

STATE OF MICHIGAN  
IN THE THIRD JUDICIAL CIRCUIT COURT  
CIVIL DIVISION

BARBARA A. LEWIS-CLARK,  
Individually and as Personal  
Represent of the Estate of  
HENRY O. CLARK, JR., Deceased

Plaintiff

vs

Hon. Wendy M. Baxter  
Case No. 03-340704 NH

HARPER HOSPITAL, an assumed name  
of HARPER-HUTZEL HOSPITAL,  
a Michigan corporation;  
JOHN BARNWELL, M.D., J. PIPER, R.N.  
and J. NEINO, R.N., JAMES GLAZIER, M.D.  
and VIRGINIA TEKEILI, R.Ph.,  
Jointly and Severally,

Defendants

EVIDENTIARY HEARING (Volume 2 of 4)

Before HONORABLE WENDY M. BAXTER,

Third Judicial Circuit Court -- Civil Division

1719 Coleman A. Young Municipal Center (CAYMC)

City of Detroit -- County of Wayne -- State of Michigan

Wednesday -- December 7, 2005

APPEARANCES:

RUTH A. ROWLEY (P65573)  
P.O. Box 1347  
Deraborn, MI 48121  
(313) 274-9900  
Attorney for Plaintiffs

TODD J. WEGLARZ (P48035)  
19390 W. Ten Mile Road  
Southfield, MI 48075  
(248) 355-5555  
Attorney for Neino  
and Tekeili

NANSI I. ROWE (P23670)  
333 Fort Street  
Detroit, MI 48226  
(313) 861-5733  
Attorney for K. Rutherford  
  
WALTER POOKRUM (P26058)  
1862 Penobscot Bldg.  
Detroit, MI 48226  
(313) 963-7300  
Attorney for N. Rutherford

TERRI CARRINGTON (CSMR 6619)  
Official Court Reporter

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1 Detroit, Michigan

2 Wednesday -- December 7, 2005

3 3:36 p.m.

4 - - - - -

5 THE COURT: Case number 03-340704 NH;  
6 Barbara Lewis-Clark versus Harper Hospital here  
7 today for a distribution hearing. May I have  
8 your appearances for the record, please.

9 MR. WEGLARZ: Your Honor, Todd  
10 Weglarz appearing as counsel for Ms. Barbara  
11 Lewis-Clark in her capacity as the personal  
12 representative of the estate.

13 MS. ROWE: And I am Nansi Irene Rowe  
14 appearing on behalf of Kallene Clark-  
15 Rutherford, the biological daughter of Mr.  
16 Clark.

17 THE COURT: I'm sorry. We're  
18 actually here today on the motion for authority  
19 to distribute and to have a distribution  
20 hearing.

21 Because we have not had execution on  
22 the -- You can be seated, Ms. Clark.

23 We have not had execution -- Is the  
24 original -- This is the original motion, or is  
25 this the subsequent motion?

1           So, my information from you was that  
2           you might be appealing the settlement. But I'm  
3           trying to figure out if you are taking a  
4           position on behalf of Ms. Clark with regard to  
5           the signature.

6           MS. ROWLEY: Yes; I guess I am, Your  
7           Honor. I'm taking -- You mean with regard to  
8           her signing off on the Order disbursing the  
9           settlement proceeds. Is that what you mean?

10          THE COURT: No. That would be the  
11          cart before the horse. You've got to sign  
12          the --

13          MS. ROWLEY: The settlement Order --

14          MR. WEGLARZ: The actual Release.

15          THE COURT: The Release. You've got  
16          to release the defendant, which amounts to the  
17          acknowledgement that the lawsuit is over.

18          MS. ROWLEY: I don't know if she's  
19          doing this. I don't know that she's going to  
20          agree to do this. That's my understanding,  
21          Your Honor.

22          THE COURT: Okay. Well, she already  
23          agreed to do it. That's my understanding. And  
24          if you've read the transcript, how could you  
25          conclude otherwise? You did indicate that you

1 read the transcript.

2 MS. ROWLEY: I did read it, Your  
3 Honor.

4 THE COURT: Okay.

5 MS. ROWLEY: I did. Well then,  
6 really, I guess there is no dispute. I guess  
7 she really has to sign.

8 THE COURT: She doesn't have to sign.  
9 But I know and do hereby Order that the  
10 defendants are released and the plaintiff is  
11 bound by that release in accordance with the  
12 record of settlement made in open court.

13 And I hereby authorize the  
14 distribution of the wrongful death proceeds  
15 pursuant to the release and dismissal of the  
16 case.

17 Okay. Now, I understand that the  
18 parties would like to make a record of the  
19 entitlement to participate in the distribution  
20 of the proceeds. Are you representing her for  
21 that purpose? I've been asked to adjourn.

22 MS. ROWLEY: Yes.

23 THE COURT: Okay. But certain people  
24 are here. I don't know if everybody is from  
25 Michigan or Detroit.

1 MS. ROWE: My client is a Detroiter  
2 and does live here, but is having to take off  
3 of work every time she has to come to court.

4 THE COURT: Okay. Well, we might as  
5 well take some testimony today, because people  
6 are here and I've got the time, and I may not  
7 be available. It might be difficult. So, no  
8 need for protracted proceedings.

