lynch departed Ireland and was in fact headed to the United States in furtherance of her stated intent to remove the children from the State of North Carolina and the United States of America.

3. On August 5, 2015, the District Court of Davidson County entered an Ex Parte Order placing temporary exclusive care, custody and control of Jack and Sarah with Plaintiff Molly Corbett "pending further Orders of the Court and the full hearing on the merits in the above-entitled action." The Court further ordered that pending "a full hearing on the merits" in the custody action, Defendant and any other person acting on behalf of Defendant was restrained

from removing the minor children “from the custody of the Plaintiff and from the State of North Carolina and the United States of America, or the jurisdiction of this Court.”

4. On or about August 7, 2015, Tracey Lynch and her husband David Lynch filed an Application for Appointment of Guardian of the Person of Sarah and Jack Corbett before the Clerk.

5. On or about August 7 and August 10, the Honorable Clerk of Superior Court ordered the applicants to appear before him on Friday, August 14.

6. On August 12, 2015, Defendant Tracey Lynch filed a Notice of Appearance, Motion, and an Answer and Counterclaim for custody.

7. On August 14, the applicants appeared before the Honorable Clerk of Superior Court. At that time, attorney for Applicant Molly Corbett moved the Court for the appointment of a guardian ad litem and also to close hearings on the guardianship matter. The attorney for the Department of Social Services was present and, based on information and belief, concurred in the motion for appointment of a guardian ad litem. Based upon information and belief, counsel for Applicants Tracey Lynch and David Lynch did not oppose the motion for appointment of guardian ad litem and requested that a guardian ad litem be appointed for each minor child.

8. On the afternoon of Friday, August 14, at the conclusion of taking testimony from fact witnesses, the Honorable Clerk announced the identity of the guardian ad litem, coordinated with counsel on the logistics of his interview with the minor children to include participation by counsel for the applicants in an adjoining room by video camera and request for potential questions to ask the minor children. The Honorable Clerk further announced a request that counsel for the applicants conduct research on the weight given to testimony or declarations regarding guardianship under these circumstances, and discussed with counsel the opportunity to make closing arguments.

9. On Monday, the morning of August 17, the Honorable Clerk informed counsel for both applicants that he had reconsidered the motion for appointment of a guardian ad litem and arranged a telephone conference at 11:45 a.m. At that telephone conference, the Honorable Clerk forwarded a draft order concluding that Applicants Tracey Lynch and David Lynch should be the guardians of the minor children without further proceeding.

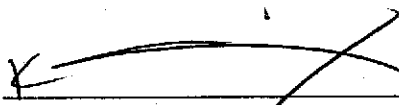
10. Despite the request from counsel for Applicants Tracey Lynch and David Lynch, the Honorable Clerk declined to insert in his temporary order certain language that Applicants Tracey Lynch and David Lynch were given custody and control of the minor children, and further ordered that “the guardians may not remove the minor child from the State of North Carolina and the United States of America prior to further proceedings before the District Court.”

11. Based on information and belief, counsel for Applicants Tracey Lynch and David Lynch contend that the appointment of her clients as guardians is a determination that Tracey Lynch and David Lynch have been awarded full custody.

WHEREAS, counsel for Applicant Molly Corbett contends that jurisdiction for determination of disputed custody remains in the exclusive jurisdiction of the District Court division.

THEREFORE, counsel for Applicant Molly Corbett requests the Honorable Clerk of Davidson County Superior Court to clearly state in any permanent order that his determination was meant solely for the purpose of legal guardianship and did not determine who should have custody of the minor children. If the Honorable Clerk contends that his determination of guardianship also resolves the issue of disputed custody that is filed in the District Court matter, Applicant Molly Corbett would ask the Clerk to reconsider the Temporary Order to include, but not limited to, reappointment of the guardian ad litem, appointment of a custodial evaluation by a licensed psychologist to include consultation with a specialist in the field of attachment disorders to fully evaluate the effect of abruptly removing minor children from the mother who they have known for the past seven years, interviews with the minor children who turn eleven and nine in a few short weeks, and the presentation of legal research. In the alternative, Applicant Molly Corbett respectfully requests that the Clerk stay its Temporary Order pending coordination between the office of the Honorable Clerk of Superior Court and the District Court Judge of Davidson County to ensure that the basic application of procedural effect occurs and custodial determination is not made without a full hearing as envisioned by the District Court of Davidson County.

