## Adams County Legal Journal

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IN RE: ADOPTION OF L.P.F. AND IN RE: ADOPTION OF M.J.F.

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#### ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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#### LEGAL NOTICE

NOTICE IS HEREBY GIVEN that a Certificate of Organization - Domestic Limited Liability Company was filed with the Commonwealth of Pennsylvania, Department of State, in Harrisburg, Pennsylvania, on April 17, 2019, under the provisions of the Pennsylvania Limited Liability Company Law of 1994 as amended

The name of the Limited Liability Company is 4 HORSEMEN TRUCKING, LLC.

4 Horsemen Trucking, LLC is organized for the purpose of transporting trailers and product.

Arthur J. Becker, Jr., Esq. Attorney for 4 Horsemen Trucking, LLC

5/24

#### CHANGE OF NAME NOTICE

NOTICE IS HEREBY GIVEN that on April 3, 2019 a Petition for Name Change was filed in the Court of Common Pleas of Adams County, Pennsylvania, requesting a Decree to change the name of the Petitioner, Christyn Elaine Cyrene Wetzel to Christyn Elaine Cyrene Koerner. The court has affixed July 12, 2019 at 3:00 p.m., in Courtroom 4, Third Floor of the Adams County Courthouse, as the time and place for the hearing of said Petition, when and where all persons interested may appear and show cause, if any they have, why the request of the Petitioner should not be granted.

5/24

#### FICTITIOUS NAME REGISTRATION

An application for registration of the fictitious name MAGIC MAIDS, 291 South Street, Hanover, PA 17331 has been filed in the Department of State at Harrisburg, PA, File Date 04/03/2019 pursuant to the Fictitious Names Act, Act 1982-295. The name and address of the person who is a party to the registration is Breighlyn Grove, 291 South Street, Hanover, PA 17331.

5/24

### IN RE: ADOPTION OF L.P.F. AND IN RE: ADOPTION OF M.J.F.

- 1. The issue before the Court is one of first impression concerning application of various, perhaps inconsistent, statutory sections of Pennsylvania's Adoption Law, 23 Pa. C.S.A. § 2501-2938.
- 2. The Krichtens accurately suggest there is not a factual issue as to Mother's failure to file formal written revocation of her prior consent or a petition challenging the validity of the consent due to fraud or duress within the statutory time periods. Mother counters that at the time she executed the consent, she was under the influence of Prozac and Xanax and was otherwise mentally unstable. She claims to have been incapable of understanding the ramifications of her consent and therefore it was not knowingly provided.
- 3. Rectifying the Superior Court's interpretation concerning the strict application of time limits in Section 2711 with the Supreme Court's instruction as to the purpose of a hearing to confirm the consent pursuant to Section 2504 presents this Court with a dilemma: If a consent to adoption is unassailable after expiration of the time period set forth in Section 2711, what is the purpose of a hearing pursuant to Section 2504 wherein the consent cannot be confirmed unless the court is comfortable that it was intelligently, voluntarily, and deliberately entered? Does the earlier preclude the latter or does the latter trump the earlier?
- 4. While appellate guidance on this issue would be helpful, it is not necessary to resolve the specific issue before this Court.
- 5. Only after filing a custody action did the Krichtens bring the consent to adoption back into play. Although there is no doubt that Mother's compromised state hampered her ability to act with legal precision, it is equally unquestionable that Mother's intent, confirmed by writing and actions, reflected a purpose consistent with revocation of her prior consent to adoption. Moreover, this purpose was expressed within weeks following her execution of the consent and was obviously apparent to the Krichtens. Under these circumstances, the Petition to Confirm the Consent is denied.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY, PENNSYLVANIA, ORPHANS' COURT, AF-26-2018, IN RE: ADOPTION OF L.P.F. and af-27-2018, IN RE: ADOPTION OF M.J.F.

Robert D. O'Brien, Esq., Attorney for Petitioners Andrea M. Singley, Esq., Guardian ad litem for the children Ruth Crabbs Gunnell, Esq., Attorney for Carol Few George, P. J., April 30, 2019

#### **OPINION**

The issue before the Court is one of first impression concerning application of various, perhaps inconsistent, statutory sections of Pennsylvania's Adoption Law, 23 Pa. C.S.A. § 2501-2938. As the factual background is one which was unlikely anticipated by the legislature, and is particularly relevant to the issue before the Court, it will be specifically set forth.