9 So, who wants to testify today?

10 MS. ROWE: I think that my client --  
11 Kallene Clark-Rutherford -- is available to  
12 testify today.

13 THE COURT: Okay. Sir, you're  
14 excused.

15 MR. WEGLARZ: Thank you.

16 THE COURT: I don't know that this  
17 Order does everything we need to do.

18 MR. WEGLARZ: Are you talking about  
19 the Order that we -- I think we brought it down  
20 today.

21 THE COURT: Okay. I've entered your  
22 Order entitled ORDER GRANTING PLAINTIFF'S  
23 COUNSEL'S MOTION FOR COURT APPROVAL, EXECUTION,  
24 AND RELEASE.

25 MR. WEGLARZ: And then, Your Honor,

1 I believe we also submitted a few copies of  
2 that Release. George has been taking care of  
3 me. Thank you.

4 THE COURT: All right. Call your  
5 witness.

6 MR. POOKRUM: If the Court please.  
7 Walter Pookrum, court-appointed GAL on behalf  
8 of Njeri Rutherford.

9 May we sequester witnesses, Your  
10 Honor?

11 THE COURT: Witnesses are  
12 sequestered. All persons who expect to testify  
13 in the matter of Barbara A. Clark who are not  
14 parties to the litigation, please wait outside  
15 until you are called in to give that testimony.

16 So, Ms. Clark, you may remain. All  
17 the others that are heirs that are here to  
18 testify in the distribution hearing, I'm asking  
19 you to wait outside until you are called in to  
20 give your testimony.

21 Ms. Clark, you can come forward and  
22 sit at the party's table.

23 MS. ROWLEY: Your Honor, I don't know  
24 if this is even appropriate. I'm acting as  
25 counsel here in a capacity I did not expect to

1 act in. And I don't feel --

2 THE COURT: You just -- I asked you  
3 to enter a special limited appearance to tell  
4 the record that you're here.

5 MS. ROWLEY: Okay.

6 THE COURT: That she's with counsel.  
7 You don't have to represent her in any way,  
8 shape, or form, and I'm not asking you to.

9 MS. ROWLEY: Okay. Well, I guess  
10 what I'm saying is, who's going to cross-  
11 examine the witness? Who's going to question  
12 on Ms. Clark's behalf? Who's going to question  
13 the witness on Ms. Clark's behalf if not  
14 counsel?

15 THE COURT: I don't have an answer to  
16 that question.

17 MS. ROWLEY: Well then, I guess I'm  
18 saying my client is not represented here today.

19 THE COURT: Your client has counsel.  
20 Apparently, she's got Fieger, Fieger, and she's  
21 got you. And there was notice of today's  
22 hearing.

23 MS. ROWLEY: Okay.

24 THE COURT: And she can represent  
25 herself if she so desires.



1 MR. WEGLARZ: Your Honor, I think I  
2 should place a statement on the record.

3 I cannot represent Ms. Barbara Lewis-  
4 Clark in her individual capacity as an heir at  
5 law, because that would be a conflict with my  
6 fiduciary duty to the estate as a whole and her  
7 heir at law individual interest.

8 THE COURT: I agree with that.

9 MR. WEGLARZ: Okay. Thank you.

10 THE COURT: Okay. You'd like to have  
11 your --

12 MS. ROWE: I can make a record --

13 THE COURT: -- heir testify. Go  
14 ahead. Call your witness.

15 MS. ROWE: Okay. This is Kallene  
16 Clark-Rutherford.

17 THE COURT: Walk up to the court  
18 reporter and spell your name, please.

19 Raise your right hand and be sworn.

20 Do you solemnly swear or affirm that  
21 the testimony you're about to give in the  
22 matter pending before the Court will be the  
23 truth?

24 MS. RUTHERFORD: I do.

25 THE COURT: Would you be seated,

1 please.

2 MR. POOKRUM: Your Honor, this would  
3 be a good time to determine whether in fact Ms.  
4 Clark is going to be representing herself.  
5 Because if she is, then I think she would be  
6 permitted to stay, of course. But if not, then  
7 she's a witness I believe like everyone else.

8 THE COURT: Okay. Ms. Clark, are you  
9 representing yourself today?

10 Let me just explain a little further.

11 You were only a named party because  
12 you were the personal representative of the  
13 estate. Now as a individual person attempting  
14 to participate in the distribution, you're an  
15 individual. You're not the personal  
16 representative any more, and there is a  
17 sequestration Order.

18 However, if you're going to be your  
19 own attorney today, you'd be entitled to stay  
20 and participate fully, because you're your own  
21 attorney.

22 If you are not here as your own  
23 attorney today, you need to understand your  
24 capacity in this distribution is not  
25 representing the estate; you're representing

1           yourself.

2                       So, can you announce who you are  
3           today? Are you your own attorney for Barbara  
4           Clark?

5                       MRS. CLARK: Well, I'm totally  
6           confused, because I --

7                       THE COURT: You have to stand when  
8           you address the Court.

9                       MRS. CLARK: I'm sorry. You know,  
10          I'm totally confused, because I acknowledged a  
11          couple of months ago that I expected to have a  
12          trial, and today I'm still trying to. You  
13          know, I haven't been able to grasp anything on  
14          what's going on.

15                      THE COURT: Okay. I only have one  
16          question for you, Ms. Clark. Do you want to  
17          represent yourself today?

18                      MRS. CLARK: Well, how am I supposed  
19          to represent myself?

20                      THE COURT: No, I'm asking for an  
21          answer. You do it by being your own attorney,  
22          ma'am. Do you want to do that today?