RESPECTFULLY SUBMITTED this the 18th day of August, 2015.



C. Ray Grantham Jr., Bar No. 15879
Kelley L. Gondring, Bar No. 39702
Attorneys for Applicant Molly Corbett

OF COUNSEL:

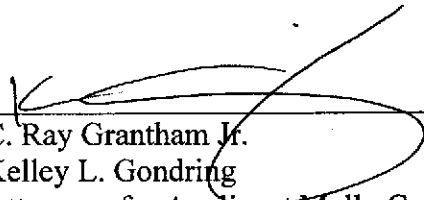
ROBINSON & LAWING, L.L.P.
101 N. Cherry Street, Suite 720
Winston-Salem, NC 27101
(336) 631-8500
Fax (336) 631-6999

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date I served the **MOTION FOR RECONSIDERATION AND MOTION FOR STAY** upon counsel of record for Tracey Lynch by fax and by depositing a copy thereof in the U.S. mail, postage prepaid, addressed as follows:

Kim Bonuomo, Esq.
Allman, Spry, Davis, Leggett & Crumpler, P.A.
380 Knollwood Street, Suite 700
Winston-Salem, NC 27103
(Fax 336-722-2382)

This the 18th day of August, 2015.



C. Ray Grantham Jr.
Kelley L. Gondring
Attorneys for Applicant Molly Corbett

OF COUNSEL:

ROBINSON & LAWING, L.L.P.
101 N. Cherry Street, Suite 720
Winston-Salem, NC 27101
Telephone: (336) 631-8500
Fax: (336) 631-6999

NORTH CAROLINA)
)
DAVIDSON COUNTY)

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
BEFORE THE CLERK

15 E 927 + 15 E-926

IN THE MATTER OF
SARAH ALMA CORBETT
(MINOR) +

JACK Michael Corbett

**ORDER DENYING APPLICANT
MOLLY CORBETT'S MOTION
FOR RECONSIDERATION
AND MOTION FOR STAY**

THIS MATTER coming before the Honorable Clerk of Superior Court of Davidson County, North Carolina, upon Applicant Molly Corbett's Motion for Reconsideration and Motion for Stay;

Bruce Scott

AND IT APPEARING TO THE COURT that Applicant Molly Corbett was represented by ~~C. Ray Grantham Jr.~~ and Kelley L. Gondring, of the law firm Robinson & Lawing, L.L.P., in Winston-Salem, North Carolina, and that Applicants David and Tracey Lynch, the Legal Guardians of SARAH ALMA CORBETT, born September 2, 2006, were represented by Kim Bonuomo, of the law firm Allman Spry Davis Leggett & Crumpler, P.A., in Winston-Salem, North Carolina;

AND IT FURTHER APPEARING TO THE COURT that upon consideration of the pleadings and arguments of counsel, IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Applicant Molly Corbett's Motion for Reconsideration and Motion for Stay be and is hereby denied.

This 18th day of August 2015.

THE HONORABLE BRIAN SHIPWASH

NORTH CAROLINA)
)
DAVIDSON COUNTY)

IN THE GENERAL COURT OF JUSTICE
FILED SUPERIOR COURT DIVISION
BEFORE THE CLERK

2015 AUG 17 P 4:17 15 E 927

DAVIDSON COUNTY, N.C.

IN THE MATTER OF
SARAH ALMA CORBETT
(MINOR)

TEMPORARY ORDER

The Honorable Clerk of Davidson County Superior Court has determined it is in the best interests of the minor child to appoint applicants Tracey Lynch and David Lynch, paternal aunt and uncle, as guardians of the minor child. A formal order is being prepared for entry by the Clerk.

