

COMMONWEALTH OF KENTUCKY
SUPREME COURT OF KENTUCKY
2015-SC-000679-D
(2014-CA-000372)

ELMER RIEHLE

Appellant

-v-

Boone Circuit Court, Division 2
2013-CI-01335

CAROLYN RIEHLE

Appellee

Brief for Appellee:
Carolyn Riehle

Submitted by:

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Certificate Required by CR 76.12(6)

The undersigned does hereby certify that copies of this Brief were served upon the following named individuals by regular United States Mail on April 7, 2016: Hon. Linda R. Bramlage, Boone Circuit/Family Court, Division 2, Boone County Justice Center, 6025 Rogers Lane, Burlington, Kentucky; Stephen J. Megerle, Esq., 421 Madison Avenue, Covington, Kentucky 41011; Mr. Sam Givens, Clerk, Kentucky Court of Appeals, 360 Democrat Drive, Frankfort, Kentucky 40601 and by Federal Express Overnight Mail to: Ms. Susan Stokely Clary, Clerk, Kentucky Supreme Court, State Capitol, Room 235, 700 Capitol Avenue, Frankfort, Kentucky 40601.

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INTRODUCTION

Appellant Elmer Riehle appeals the decision of the Court of Appeals whereby the Court of Appeals affirmed the Trial Court's dismissal of his Petition for Dissolution of Marriage.

The Boone Circuit Court and the Kentucky Court of Appeals correctly ruled that under the current state of the law in Kentucky Appellant Elmer Riehle did not have standing to bring or maintain an action for dissolution of marriage.

STATEMENT CONCERNING ORAL ARGUMENT

Appellee Carolyn Riehle does not believe that oral argument would be helpful in deciding this matter. This issue at hand is not unique. Rather, this case requires nothing more than a straightforward application of existing, well-defined law to an unremarkable, and generally undisputed, set of facts.

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COUNTERSTATEMENT OF THE CASE

Appellee does not accept the Appellant's Statement of the Case.

At the commencement of his appeal, Appellant Elmer Riehle ("Elmer" hereafter) was eighty-six (86) years old [now 88] and Carolyn Riehle ("Carolyn" hereafter) was seventy (70) years old [now 72]. (3, 4, 16; 104 ROA; Appendix 1, 2).

Elmer and Carolyn were married on August 5, 1983. (13 ROA) Carolyn is the sole breadwinner for Elmer and herself, being employed full time as a nurse and earning approximately \$50,000.00 per year. (4 ROA) Elmer is not employed and his only income is approximately \$200.00 per month from Social Security. (7 ROA).

The real beginning of this matter occurred in 2008 when, following several instances of Elmer sending money to internet overseas pyramid schemes, Carolyn sought to have Elmer declared incompetent in an effort to preserve their financial stability. Elmer had a penchant for "get rich quick" schemes and was particularly vulnerable to scammers and con artists.

In 2008, the Boone District Court, following a jury trial, determined Elmer to be disabled and appointed Carolyn as guardian and conservator in Case No. 08-H-163-001. (24, 28 ROA)

In 2009, Elmer consulted counsel in an effort to have the disability determination terminated. Elmer's counsel recommended that Elmer undergo evaluation and testing, which he did with a neuropsychologist, whose diagnosis was Frontal Lobe Dementia, which affects judgment, reasoning, insight, personality and other related areas. Elmer then abandoned this effort to have the disability finding terminated. (34, 35 ROA).

Following Carolyn's appointment as guardian, Elmer became upset over the financial controls which Carolyn implemented and Elmer sought to have the guardianship dissolved on two separate occasions, including a second jury trial. In October, 2010, following a second trial by jury, Carolyn was confirmed and re-appointed as Elmer's guardian and conservator, without limitation and without an expiration date. (19; 24-25, 28-31; 35 ROA; Appendix 1, 2). Elmer was unsuccessful in both instances. (19; 24-25 ROA; Appendix 1, 2).