23                      MRS. CLARK: Be my own attorney?  
24          That means I have to pose questions?

25                      THE COURT: You don't have to do

1 anything. But it will -- You can choose to ask  
2 questions if you like; not ask questions if you  
3 choose not to. But the only way you can stay  
4 in the room while other witnesses are  
5 testifying is if you'd like to represent  
6 yourself.

7 MRS. CLARK: No. Because I will --

8 THE COURT: Okay. The answer is no.  
9 Can I just have you step outside?

10 MRS. CLARK: Yes.

11 THE COURT: Thank you.

12 Okay, Ms. Rowe. The witnesses are  
13 sequestered.

14 MS. ROWE: Pardon?

15 THE COURT: The witnesses are  
16 sequestered.

17 K A L L E N E D. C L A R K - R U T H E R F O R D  
18 after having been first duly sworn was called to the  
19 witness stand and testified as follows:

20 DIRECT EXAMINATION (3:46 p.m.)

21 BY MS. ROWE:

22 Q Could you state your name for the record; your  
23 full name.

24 A Kallene Danielle Clark-Rutherford.

25 Q And can you tell me your address?

1 anything. But it will -- You can choose to ask  
2 questions if you like; not ask questions if you  
3 choose not to. But the only way you can stay  
4 in the room while other witnesses are  
5 testifying is if you'd like to represent  
6 yourself.

7 MRS. CLARK: No. Because I will --

8 THE COURT: Okay. The answer is no.  
9 Can I just have you step outside?

10 MRS. CLARK: Yes.

11 THE COURT: Thank you.

12 Okay, Ms. Rowe. The witnesses are  
13 sequestered.

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20 DIRECT EXAMINATION (3:46 p.m.)

21 BY MS. ROWE:

22 Q Could you state your name for the record; your  
23 full name.

24 A Kallene Danielle Clark-Rutherford.

25 Q And can you tell me your address?

1 A 1355 Somerset Avenue; Grosse Point Park,  
2 Michigan.  
3 Q Can you tell me what your relationship is with  
4 the deceased, Mr. Clark?  
5 A He was my father.  
6 Q Can you describe for the Court what your  
7 relationship has been with your father over  
8 your lifetime?  
9 A My father has always been in my life after he  
10 and my mother divorced when I was 8 or 9. My  
11 father took care of me on weekends. He had  
12 regular visitation. We went to plays. We had  
13 a normal relationship pretty much up until high  
14 school I would say.  
15 Q Was there any time when those weekend visits  
16 ceased?  
17 A No.  
18 Q Did you spend holidays with your father?  
19 A Yes; every holiday.  
20 Q How did you spend Father's Day?  
21 A Usually, it was a family, you know, gathering.  
22 I was pretty close to my father's side of the  
23 family; my grandmother and aunts and so forth.  
24 So, we usually all were together for Father's  
25 Day.

1 Q What was your relationship with your father  
2 during his illness, if any?

3 A He suffered the stroke in '97, and re-married  
4 his wife in '98 and went to live with her at  
5 that time when he was released from the  
6 hospital from the stroke.

7 And I did not speak with him probably  
8 from around early 1998 until my grandmother  
9 passed in February of 2000.

10 Q There was a period of time you said that you  
11 did not speak with --

12 A We did not have much contact with him at all;  
13 no.

14 Q Is there a reason to your knowledge that you  
15 did not?

16 A It was difficult to, because he was not in the  
17 mental or physical capacity during that time to  
18 handle his own affairs. We really had to kind  
19 of get to him through his spouse, and I found  
20 that difficult to do.

21 Q Is it your feeling that your relationship with  
22 your father continued to be that of father/  
23 daughter even after his marriage to his current  
24 wife at best?

25 A It was strained. It was strained. I didn't

1 see him that much during my high school years  
2 after they got married.

3 I would talk to him. He would come  
4 on Christmas, but his wife would come with him,  
5 and she would stay in the car. So, it was just  
6 kind of, you know, that he would come on  
7 Christmas.

8 But he didn't call the house. My  
9 mother was re-married, and he had his feelings  
10 about calling the house.

11 So, the relationship was strained.

12 Q But he did keep contact with you, and you with  
13 him.

14 A Yes.

15 Q Was there ever a time that you felt that you  
16 were not his daughter?

17 A No.

18 Q You were his biological daughter, and also his  
19 daughter in heart?

20 A Yes.

21 MS. ROWE: I have no further  
22 questions, Your Honor.

23 CROSS EXAMINATION (3:53p.m.)

24 BY MS. ROWLEY:

25 Q I'm sorry. I don't know your last name.



1 A Rutherford.

2 Q Rutherford; okay. Ms. Rutherford, wasn't there  
3 a period of time when Mrs. Clark -- I'm talking  
4 about Barbara Clark -- allowed you to stay in  
5 the family home?

6 A Um-hum.

7 Q And this was -- Okay.

8 A Briefly, maybe in -- I must have been in the  
9 10th grade. It was like an extended -- I went  
10 for a Christmas vacation and I stay a couple of  
11 weeks. And then, right before I got married in  
12 '94, I stayed with them for maybe six months.

13 Q Okay. And this was at her -- She did not  
14 oppose to your staying there to your knowledge.

15 A To my knowledge.

16 Q In fact, had you not spoken with her directly  
17 and had her giving her assent to have you stay  
18 there?

19 A Well, I didn't ask her; I asked my dad. So, I  
20 didn't communicate with her about it. I  
21 communicated with my dad about it. I'm sure  
22 that he consulted his spouse about their  
23 decision. But then, it was he who I, you know,  
24 spoke with about it.