As a result of the ruling in this matter, the Clerk orders the Davidson County Department of Social Services to take possession of the minor child and deliver her to his guardians.

The Court orders that none of the attorneys involved in representing any of the applicants in this or any other legal proceeding or matter notify anyone of the Clerk's decision, other than the attorneys involved in this proceeding and their immediate and necessary office staff, until such time that the minor child is in the keeping of the Department of Social Services.

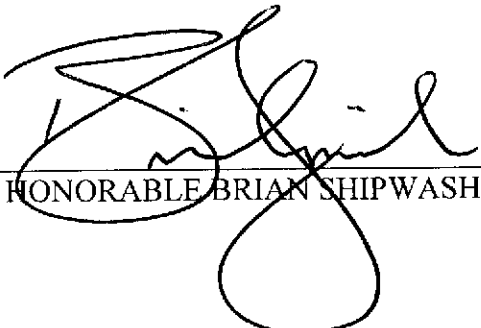
The Clerk orders all parties should appear at the District Court setting of the Chapter 50 matter on Thursday, August 20, 2015, and the guardians may not remove the minor child from the state of North Carolina or the United States of America prior to said setting.

Counsel of Molly Martens Corbett shall turn over the minor child's passport to the Clerk of Court's office today.

Local, state and/or federal law enforcement officers shall take whatever measures are reasonably necessary to effectuate this temporary order.

The appointed guardians, Tracey Lynch and David Lynch, shall deliver the minor child to Davidson County Courthouse, Courtroom E, on August 18, 2015, at 2:00 p.m. so that applicant Molly Corbett can have an opportunity to be with the minor child for one hour. It is contemplated that immediate family members of Ms. Corbett may attend as well. Davidson County DSS will facilitate.

This 17th day of August 2015.


THE HONORABLE BRIAN SHIPWASH

NORTH CAROLINA)
)
DAVIDSON COUNTY)

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
BEFORE THE CLERK
15 E 926

FILED
2015 AUG 19 P 5:13
DAVIDSON CO., C.S.C.
BY KC

IN THE MATTER OF
JACK MICHAEL CORBETT
(MINOR)

ORDER

THIS MATTER coming on to be heard and being heard before The Honorable Clerk of Superior Court of Davidson County, North Carolina, on August 14, 2015, upon application for guardianship appointment for the minor child JACK MICHAEL CORBETT, born September 18, 2004 under N.C.G.S. §35A-1201 *et seq.*;

AND IT APPEARING TO THE COURT that the Court has jurisdiction over the parties hereto, of the subject matter herein, and that the venue is proper as the decedent and beneficiaries were residents of Davidson County, North Carolina, at the time of the decedent's demise.

AND IT FURTHER APPEARING TO THE COURT that the parties presented evidence and witnesses before the court. With no remaining witnesses or evidence on the matter, the court ordered that a Guardian Ad Litem be appointed for the child. The Court, after review of the testimony, evidence presented and relative case law decided that a Guardian Ad litem was not necessary for the Court to determine the best interest of the child. No closing arguments were heard and the Court entered a Temporary Order on August 17, 2015 appointing David Lynch and Tracey Lynch as Guardians and directing the Davidson County Department of Social Services to pick up the minor child and deliver her to her appointed guardians David and Tracey Lynch, immediately and while a formal order was being prepared which fully addresses all matters decided by the Honorable Clerk of Court. This is that formal order.

After considering the testimony offered, the evidence presented, and the applicable North Carolina General Statutes and secondary sources of case law on the subject, the Court makes the following:

FINDINGS OF FACT

1. The present proceeding was initiated by Molly Paige Corbett on August 4, 2015, for appointment of guardian of the person of minor JACK MICHAEL CORBETT, born 9/18/04.