Elmer's unhappiness increased with his continued inability to have unfettered access to the family assets. In an effort to avoid the financial controls put in place by Carolyn, and subsequent to his unsuccessful attempts to have the Court dissolve the guardianship, Elmer found counsel who was willing to file an action for dissolution of marriage. He did so without first communicating with Carolyn, who was known to be Elmer's guardian and conservator. Notwithstanding the provisions of CR 17.03, the action was not brought in the name of Elmer's guardian as the real party in interest, nor was Elmer's wife identified as his guardian in the *Verified Petition*. There was no mention in Elmer's *Verified Petition for Dissolution of Marriage In Forma Pauperis* of the fact of the guardianship and conservatorship then in place for him. (3, 7, 35 ROA) The Petition was filed in Elmer's individual name, as petitioner, against Carolyn in her individual capacity, as respondent. (3 ROA). There was no mention or indication of Carolyn's status as Elmer's guardian. (3-6, 7 ROA). There was no attempt to include Carolyn in her role as guardian or conservator.

Elmer's goal was to seek a divorce and obtain his share of the marital assets so that

he could spend it without the oversight of Carolyn. (39; 104,105 ROA; Appendix 1, 2).

In his *Motion for Pendente Lite Spousal Support and Maintenance*, Elmer states in his Affidavit that “A few bad financial decisions were used against me... to get my wife control over all of my affairs”. (16, 21 ROA) What Elmer does not address is his then, and continuing, addiction to internet schemes through which he has funneled and lost thousands of marital dollars with no possible prospect of success or benefit. (100 ROA). Elmer's history has been to gravitate toward those who become his enablers for his get-rich-quick schemes. (39, 95, 100 ROA).

Elmer's inability to manage money and his inability to control his spending addiction were critical factors in the judgment finding him to be disabled. (39 ROA).

Carolyn filed a Response to the *Petition for Dissolution of Marriage* setting forth the fact of her guardianship of Elmer. (11, 13 ROA).

In response to Elmer's subsequent filing of a *Motion for Temporary Support and Maintenance* (16 ROA), Carolyn filed a *Motion to Hold in Abeyance; Alternately a Motion to Dismiss*. (24 ROA) The Trial Court then directed the parties to file memoranda setting forth their positions on the matter. (33 ROA).

The Trial Court dismissed Elmer's Petition for Dissolution of Marriage, finding that as a matter of law, “based upon present state of the law in Kentucky, an incompetent person cannot bring or maintain an action for dissolution of marriage in this State”. (Appendix 2; 104 ROA).

Thereafter, Elmer appealed to the Court of Appeals.

Primarily, Elmer argued that the “lucid interval doctrine” should be available to

him in pursuit of a dissolution of marriage. Elmer sums up his theory when he states that

“The lucid interval doctrine grants Elmer standing to bring an action to divide his marital estate and dissolve his marriage to Carolyn. And if Kentucky law permits a disabled person to get married, certainly they should be able to divorce as well”. (Appellant's Ct. App. Brief, Page 6; Opinion, Ct. App., Page 6).

Secondly, Elmer argued that the plain language of KRS 403.150 permits an individual, other than one of the parties to the marriage, to file a dissolution action. (Appellant's Ct. App. Brief, Pages 8-9; Opinion, Ct. App., Page 6).

Lastly, Elmer argued that for public policy and equitable reasons Kentucky should adopt an approach followed by some other jurisdictions that have allowed a ward to divorce his guardian. (Appellant's Ct. App. Brief, Page 11; Opinion, Ct. App., Page 7).

The Court of Appeals ultimately determined that it was bound by the precedent in *Johnson v. Johnson*, 294 Ky. 77, 170 S.W.2d 889 (1943) (Appendix 5) and affirmed the Order of the Boone Family Court dismissing Elmer's Petition for Dissolution of Marriage.

Elmer then moved the Kentucky Supreme Court for Discretionary Review, which was granted.