25 Q Okay. And in the weeks and months before your

1 father's passing, how often did you see your  
2 father?  
3 A Maybe once a week. Maybe more, but at least  
4 once a week.  
5 Q Okay. Where were these visits?  
6 A Before he passed you said?  
7 Q Yes.  
8 A We would meet. We would meet for dinner  
9 sometimes, or they would come by. He didn't  
10 drive from the stroke. So, sometimes from the  
11 weekends when they were out, they would stop by  
12 our home.  
13 Q And by "they" meaning.  
14 A He and Barbara.  
15 Q Okay. So then, she did communicate with you.  
16 She did speak to you, and she and Mr. Clark did  
17 stop and see you.  
18 A Um-hum.  
19 Q Okay. I thought I understood you to say  
20 earlier that she would not communicate with  
21 you.  
22 A Well, you have to be specific between the time  
23 before he had the stroke. They were not  
24 married; I saw my father. We lived almost  
25 around the corner from one another. I saw him

1 all the time.

2 After the stroke, there was a period  
3 of time, at least a year, when they got  
4 re-married and he went back to live with her  
5 that we did not have any contact.

6 I didn't know what state he was in.  
7 We didn't have any contact.

8 My grandmother passed in February of  
9 2000. I called that June of 2000 and asked  
10 them to meet for Father's Day.

11 Q Okay. When your father -- Were you present at  
12 the time when your father -- Were you in the  
13 hospital when your father passed?

14 A Yes.

15 Q You were there?

16 A Um-hum.

17 Q Now, you're saying that there was a period of  
18 time -- When your father suffered his stroke,  
19 was he married to Mrs. Clark:

20 A No.

21 Q He was not.

22 A He was not.

23 Q He had previously been married to her. Okay.  
24 So, this was during the period of time they  
25 were not married.

1 A Um-hum.

2 Q Do you know where your father was living at

3 that time, during the time he was not married

4 to Mrs. Clark?

5 A With my grandparents.

6 Q And where were you living at that time?

7 A About ten minutes away on the east side.

8 Q Okay. And you resided with your -- with Mrs.

9 Clark and with your father prior to his stroke,

10 or after?

11 A Oh, years before. I was in my 20's when I

12 lived with them.

13 Q Okay.

14 A Yeah; years before the stroke.

15 Q All right. So, this was before he had his

16 stroke.

17 A Yes.

18 Q Okay. And were there any problems when you

19 first moved into the -- How was your

20 relationship with your father while you were

21 residing --

22 A My relationship with my father was fine.

23 Q And there were no problems of any kind.

24 A Uh-uh; not with him. The problems were not

25 with him.

1 Q Okay. And so, during -- All right. And after  
2 your father re-married Mrs. Clark, what would  
3 you say your relationship was with him?  
4 A We did not have one. I had no -- I was with  
5 him when he had the stroke. I was with him in  
6 the hospital until the time he was released,  
7 and he went back to Oakfield, which is where  
8 they resided, and they got married.  
9 Q Okay.  
10 A From then, that was probably winter of '98.  
11 From then until the winter of 2000 I had not --  
12 I saw him once. I just happened to go by  
13 there. Nobody was home. He was home.  
14 And because I hadn't seen him and I  
15 didn't know what state he was in, and I went  
16 and I saw him.  
17 I don't even know if he remembered  
18 that I had come, because I don't know what --  
19 He had to learn to walk, to talk, to read.  
20 Q And this was because of his stroke?  
21 A Yes.  
22 Q Okay. All right. So, from 1998 until 2000 you  
23 didn't see him.  
24 A No.  
25 Q Okay. And after that -- Now, you didn't see

1 him -- Why would you not have seen him?

2 A It was very difficult to try, because I had to

3 have so much contact with Mrs. Clark at that

4 time, it was very difficult. And I was not

5 mature enough to deal with it.

6 Q Okay. All right. So then, you began seeing

7 your father again in 2000?

8 A Yes.

9 Q And how often -- How often did you see him?

10 A As often as we could. As often as we could at

11 that point.

12 Q And who initiated that contact?

13 A I did.

14 Q You did.

15 A I did.

16 Q Your father didn't.

17 A No. I called them and asked them to meet me

18 for Father's Day that June of 2000.

19 Q Okay. And from that point, we kept a pretty

20 regular calling pattern; visiting pattern.

21 Q This may raise an objection.

22 Are you aware that your father wrote

23 two Wills?

24 A No.

25 Q No; you're not aware that there was --

1 A I wasn't aware of any Wills until probably a  
2 week after his funeral. And Mrs. Clark called  
3 me to the house and met me at the curb and gave  
4 it to me.

5 Q I'm sorry. She called you to the house and  
6 gave you a copy of the Will?

7 A A copy of the Will at that time.

8 Q Okay. And did you know that in that Will -- Do  
9 you know -- You knew the contents of the Will  
10 then.

11 A No. I had not --

12 Q Do you know now?

13 A Yes; I know now.

14 Q Okay. All right. And so, the father  
15 specifically did not bequeath -- Okay.

16 MS. ROWE: Your Honor, just for the  
17 record, I would object to the relevance of the  
18 contents of the Will.

19 THE COURT: Okay.

20 MS. ROWLEY: Can I address that  
21 objection, Your Honor?

22 THE COURT: Yes.

23 MS. ROWLEY: I only raised it to  
24 maybe show that the relationship -- that there  
25 was estrangement between father and his

1 daughter, and that it was no a sound  
2 relationship. That's my reason for doing so.