2. A second application for appointment of guardian of the person of JACK MICHAEL CORBETT, born 9/18/04, was received by the Court on August 7, 2015, from TRACEY LYNCH and DAVID LYNCH, paternal aunt and uncle.

3. The matter was brought before the Court for hearing on August 14, 2015, before the Honorable Clerk of Superior Court. Both applicants were before the Court and given an opportunity to testify and present evidence and information to the Court.

4. The decedent Jason Paul Corbett (hereinafter referred to as the “decedent”) was a citizen of Ireland.

5. The minor child JACK MICHAEL CORBETT, also a citizen of Ireland (hereinafter referred to as the “minor child”).

6. The minor child’s mother, Margaret Fitzpatrick Corbett, also a citizen of Ireland, died on November 21, 2006.

7. On April 11, 2007, the decedent prepared a will and executed same in the presence of two witnesses, naming his sister Tracey Lynch and her husband David Lynch as Testamentary Guardians for the minor child should the decedent die while the minor child was still a minor. Tracey Lynch and David Lynch are citizens of Ireland.

8. The paternal and maternal relatives of the minor child are Irish citizens and predominantly live in County Limerick, Ireland.

9. The named God Parent of the minor child, Lynn Shanahan, resides in County Limerick, Ireland.

10. Upon the passing of the minor child’s mother in 2006, the decedent established a practice of utilizing au pairs to assist in the day-to-day care of managing the house and assisting with the minor child at his home in Ireland.

11. In April of 2008, Molly Martens Corbett (hereinafter referred to as “Molly Corbett”) arrived in Ireland to act as an au pair for the decedent’s family.

12. Molly Corbett was the fourth au pair utilized for the minor child's care since the death of the minor child's biological mother.

13. At some point between 2008 and 2011, the decedent and Molly Corbett became intimately involved and her role in the relationship changed from au pair to girlfriend.

14. In April of 2011, the decedent moved his family along with Molly Corbett to the United States of America.

15. In June of 2011, the decedent and Molly Corbett were married.

16. Molly Corbett, as the step-mother of the minor child, acted as the mother figure in the household and has been very active in the minor child's life both with school and extracurricular activities, and the child referred to her as mother or mom.

17. In June/July of 2013, Molly Corbett confided to a family friend, Lynn Shanahan, that Molly Corbett had sought legal advice regarding custody of the minor child in case of divorce.

18. On March 31, 2014, the decedent obtained on behalf of the minor child Sarah Corbett a permanent resident green card under the E10 status as a Child of a priority worker classified as E11, E16, E12, E17, E13, or E18.

19. On March 31, 2014, the decedent obtained a permanent resident green card under the E18 status as Priority worker – certain multinational executive or manager.

20. The Corbett family has travelled back and forth to Ireland for extended visits and vacations as well as hosted the family from Ireland for the same in the United States of America consistently since the move from Ireland.

21. There were regular and consistent communications between the families in Ireland and the Corbetts in the United States of America.

22. In the fall of 2014, Molly Corbett spoke to an attorney about her rights to the children.

23. On August 2, 2015, the decedent died and a criminal investigation is incomplete and ongoing.

24. On August 13, 2015, the decedent's last will and testament was presented to and reviewed by the Court.

25. On August 13, 2015, the Will of Jason Corbett dated April 11, 2007, was probated.

26. In the Will of Jason Corbett dated April 11, 2007, the decedent named David Lynch (the decedent's brother-in-law) and Lynn Shanahan as Executors and Trustees for the testamentary trust established by the will.

27. In the Will of Jason Corbett dated April 11, 2007, the decedent appointed David Lynch and his wife Tracey Lynch (the decedent's sister) to be the Guardians of the decedent's children.

28. The decedent would not consent to a step-parent adoption even though Molly Corbett expressed a desire to adopt the child. A step-parent adoption under N.C.G.S §48-4-101 would have required decedent's consent while he was living and competent.