ARGUMENTS

I. STANDARD OF REVIEW AND STANDING

Elmer Riehle, individually, does not have a judicially recognizable interest in the subject matter of the suit. *See, Harrison v. Leach*, 323 S.W.3d 702, 705 (Ky. 2010). In Kentucky, legal capacity to institute a dissolution of marriage action is presumed in the absence of a legal adjudication of insanity. It is required only that the petitioner have sufficient mentality to understand the nature of the action being taken. *Petrilli, Kentucky*

Family Law, §23.6 “Incompetent or Insane Persons”, citing 17 *AmJur* 479 (1957); Annot: 19 ALR(2d) 184 (1951). That Elmer Riehle has twice been determined in trials by jury to be disabled/incompetent, and twice further denied to have his guardianship lifted, sufficiently overrides the presumption of legal capacity to institute a dissolution of marriage action. Elmer’s inability to handle and manage finances, coupled with his addiction to internet “get rich quick” schemes are critical reasons in the judgment that he is disabled and incompetent. He simply does not have the “intelligent election” referred to by the Court in *Johnson, supra*, to allow him to proceed with an action for dissolution of marriage.

Elmer argues that he has standing to bring an action for divorce, but ignores the plain language of Civil Rule 17.03(1) which clearly states, "Actions involving persons of unsound mind *shall* be brought by the party's guardian or committee, but if there is none, or such guardian or committee is unwilling or unable to act, a next friend may bring the action" (emphasis added). CR 17.03 The use of the word 'shall' indicates, mandatorily, that there would be no circumstance under which an incompetent person may file suit on his own behalf. Elmer was first declared disabled in November 2008. (24, 28-31 ROA; Appendix 2).

In the case at bar, the *Petition for Dissolution* was brought in Elmer's name, individually, not through any guardian, committee or next friend. (3 ROA).

Further, Elmer's guardian, Carolyn, was not served in her capacity as guardian, as required under CR 17.03(2) and CR 4.04(3). (3; 27 ROA).

Should Petitioner once again wish to challenge his disability determination, he

could do so with the Boone District Court where that action originated. Additionally, there are statutory procedures in place by which he may seek to remove and replace Carolyn as guardian, also with the Boone District Court which originally appointed her. At no time has Carolyn's removal as guardian been sought. (101 ROA).

Now, as before, Carolyn remains the legal guardian and conservator of Elmer. She should remain so until and unless she is removed. Removal of a guardian is addressed at KRS 387.090. (101 ROA).

II. A GUARDIAN IS NOT AUTHORIZED TO BRING OR
MAINTAIN A DIVORCE ON BEHALF OF A DISABLED
PERSON SEEKING A STATUTORY RIGHT TO A DIVORCE

Elmer declares that he was married to Carolyn prior to becoming disabled and that he has been married to her for 38 years. (3 ROA). Curiously, Elmer argues at Page 4 of his Brief that “Elmer and Carolyn have a fundamental right to marry whomever they choose, citing the case of *Obergefell v. Hodges*, 135 Sct. 2584, 2604 (2015)¹. Elmer then argues at Page 5 of his Brief that an “insane person”[disabled] may get married in certain circumstances, citing *Beddow v. Beddow*, 257 S.W.2d 45 (Ky. 1953) and *Littreal v. Littreal*, 253 S.W.2d 247 (Ky. 1952).² Elmer then seeks to bootstrap his flawed argument

¹ However, the *Obergefell* opinion states at page 2 that the United States Supreme Court granted review “limited to two questions”: (1) whether the Fourteenth Amendment requires a State to license a marriage between two people of the same sex; and (2) whether the Fourteenth Amendment requires a State to recognize a same-sex marriage licensed and performed in a State which does grant that right.

