

JUDGE CURT WERREN
STARK COUNTY
PROBATE COURT

2025 AUG 29 PM 3: 58

THE COURT OF COMMON PLEAS
PROBATE DIVISION
STARK COUNTY, OHIO

In re: Estate of Linda R. Kelly, Deceased : Case No. 252541
: :
: Judge Curt Werren

REPORT OF INVESTIGATOR,
JOHN R. FRANK

On July 7, 2025, pursuant to Ohio Revised Code §2106.08, the Court appointed me to investigate the spousal election that should be made for the decedent Linda R. Kelly's (Mrs. Kelly's) surviving spouse, Terry L. Kelly (Mr. Kelly), who is under legal disability.

Based upon my investigation, I believe that Mr. Kelly's best interest requires that he elect to take **AGAINST** his late wife's last will & testament. I respectfully submit this report to explain the reasons for this election.

I. Review of Operative Facts

A. Mrs. Kelly's Last Will & Testament

The decedent, Mrs. Kelly, died on January 25, 2025. She was survived by her husband, Mr. Kelly, and their son, Thomas David Kelly (Thomas).

Five days before Mrs. Kelly died, on January 20, 2025, a holographic or handwritten last will & testament was signed. A copy of the document is attached hereto as Appendix 1. That document sought to devise and bequeath the real estate that was located at 7907 Columbus Road, Louisville, Ohio 44641, and all of its contents, to Thomas.

On May 22, 2025, Thomas filed an "Application to Treat Document as Will, Notwithstanding Noncompliance," pursuant to Ohio Revised Code §2107.24. The Court conducted a hearing on

Thomas' application on June 25, 2025. In the resulting Magistrate's Decision, the Court:

- (1) ***Admitted the Handwritten Document to Probate:*** The Court concluded that the above-described document did not comply with the requirements for a last will & testament under Ohio Revised Code §2107.03, but that it qualified for admission to probate under Ohio Revised Code §2107.24.
- (2) ***Ordered This Investigation:*** Because Mr. Kelly has dementia, which has recently worsened, the Court determined that he was not able to make a valid election to take under or against his late wife's recently admitted last will & testament. My appointment to investigate followed.

B. Mr Kelly's Current Condition & Circumstances

On August 18, 2025, I called and spoke with Thomas. During our telephone conversation, he provided the following information about his father, Mr. Kelly:

- ***Mr. Kelly's Age, Medical Condition, and Mental Condition:*** Mr. Kelly is currently age 75. He manages numerous medical conditions, including heart failure, kidney failure, and diabetes. He also has a leg and/or foot condition that impairs his ability to walk.

Mr. Kelly also has dementia. Thomas said that the dementia has intensified.

Thomas also claimed that Mr. Kelly has additional mental health conditions, including narcissism. Thomas said, "My dad is an ex-cop. He thinks that the rules and law don't apply to him."

Thomas said that Mr. Kelly's behavior has recently been very erratic. For example, he said that his father has threatened to have him arrested because he would not bring cheese puffs to him. He also suggested that his father has made menacing statements about physical harm to him.

- ***Mr. Kelly's Residential Placement:*** When Mr. Kelly lived at his personal residence, Thomas said that his cognitive condition was "off the charts."

When Mr. Kelly left his personal residence, he initially resided at McKinley Health Care Center in Canton, Ohio for approximately 4-6 weeks. In mid-July 2025, he moved to Hanover House in Massillon, Ohio, where he currently resides. Thomas believes that Mr. Kelly requires long term care in a nursing facility for the remainder of his life.

- ***Mr. Kelley's Employment History:*** Thomas informed me that his father worked for the Stark County, Ohio Sheriff's office for approximately 30-35 years before he retired in 2017.

- ***Mr. Kelly's Assets:*** Thomas informed me that his father's assets include:

(1) **Undivided One-Half Interest in Residence:** Mr. Kelly owns an undivided one-half interest in his former residence that is located at 7907 Columbus Road, N.E., Louisville, Ohio 44641. According to the Stark County, Ohio Auditor's website, the total market value of the residence is \$242,100.00. Therefore, his undivided one-half interest is worth \$121,050.00.

(2) **Financial Institution Accounts:** Thomas informed me that his father has the following accounts at First Commonwealth Bank in Canton, Ohio:

Checking Account: \$1,647.80 (Note: Thomas informed me that a \$40,000.00 home equity line of credit on Mr. Kelly's home was recently paid from this checking account. The Stark County, Ohio Recorder's office website does not yet include a Release of Mortgage.)

Savings Account: \$310.00

(3) **Other Personal Property**

Baseball & Football Cards & Figurines

Antique Furniture & Memorabilia

Civil War & World War II Items (e.g., daggers, bayonets, guns, etc.)

Note: Mr. Kelly currently owns no vehicles. Ownership was transferred to Tom when Mr. Kelly was unable to drive.