Carol Few (hereinafter "Mother") is the adoptive mother of L.P.F. (D.O.B. 9/30/2009) and M.J.F. (D.O.B. 5/21/2011). The adoptions occurred in Adams County, Pennsylvania by court orders entered in November 2014. Following the adoptions, the children lived with Mother through the spring of 2018. At some time prior to spring 2018, Mother suffered significant mental health issues which caused her to consult with a psychiatrist in May of that year. Prior to the psychiatric consultation, Mother had been treating with her family doctor who expressed to her concerns about her competency. Ultimately, she was prescribed Prozac and Xanax which, after subsequent medication adjustments, led to greater mental stability in the fall of 2018.

As a result of Mother's mental health illness during the early part of 2018, her ability to control and provide sufficient care for the children had digressed significantly. The difficulty in providing adequate care for the children led to Mother contacting Thomas and Debra Krichten (hereinafter "Krichtens") for assistance which cumulated with the Krichtens taking custody of the children in April 2018. The Krichtens exercised custody of the children for approximately one week until Mother accused Mrs. Krichten of neglecting care to L.P.F. As a result of this concern, Mother reasserted her custodial authority and reacquired custody of both children. As the relationship between the parties was sufficiently strained, all parties retained counsel. The record does not fully develop the discussions between the parties; however, on April 24, 2018, Mother, while represented by counsel, executed a Petition to Confirm Consent to Adoption Under 23 Pa. C.S.A. § 2504 consenting to the adoption of the children by the Krichtens. Despite execution of this document, on May 15, 2018, the parties entered a child custody agreement that provided Mother retain exclusive custody of the children through May 25, 2018. On May 25, 2018, custody was transferred to the Krichtens pursuant to the terms of the child custody agreement. In addition to the custodial terms, the agreement contained a provision requiring both parties "to foster a feeling of affection between the children and the other party." The agreement further prohibited relocation by either party without notice and an opportunity to object. Both parties were represented by counsel at the time of the agreement; however, there is no evidence of

<sup>&</sup>lt;sup>1</sup> More specifically, it is unclear from the record whether Mother reacquired physical custody of the children prior or subsequent to her execution of the consent to adoption.

record that either party took immediate action to confirm the custody agreement by court order or to commence adoption procedures.

Over the next several months while the children were in custody of the Krichtens, Mother sent text messages to Mrs. Krichten asking to see the children. When the messages went unanswered, Mother went to the Krichten residence and taped a letter on the front door asking once again to visit with the children. At hearing, Mrs. Krichten acknowledged Mother's attempts and acknowledged that she "didn't want [Mother] to see the kids." During this time period, Mother claims to have consulted her previous attorney to revoke the earlier executed consent to adopt. However, for reasons unclear in the record, such a revocation never resulted. Nevertheless, on September 13, 2018, the Krichtens initiated a custody action seeking to confirm the custody agreement previously executed by the parties.<sup>2</sup> In response, Mother, pro se, provided written notice to the Krichtens' attorney on October 10, 2018 that she was withdrawing her "agreement" to allow the children to be adopted. Also, on October 23, 2018, Mother filed a pro se Petition to Modify Custody.<sup>3</sup>

On December 26, 2018, the Krichtens filed a Petition for Adoption Under Section 2701 of the Adoption Act. The petition was accompanied by the consent to adoption previously executed by Mother as well as a Report of Intention to Adopt Pursuant to 23 Pa. C.S.A. § 2531. By Order dated February 11, 2019, the Court scheduled a hearing on the Petition to Confirm Consent to Adoption as required by the Adoption Act, 23 Pa. C.S.A. § 2503.<sup>4</sup> Hearing on the Petition to Confirm Consent was subsequently held on March 15, 2019 at which time Mother claimed she was mentally incompetent to voluntarily and intelligently sign the consent and, upon obtaining sufficient mental capacity, it was her desire to revoke the consent.