² The statutes governing marriage by an incompetent person have changed since *Beddow* and *Littreal* and they do not allow a person who has been adjudged mentally disabled by a court of competent jurisdiction to marry. Such a marriage is prohibited and void.

that if a person can marry anyone they choose, then they should also have the right to terminate the marriage. However, an incompetent person is not able to marry anyone whom they choose. K.R.S. 402.020 (1)(a) provides that “Marriage is prohibited and void... with a person who has been adjudged mentally disabled by a court of competent jurisdiction”. Consequently, Elmer's blanket statement that “if a person can marry anyone whom they choose, then they should also be able to divorce as well,” is without merit as there is no enabling statute to permit a divorce by an incompetent person. The statutory framework in place in Kentucky, provides a measure of protection to those who are less able to fully recognize and appreciate that which they are undertaking to do.

Elmer further argues that the guardianship statutes in Kentucky, particularly K.R.S. 387.660 (4) empowers a guardian to act on behalf of a ward so as to limit the deprivation of civil rights and to restrict personal freedom only to the extent necessary to provide needed care and services to him. It cannot be reasonably be argued that a divorce would constitute needed care or service.

Elmer points out that the General Assembly and common law evolution prevents a guardian from controlling all of a disabled person's affairs, including approval of a settlement in a civil action without court approval, selling real property without court approval, operate a business for the disabled person, or subject the disabled person to a surgery to donate a kidney. By this argument, Elmer concedes that a guardian has no power to do certain acts on behalf of a disabled person, and must have approval of the Court to undertake other acts on behalf of a disabled person. Again, it cannot be reasonably argued that a guardian has the power to commence or maintain a divorce

proceeding on behalf of a ward in the absence of some enabling authority. These are all matters which, if intended to be included in the powers and authority afforded to guardians on behalf of their wards, could have been addressed in some manner in the enabling statutes governing the actions of a guardian. A review of the statutory powers afforded guardians does not provide any authority for a guardian to maintain an action for divorce on behalf of an incompetent person. *See*, KRS 387.660.

Elmer states that his wife, Carolyn, “strenuously objects to Elmer getting a divorce”. (Appellant Brief, Page 6). Elmer then argues that if dissolution of marriage is unavailable to the disabled spouse, then the competent spouse is vested with absolute, final control over the marriage, with Elmer remaining “a prisoner at the hands of Carolyn by means of the bands (sic) of matrimony.” (Appellant’s Brief, Page 7). It should be remembered that Carolyn did not file the *Petition for Dissolution of Marriage*. She also takes seriously her duty as his guardian and conservator. She still desires and intends to stay married to Elmer and provide for him as she has done for many years past. Elmer is not a prisoner at all, having the freedom to come and go as he pleases and associate with anyone whom he chooses. The only restriction with which Elmer disagrees is that he no longer has the unfettered ability to access the family assets and waste them on get-rich-quick schemes, scammers and predators who are always looking for unsuspecting people like Elmer. The guardianship statutes require Carolyn to make regular accountings to the Court of her handling of Elmer’s assets of which she has control as guardian and conservator. The guardianship statutes were crafted so as to provide protection to disabled persons such as Elmer as opposed to vesting them with the power to avoid this level of

scrutiny. To now interpret the guardianship statutes in a manner which would allow a ward to divorce his guardian would be fraught with unintended consequences.

III. KENTUCKY LAW DOES NOT
ABROGATE THE *JOHNSON* HOLDING

Appellant argues that Kentucky has already abrogated the holding in the *Johnson* decision. However, it appears that Appellant cites nothing in support of this argument. He does, however, declare that “Marriage is no longer so personal that it is only between the husband and wife”. (Appellant's Brief, Page 9). However, he does not suggest who may also be included in the marriage relationship in these more modern times. Appellant then completes his leap of faith on this topic by citing the provisions of K.R.S. 403.150 for allowing the court to adjoin additional parties in its exercise of authority to implement this chapter of the statutes. (Appellant's Brief, Page 9). However, those parties, e.g., employers, grandparents, corporations and single-member limited liability companies are typically added because of some tangential value or interest in the case itself, not to the essential issue of the marriage itself. They are not necessary to the actual dissolution of marriage between the two parties, Petitioner and Respondent. However, they may be necessary in the determination of other issues in the proceeding. This can hardly be said to be an abrogation of the *Johnson* case.