3 Really, I have no further questions  
4 at this point.

5 THE COURT: Okay.

6 MR. POOKRUM: May I remain here, Your  
7 Honor?

8 THE COURT: Yes, sir.

9 MR. POOKRUM: Thank you.

10 THE COURT: You have re-direct?

11 MS. ROWE: Yes.

12 RE-DIRECT EXAMINATION (4:04 p.m.)

13 BY MS. ROWE:

14 Q I'd just like to ask you if you can answer me  
15 what did you feel the relationship with your  
16 father was at the time of his death and  
17 immediately prior to that.

18 A My father and I had always had a good  
19 relationship. And from my understanding, one  
20 of the reasons for the divorce initially was  
21 because I was pregnant, and he wanted to be a  
22 part of our lives. And his spouse had a issue  
23 with that.

24 I was so thankful not to have lost my  
25 grandmother, but it was her spirit that led me



1 to call my father that June. And I was just so  
2 thankful to have had that time with him before  
3 he passed, and I think he felt the same way.

4 Q When you were in his presence, did he ever  
5 treat you as anything other than his daughter?

6 A No.

7 Q Did you ever threat him as anything other than  
8 your father?

9 A No.

10 Q Was there ever a time in your life that you  
11 felt that there was an estrangement where he  
12 was not your father, no matter how many times  
13 you saw him or didn't see him?

14 A No.

15 Q You always felt that the relationship --

16 A I always knew --

17 Q -- was that of father and daughter.

18 A Yes.

19 MS. ROWE: I have no further  
20 questions.

21 THE COURT: Mr. Pookrum, are you  
22 making a record on behalf of the minor?

23 MR. POOKRUM: Yes.

24 THE COURT: Go ahead, sir.

25 MR. POOKRUM: Thank you.

CROSS EXAMINATION (4:06 p.m.)

BY MR. POOKRUM:

Q Ms. Rutherford, what is your educational background?

A I'm completing a Bachelor's at Wayne State University currently. I have another year to go.

Q And what area is that?

A Africana Studies.

Q And do you have a relationship to Njeri Rutherford?

A I'm her mother.

Q And what is Njeri's date of birth?

A 3/11/94.

Q All right. That would make your dad her maternal grandfather.

A Yes.

Q Can you tell the Court something about the relationship, if any, that your dad had with Njeri?

A It was probably much like the relationship he had with me when I was little. You know, he was very participatory. He was not afraid to change diaper, you know, make bottles.

And after she got potty trained, he

1 would always offer to babysit, which he did.  
2 Q How often would you say he babysat?  
3 A I don't know. But when we would ask him, you  
4 know, if said, You know, well, I'm off, bring  
5 her over on Saturday. So, we would do that.  
6 Q And what age was -- Well, strike that.  
7 What grade is she in?  
8 A Currently, she's in the 6th grade.  
9 Q And what is she now?  
10 A Eleven.  
11 Q Okay. And which school does she attend?  
12 A She goes to Bates Academy.  
13 Q And does she have a hobby?  
14 A Dance; piano.  
15 Q And anything else?  
16 A Academic games.  
17 Q All right. What about sewing?  
18 A Yes. She recently took up sewing.  
19 Q I'm sorry?  
20 A She did recently take up sewing.  
21 Q Okay. All right. Now, when did your --  
22 Strike that.  
23 Your mother and your father were  
24 married at some point, and they divorced in  
25 what year?

1 A Maybe I was about 8; so maybe 1979, 1980.  
2 Q It was about 14 years after that then that  
3 Njeri was born.  
4 A Yes.  
5 Q When did he first marry Barbara Clark?  
6 A '95. I know it was my first year of high  
7 school -- I'm sorry; '85.  
8 Q '85.  
9 A '85; yes.  
10 Q And do you know how long they remained married?  
11 A They got divorced -- I got married in '93. And  
12 by the time my daughter was born in '94, they  
13 had gotten a divorce. So, somewhere between  
14 '93 and '94 I believe was the divorce.  
15 Q '93, '94?  
16 A Yes.  
17 Q And at some point they re-married?  
18 A They did.  
19 Q And when did that occur; do you know?  
20 A In '98.  
21 Q And between -- Strike that.  
22 So, he was divorced at around the  
23 time that Njeri was born.  
24 A Yes.  
25 Q All right. And so, from the time that she was

1           born -- Strike that.

2                       He was at the home when she was

3           brought home from the hospital; Njeri?

4   A       Yes.

5   Q       Okay. And at that time, would you say his --

6           the frequency of the contact was with her; your

7           dad and Njeri?

8   A       Maybe once every couple of weeks. Usually, it

9           wouldn't be until the weekends, because he

10          worked days, I believe is the shift where he

11          would go in at 1:00, and he wasn't off until

12          midnight.

13                       So, usually when we saw him it was on

14          the weekends. But we talked, you know.

15          Usually a couple times a week we would talk on

16          the phone.

