



**IT IS ORDERED as set forth below:**

**Date: April 30, 2010**

**Paul W. Bonapfel  
U.S. Bankruptcy Court Judge**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE: :  
: Chapter 13  
JUSTINE L. BENSON, :  
: Case No. 10-64761-PWB  
: Debtor. :  
:

**ORDER APPOINTING GUARDIAN AD LITEM  
AND NOTICE OF STATUS CONFERENCE**

This case came before the Court for a hearing on April 19, 2010, for the Court's consideration of whether to appoint a guardian ad litem for the Debtor, Justine L. Benson, pursuant to Rule 1004.1 of the Federal Rules of Bankruptcy Procedure, which provides in pertinent part:

The court shall appoint a guardian ad litem for an infant or incompetent person who is a debtor and is not otherwise represented or shall make any other order to protect the infant or incompetent debtor.

Three adult children of Ms. Justine Benson appeared at the hearing: her daughters Jennifer Benson and Stephanie Moore, and her son, Frederick Benson. Also appearing at the hearing were: Ms. Benson's attorney of record in this case, Angela Williams Seymour; the Chapter 13 Trustee, Mary Ida Townson; and the Trustee's attorney, Brandi Kirkland.

It is undisputed that Ms. Justine Benson lacks the mental capacity to understand and manage her financial affairs and, indeed, that she does not understand that she is the debtor in a bankruptcy case. Ms. Moore, exercising a power of attorney granted by Ms. Justine Benson at a time when it appears she was competent, retained Ms. Seymour to file this case on her behalf. It also appears that Ms. Justine Benson executed another power of attorney in favor of Mr. Benson when she was competent. The Court could not determine on the basis of the hearing: (1) whether either power of attorney would authorize the attorney in fact to file a bankruptcy case on behalf of Ms. Justine Benson or whether either power of attorney is effective to authorize either attorney in fact to act on her behalf upon her incompetency as O.C.G.A. § 10-6-142 contemplates; and (2) whether the ratification of the filing by Ms. Justine Benson is or would be in her best interest or legally permissible even if the filing was not authorized.

Although Ms. Justine Benson thus has two potential attorneys in fact, the nature and extent of their authority is uncertain, and she does not have a duly appointed representative. Although the children collectively appear to be genuinely concerned about their mother's interests, no one has expressly and definitively undertaken to assume the role of a "next friend" or guardian ad litem.

Ms. Justine Benson's children and her attorney at the hearing were uncertain as to the nature of Ms. Justine Benson's rights in the real property in which she is residing (i.e., whether

she owns a life estate, a fee simple, or some other interest<sup>1</sup>) and her rights and obligations under a “reverse mortgage” that encumbers the property, including the extent to which she may be entitled to further advances under the instrument and the amount of funds that have been disbursed to her since its execution.<sup>2</sup> Consideration of this question requires determination of whether, if she surrendered the vehicle, she has nonexempt equity in the residence that would require payment of some or all of the deficiency claim, if any,<sup>3</sup> under the “best interests” test of 11 U.S.C. § 1325(a)(4). If no nonexempt equity in the residence exists, it may be in Ms. Justine Benson’s interest to surrender the vehicle and convert her case to one under Chapter 7. Alternative means of transportation might be less of a drain on her resources than payment of the claim.

Further, it appears that Ms. Justine Benson has creditors that were not listed as creditors in this case; that some or all of her children and her attorney do not fully understand the extent or nature of her financial transactions prior to the filing of the bankruptcy case; and that

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<sup>1</sup>Some of the children seemed to think that the residence could be retained upon payment of the amount due under the reverse mortgage. No one knew who held the remainder interest in the property subject to the life estate.

<sup>2</sup>The Court did not take any formal evidence at the hearing and consequently can make no definitive findings of fact with regard to any matters relating to Ms. Justine Benson’s financial affairs or transactions. Nevertheless, the statements of the children at the hearing, particularly their understanding of the amounts that Ms. Justine Benson has received as a result of the reverse mortgage transaction and the amounts to which she may still be entitled, give rise to concerns that the sum of amounts she has received and amounts to which she may still be entitled is substantially less than what one might expect a reverse mortgage transaction to produce based on the amount shown in the schedules as the balance due.

