

## IT IS ORDERED AND ADJUDGED:

1. That Cat Champion Corporation is appointed as a fiduciary for the limited purpose of providing for the care and permanent placement of the 11 cats previously in Respondent's custody in a manner that serves the cats' interests;
2. Due to the fragile health of the cats that they continue to endure as a result of actions taken by Respondent, Petitioner does not expect to be able to charge any adoption fee in placement of the cats. Further, Petitioner has expended costs in an amount exceeding \$32,000 and as such, any adoption fees they do recover, we ask the Court to apply toward those costs. See Exhibit A – Cost of Care Spreadsheet;
3. For the court to order that the \$78 filing fee for this matter be waived and returned to Cat Champion Corporation, being that they are a nonprofit corporation with very little operating funds;
4. Any other related order that the Court deems appropriate to protect Respondent and her property.

Dated this \_\_\_\_\_ day of August, 2005.

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Judge

ORDER PREPARED BY: Stephanie J. Engelsman, attorney for Petitioner  
Animal Legal Defense Fund  
919 SW Taylor, 4<sup>th</sup> Floor  
Portland, OR 97205  
503-231-1602

GLEN D. BAISINGER  
Judge

CAROL R. BISPHAM  
Judge

JOHN A. MCCORMICK  
Judge

RICK J. MCCORMICK  
Judge

DANIEL R. MURPHY  
Judge



CIRCUIT COURT OF OREGON  
TWENTY-THIRD JUDICIAL DISTRICT

P.O. BOX 1749  
ALBANY, OREGON 97321-0491  
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August 18, 2005

Stephanie J. Engelsman  
Attorney at Law  
919 SW Taylor, 4<sup>th</sup> Floor  
Portland, Oregon 97205

Re: In the Matter of a Protective Order for Jean Marie Primrose  
Linn County Case No. 21840

FILED  
STATE OF OREGON  
LINN CO. CIRCUIT COURT  
2005 AUG 19 PM 3:45  
COURT ADMINISTRATOR  
BY \_\_\_\_\_

Dear Ms. Engelsman :

Before I will consider your proposed Order, I will need to receive some legal authority for the proposition that a Probate Court can permanently divest an incapacitated person of their property in the manner you suggest. My initial thought is that the authority of a Probate Court in this situation would be limited to care and protection of Ms. Primrose's property.

It may be that other remedies are available, although I note that the criminal case was dismissed on motion of the District Attorney on January 24, 2005. In any event, I will not approve your proposed Order at this time.

Sincerely,

Glen D. Baisinger  
Circuit Judge

sb

## IN THE CIRCUIT COURT OF THE STATE OF OREGON

## FOR THE COUNTY OF LINN

## PROBATE DEPARTMENT

In the Matter of a Protective Order for	)	Case No. 21840
	)	
JEAN MARIE PRIMROSE	)	
	)	Memorandum of Law in Support of
	)	Petition for Protective Order
Respondent.	)	
	)	
STATE OF OREGON	)	
	)	
County of LINN	)	

## I. INTRODUCTION

Cat Champion, Corp. ("Petitioner"), by and through its attorneys, Animal Legal Defense Fund ("ALDF"), filed a Petition for a Protective Order in Linn County Probate Court on July 1, 2005. Petitioner seeks to be appointed as a fiduciary for the limited purpose of providing for the continued physical care and the legal, permanent placement of the eleven cats seized from Respondent Jean Marie Primrose on July 8, 2004. Respondent was personally served with the Petition by Linn County Sheriff Deputy Alan Campbell on July 2, 2005. All others (Respondent's parents, her last-known attorney and her case manager), as required by Or. Rev. Stat. Ann. § 125.060, were properly served by mail. *See* Ex. 1, Aff. Deputy Alan Campbell (July 5, 2005); *see also* Ex. 2, Aff. Stephanie Engelsman (July 14, 2005). To date, no one has filed an objection to the Petition.

Petitioner is an Oregon non-profit organization dedicated to the rescue and rehabilitation of cats. Petitioner has, in the past, agreed to temporarily care for cats seized by law enforcement officers

in Linn County; however, that operation has been suspended over the past year as Petitioner has been forced to dedicate its time and resources solely to caring for Respondent's cats.

This Memorandum was filed as a response to this Court's August 18, 2005, request for legal authority for the proposition that the Probate Court can permanently divest an incapacitated person of their property in the manner suggested. It supports the conclusion that this Court can appoint Petitioner as fiduciary for the limited purpose stated, which will protect Respondent from endangering her health, future animal cruelty charges and a tremendous financial burden.