17   Q       You and he.

18   A       Yes.

19   Q       Okay. And what did he do for a living?

20   A       He worked at Chrysler.

21   Q       As a laborer?

22   A       Yes.

23   Q       So, you would talk to him a few times a week

24          when Njeri was an infant or toddler, and --

25   A       And they lived close at the time. He was

1 living with my grandparents. And so, you know,  
2 it was fairly easy to go by.  
3 Q Okay. And so, you did have, would you say  
4 frequent or occasional? How would you  
5 characterize the contact that?  
6 A It was frequent.  
7 Q Frequent contact then. Okay. And how long  
8 would you say that situation obtained?  
9 A It ended immediately when he got sick; when he  
10 had the stroke.  
11 Q All right. Now, the baby -- well, Njeri was  
12 born in '94 and he had the stroke in '97?  
13 A '97.  
14 Q All right. So, she was three years old when he  
15 had the stroke.  
16 A Um-hum.  
17 Q And so, the frequent contacts ceased in '97?  
18 A Um-hum.  
19 Q For what period of time?  
20 A Until -- Well, really until Father's Day of  
21 2000.  
22 Q So, she had no contact with him between '94 and  
23 '97 roughly -- or early '90's?  
24 A '97.  
25 Q '97; right.

1 A Right.

2 Q Right. Okay. And that was because you really

3 weren't having any contact with him either.

4 A Yes.

5 Q And so, the only people that he was having

6 contact with as far as you know were his wife

7 Barbara --

8 A Yes.

9 Q -- and Chandra.

10 A Yes. None of the other family members had much

11 -- You know, I know they would try. His

12 sister; his mother, you know, still alive.

13 They're all still alive.

14 Q As a matter of fact, his parents are still

15 living now; correct? No; his mother died.

16 That was your mother.

17 A Exactly. His father is still alive; yes.

18 Q All right. And are they here in court today,

19 or outside in the hallway?

20 A His sister is here today.

21 Q His sister.

22 A Um-hum.

23 Q Okay. All right. So, between '94 -- Strike

24 that.

25 Between '97 when your dad had the

1 stroke and the time that he re-married in '98,  
2 there wasn't any contact with Njeri.  
3 A No.  
4 Q No contact. Okay. And when -- Strike that.  
5 There was no contact until you  
6 decided to make contact with him when his  
7 mother died. That was your grandmother.  
8 So, when he mother died in early  
9 2000, you decided that you would try to  
10 re-establish contact with him.  
11 A Um-hum.  
12 Q And were you successful?  
13 A Yes.  
14 Q And what was the nature of your contact --  
15 Strike that.  
16 What was the nature of Njeri's  
17 contact with him as a result of your  
18 reunification?  
19 A He again started to participate in her  
20 extracurricular activities. She was involved  
21 in choir. He would come to her concerts.  
22 Again, we made a point of spending --  
23 We would go to dinner.  
24 Q We who?  
25 A Generally everybody; my husband, my daughter,



1 he and Barbara. You know, we usually -- we  
2 didn't really do too many things one-on-one,  
3 you know. It was usually all of us.  
4 Q Okay.  
5 A So, when I say "we," it was pretty much  
6 everybody.  
7 Q So, the four of you would go -- Well, first of  
8 all, your dad would come to Njeri's concerts.  
9 A Yes.  
10 Q How often were those?  
11 A I believe she had -- While she was doing choir  
12 she had two, and he came to both of them.  
13 Q Okay. And was he visiting her on a regular  
14 basis during that time; or she visiting him?  
15 A I'm sorry. In what time period --  
16 Q Well, once you got back together after your  
17 grandmother died.  
18 A Oh, probably -- Once like I said, if they were  
19 out on the weekends, they would come by.  
20 Sometimes after school or work I would run by  
21 to check on him.  
22 We lived east and they lived west.  
23 But if I was going that way, I always made a  
24 point to stop by.  
25 And then, for some period we were

1           going by there for dinner. Maybe once a month  
2           we would go to their house for dinner.  
3   Q       And when you would make pop calls to his house,  
4           you'd have Njeri with you?  
5   A       Sometimes not.  
6   Q       Sometimes not, but sometimes you would.  
7   A       Um-hum.  
8   Q       Okay. And how did she refer to your dad?  
9   A       Papa. Papa Henry. You have to make that  
10          distinction, because she has a few of them.  
11   Q       Papa Henry?  
12   A       Yes.  
13   Q       And how often would you say he visited her, or  
14          he had a one-on-one time with her; with Njeri?  
15   A       After the stroke, probably no one-on-one time,  
16          because he couldn't drive. So, I mean, any  
17          time that he -- that she would -- you know, she  
18          would have to bring him.  
19   Q       "She" being Barbara?  
20   A       Yes; his wife.  
21   Q       Would have to bring him over.  
22   A       Yes.  
23   Q       Or you would have to take Njeri to him.  
24   A       Right.  
25   Q       And did you do that?

1 A Yes.

2 Q How often?

3 A Again, maybe once a week; maybe once every  
4 couple of weeks.

5 Q Okay. Was he able to talk on the phone?

6 A Yes.

7 Q And do you know whether he spoke with Njeri by  
8 phone?

9 A Yes.

10 Q How often did that occur?

11 A Maybe two, three times a week.

12 Q This is after the stroke?

13 A After -- In 2000?

14 Q This is after 2000.

15 A Yes.

16 Q Okay. And would you say Njeri and your dad  
17 were close?

18 A As close as probably a, you know, a three-year-  
19 old could be. She knew that was her Papa  
20 Henry.

21 Q Okay.

22 A And he treated her, you know, he treated her  
23 well.

24 Q Okay. And what kinds of things did he do for  
25 her other than changing the diapers and making

1 bottles, as she got older and was able to walk  
2 and that kind of thing.