The Krichtens argue that Mother is statutorily precluded from revoking her consent to the adoption. In doing so, they cite language

<sup>&</sup>lt;sup>2</sup> The action is filed in the Adams County Prothonotary's Office at 2018-SU-991.

<sup>&</sup>lt;sup>3</sup> The custody action is scheduled for hearing which has been stayed pending the outcome of this matter.

<sup>&</sup>lt;sup>4</sup> The Court initially rejected the petition on the basis that the consent was not recently executed and a custody proceeding had been commenced subsequent thereto. The Krichtens' request for reconsideration was granted as the Court assessed an evidentiary hearing would best advance resolution of the issues.

in the Adoption Act which identifies the consents which are necessary prior to an adoption. The Act, in relevant part, provides:

- (c) Validity of consent. - ... A consent to an adoption may only be revoked as set forth in this subsection. The revocation of a consent shall be in writing and shall be served upon the agency or adult to whom the child was relinquished. The following apply:
  - (1) Except as otherwise provided in paragraph (3):

. . .

- (ii) For a consent to an adoption executed by a birth mother, the consent is irrevocable more than 30 days after the execution of the consent.
- (2) An individual may not waive the revocation period under paragraph (1).
- (3) Notwithstanding paragraph (1), the following apply:
  - (i) An individual who executed a consent to an adoption may challenge the validity of the consent only by filing a petition alleging fraud or duress within the earlier of the following time frames:
    - (A) Sixty days after the birth of the child or the execution of the consent, whichever occurs later.
    - (B) Thirty days after the entry of the adoption decree.
  - (ii) A consent to an adoption may be invalidated only if the alleged fraud or duress under subparagraph (i) is proven by:
    - (A) a preponderance of the evidence in the case of consent by a person 21 years of age or younger; or
    - (B) clear and convincing evidence in all other cases.

#### 23 Pa. C.S.A. § 2711

The Krichtens accurately suggest there is not a factual issue as to Mother's failure to file formal written revocation of her prior consent or a petition challenging the validity of the consent due to fraud or duress within the statutory time periods. Accordingly, they argue Mother is statutorily precluded from currently trying to do so.

Mother counters that at the time she executed the consent, she was under the influence of Prozac and Xanax and was otherwise mentally unstable. She claims to have been incapable of understanding the ramifications of her consent and therefore it was not knowingly provided. She points to her actions subsequent to execution of the consent as evidence of her desire to remain in the parental role with the children.

In Re Adoption of J.A.S., 939 A.2d 403 (Pa. Super. 2007), the Superior Court had the opportunity to interpret and apply Section 2711 of the Adoption Act. Finding that the statutory language plainly provided for time constraints to revoke and/or challenge the validity of a consent to adoption, the Superior Court concluded that the validity of a consent to adoption could only be addressed if the consenter timely filed a petition in compliance with the time periods established by the legislature.<sup>5</sup> The issue which the J.A.S. Court left unanswered, however, is the interplay between Sections 2711 and 2504 of the Adoption Act.

Section 2504 of the Adoption Act requires the court, upon petition of a prospective adoptive parent, to hold a hearing for purposes of confirming a consent to an adoption following expiration of the time periods set forth in Section 2711. The hearing may not be held less than ten days after filing of the petition and notice of the hearing must be provided the consenter. 23 Pa. C.S.A. § 2504. Our Supreme Court has explained that the purpose of this hearing is to ensure an intelligent, voluntary, and deliberate consent by a parent to the termination of parental rights. *In Re Wolfe*, 312 A.2d 793, 796 (Pa. 1973). At hearing to confirm the consent, the court has the responsibility to

<sup>&</sup>lt;sup>5</sup> In a 2014 nonprecedential decision, a panel of the Superior Court held on facts substantially similar to the current facts that a Mother's challenge to the validity of a consent to adoption was precluded in the absence of strict compliance with the time limits set forth in Section 2711. Despite mother's testimony that she was under the influence of Xanax at the time she executed the consent, and subsequently reconsidered, the Court determined that her effort to revoke her consent beyond the limitations period in Section 2711 would defeat the purpose of this section to permit finality to the adoption process. Pursuant to Superior Court I.O.P. 65.37, this decision is nonbinding. It is also distinguishable as the trial court factually found Mother waited nine months after executing the consent to adoption to communicate to anyone her desire to revoke the consent.