## II. FACTS

In July of 2004, three officers with the Linn County Sheriff's Department investigated Respondent for allegations of animal cruelty. What they found lead them to seize as many cats as they could catch and advise the Linn County District Attorney's Office to prosecute Respondent for animal cruelty.

During her investigation on July 7, 2004, Deputy Beth Adams had "trouble breathing" and "observed that the kitchen appliances, including the stove and sink, were filled with old and fresh feces." *See* Ex. 3, Aff. Deputy Beth Adams (June 27, 2005). The kitchen floor was covered "in animal feces and urine" and Deputy Adams had to "quickly step off the porch again due to the overwhelming odor of feces and urine." *Id.* Respondent was unable to give Deputy Adams an exact count of how many cats she had and Deputy Adams lost count of the number of cats she saw running around the house and outside the property. *Id.* Respondent informed Deputy Adams that she sleeps in the trailer with the cats and that her bed is a pile of blankets Deputy Adams had observed on the floor in the feces-covered living room. *Id.* Despite claiming to have been ill for two weeks, Respondent had not seen a doctor. *Id.* Finally, despite Respondent's claims that she feeds and waters the cats

twice daily, Deputy Adams did “not observe any area for the cats to be fed or for them to have access to water.” *Id.*

Sergeant Art Sprague’s account of the situation the following day was equally as grim. He accompanied Deputy Campbell. Sergeant Sprague saw “weak and starving” cats. *See* Ex. 4, Aff. Sergeant Art Sprague (June 27, 2005). Upon Sergeant Sprague’s arrival, Respondent became irate and began “screaming and kicking at the cats to scare them away” and then began “throwing gravel at them.” *Id.* Sergeant Sprague noted a “very foul stench of cat urine and solid waste” and had “difficulty breathing” as a result of the odor. *Id.* In fact, Sergeant Sprague was unable to remain in the trailer very long because of the smell and became nauseated upon exiting the trailer. *Id.* The facts show it was unfit for occupancy by humans or animals.

Deputy Adams’ and Sergeant Sprague’s accounts of the situation at Respondent’s home were enough to lead them to seize as many cats as they could catch, and advise the Linn County District Attorney’s Office to prosecute Respondent for animal cruelty.

### III. SUMMARY OF LEGAL PROCEEDINGS

On August 12, 2004, the Linn County District Attorney’s Office filed a charge of Animal Neglect in the Second Degree against Respondent, case number 04081771, based on reports submitted by Linn County Sheriff Department officers who investigated Respondent’s property on July 7 and 8, 2004. Mr. Arnold Poole served as Respondent’s court-appointed defense attorney and moved the Court for an Order for a Mental Status Examination, the results of which showed Respondent was “functioning within the mild range of mental retardation.” *See* Ex. 5, Report Gary E. Nielsen, Ph.D. (Nov. 3, 2005). The Court found Respondent unable to aid and assist in her criminal trial and dismissed the charge of animal neglect on January 24, 2005. No criminal charges are

currently pending against Respondent.

Petitioner, by and through its attorneys, ALDF, filed its Petition on July 1, 2005 and properly served Respondent and all those required by Oregon law. To date no one has filed an objection to this Petition.

#### IV. ARGUMENT

1. The Court has all the authority needed in ORS § 125.650(4) to appoint a fiduciary and transfer the cats to the fiduciary

Under Or. Rev. Stat. Ann. § 125.650(4), the cats Petitioner is currently caring for can be legally transferred to a fiduciary immediately. This statute specifically authorizes the court to “appoint a fiduciary whose authority is limited to a specified time and whose power is limited to certain acts needed to implement the protective order.” Or. Rev. Stat. Ann. § 125.650(4).

Or. Rev. Stat. Ann. § 125.650(5) also permits the cats currently being cared for by Petitioner to be legally transferred to a fiduciary immediately. Subsection (a) of the statute specifically authorizes the court to enter into “any transaction necessary or desirable to achieve any security, service or care arrangement meeting the foreseeable needs of the protected person, including but not limited to payment, delivery, deposit or retention of funds or property, *sale*, mortgage, lease or *transfer* of property.” Or. Rev. Stat. Ann. § 125.650(5)(a) (emphasis added).