3 A Oh, yeah. And like it said, he would care for  
4 her, you know, on his own. Because my dad  
5 cooked, ironed, cleaned. He could do it all.  
6 So, he was pretty capable.

7 Always there for Christmas;  
8 birthdays. So, of course that was before the  
9 stroke. He was always there for birthdays and  
10 so forth.

11 But after the stroke, we would  
12 probably do more things, you know, as a group  
13 going out to dinner; us going there, or them  
14 coming to our house.

15 Q And what age was he when he died?

16 A Fifty-one.

17 Q You know when he was born?

18 A 1950.

19 Q January 1950?

20 A Um-hum.

21 Q Okay. So, he was about 51 when he died in  
22 2001?

23 A Yes.

24 Q All right. And so, Njeri was what age when he  
25 passed?

1 A Njeri was five (5). Let's see. No. He passed  
2 in July, so she was six (6).  
3 Q Six years old. She would have been in the  
4 first grade?  
5 A Um-hum.  
6 Q Okay. I'm showing you now a photograph which  
7 has been marked Plaintiff's Exhibit-1, and  
8 would ask you whether you know what that is, or  
9 what that depicts.  
10 A This was actually Father's Day in June of 2000.  
11 We were at the Detroit Institute of Arts, and  
12 that's where they met us for brunch.  
13 Q And you work at the Detroit Institute of Arts?  
14 A I do.  
15 Q And what do you do there?  
16 A I'm Administrative Assistant.  
17 Q In which department?  
18 A In the African department.  
19 Q Okay. So, he met you there on connection with  
20 Father's Day for lunch in June of 2000.  
21 A In June of 2000; yes.  
22 Q And then, that next July he passed.  
23 A Exactly.  
24 Q So, that was about a year before he passed.  
25 A It was; yes.

1 Q And do you know who took that photograph?  
2 A I'm assuming it was me, since I have the  
3 picture.  
4 Q Okay.  
5 A Or my husband. He was there. It could have  
6 been him.  
7 Q All right. Well, is that a fair and accurate  
8 representation of how Njeri and her grand dad  
9 looked on or about Father's Day of 2000?  
10 A Oh, yeah.  
11 MR. POOKRUM: Move the admission of  
12 the photograph, Your Honor; Plaintiff's  
13 Exhibit-1.  
14 THE COURT: Plaintiff's Exhibit-1  
15 admitted.  
16 MR. POOKRUM: Thank you.  
17 Continuing By Mr. Pookrum:  
18 Q Okay. So, the reunification occurred in  
19 January of 2000; correct?  
20 A Yes.  
21 Q June of 2000; I'm sorry. And so about six,  
22 seven months -- no, about a year later your dad  
23 passed.  
24 A A year; yes.  
25 Q What was the nature and quality of the contacts

1           that he had with Njeri between the time that  
2           you had the reunion in 2000 and the time that  
3           he passed; any different than what you've  
4           testified to already?

5       A     No.

6       Q     So, you'd speak with him several times a week,  
7           and Njeri would speak with him several times a  
8           week.

9       A     Um-hum; yes.

10      Q     And she would see him on the weekends usually?

11      A     Yes.

12      Q     And did he have occasion to buy anything for  
13           her?

14      A     He always bought her -- You mean outside of --  
15           I mean, of course, he always bought her  
16           birthday gifts; Christmas gifts; Easter  
17           baskets.

18                         And the last year, I guess that was  
19           2001, she got a piano for Christmas.

20      Q     Can you think of a reason that your dad would  
21           have wanted to exclude you or Njeri from his  
22           probate estate?

23      A     No.

24                         MS. ROWLEY: I'm going to object to  
25           that, Your Honor, because that calls for

1 speculation.

2 THE COURT: He's asking her what her  
3 state of mind is.

4 THE WITNESS: I really -- You know,  
5 again, I didn't learn of that until after he  
6 had passed. And I was not in contact with him  
7 in '99 when the Will was made.

8 Continuing By Mr. Pookrum:

9 Q Okay.

10 A So --

11 Q It wasn't until 2000 that you two got back  
12 together, so to speak.

13 A Yes.

14 Q Okay. And did he, being your dad, ever pay for  
15 any of Njeri's school costs or anything of that  
16 nature; after school, anything of that nature?

17 A Yes. There was -- During that year, I know  
18 that they helped with the latch key costs for  
19 my daughter; after school costs.

20 Q Okay. And if Njeri had a recital or school  
21 program, would he attend?

22 A Yes.

23 Q And did she ever visit him at his home?

24 A Yes.

25 Q How often would you say that occurred?



1 A Again, usually on the weekends; maybe once a  
2 week; once every couple of weeks. But you  
3 know, at least once a week either we would go  
4 to visit them or they would come to our house.  
5 Q Okay. And what summer -- during summer  
6 vacation? Did she see him then at all?  
7 A After the stroke?  
8 Q Well, after you --  
9 A Okay. Yeah, because there was really just one  
10 summer.  
11 Q Right.  
12 A And we saw him -- Yeah. We went to -- We had,  
13 you know, Father's Day with him that year; we  
14 had Father's Day with him the year he passed.  
15 Q Okay.  
16 A You know, we tried to make it a point to --  
17 It was important to me to have him have a  
18 relationship with her.  
19 Q Okay. And are you -- Strike that.  
20 Do you have an opinion as to whether  
21 Njeri misses him?  
22 A She tells me she misses him.  
23 Q What does she say?  
24 A She'll tell me, You know, mommy, I miss Papa  
25 Henry. But quite honestly, my daughter has

1 always had a higher thinking than even I.