determine that the consent which was given was "clear and unequivocal." *In Re Singer*, 326 A.2d 275, 278 (Pa. 1974). Recently, in *In Re C.M.C.*, 140 A.3d 699 (Pa. Super. 2016), a panel of the Superior Court reaffirmed the purpose of a Section 2504 hearing. In doing so, the panel observed "[t]ermination of parental rights is a drastic measure that should not be taken lightly. Not only are [the parents'] rights at stake here, but [the child's] right to a relationship with [his or her parent] is also at stake." *Id.* A.2d at 711, *quoting In Re K.G.M.*, 845 A.2d 861, 864 (Pa. Super. 2004).

Rectifying the Superior Court's interpretation concerning the strict application of time limits in Section 2711 with the Supreme Court's instruction as to the purpose of a hearing to confirm the consent pursuant to Section 2504 presents this Court with a dilemma: If a consent to adoption is unassailable after expiration of the time period set forth in Section 2711, what is the purpose of a hearing pursuant to Section 2504 wherein the consent cannot be confirmed unless the court is comfortable that it was intelligently, voluntarily, and deliberately entered? Does the earlier preclude the latter or does the latter trump the earlier?

While appellate guidance on this issue would be helpful, it is not necessary to resolve the specific issue before this Court. The consent to adoption was executed in this matter on April 24, 2018. The consent indicated that Mother may revoke it by providing written revocation of her consent to Krichtens' counsel within 30 days. On May 15, 2018, a time within 30 days of the executed consent, Mother entered into a written child custody agreement with the Krichtens who, at the time, were represented by the attorney identified in Mother's executed consent to adopt. Although the custody agreement does not formally revoke Mother's prior consent, there can be no doubt that it is written notice by Mother as to her intent to maintain a future legally enforceable right to the children. See Miller v. Miller, 620 A.2d 1161, 1164 (Pa. Super. 1993) (child custody agreements preserve an atmosphere of peace and facilitate a much easier and more meaningful future relationship between the child and the noncustodial parent). Importantly, the custody agreement does not address the termination of Mother's parental rights but rather speaks to future responsibilities. At a minimum, it negates a conclusion that Mother's prior consent to the termination of her rights was clearly and unequivocally given.

Just as importantly, Mother's actions subsequent to execution of the custody agreement confirm her intent to maintain a parental role with the children. At the time of her execution of the consent, and for more than a month thereafter, Mother exercised sole physical and legal custody of the children. Even after the custody exchange, she consistently and repeatedly attempted to effectuate visitation with the children through attempted contacts with the Krichtens. Contrary, however, to their written agreement, the Krichtens made efforts to estrange the children from Mother by shielding them from her attempted contacts. Only after filing a custody action did the Krichtens bring the consent to adoption back into play. Although there is no doubt that Mother's compromised state hampered her ability to act with legal precision, it is equally unquestionable that Mother's intent, confirmed by writing and actions, reflected a purpose consistent with revocation of her prior consent to adoption. Moreover, this purpose was expressed within weeks following her execution of the consent and was obviously apparent to the Krichtens. Under these circumstances, the Petition to Confirm the Consent is denied.<sup>6</sup>

#### ORDER OF COURT

AND NOW, this 30th day of April, 2019, the Petition to Confirm the Consent to Adoption executed by Carol Few ("Mother") is denied.

It is hereby Ordered that a rule is issued on the Petitioners to show cause pursuant to 23 Pa. C.S.A. § 2901, if any, as to why the Adoption Petition should not be dismissed or, in the alternative, whether circumstances involving the children permit the Court to enter an adoption decree without termination of Mother's parental rights. Rule returnable and hearing are scheduled for May 22, 2019 at 10:30 a.m. in Courtroom No. 1, fourth floor of the Adams County Courthouse, at which time all parties are directed to appear.

It is further Ordered that pursuant to 23 Pa. C.S.A. § 2313, Attorney Andrea M. Singley is appointed as guardian ad litem and counsel for the children at the cost of the County of Adams.