If the Court can discern a statute’s plain meaning and nothing in the statute’s context “creates a plausible doubt about whether the legislature intended that meaning, the court will adopt that plain meaning as the correct interpretation” of the statute. *State v. Hall*, 327 Or. 568, 578 (1998), citing *PGE v. Bureau of Labor and Industries*, 317 Or. 606 (1993) (in analyzing a statute, if the legislature’s intent is clear from an analysis of text and context, further inquiry is unnecessary). In

this case, the plain language of the subsection (4) provides the Court with the authority appoint a fiduciary to carry out the protective order and care for the eleven cats seized from Respondent. Per the language in subsection (5), the acts of the protective order can include selling or transferring Respondent's property which, in this situation, is eleven cats seized over one year ago because of their sick, weak condition and the disgusting conditions in which they were living.

Respondent has been deemed unable to aid and assist in her own criminal trial. *See* Ex. 6, Pl.'s Mot. Dismiss (Jan. 24, 2005). It is clear that she is also unable to care for her cats, given the state of terrible health she let them fall into while they were under her care last year. Respondent has stated that she does not see a problem with the filthy, sickly conditions they were living in, and she has never made claims that she would upgrade their living conditions if they were returned to her. *See* Ex. 3, at III, Aff. Deputy Adams (June 27, 2005). Respondent repeatedly claims to love the cats, but, given that she cannot provide them the care and attention needed, adopting them out to new homes is a "transaction necessary . . . to achieve" her needs. Transferring the cats to a fiduciary will help keep Respondent out of future criminal trouble, be more hygienic for her health, and will also help her financial position in that she will not have to spend her limited funds on the extensive veterinary care needed by all the cats seized. *See infra* I(2).

In conclusion, the clear language of Or. Rev. Stat. Ann. §§ 125.650(4) and (5)(a) allow this Court to transfer the cats to a fiduciary. Clearing the legal status of the cats so they may be placed in permanent homes must occur in order to protect Respondent and the cats.

2. Or. Rev. Stat. Ann. § 125.650(5)(b) authorizes this Court to enter into any transaction needed to protect Respondent's best interests

Or. Rev. Stat. Ann. § 125.650(5)(b) permits this Court to enter into any "transaction relating

to [Respondent's] financial affairs or involving the estate of [Respondent] if the court determines that the transaction is in the best interests of Respondent. Given this statutory language, this Court may release Respondent's cats to Petitioner in order to protect Respondent from future animal cruelty charges, the financial burden of caring for extremely sickly cats, and to protect her health.

On July 7 and 8, 2004, Linn County Sheriff Department officers Sergeant Sprague, Deputy Adams and Deputy Campbell arrived at Respondent's residence to investigate allegations of animal cruelty. What they found there was terrible enough to warrant seizure of eleven cats and a recommendation to the District Attorney's office for criminal charges. *See Ex. 3 and 4, Aff. Deputy Beth Adams, Aff. Sergeant Art Sprague.* The District Attorney's office filed criminal charges against Respondent for Animal Neglect II on August 12, 2004. Due to her financial situation, Respondent qualified for a Court-Appointed Attorney and then underwent a mental examination to determine her ability to aid and assist in a criminal trial. The entire process was time consuming and costly to Respondent and the County.

If these eleven cats are returned to Respondent, she will undoubtedly face criminal animal cruelty charges again. *See Ex. 3, Aff. Deputy Beth Adams* (where Respondent and her family admit to seeing nothing wrong with the way Respondent lives and the way she treats her cats); *see also Ex. 7, Aff. Arnold Poole* (Oct. 12, 2004) (on behalf of Respondent, stating that she does not understand the charges brought against her or how she had violated the law). This will put Respondent in a difficult position, both financially and emotionally. She will have to apply for court-appointed counsel again, *see Ex. 8, Ltr. From Arnold Poole to Dana Campbell* (July 13, 2005) (stating that Mr. Poole no longer represents Respondent) and will likely have to undergo another intrusive examination of her mental health and a hearing to discuss any findings. Finally, if these



cats are returned to Respondent, she will face the enormous financial burden of caring for sick cats. *See* Ex. 9 (costs Petitioner has accrued in caring for the cats).

It is therefore in Respondent's best interests that Petition be appointed as fiduciary for the limited purpose of determining what is in the best interests of the eleven cats. This will safeguard Respondent's health and protect her financially and from any future criminal charges.

3. Guardianship and conservatorship  
statutes do not apply to this situation

Appointing a guardian or conservator on behalf of the eleven cats seized from the deplorable conditions at Respondent's home is not a possibility in this situation.