2 Because when my grandmother passed,  
3 we were very close to my grandmother as well.  
4 And she rationalized it as, you know, "Grandma  
5 is in heaven."

6 So, you know, it was very -- it was  
7 just that simple for her. It wasn't no long  
8 grieving, or it was, you know, Papa Henry is in  
9 heaven. And she always seemed to just be more  
10 concerned for me.

11 Q Okay. But you do think that she misses him and  
12 misses her relationship with him

13 A I'm sure. Yes.

14 Q Njeri wasn't financially dependent on your dad  
15 though; correct?

16 A No.

17 Q Okay. And it's fair to say that you and your  
18 -- Strike that.

19 And you are married; correct?

20 A Yes.

21 Q And how long have you been married?

22 A Twelve (12) years.

23 Q Okay. And you and your husband live together  
24 in one home; correct?

25 A Not at the moment.

1 Q Not at the moment? Okay. All right.

2 But in any case, the two of you are  
3 able to take care of Njeri's financial needs at  
4 this time.

5 A Yes; we do that together.

6 Q And you do in fact. Okay. All right.

7 And what does your husband do?

8 A He is a educational consultant for Houghton.

9 Q Okay. That's a publishing company?

10 A It is.

11 Q I may have asked you this. If I did, just let  
12 me know. Would it be fair to say that Njeri  
13 had a close relationship with your dad?

14 A Yes.

15 Q Okay. Well, what did he call her?

16 A He never said her name right, really. It's  
17 Njeri, you know. Njeria or baby; "Come here,  
18 baby."

19 Q All right.

20 MR. POOKRUM: Thank you, Your Honor.

21 I have no further questions.

22 THE COURT: Okay. Do you have any  
23 re-direct or re-cross you'd like to ask of this  
24 witness?

25 MS. ROWLEY: No, Your Honor; I don't.

1 MS. ROWE: I have a few questions;  
2 not many.

3 THE COURT: Okay.

4 RE-DIRECT EXAMINATION (4:27 p.m.)

5 BY MS. ROWE:

6 Q You mentioned the Will was 1999?

7 A That's the date that's on the copy I have.

8 Q What was the state of your father's health in  
9 1999?

10 A I'm really not for certain. I visited him in  
11 July of '99. And he appeared as someone who --  
12 he had effects of someone who had had a stroke.  
13 He had slurred speech; he walked with  
14 assistance.

15 I don't know what his mental capacity  
16 was. I really don't know.

17 Q You indicated that there were many times when  
18 your daughter saw her grandfather. And at her  
19 tender age, I'm certain she didn't drive  
20 herself there. So, how did she get to see her  
21 grandfather?

22 A We would take her.

23 Q We?

24 A Normally, me. I would take her.

25 Q So, you fostered that relationship. How did

1 your father receive your fostering of the  
2 relationship?

3 A Very well. From the first Father's Day, it  
4 was, you know, almost like no time had gone by.

5 Q Was there any time to your knowledge that your  
6 father's wife participated in him seeing his  
7 granddaughter or you by her own initiation?

8 A She would have to drive him. He could not  
9 drive after the stroke at all. So, unless it  
10 was myself driving, she would have to bring him  
11 and take him, you know. If we called and  
12 asked, Will you meet us here? we did have to  
13 depend on her.

14 Q That was by your initiation and not hers?

15 A I did a lot. Yes; I did a lot. And sometimes  
16 on Sundays, again, if they were out driving,  
17 they would come by. I don't know who, you  
18 know, whether that my father or whether it was  
19 her.

20 MS. ROWE: I have no further  
21 questions, Your Honor.

22 THE COURT: Thank you, witness. You  
23 can stand down.

24 Okay. You're not talking anything  
25 else. So, you can ask your other people to

1           come in so we can coordinate with Mr. Wilson  
2           the date to continue.

3                   THE CLERK:   Is anything wrong with  
4           Friday afternoon?

5                   THE COURT:   Is anything wrong with  
6           Friday afternoon other than this Friday  
7           afternoon?   No?

8                   MS. ROWLEY:   Not this Friday;  
9           I can't.

10                   THE COURT:   That's fine with me.  
11           I can't do it tomorrow afternoon.

12                   MS. ROWLEY:   I can't either.

13                   THE COURT:   I can do it Friday.

14                   (Proceedings conclude at 4:33 p.m.)  
15  
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CERTIFICATE

STATE OF MICHIGAN )  
COUNTY OF WAYNE ) SS

IT IS HEREBY CERTIFIED  
that the 47 pages contained herein is a complete, true,  
and accurate transcript of proceedings held  
before Honorable Wendy M. Baxter  
on Wednesday -- December 7, 2005  
in the case of

=====  
Lewis-Clark

- VS -

Harper Hospital; Detroit Medical Center;  
Barnwell; Piper; Neino; Glazier; Tekeili

03-340704 NH  
=====

  
\_\_\_\_\_  
TERRI CARRINGTON (CSMR 6619)  
Official Court Reporter

DATED: February 7, 2007

Evidentiary Hearing (Vol. 2 of 4)  
T536-3 / CLAR1207.05 / 47 / 2006N