29. Under NCGS 35A-1225, parents are presumed to know the best interest of their minor children, and a testamentary recommendation of guardian shall be a strong guide for the clerk in appointing a guardian unless the clerk finds that a different appointment is in the minor's best interest.

30. David and Tracey Lynch, have maintained an ongoing relationship with the minor child and have a suitable home and familial support to give the minor child a nurturing environment to deal with the deaths of both of their parents and maintain the Irish culture and heritage in a manner consistent with their natural parent's.

31. The proposed Testamentary Guardians have already arranged schooling and counseling for the minor child in anticipation of her return to Ireland.

32. The Court finds that appointing applicant Molly Corbett instead of applicants Tracey and David Lynch would not be in the minor child Sarah's best interests in light of all facts and circumstances.

33. The minor child has no natural guardian under NCGS §35A-1201.

34. This Court has original jurisdiction under NCGS §35A-1203 to appoint a guardian for the minor child because she has no natural guardian.

35. Based upon all the facts, evidence, governing statutes and surrounding case law, including but not limited to the testamentary wishes of the decedent, the Court finds appointing the named Guardians, David and Tracey Lynch, as the Guardian of the minor child Sarah will be in the minor child's best interest.

36. The Court finds that guardianship of the person means a guardian appointed solely for the purpose of performing duties relating to the care, custody and control of the minor child, and not appointed for the purpose of managing the property, estate, and business affairs of the ward.

37. Pursuant to NCGS §35A-1203 and NCGS §35A-1207 it is proper for the Clerk to retain jurisdiction following the appointment of the guardians herein in order to ensure compliance with the clerk's order and the orders of the Superior Court, and may consider any matter pertaining to the guardianship including motions in the cause.

Based on the above Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

1. The minor child's welfare is paramount in the decision as to who will serve as her guardian until the minor child reaches the age of majority.

2. Pursuant to NCGS §35A-1201(6), "Minors, because they are legally incompetent to transact business or give consent for most purposes, need responsible, accountable adults to handle property or benefits to which they are entitled. Parents are the natural guardians of the persons of their minor children, but unemancipated minors, when they do not have natural guardians, need some other responsible accountable adult to be responsible for their personal welfare and for personal decision-making on their behalf...when they do not have natural guardians, need some other responsible accountable adult to be responsible for their personal welfare and for personal decision making on their behalf."

3. Pursuant to NCGS §35A-1203, "The clerk has original jurisdiction to appoint guardians of the estate for minors, to appoint guardians of the person or general guardians for minors who have no natural guardian and of related proceedings."

4. Pursuant to N.C. Gen. Stat. § 35A-1225, "Parents are presumed to know the best interest of their children. Any parent may be last will and testament recommend a guardian for any of his or her minor children, whether born or en ventre sa mere, for such time as the child remains under 18 years of age, unmarried, and unemancipated, or for any less time. Such will may be made without regard to whether the testator is an adult or a minor. If both parents make

such recommendations, the will with the latest dater shall, in the absence of other relevant factors, prevail. In the absence of a surviving parent such recommendation shall be a strong guide for the clerk in appointing a guardian but the clerk is not bound by the recommendation if the clerk finds that a different appointment is in the minor's best interest...."

5. The Court concludes that appointing the named Guardians, David and Tracy Lynch, as guardian of the minor child JACK MICHAEL CORBETT, will be in the minor child's best interests.

6. The Court concludes that appointing applicant Molly Corbett instead of applicants Tracey and David Lynch would not be in the minor child JACK MICHAEL CORBETT, best interests in light of all facts, evidence, and relevant statutory authority.

7. The Court would appoint David and Tracy Lynch even in absence of the testamentary declaration by the decedent.

8. The Appointment of Guardianship should be enforced by this court.

9. Chapter 35A, Article 8 sets out the Powers and Duties of Guardian of the Person, including general guardians exercising authority as guardian of the person. Pursuant to the N.C.G.S. § 35A-1241, which is within Article 8, the guardian of the minor is entitled to custody of that minor. The very nature of the guardianship, and the relation of guardian and ward, gives to the guardian this right.