Statutory language deems that "a guardian may be appointed for an adult *person* only as is necessary to promote and protect the well-being of the protected *person*." Or. Rev. Stat. Ann. § 125.300(1) (2004) (emphasis added). While the initial declarations regarding minors are less explicit and do not specifically utilize the word "person," a later section that spells out the duties and responsibilities of a juvenile guardian clarifies this ambiguity by referencing the "child" under protective care. *See* Or. Rev. Stat. Ann. §§ 125.305(1)(a), (4), (1)(e) (2004). Also, the definition section of this statutory chapter defines a minor as "any *person* who has not yet attained 18 years of age." Or. Rev. Stat. Ann. § 125.005(6) (2004). Given the courts' hesitation to contradict the "plain meaning" of a statute, a request to be appointed guardian of the eleven cats under these sections is not available to Petitioner.

Appointing a conservator is not the best solution in this case. As a "person who is interested in the affairs or welfare of a respondent," Petitioner can request a protective order to appoint a conservator "for the purpose of protecting the person or estate of a respondent." Or. Rev. Stat. Ann.

§§ 125.010(1), 125.005(8) (2004). Respondent is “financially incapable” of looking after the cats given their poor health and the extensive veterinary care required in order to help them get better, and her cats require protection. Or. Rev. Stat. Ann. § 125.400 (2004). It is unlawful for Respondent to keep her cats in their sickly states, denied the veterinary care they need and deserve. Or. Rev. Stat. Ann. § 167.325. As a conservator, Petitioner would be authorized to “collect, hold, and retain assets of the estate . . . until, in the judgment of the conservator, disposition of the assets should be made.” Or. Rev. Stat. Ann. § 125.445 (2004). This provision, on its face, would allow Petitioner, if appointed conservator, to place the cats in adoptive homes. The problem with this provision is that a conservator must take “possession of *all* property of *substantial value* of the protected person.” Or. Rev. Stat. Ann. § 125.420 (2004) (emphasis added). This clause is problematic for two significant reasons.

First, “substantial value” is undefined in this statutory chapter and the sickly cats can hardly be considered of “substantial value” warranting the appointment of a conservator. More importantly, appointing Petitioner as a conservator means that Petitioner would take control of “all” property of a “substantial value” in Respondent’s possession. Or. Rev. Stat. Ann. § 125.420. This would divest Respondent of much more property than is necessary in this situation. Petitioner does not need to oversee care and maintenance of all of Respondent’s property. For these reasons, appointing Petitioner as a conservator is not an appropriate solution. For these reasons, appointing a conservator is not the best option for the sick eleven cats being dutifully cared for by Petitioner.

The protective order requested by Petitioner under Or. Rev. Stat. Ann. § 125.650 remains the best option. Under this statute, this Court is authorized to fulfill any responsibility that it is capable of designating to a conservator. Or. Rev. Stat. Ann. § 125.650(2) (2004). This includes the “transfer

of the property” necessary to achieve any “care arrangement meeting the foreseeable needs of” Respondent. *Id.* at (5)(a). Issuance of a protective order will help Petitioner more quickly achieve its goal of protecting Respondent’s cats from further harm and protecting Respondent herself from future health dangers, animal cruelty charges, and a tremendous financial burden.

4. Petitioner will not seek monetary compensation for the costs incurred in the transportation, feeding and care of Respondent’s cats

Respondent was charged with Animal Neglect II under Or. Rev. Stat. Ann. § 167.325 on August 12, 2004, stemming from reports written by Linn County Sheriff’s Office Sergeant Sprague, Deputy Adams and Deputy Campbell. As a result of their investigation of and visit to Respondent’s property, and as allowed by Or. Rev. Stat. Ann. § 167.354, Linn County Sheriff’s Office ordered the seizure of Respondent’s cats in order to protect them from further animal cruelty. Sergeant Sprague, accompanied by Petitioner representative Sandy Chitwood, returned to Respondent’s property on July 8, 2004, to effect the seizure. Although Respondent was in possession of many more cats, only eleven cats were able to be caught and removed from the property that day.

Petitioner has provided care for the seized cats since July 8, 2004 and has accrued costs in excess of \$30,000. *See* Ex. 9. Per Or. Rev. Stat. Ann. § 87.159, Petitioner has a lien on the cats for the reasonable charges for transportation, feed, care and treatment of the cats impounded under Or. Rev. Stat. Ann. § 167.345. Further, Petitioner may “retain possession of the animal until those charges are paid.” *Id.* Given Respondent’s troubled financial situation, it is highly unlikely that she will be able to pay the extensive charges accrued by Petitioner or, more importantly, that she will be able to afford any future veterinary care for the cats. This will place her in violation of the Oregon animal cruelty code once again. Petitioner is willing to give up any right to seek recovery of its costs

accrued in the event that the eleven cats seized by the Sheriff's Office and placed in Petitioner's care are permanently placed with Petitioner.

