

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

IN THE MATER OF	:	ORPHANS COURT DIVISION
RYAN D. RIZZO, an alleged	:	
incapacitated person	:	NO. 41-94-0384

OPINION and ORDER

This matter involves the revocable trust of Ryan D. Rizzo, an incapacitated person. Ryan, who is currently thirty-two years old, sustained a severe closed head injury in a car accident twelve years ago, while on a college-sponsored ski trip. In 1998, Ryan received \$2,122,160.12 from the settlement of a personal injury action from the accident. That money was placed in a revocable trust. Any direct expenditures from the estate in excess of \$5,000 must receive prior court approval. The matter before the court involves various requests for expenditures from the trust. The petitions have been filed by Ryan through his attorney, by Ryan's father David E. Rizzo, who is the guardian of his estate, and by Ryan's mother Joyce E. Bair, who is the guardian of his person.

Ryan sustained moderate brain damage from the accident. His symptoms include inappropriate social interaction, difficulty in controlling his temper, mood instability, volatility, impulsiveness, decreased judgment, and lack of short term memory. He also has some balance problems, and a speech impediment. Ryan requires constant custodial care and supervision. He is unemployable and incapable of living on his own. Despite these problems, Ryan is a handsome man in good physical health. He retains a level of intelligence, has a strong desire to socialize and develop friendships, wants to develop personal interests such as pottery, likes to be active, and wants to feel that he is a productive member of society.

His parents, David E. Rizzo and Joyce E. Bair, who are divorced, have devoted a large portion of their lives since the accident to caring for Ryan. In the first few years

following Ryan's accident, Ryan's parents attempted various plans to keep him active, stimulated, and happy, without much success. Ryan became increasingly isolated and suicidal. His parents realized Ryan needed to be active and productive, and that his interests would best be served by obtaining meaningful employment in an environment that would allow him to interact socially. However, he was unable to keep a job, due to his behavioral problems and the other symptoms of his brain damage.

Eventually, Ryan's parents formulated a plan whereby Ryan's trust account would be used to purchase the large building at 353 Pine Street in Williamsport, called the "Arts Building." The building is located in the heart of downtown, and includes eight rental units, including street-front retail property. The idea was to open up a business at which Ryan could work, while under the constant supervision of his mother. The long-range plan was to generate funds from the rentals to subsidize that business, and perhaps even to generate enough money eventually to support Ryan's living expenses and add to the principal of the trust. On March 21, 2001, the Hon. Clinton W. Smith granted permission to purchase the building for \$400,000, and later authorized the release of an additional \$202,500 for renovations and improvements to the building.

Initially, Ryan's parents established Gifts of Art, a retail business specializing in various types of artifacts and crafts. Ryan worked at the business under the supervision of his mother. The work, however, proved to be too complicated for Ryan, who grew frustrated and bored. Also adding to the problem was his constant contact with Ms. Bair. Ryan and his mother not only lived together, but they also worked side-by-side at the business, and this proved too much for Ryan, who understandably strives to maintain some independence from his mother.

In 2004, when the business next door decided not to exercise its lease option, Ryan's parents renovated it and opened the "Java, Juice and Art Café." This proved to be a perfect place for Ryan to work, with its easier tasks, relaxed atmosphere, and younger clientele. Moreover, the café adjoins Gifts of Art, with a common passageway;

therefore, Ryan still works in close proximity to his mother, who operates Gifts of Arts, yet he is not constantly under her wing. This allows him a degree of independence. Moreover, Mr. Rizzo stops in the café frequently, and takes Ryan outside the café for periods of time when Ryan needs a respite from the business.

With the opening of the café, Ryan's psychological health improved dramatically, as did his self-esteem. Ryan now works daily at the café, making drinks and serving them, as well as assisting in other tasks. He is very happy with this arrangement, which was clear from Ryan's testimony, as well as the testimony of both parents and his psychiatrist, Dr. R. Scott Hoffer, who called the café excellent "occupational therapy" for Ryan. The court accepts Dr. Hoffer's testimony that this business is ongoing treatment for Ryan.

Unfortunately, both the café and the Gifts of Art need to be subsidized each month, and these funds have come largely from the interest generated from the Smith Barney trust account. However, cash flow is a major problem, making the current situation of the businesses very unhealthy. Although the building has acquired some very good tenants, income derived from the Arts Building and interest on the trust are barely sufficient to make ends meet. The petitioners have therefore asked this court to permit them to pay off the remaining mortgage on the building, which is approximately \$232,000, which will result in a monthly savings of \$1833.00. That savings would be used to sustain the Gifts of Art and the Java, Juice café, and would guarantee a steady income flow for the estate. In addition, the estate would save the 7 ½ percent interest currently being paid on the mortgage.

While the court recognizes the existence of some risk in this proposal, the court has decided to grant the petition for following reasons. First, the court is convinced that the existence of the Java, Juice café is essential to Ryan's continued psychological health. The café permits him to remain active, interact socially, and feel that he is a productive member of society. The Gifts of Art permits his mother to be close, but not

shoulder-to-shoulder with Ryan. And while neither of these businesses are self-sufficient at the present time, subsidizing them is a very good use of the trust account funds. Without the businesses, Ms. Bair would have to obtain a full-time job, which would mean that Ryan would have to be institutionalized or receive some type of care during Ms. Bair's work hours. Such an alternative would not only be expensive, it would be an outright disaster for Ryan psychologically.

Second, while neither the café nor the Gifts of Art are self-supportive at this time, their productivity has been improving, and the outlook is good for the future, especially with the current development taking place in the downtown area, which will hopefully generate customers for both businesses.