<sup>&</sup>lt;sup>6</sup> Although normally a decree for adoption should not be entered unless parental rights have been terminated, 23 Pa. C.S.A. § 2901, this Court does not immediately dismiss the pending adoption petition. Rather, a rule will be issued on the Petitioners to show cause, if any, as to why the circumstances involving these children would permit the Court to enter an adoption decree without termination of Mother's rights. *Id.* 

#### **ESTATE NOTICES**

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below, the Register of Wills has granted letters, testamentary of or administration to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

#### FIRST PUBLICATION

- ESTATE OF GERALDEAN J. BAIN, DEC'D
  - Late of Mt. Joy Township, Adams County, Pennsylvania
  - Executrix: Melanie B. Keltz, 12524 Meadowood Drive, Silver Spring, MD 20904
- ESTATE OF KRISTOPHER KIRK KAISER a/k/a KRISTOPHER K. KAISER, DEC'D
  - Late of Hamilton Township, Adams County, Pennsylvania
  - Administratrix: Brandi L. Kaiser, c/o Alex E. Snyder, Esq., Barley Snyder LLP, 100 E. Market Street, York, PA 17401
  - Attorney: Alex E. Snyder, Esq., Barley Snyder LLP, 100 E. Market Street, York, PA 17401
- ESTATE OF MARCELLA M. KOSER, DEC'D
  - Late of Oxford Township, Adams County, Pennsylvania
  - Executor: Edward Jones Trust Company, c/o Samuel A. Gates, Esq., Gates & Gates, P.C., 250 York Street, Hanover, PA 17331
  - Attorney: Samuel A. Gates, Esq., Gates & Gates, P.C., 250 York Street, Hanover, PA 17331
- ESTATE OF RALPH E. KUYKENDALL, DEC'D
  - Late of the Borough of Gettysburg, Adams County, Pennsylvania
  - Thomas Kuykendall, 603 Highland Avenue, Carlisle, PA 17013
  - Attorney: David K. James, III, Esq., 234 Baltimore Street, Gettysburg, PA 17325
- ESTATE OF JANET M. LOHR, DEC'D
  - Late of Oxford Township, Adams County, Pennsylvania
  - Executor: Edward Jones Trust Company, c/o Samuel A. Gates, Esq., Gates & Gates, P.C., 250 York Street, Hanover, PA 17331
  - Attorney: Samuel A. Gates, Esq., Gates & Gates, P.C., 250 York Street, Hanover, PA 17331

- ESTATE OF ROSALIE A. PATTERSON, DEC'D
  - Late of Straban Township, Adams County, Pennsylvania
  - Executrix: Sharon R. Patterson, 250 Hunterstown Hampton Road, Gettysburg, PA 17325
  - Attorney: John J. Murphy III, Esq., Patrono & Murphy, LLC, 28 West Middle Street, Gettysburg, PA 17325
- ESTATE OF CHARLES K. SENTZ, JR., DEC'D
  - Late of Conewago Township, Adams County, Pennsylvania
  - Andrew C. Sentz, c/o Scott J. Strausbaugh, Esq., Strausbaugh Law, PLLC, 1201 West Elm Avenue, Suite #2. Hanover. PA 17331
  - Attorney: Scott J. Strausbaugh, Esq., Strausbaugh Law, PLLC, 1201 West Elm Avenue, Suite #2, Hanover, PA 17331
- ESTATE OF JOAN L. STULL a/k/a JOAN L. WOLF. DEC'D
  - Late of Conewago Township, Adams County, Pennsylvania
  - Personal Representative: Bonnie M. Creager, c/o Alexandra M. Sipe, Esq., Maxwell Sipe Law Offices, LLC, 20 East Sixth Street, Suite 301, Waynesboro, PA 17268
  - Attorney: Alexandra M. Sipe, Esq., Maxwell Sipe Law Offices, LLC, 20 East Sixth Street, Suite 301, Waynesboro, PA 17268