#### V. CONCLUSION

Petitioner seeks a protective order in order to act as a fiduciary for the limited purpose of providing for the continued physical care and the legal, permanent placement of Respondent's cats. Granting the Order would not only protect the cats from probable future neglect but would also protect Respondent from enduring unsanitary conditions, further animal cruelty charges, the emotional burden of undergoing another mental examination in the event that further criminal charges are filed, and the enormous financial burden of caring for these extremely sick cats. For these reasons, Petitioner, by and through its attorneys, ALDF, hereby requests the Court to sign the Petition for a Protective Order so that Petitioner can determine and execute the long term care plans that are in the best interests of the cats, and then continue helping Linn County by temporarily caring for cats seized in other cruelty situations.

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Stephanie J. Engelsman, OSB Number 05054  
Attorney for Petitioner

PETITIONER  
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Cat Champion, Corp.  
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GLEN D. BAISINGER  
Judge

CAROL R. BISPHAM  
Judge

JOHN A. MCCORMICK  
Judge

RICK J. MCCORMICK  
Judge

DANIEL R. MURPHY  
Judge

ER-21



FILED  
STATE OF OREGON  
LINN CO. CIRCUIT COURT  
2005 NOV -3 PM 12:45  
ALBANY, OREGON 97321-049  
COURTS (541) 967-3848  
CRIMINAL RECORDS (541) 967-3848  
CIVIL RECORDS (541) 967-3848

CIRCUIT COURT OF OREGON  
TWENTY-THIRD JUDICIAL DISTRICT  
COURT ADMINISTRATOR  
BY \_\_\_\_\_

November 3, 2005

Stephanie J. Engelsman  
Attorney at Law  
919 SW Taylor, 4th Floor  
Portland, OR 97205

Re: In the Matter of a Protective Order for Jean Marie Primrose  
Linn County Case No. 21840

Dear Ms. Engelsman:

Thank you for your submission of an addition Memorandum in support of your request for this Protective Order. I am sympathetic to the dilemma created when the criminal proceedings were suspended and then dismissed due to the apparent incapacity of Ms. Primrose. Unfortunately, I remain unpersuaded that such an Order is authorized by existing law. Your Petition is denied.

Sincerely,

---

Glen D. Baisinger  
Circuit Judge

sb

COPY

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF LINN  
PROBATE DEPARTMENT

In the Matter of a Protective Order for )  
JEAN MARIE PRIMROSE, Respondent. ) Case No. 21840  
) ORDER and JUDGMENT

This matter came before the Court on a "Petition for Limited Protective Order Regarding Respondent's Property: Cats."

By letter to Petitioner dated August 18, 2005, the Court expressed its reluctance to grant the requested relief. A copy of that letter is attached hereto and incorporated herein by reference. In response, the Petitioner submitted a Memorandum of Law (with supporting Affidavits) and a proposed Limited Protective Order. The Memorandum, Affidavits and proposed Order are contained within the Court's file herein.

The Court finds that the procedural requirements for commencing a proceeding for a protective order and appointment of a fiduciary under ORS Chapter 125 appear to have been met.

By letter to Petitioner dated November 3, 2005, the Court indicated its denial of the Petition. A copy of that letter is attached hereto and incorporated herein by reference.

Accordingly, it is hereby ORDERED that even assuming the truth of all the factual allegations made by Petitioner throughout this case, nothing in ORS Chapter 125 authorizes this Probate Court to permanently divest Ms. Primrose of her personal property, to-wit: her cats. The Petition is denied and this action is dismissed without costs.

DATED this 16th day of December, 2005.

  
Glen D. Baisinger  
Circuit Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 8<sup>th</sup> day of March, 2006, I served the foregoing Appellant's

Brief and Excerpt of Record on:

Jean Marie Primrose, *Pro se*  
38423 Century Drive  
Albany, Oregon 97321

by mailing to said individual two true copies thereof, contained in a sealed envelope, via first-class mail with postage prepaid, addressed to said person at his/her last known address and deposited in the Post Office on said day.

I further certify that on the same date listed above I filed the original and twenty copies of the same document with the Court of Appeals by depositing them into the United States mail enclosed in a sealed envelope with postage prepaid and addressed to the State Court Administrator.



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Margaret H. Leek Leiberan - OSB # 77046  
Of Attorneys for Appellant  
Cat Champion Corporation