Third, the court has considered the testimony of financial expert James Armstrong, who testified about the financial advisability of paying off the mortgage and using the savings to subsidize the businesses and eventually perhaps add to the principal of the trust.

Fourth, the court is convinced that in the long run, the Arts building investment is a solid financial investment, which has the additional advantage of giving Ryan a life-long occupation. Seven out of the eight suites have been completely renovated. The court recently had the opportunity to tour the entire building, and was immensely impressed. Furthermore, the court found the café and the Gifts of Art to be extremely attractive.

Fifth, the court is impressed with the great personal sacrifices both parents have made, and the court respects their judgment regarding Ryan's assets. The court has no doubt that either parent desires anything other than what is best for Ryan's happiness and long-term interests. Both Ms. Bair and Mr. Rizzo are concerned not only about Ryan's life and needs in the immediate future, but also in the long run. They wish to set up a business that will sustain Ryan when they are no longer alive to help him on a daily

basis. While there may be safer investments, this business arrangement allows Ryan to live a more challenging and normal life.

And finally, the court believes Ryan has a basic understanding of his financial assets, as well as his parent's request to pay off the mortgage, and that he agrees with the request. The court notes that Ryan was represented by an attorney at the hearings, and indeed filed his own petition joining in the requests of his parents. In addition, Ryan's own testimony confirmed his understanding of the proposal, although that understanding is somewhat limited. Dr. Hoffer testified that Ryan has a basic understanding of his assets and what they have been used for, but has little appreciation for financial risk. In any event, it is clear to the court that Ryan loves working at the café, believes in the café's future, and wants the café to continue to exist. At the moment, the best way to ensure the continued existence of the café appears to be by paying off the mortgage. Our legislature has recognized that incapacitated persons have unique needs and should be able to participate as fully as possible in decision that affect them. 20 Pa. C.S. §5502. This plan achieves that purpose.

The petitioners have also requested the court to permit them to release funds from the trust to purchase a home for Ryan and his mother. As stated previously, although Ryan is a 32-year-old man in good health and with normal desires for a man his age, Ryan needs constant supervision. Fortunately, Ms. Bair is providing that supervision, at a tremendous personal sacrifice. The current living conditions for Ryan and his mother are severely inadequate. They rent a five-room bungalow with extremely small rooms, no attic, no basement, and no garage. Ryan has little privacy, no room to entertain guests, and no space to devote to his interest in making pottery or any other interests he may develop. The inadequate living conditions are having an adverse affect on Ryan and Ms. Bair's levels of stress and are causing Ryan additional frustration. The court will therefore grant the request to purchase a home with more room and privacy for Ryan. Acquiring residential real estate is not only a sound

financial investment, but obtaining a more appropriate home for Ryan is absolutely essential to his psychological health. Dr. Hoffer testified that Ryan needs more “elbow room” and that this would represent money well-spent.

The petitioners have also requested permission to reinvest the trust funds in a fashion that would generate more income. The court will gladly grant this request, as the trust’s portfolio has performed very poorly. However, the court desires a further hearing before any assets are transferred, as we wish to hear the testimony of the financial planners before approving any particular investment plan, with specific testimony on the goals and objective of the plan.

Next, the petitioners have requested permission to repay Ms. Bair \$32,200 she lent to the businesses from an inheritance she received. The money was used to renovate space for a tenant and keep the businesses operating while an earlier petition to the court was pending. The court is convinced this money was necessary to keep the businesses intact, and was unavailable from the trust due to the limited liquid assets. We will therefore grant this request as well.

And finally, the petitioners have requested reimbursement of \$10,772 they have spent by themselves for Ryan’s maintenance and living expenses from April 1, 2005 to May 31, 2006. The court will deny this request, as the petitioners failed to establish justification as to why the money could not have come from the trust, which authorizes periodic withdrawals. Furthermore, this request was not included in any of the three petitions, nor was it mentioned at the first hearing held on the petitions.

ORDER

AND NOW, this _____ day of July, 2006, the court grants the petition of Ryan D. Rizzo for Approval of Release of Funds, the Petition of Guardian of Person for Expenditure of Funds from Trust Account to Purchase Real Estate and Repay Debt, and the Petition of Guardians for Approval of Expenditure of Additional Trust Funds, all of which were filed on May 3, 2006. It is hereby ordered as follows:

1. Permission is granted for the transfer of funds from Ryan Rizzo's trust account to pay off the mortgage held by Legacy Bank on the real estate. It is noted that the approximate amount of the mortgage is \$232,000.00.
2. Permission is granted for the transfer of funds from Ryan Rizzo's trust account for the purpose of purchasing a home which will be the residence of Ryan Rizzo and Joyce E. Bair. The amount to be transferred for this purpose may not exceed \$200,000.
3. Permission is granted for the transfer of funds from Ryan Rizzo's trust account to reimburse Joyce E. Bair the amount of \$32,200.
4. Permission is granted to redesign the investment portfolio currently held by Citigroup/Smith Barney. As the court is concerned about the poor performance of the trust funds thus far, the court desires a further hearing before the assets are actually transferred. The hearing is scheduled for October 2, 2006, at 10:00 a.m. If a sooner date becomes available, the court will notify the attorneys.
5. Permission is denied for reimbursement to the petitioners in the amount of \$10,772.

BY THE COURT,

Richard A. Gray, J.

cc: Dana Jacques, Esq., Law Clerk
Hon. Richard A. Gray
Peter Campana, Esq.
Cynthia Rank Person, Esq.
Gary Weber, Esq.