10. Pursuant to NCGS §35A-1203 and NCGS §35A-1207 it is proper for the Clerk to retain jurisdiction following the appointment of the guardians herein in order to ensure compliance with the clerk's order and the orders of the Superior Court, and may consider any matter pertaining to the guardianship including motions in the cause.

NOW, THEREFORE, based on the Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. That applicants Tracey Lynch and David Lynch, paternal aunt and uncle of the minor child JACK MICHAEL CORBETT, born 9/18/04, are hereby appointed guardian of the person of JACK MICHAEL CORBETT, born 9/18/04.

2. That the Application for Guardianship after consideration of all evidence including the testamentary recommendation be accepted and Letters of General Guardianship be issued to David and Tracey Lynch pursuant to N.C. Gen. Stat. § 35A-1206 immediately to serve without bond.

3. That the Davidson County Department of Social Services (DSS) take control of the minor child and that the minor child be placed in to the Testamentary Guardians' sole custody, care and control. This was done by way of the aforementioned Temporary Order entered on August 17, 2015.

4. That Molly Corbett is to assist in the exchange by presenting to DSS the children's clothing, personal property, and passport/green cards.

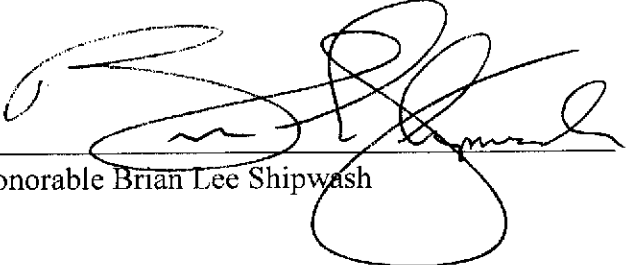
5. That any law enforcement having jurisdiction in the domicile of the minor child are ordered to assist DSS in gaining custody of the child if requested.

6. That, due to the Court's concern of the reaction of parties the Court orders that this decision and order is to remain sealed, and only made public once the children are in the custody of DSS. This occurred on August 17, 2015.

7. That this Court retains jurisdiction to ensure compliance with the clerk's order and the orders of the Superior Court, and may consider any matter pertaining to the guardianship including motions in the cause.

8. That all parties should appear at the District Court setting of the Chapter 50 matter on Thursday, August 20, 2015, and the guardians may not remove the minor child from the State of North Carolina or the United States of American prior to said setting. Should the Chapter 50 matter be dismissed the court directs the passports be turned over to the legal Guardians the Minor

This 18th day of August 2015, *nunc pro tunc*, August 17, 2015.


The Honorable Brian Lee Shipwash

NORTH CAROLINA)
)
DAVIDSON COUNTY)

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
BEFORE THE CLERK
15 E 926

IN RE: JACK MICHAEL CORBETT,)
 a Minor.)

NORTH CAROLINA)
)
DAVIDSON COUNTY)

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
BEFORE THE CLERK
15 E 927

IN RE: SARAH ALMA CORBETT,)
 a Minor.)

**MOTION FOR RECONSIDERATION
AND MOTION FOR STAY**

NOW COMES Applicant Molly Corbett, by and through counsel, and moves the Honorable Clerk of Davidson County Superior Court as follows:

1. As a result of statements made by Tracey Lynch and David Lynch contending that they were the guardians of Sarah and Jack, Molly Corbett filed an Application for Appointment of Guardian of the Person of Sarah and Jack on or about August 4, 2015.

2. Based on the statements made by Tracey Lynch to the minor child, Jack, in a telephone conversation that she was flying to the United States to remove Jack and his sister, Applicant Molly Corbett filed a Complaint for custody and an emergency order in the District Court of Davidson County at 9:51 a.m. on August 5. Shortly after, Applicant Molly Corbett learned that Tracey Lynch departed Ireland and was in fact headed to the United States in furtherance of her stated intent to remove the children from the State of North Carolina and the United States of America.