#### SECOND PUBLICATION

- ESTATE OF CAROL A. BURKE-GOODMAN a/k/a CAROL A. BURKE, DEC'D
  - Late of Butler Township, Adams County, Pennsylvania
  - Administratrix: Christine E. Goodman, 90 Harney Road, Littlestown, PA 17340
  - Attorney: Clayton A. Lingg, Esq., Mooney Law, 230 York Street, Hanover. PA 17331
- ESTATE OF DORIS E. CAREY, DEC'D
  - Late of Straban Township, Adams County, Pennsylvania
  - Co-Executrices: Carey P. Brown and Susan K. Carey, c/o Todd A. King, Esq., Salzmann Hughes, P.C., 112 Baltimore Street, Gettysburg, PA 17325
  - Attorney: Todd A. King, Esq., Salzmann Hughes, P.C., 112 Baltimore Street, Gettysburg, PA 17325

- ESTATE OF JOHN C. GROFT, DEC'D
  - Late of the Borough of New Oxford, Adams County, Pennsylvania
  - Executor: John M. Groft, c/o Stephen D. Tiley, Esq., Frey and Tiley, 5 South Hanover Street, Carlisle, PA 17013
  - Attorney: Stephen D. Tiley, Esq., Frey and Tiley, 5 South Hanover Street, Carlisle, PA 17013
- ESTATE OF PAULINE C. PIFER, DEC'D
  - Late of Huntington Township, Adams County, Pennsylvania
  - Executors: Shirley A. Miller, 5004 Oxford Road, York Springs, PA 17372; Jonathan R. Pifer, 4996 Oxford Road, York Springs, PA 17372
  - Attorney: Keith R. Nonemaker, Esq., Barley Snyder LLP, 40 York Street, Hanover, PA 17331
- ESTATE OF WILLIE CATHERINE STARNER, DEC'D
  - Late of Union Township, Adams County, Pennsylvania
  - Leon C. Deatrick, 845 Buchanan Valley Road, Orrtanna, PA 17353; David L. Deatrick, P.O. Box 295, Lampeter, PA 17537; John Leroy Starner, 4363 Wolfs Church Road, York, PA 17408
  - Attorney: David K. James, III, Esq., 234 Baltimore Street, Gettysburg, PA 17325

#### THIRD PUBLICATION

- ESTATE OF MARIE C. BEARD, DEC'D
  - Late of Mt. Pleasant Township, Adams County, Pennsylvania
  - Executrix: Joan M. Fox, 508 Grant Drive, Gettysburg, PA 17325
  - Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325
- ESTATE OF BARBARA W. FICK, DEC'D
  - Late of Franklin Township, Adams County, Pennsylvania
  - Executor: James Zarrella, 61 Tiffany Lane, Gettysburg, PA 17325
  - Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325
- ESTATE OF LOLA M. HAMM, DEC'D
  - Late of Straban Township, Adams County, Pennsylvania
  - Executor: Timothy Hamm, 98 Sibert Road, Gettysburg, PA 17325
  - Attorney: John A. Wolfe, Esq., Wolfe, Rice & Quinn, LLC, 47 West High Street, Gettysburg, PA 17325

#### THIRD PUBLICATION CONTINUED

ESTATE OF STEPHEN KUPICH, DEC'D

Late of Cumberland Township, Adams
County, Pennsylvania

Evecutiv: Nancy O'Brien 250

Executrix: Nancy O'Brien, 250 Hamburg Turnpike, Hamburg, NJ 07419

Attorney: John A. Wolfe, Esq., Wolfe, Rice & Quinn, LLC, 47 West High Street, Gettysburg, PA 17325

ESTATE OF GEORGE M. SCOTT, DEC'D Late of the Borough of McSherrystown, Adams County, Pennsylvania

Alec C. Scott, 14 Debra Lane, Lancaster, PA 17602

ESTATE OF CHRISTA H. THOMAS, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executor: Jacqueline Krebs, 50 Rita Marie Lane, Littlestown, PA 17320

Attorney: Bernard A. Yannetti, Jr., Esq., Hartman & Yannetti, 126 Baltimore Street, Gettysburg, PA 17325 ESTATE OF DOROTHY C. VASILENKO, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Nancy Vasilenko, 12 Bobolink Drive, Gettysburg, PA 17325

Attorney: John A. Wolfe, Esq., Wolfe, Rice & Quinn, LLC, 47 West High Street, Gettysburg, PA 17325

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