The *Johnson* case contains several very important passages which remain relevant in Kentucky's present handling of divorce and incompetent persons. The *Johnson* Court determined the general premise is that an action for dissolution of marriage is strictly personal and volitional; that neither an insane person nor an incompetent person could impart to his committee a true desire to have a dissolution. *Id* at 78-79.

As its basis for this holding, the *Johnson* court recognized in 1943 that other jurisdictions had acknowledged that a committee may maintain an action for divorce on behalf of the ward, and cited several jurisdictions where such action was accepted, but noted that “This is also the English rule. But it seems that in these jurisdictions the right of the committee is gathered from legislative authority. (Emphasis provided). The weight of authority is that in the absence of a governing statutory provision the committee has no such power”. *Id* at 78.

The *Johnson* court then espoused the majority view that a divorce action is so strictly personal and volitional that it could not be maintained at the pleasure of a committee, even though the result is to render the marriage indissoluble on behalf of the incompetent”.” *Id* at 78. Citing *Birdzell v. Birdzell*, 6 P. 562 (Kansas) the *Johnson* court quoted that

Whether a party who is entitled to a divorce shall commence proceedings to procure the same or not is a personal matter resting solely with the injured party, and it requires an intelligent election on the part of such party to commence the proceedings, and such an election cannot be had from an insane person”. *Id* at 78.

The *Johnson* court pronounced that it was in accord with the majority view and the reasons supporting it. *Id* at 78.

Finally, the *Johnson* court declared that it did not think the Legislature intended to vest a committee with power over the strictly personal and volitional affairs of the ward to the extent of controlling his marital status, that the action of an incompetent must be brought by a committee or other representative either by a committee or other representative. *Id* at 79. The *Johnson* court declared that its interpretation of the then Civil

Code was to restrict the right of an incompetent to maintain an action in his own name rather than to enlarge the powers of a committee. (Emphasis provided) *Id* at 79. *See, also*, CR 17.01. Consequently, the *Johnson* court dismissed the petition for divorce.

IV. THERE IS NO COMPELLING REASON AS A MATTER OF PUBLIC POLICY FOR KENTUCKY TO PERMIT AN INCOMPETENT PERSON TO BRING OR MAINTAIN AN ACTION FOR DIVORCE.

Appellant, in his Brief, cites the compilation of states which do and do not allow an incompetent person to seek a divorce. (Appellant's Brief, Page 13). Appellant argues that the holding in *Johnson, supra*, upon which the Kentucky Court of Appeals relied in the present action, is no longer the majority view. In support, Appellant cites Metzmeier, Kurt X., *The Power of an Incompetent Adult to Petition for Divorce Through a Guardian or Next Friend*, 33 U. Louisville J. Fam. L., 949, 952-953 (1994), for the premise that 10 states retain the prohibition against divorce by an incompetent person and 15 states have not addressed the issue. Those two categories make up 50% of the States in this country. (Appellant's Brief, Page 13). Appellant further states that 17 states permit a disabled person to divorce. (Appellant's Brief, Page 13). Using Appellant's numbers, essentially half of the States do not permit, or do not address the matter of divorce by an incompetent person. It is fairly unclear from merely reviewing Appellant's chart (Appellant's Brief at Appendix 3) as to which of the states allows an incompetent to divorce. E.g., attention is directed to the State of Indiana on the chart. It is listed as a state which follows the statutory approach, citing the case of *State ex rel. Quear v. Madison Circuit Court et al.* 99 N.E.2d 254 (Ind. 1951) (Appendix 3).