3. On August 5, 2015, the District Court of Davidson County entered an Ex Parte Order placing temporary exclusive care, custody and control of Jack and Sarah with Plaintiff Molly Corbett "pending further Orders of the Court and the full hearing on the merits in the above-entitled action." The Court further ordered that pending "a full hearing on the merits" in the custody action, Defendant and any other person acting on behalf of Defendant was restrained

from removing the minor children “from the custody of the Plaintiff and from the State of North Carolina and the United States of America, or the jurisdiction of this Court.”

4. On or about August 7, 2015, Tracey Lynch and her husband David Lynch filed an Application for Appointment of Guardian of the Person of Sarah and Jack Corbett before the Clerk.

5. On or about August 7 and August 10, the Honorable Clerk of Superior Court ordered the applicants to appear before him on Friday, August 14.

6. On August 12, 2015, Defendant Tracey Lynch filed a Notice of Appearance, Motion, and an Answer and Counterclaim for custody.

7. On August 14, the applicants appeared before the Honorable Clerk of Superior Court. At that time, attorney for Applicant Molly Corbett moved the Court for the appointment of a guardian ad litem and also to close hearings on the guardianship matter. The attorney for the Department of Social Services was present and, based on information and belief, concurred in the motion for appointment of a guardian ad litem. Based upon information and belief, counsel for Applicants Tracey Lynch and David Lynch did not oppose the motion for appointment of guardian ad litem and requested that a guardian ad litem be appointed for each minor child.

8. On the afternoon of Friday, August 14, at the conclusion of taking testimony from fact witnesses, the Honorable Clerk announced the identity of the guardian ad litem, coordinated with counsel on the logistics of his interview with the minor children to include participation by counsel for the applicants in an adjoining room by video camera and request for potential questions to ask the minor children. The Honorable Clerk further announced a request that counsel for the applicants conduct research on the weight given to testimony or declarations regarding guardianship under these circumstances, and discussed with counsel the opportunity to make closing arguments.

9. On Monday, the morning of August 17, the Honorable Clerk informed counsel for both applicants that he had reconsidered the motion for appointment of a guardian ad litem and arranged a telephone conference at 11:45 a.m. At that telephone conference, the Honorable Clerk forwarded a draft order concluding that Applicants Tracey Lynch and David Lynch should be the guardians of the minor children without further proceeding.

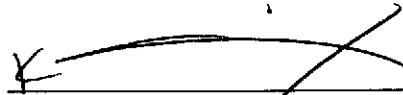
10. Despite the request from counsel for Applicants Tracey Lynch and David Lynch, the Honorable Clerk declined to insert in his temporary order certain language that Applicants Tracey Lynch and David Lynch were given custody and control of the minor children, and further ordered that “the guardians may not remove the minor child from the State of North Carolina and the United States of America prior to further proceedings before the District Court.”

11. Based on information and belief, counsel for Applicants Tracey Lynch and David Lynch contend that the appointment of her clients as guardians is a determination that Tracey Lynch and David Lynch have been awarded full custody.

WHEREAS, counsel for Applicant Molly Corbett contends that jurisdiction for determination of disputed custody remains in the exclusive jurisdiction of the District Court division.

THEREFORE, counsel for Applicant Molly Corbett requests the Honorable Clerk of Davidson County Superior Court to clearly state in any permanent order that his determination was meant solely for the purpose of legal guardianship and did not determine who should have custody of the minor children. If the Honorable Clerk contends that his determination of guardianship also resolves the issue of disputed custody that is filed in the District Court matter, Applicant Molly Corbett would ask the Clerk to reconsider the Temporary Order to include, but not limited to, reappointment of the guardian ad litem, appointment of a custodial evaluation by a licensed psychologist to include consultation with a specialist in the field of attachment disorders to fully evaluate the effect of abruptly removing minor children from the mother who they have known for the past seven years, interviews with the minor children who turn eleven and nine in a few short weeks, and the presentation of legal research. In the alternative, Applicant Molly Corbett respectfully requests that the Clerk stay its Temporary Order pending coordination between the office of the Honorable Clerk of Superior Court and the District Court Judge of Davidson County to ensure that the basic application of procedural effect occurs and custodial determination is not made without a full hearing as envisioned by the District Court of Davidson County.