- ***Mr. Kelly's Income:*** Thomas informed me that Mr. Kelly currently receives the following monthly income:

(1) Ohio PERS: \$3,196.85

(2) Social Security Retirement: \$1,462.00

(3) Other: \$142.00 from one source, and \$44.00 from another source.

- ***Mr. Kelly's Family History of Longevity:*** Thomas informed me that Mr. Kelly's father died in his eighties, and his mother died in her late seventies or early eighties.

C. **Information from Hanover House, Inc.**

On August 28, 2025, I called and spoke with Brett Letner, who is Business Office Manager at Hanover House, Inc., 435 Avis Avenue, N.W., Massillon, Ohio 44646. During our telephone

conversation, he provided the following information to me:

- *Mr. Kelly's Current Residence Status:* Mr. Kelly is still within the first 100 days that may be covered by Medicare for rehabilitative purposes. Specifically, Thursday, August 28, 2025 was Day 58 of the first 100 days. He had 42 days remaining before Medicare coverage expires.
- *Medicare Coverage:* The *per diem* or daily rate at Hanover House, Inc. is \$374.00. Medicare covered 100% of that cost for the first 20 days. Between Day 21 and Day 100, Mr. Kelly incurs a co-pay of \$204.00 per day. Mr. Kelly's co-pay for July 2025 was \$2,304.50. His co-pay for August 2025 is \$6,494.50.
- *Verification of Mr. Kelly's Income:* Mr. Letner verified that Mr. Kelly's current monthly income includes:
 - (1) Ohio PERS: \$3,196.85
 - (2) Social Security Retirement: \$1,462.00
 - (3) UFCS Pension: \$191.59
 - (4) Brighthouse Pension: \$109.16
 - (5) Veterans Administration Payments: \$44.75, \$124.00, and \$314.00
- *Anticipated Medicaid Application:* Mr. Letner informed me that his office will soon initiate a Medicaid application for the cost of Mr. Kelly's care. In fact, they already established a QIT Trust for Mr. Kelley, because of the amount of his monthly income.

II. The Ohio Supreme Court's Clear Command

In 1996, the Ohio Supreme Court addressed a factual situation that is very similar to Mr. Kelly's situation. *In re: Estate of Cross* (1996), 75 Ohio St.3d 530, 664 N.E.2d 905. In *Estate of Cross*, a unanimous Ohio Supreme Court concluded:

[E]ligibility for Medicaid benefits is dependent upon a recipient's income or available resources. Ohio Adm. Code 5101:1-39-05. The term "resources" includes "property owned separately by the person, his share of family property, and property deemed to him from a parent or spouse. Ohio Adm. Code 5101:1-39-05(A)(4). This also encompasses "those resources in which an applicant/recipient has a legal interest and the legal ability to use or dispose of."

Mrs. Cross clearly had a legal interest in and ability to use or dispose of her intestate share under her right to take against the will. Thus, she had available to her a potential resource for Medicaid eligibility purposes. This is critical to the facts presented, since the Medicaid rules specifically state that the nonutilization of available income renders a Medicaid applicant or recipient ineligible for benefits. *Id.*, 664 N.E.2d at 907.

My query to Shepard's on LexisNexis verified that there has been no negative subsequent treatment of *Estate of Cross*, through the date of this report: Friday, August 29, 2025. Additionally, on Friday, August 29, 2025, I called and spoke with Stark County Department of Job & Family Services-Long Term Care Caseworker Josef Mohr (Mr. Mohr). During our telephone conversation, he verified his office's expectation, consistent with *Estate of Cross*, that every potentially available resource will be actively pursued before a Medicaid application will be approved.

If Mr. Kelly would elect to take under Mrs. Kelly's last will & testament, he would receive nothing from her estate.

If Mr. Kelly would elect to take against Mrs. Kelly's last will & testament he would receive the share of Mrs. Kelly's estate that the Ohio Revised Code prescribes.

Based upon Mr. Kelly's age, probable life expectancy, physical and mental condition, current assets, and present and reasonably anticipated future needs, as well as the Ohio Supreme Court's clear command in *Estate of Cross*, I recommend that an election to take **AGAINST** Mrs. Kelly's last will & testament be entered for Mr. Kelly.

Date: August 29, 2025

John R. Frank

John R. Frank (0055525)
T.K. Harris Building - Suite 102A
3930 Fulton Drive, N.W.
Canton, Ohio 44718-3040
Telephone: (330) 494-7300
Facsimile: (330) 494-4948
E-Mail: Jfranklawoffice@cs.com

CERTIFICATE OF SERVICE

A copy of the foregoing Report of Investigator, John R. Frank, was sent to the following persons by e-mail on the 29th day of August 2025:

(1) Attorney Kara M. Dodson Counsel for Administrator WWA Estate of Linda R. Kelly KDodson@soleslaw.com	(2) Attorney Mackenzie C. Murphy Counsel for Surviving Spouse, Terry L. Kelly MCM@mackenzie-murphyslaw.com
--	---

John R. Frank
John R. Frank