Interestingly, the Court in *Quear, supra*, echoes many of the same rationales against divorce by an incompetent as did the Kentucky court in *Johnson, supra*. For example, the *Quear* court ruled that “An insane person cannot bring an action for divorce because he cannot consent to the filing of the complaint”. *Id* at 2. Ironically, the *Quear* court held that

Since neither the statute defining the powers of guardians nor the statutes on divorce authorize a guardian to prosecute an action for divorce... the trial court had no jurisdiction to entertain the action in this case”. Citing *Johnson v. Johnson*, 1943, 294 Ky. 77, 170 S.W.2d 889; et al.

Now that it appears that the Indiana courts were in line with the Kentucky courts in 1951, it would be interesting to see where they stand in much more recent times. That answer can be found as late as October 24, 2013, in a well-reasoned opinion by the Indiana Court of Appeals, which ruled that the right to dissolve a marriage is not a common law right, but rather is a statutory right, and that a dissolution of marriage action could only be brought in the manner and within the limitations prescribed by statute. *See, In Re: The Marriage of Leora McGee, Appellant v. Robert McGee, Appellee*, 998 N.E.2d 270 (Ind. App. 2013). (Appendix 4) This case closely mimics the present state of the law in Kentucky and is a modern, contemporary approach to divorce law in a land of many differing opinions. Additionally, the *McGee* court speaks to an argument which is a theme in Appellant Elmer Riehle's quest to divorce Carolyn. It stated

While the statutes governing dissolution and guardianship in Indiana have evolved since 1951, when *Quear* was decided, it is still the case today that neither the current Indiana statutes governing dissolution of marriage nor those governing the guardianship of incapacitated persons provide a means for a guardian to file a petition for dissolution of marriage on behalf of his or her ward. Dissolution of marriage actions in Indiana are governed by Indiana

Code Title 31, Article 15, which provides that a party who seeks to initiate a dissolution of marriage proceeding must file a verified petition for dissolution. Ind. Code § 31-15-2-5. Indiana Code section 29-3-8-4 provides that the guardian of an incapacitated person may take action and make decisions for the benefit of the incapacitated person. For example, the guardian may “invest and reinvest the property of the protected person, “may exercise control over the incapacitated person's business or income, and, if reasonable, may “delegate to the protected person certain responsibilities for decisions affecting the protected person's business affairs and well-being.” Neither statute, however, provides the guardian with the right to file a petition for dissolution on behalf of the incapacitated person. In a world full of subsequent marriages and available pre-nuptial agreements, we will not read into a statute such a sweeping and potentially overreaching authority that is not the clearly expressed intent of the General Assembly. (Emphasis provided).

Therefore, since Indiana statute does not provide guardians with the authority to petition for dissolution of marriage on the ward's behalf, the trial court's grant of the petition for dissolution... filed on Husband's behalf was improper. *McGee, Id.* at 3.

The *McGee* case is 18 years newer than the *Metzmeier* article cited by Appellant; the Kentucky Court of Appeals opinion (Appendix 1) in the present case is 20 years newer.

Appellant continues his argument to the point that *Johnson* was never favorably cited until 2010 and that the Kentucky Supreme Court never reviewed the *Johnson* case in over seven decades. Viewed from a different perspective than that of Appellant, it could be said, as does the Appellee, that in that period of over seven decades there has never been much public need for any type of review or change to the holding in *Johnson*.

Appellant cites dissent the unpublished decision in the case of *Brockman v. Young*, No. 2010-CA-001354-MR, 2011 WL 5419713 (Ky. Ct. App. 2011) as an example of why

he believes that a prohibition against divorce by an incompetent person is unreasonable and unjust. (Appellant Brief, Page 14). However, a similar argument could be made that to lift the prohibition against divorce by an incompetent person would be just as unreasonable and unjust, particularly in a case such as the present case involving Appellant Elmer Riehle. Rather than for any reason which would be beneficial for either of the parties to his marriage, Elmer, through his enablers, seeks a divorce so that he can obtain his share of the marital assets so that he could spend it without the oversight of Carolyn. (39, 104, 105 ROA; Appendix 1, 2)

In such a scenario, the worst fears of Carolyn would be realized as Elmer is fleeced and drained by his enablers, and left out on the street when he has no longer has any ability to support himself. As Elmer's guardian, Carolyn is now able to provide a good and safe life for Elmer, just without the drain of the scammers and other persons who prey on him.