RESPECTFULLY SUBMITTED this the 18th day of August, 2015.



C. Ray Grantham Jr., Bar No. 15879
Kelley L. Gondring, Bar No. 39702
Attorneys for Applicant Molly Corbett

OF COUNSEL:

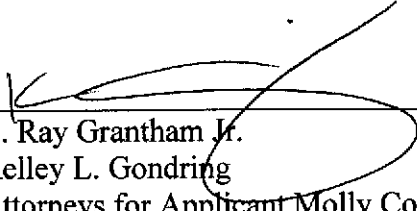
ROBINSON & LAWING, L.L.P.
101 N. Cherry Street, Suite 720
Winston-Salem, NC 27101
(336) 631-8500
Fax (336) 631-6999

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date I served the **MOTION FOR RECONSIDERATION AND MOTION FOR STAY** upon counsel of record for Tracey Lynch by fax and by depositing a copy thereof in the U.S. mail, postage prepaid, addressed as follows:

Kim Bonuomo, Esq.
Allman, Spry, Davis, Leggett & Crumpler, P.A.
380 Knollwood Street, Suite 700
Winston-Salem, NC 27103
(Fax 336-722-2382)

This the 18th day of August, 2015.



C. Ray Grantham Jr.
Kelley L. Gondring
Attorneys for Applicant Molly Corbett

OF COUNSEL:

ROBINSON & LAWING, L.L.P.
101 N. Cherry Street, Suite 720
Winston-Salem, NC 27101
Telephone: (336) 631-8500
Fax: (336) 631-6999

NORTH CAROLINA)
)
DAVIDSON COUNTY)

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
BEFORE THE CLERK
15 E 927 + 15 E-926

FILED

2015 AUG 18 2 51 PM

IN THE MATTER OF
SARAH ALMA CORBETT
(MINOR) +

JACK Michael Corbett

DAVIDSON CO

AB

ORDER DENYING APPLICANT
MOLLY CORBETT'S MOTION
FOR RECONSIDERATION
AND MOTION FOR STAY

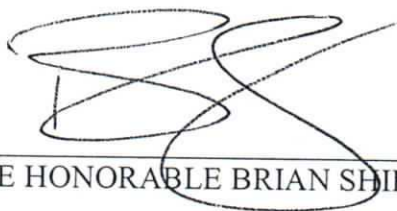
THIS MATTER coming before the Honorable Clerk of Superior Court of Davidson County, North Carolina, upon Applicant Molly Corbett's Motion for Reconsideration and Motion for Stay;

Trace Scott


AND IT APPEARING TO THE COURT that Applicant Molly Corbett was represented by ~~C. Ray Grantham Jr.~~ and Kelley L. Gondring, of the law firm Robinson & Lawing, L.L.P., in Winston-Salem, North Carolina, and that Applicants David and Tracey Lynch, the Legal Guardians of SARAH ALMA CORBETT, born September 2, 2006, were represented by Kim Bonuomo, of the law firm Allman Spry Davis Leggett & Crumpler, P.A., in Winston-Salem, North Carolina;

AND IT FURTHER APPEARING TO THE COURT that upon consideration of the pleadings and arguments of counsel, IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Applicant Molly Corbett's Motion for Reconsideration and Motion for Stay be and is hereby denied.

This 18th day of August 2015.



THE HONORABLE BRIAN SHIPWASH

A TRUE COPY
CLERK OF SUPERIOR COURT
DAVIDSON COUNTY
BY 
Assistant, Deputy, Clerk Superior Court