<sup>3</sup>The Court notes that Capital One Auto Finance has valued its collateral as being equal to the amount of its claim. Consequently, Capital One Auto Finance may not hold an unsecured claim if the vehicle is surrendered.

questions may exist as to whether and to what extent it is in the best interests of Ms. Justine Benson that she seek bankruptcy relief at all and, if so, whether she should be in a Chapter 13 case or a Chapter 7 case. Important concerns in this regard are whether she in fact has any equity in her residence.

Under all the facts and circumstances of this case, the Court concludes that it is necessary to appoint a guardian ad litem for Ms. Justine Benson because she does not have a duly appointed representative and because the appointment of a guardian ad litem is necessary to protect her interests in this case.<sup>4</sup> Without limiting the generality of the rights and powers of the guardian ad litem, the guardian ad litem: (1) shall have the right to request and obtain from any entity (as that term is defined in 11 U.S.C. §101(15))<sup>5</sup> any information that Ms. Justine Benson could request and obtain, and the guardian ad litem shall have any and all rights, powers, privileges, and authority to request and obtain information that Ms. Justine Benson has, without the necessity of approval or ratification from Ms. Justine Benson; and (2) shall have the right to recommend to the Probate Court of Fulton County the appointment of a conservator, general guardian, or other fiduciary as the guardian ad litem may determine, after consultation with the family of Ms. Justine Benson, if she deems such an appointment to be in the best interests of Ms. Justine Benson.

It appears that Shayna M. Steinfeld is qualified to serve as guardian ad litem in this case and is a disinterested party.

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<sup>4</sup>The children at the hearing did not oppose appointment of a guardian ad litem.

<sup>5</sup>11 U.S.C. § 101(15) provides, “The term ‘entity’ includes person, estate, trust, governmental unit, and United States trustee.”

Based on the foregoing, it is hereby **ORDERED and ADJUDGED** as follows:

1. Shayna M. Steinfeld is hereby appointed as guardian ad litem for Ms. Justine L. Benson, the debtor in this case, and shall have all rights, powers, and duties usually attendant to a guardian ad litem, including the authority to determine what is in the best interests of Ms. Justine L. Benson and to act for her and on her behalf in this bankruptcy case.

2. Without limiting the generality of the guardian ad litem's rights, powers, and duties, the guardian ad litem:

(a) shall have the right to request and obtain from any entity (as that term is defined in 11 U.S.C. §101(15)) any information that Ms. Justine Benson could request and obtain, and the guardian ad litem shall have any and all rights, powers, privileges, and authority to request and obtain information that Ms. Justine Benson has, without the necessity of approval or ratification from Ms. Justine Benson;

(b) shall have the right to recommend to the Probate Court of Fulton County the appointment of a conservator, general guardian, or other fiduciary as the guardian ad litem may determine, after consultation with the family of Ms. Justine Benson, if she deems such an appointment to be in the best interests of Ms. Justine Benson;

(c) shall have the authority (i) to initiate and to prosecute any claims or causes of action and to appear and defend on behalf of Ms. Justine L. Benson in any application, motion, adversary proceeding, or any other civil proceeding in this or any other court; (ii) to file, as appropriate, such pleadings and papers as are necessary and appropriate in connection with the seeking of relief under Chapter 13 on behalf of Ms. Justine L. Benson, including without limitation the filing of a Chapter 13 plan and any amendments or modifications thereto; (iii) to

seek the conversion to Chapter 7 or dismissal of this case; and (iv) to otherwise act for and on behalf of Ms. Justine L. Benson in this case; and

(d) shall have the authority to employ, with approval of the Court, attorneys or other professionals as appropriate, provided that the guardian ad litem shall have the discretion to utilize the legal services of Angela Williams Seymour, the attorney of record for Justine L. Benson, without the necessity of such approval.

3. Any entity (as that term is defined in 11 U.S.C. § 101(15)) is hereby authorized and directed to provide to the guardian ad litem any documents or other information to which Ms. Justine L. Benson personally is entitled as if Ms. Justine L. Benson had personally requested such documents or other information.

4. The guardian ad litem shall be entitled to allowance of reasonable compensation and reimbursement of expenses ordinarily and necessarily incurred as an administrative expense in this case after notice and a hearing upon application to the Court.

5. The Court shall hold a status conference in this matter on **May 25, 2010**, at **2:00 p.m.**, in Courtroom 1401, U.S. Courthouse, 75 Spring Street, S.W., Atlanta, Georgia, at which time the Court shall hear an oral report of Ms. Steinfeld's findings to date.

**[End of Order]**

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and

All parties in interest.