Appellant continues his argument that Elmer's intent is clear that he wants a divorce; that on his own he retained an attorney, filed a verified divorce petition, filed a motion for spousal support and maintenance with a supporting affidavit, and assisted in the prosecution of the case. Appellee submits that Elmer had no real understanding as to what he was doing other than following the lead of his most recent enabler, counsel who, knowing that Elmer was an incompetent person, deemed it permissible to undertake these actions without any discussion or prior notice to Elmer's guardian, who was also his wife, and elected not to draft his *Petition for Dissolution of Marriage* and subsequent motion within the scope of CR 17.03 regarding real parties in interest. (3, 7, 24, 27 ROA).

Appellant argues that “The record has ample evidence Elmer Riehle wants a

divorce.” (Appellant Brief, Page 18). Appellee submits that the record in this case shows no such thing. There was no testimony on the record. The trial court made her ruling based upon memoranda filed by counsel. (24, 33, 104 ROA, Appendix 2).

Appellant recounts in his brief the four (4) different methods by which some other states have allowed an incompetent to divorce. Those theories are: (1) Evidence of Intention Approach Exception; (2) the Best Interest Approach; (3) the Substituted Judgment Exception; and (4) the Statutory Approach. (Appellant Brief, Pages 16-23). Subsequently Appellant “moves” this Court to adopt the Evidence of Intention Rule. (Appellant's Brief, Page 18). However, Appellant then suggests that this Court should move in the direction of the Statutory Approach. (Appellant Brief, Page 21). Appellant ultimately “moves” this Court to overrule *Johnson* and permit Elmer to divorce Carolyn, stating that “Any of the exceptions are applicable...”. (Appellant Brief, Page 23).

The essential problem with Appellant's argument is that he asks this Court to ignore the clear and plain language of Kentucky's Guardianship and Divorce statutes, and to either insert or attribute language to the statutes which does not now exist. Appellant goes so far as to cite *Metzmeier, supra*, and encourage this Court that “It is easier for state courts to find the power to divorce if not specifically articulated in the plain language.” (Emphasis provided) (Appellant Brief, Page 23). In other words, let the existing guardianship and divorce statutes say whatever you want them to say.

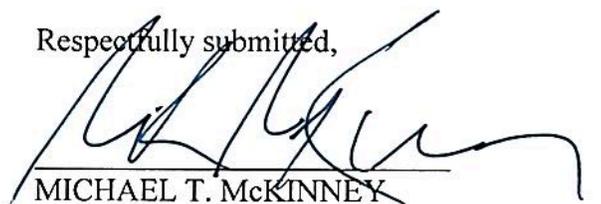
Taken as a whole, Appellant's argument is fraught with problems. Problems, such as insertion of language in statutes where none has heretofore existed, and to interpret statutes in a manner different than what their plain language offers. Kentucky guardianship

statutes provide a solid and workable framework for the protection of wards by their guardians. The divorce statutes, as codified, likewise provide a dependable framework within which divorce practitioners can work. The Rules of Civil Procedure, particularly CR 17, complement these statutory provisions. It would seem that if there is a need for change in the divorce law of Kentucky to allow incompetent persons to divorce, it should be best accomplished by new legislation providing clear and precise language and guidance down this path, with further guidance for guardians in this new statutory effort. As the Bar is often heard to say that dissolution of marriage is a “creature of statute”, it would seem appropriate that any substantial change would be ushered in by new statutes. To do otherwise could lead to the unfortunate creation of unintended consequences in Kentucky divorce law.

CONCLUSION

For all of the foregoing reasons, this Court should affirm the Opinion of the Kentucky Court of Appeals (Appendix 1), in turn, affirming the Order Dismissing entered by the Boone Circuit/Family Court, Division 2, (Appendix 2).

Respectfully submitted,



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