

PROBATE COURT OF SHELBY COUNTY, TENNESSEE

IN RE: MICHAEL JEROME WILLIAMS, JR.
A/K/A MICHAEL JEROME OHER

CAUSE NUMBER: C-010333

MICHAEL JEROME OHER
PETITIONER AND FORMER WARD

OBJECTIONS TO ACCOUNTING

Pursuant to Tennessee Code Annotated § 34-3-108, Petitioner Michael Jerome Oher (“Petitioner” or “Mr. Oher”) objects in whole to the so-called “Accounting” and “Preliminary Statement to Accounting” submitted in conjunction therewith, filed by Former Co-Conservators, Sean Tuohy and Leigh Anne Tuohy (“Former Co-Conservators” or the “Tuohys”), on November 8, 2023. Taken singly or together, these documents are contradictory, confusing, false in material ways, and wholly inadequate to account for the assets of Petitioner’s estate and the Former Co-Conservators’ management of said assets. Petitioner respectfully asks this Court to strike these two filings, to order Former Co-Conservators to produce and file forthwith the complete and honest accounting required by Tennessee law, and to sanction Former Co-Conservators for their willful failure to fulfill their obligations to Petitioner and to this Court.

PRE-DISCOVERY OBJECTIONS

Without access to the financial records of Former Co-Conservators, and prior to formal discovery taking place in this matter, Petitioner lacks full knowledge of what the Tuohys did or failed to account for.¹ However, based on information learned to date, Petitioner makes the following objections to the “Accounting” and “Preliminary Statement of Accounting”:

¹ As a result, Petitioner reserves the right to supplement his objections to the Accounting based on information learned in discovery.

1. The “Accounting” is demonstrably false on its face and demonstrates that Former Co-Conservators understood that their ward’s name, image, and life story (“NIL”) was a valuable asset.² Since Mr. Oher’s petition was filed, the Tuohys have offered up various stories of what they received from the use of their ward’s NIL. At first, they said they received nothing.³ When that story was contradicted by their son, Sean Tuohy, Jr.,⁴ they said they shared 1/5 of the proceeds of *The Blind Side* royalty rights with their ward.⁵ Now in this “Accounting,” they claim to have paid him 1/3 of *The Blind Side* proceeds.⁶ These inconsistencies demonstrate the inaccuracies on the face of the “Accounting,” including the Former Co-Conservators’ self-dealing and lack of meaningful negotiation on behalf of Mr. Oher for his NIL.

Petitioner alleges that Former Co-Conservators made a poor and even foolish deal with Twentieth Century Fox for the transfer of Petitioner’s NIL rights to Twentieth Century Fox, without consulting attorneys’ expert in the area of entertainment law or NCAA Standards and/or Rules, without reporting to this Court what they were planning on doing, and without requesting a

² See Respondents’ Response to the Petition, ¶ 3, wherein they admit that “it was clear that Michael had the size, speed, physical ability, and mental acuity to be a star in college and afterwards. Football scholarship offers poured in from the powerhouse football universities across the nation.”

³ Geoff Calkins, *Sean Tuohy responds to “Blind Side” allegations: “We are going to keep loving Michael (Oher)”*, DAILY MEMPHIAN (Aug. 14, 2023), <https://dailyMemphian.com/article/37925/sean-tuohy-responds-allegations-michael-ohers-blind-side-money>.

⁴ Barstool Radio, *SJ Tuohy, Brother to Michael Oher; on Oher’s Lawsuit Against the Family*, BARSTOOL SPORTS (Aug. 14, 2023), <https://www.barstoolsports.com/blog/3478788/sj-tuohy-brother-to-michael-ohers-lawsuit-against-the-family-barstool-radio> (last visited Nov. 26, 2023).

⁵ See Preliminary Statement to Accounting, at 1 (“By agreement between the family members including Sean and Leigh Anne Tuohy, their children SJ and Collins and as well as Michael Oher, the book and movie proceeds received were to be split five ways.”).

⁶ See Accounting, at 3 (“See Attachment A representing payments made to Sean and Leigh Anne Tuohy from movie proceeds from *The Blind Side*. After a 10% commission was paid, one-third of this sum was given to Michael Oher by Sean and Leigh Anne Tuohy.”).

guardian *ad litem* to represent their ward's interests, which conflicted sharply with their own.⁷

These facts are not reported in the "Accounting." Nor does the "Accounting" reveal the fact that the Former Co-Conservators arrogated unto themselves the right to divide the money from *The Blind Side* as they chose, and they unfairly chose to keep 80% for themselves and their two children, and to allot 20% to Petitioner. This unlawful self-dealing was accomplished without notice to this Court, without any order of the Court, and without asking the Court for the appointment of a guardian *ad litem* to protect their ward's interest. Although falsely told to his detriment, *The Blind Side* is Mr. Oher's story. Without Mr. Oher there would have been no movie.

The Tuohys had it backwards: 80% of the proceeds should have gone to Petitioner and 20% to the Tuohy family, not the other way around.

The "Accounting" also falsely states that Mr. Oher's share of *The Blind Side* proceeds was paid to him. Accounting at 3 ("one-third of this sum was given to Michael Oher."). This is untrue. The "Accounting" shows that over \$62,000 was paid to a third party, Michael Oher, Jr. Moreover, the Former Co-Conservators had a duty to place whatever belonged to their ward into a conservatorship account and to invest those funds prudently, and as directed by this Court. Former Co-Conservators ignored this duty, as well.

2. The "Accounting" fails to account for any moneys earned from *The Blind Side: Evolution of a Game* book and paid by the author, Michael Lewis.

3. The "Accounting" fails to account for the monies earned from Petitioner's NIL by way of speaking fees paid to Former Co-Conservators, Sean and Leigh Anne Tuohy, who have used their ward's NIL for years, fabricating the phony story that they are the adoptive parents of

⁷ Indeed, Former Co-Conservators have stated to this Court that they did nothing regarding the protection of Mr. Oher's NIL rights and just left the contract negotiation of Mr. Oher's rights up to the author, Micheal Lewis. See Respondents' Response to the Petition, ¶ 12.

Petitioner, and expounding on this lie while raking in approximately \$8 million from gullible audiences around the nation. All of such funds should be included in this “Accounting,” together with interest from the date of each receipt and paid over to Petitioner.

4. The “Accounting” fails to account for \$2.5 million which Former Co-Conservator Sean Tuohy took from his ward, Michael Oher, in 2011. This \$2.5 million was supposedly taken to be invested for Mr. Oher, but the Former Co-Conservators took the \$2.5 million without permission from this Court, without any notice to this Court, and without having the Court appoint a guardian *ad litem* to protect the ward’s interests. The Former Co-Conservators should be required to account for this money. Was it a loan? If so, where is the promissory note to Petitioner from the borrower? What security was put up for this loan? What interest rate was paid? When was interest paid and how much was paid? What interest should have been paid? When and in what amounts was the principal re-paid?

If the \$2.5 million taken by the Tuohys was not a loan, then was it an investment in the Tuohys’ taco business? Or should it be so considered? What was it used for? And what did this infusion of cash do to help their business? A true and proper accounting should answer all of the above questions.

5. The “Accounting” fails to account for Petitioner’s funds which were placed in a checking account at Independent Bank, located at 5050 Poplar Ave., Memphis, TN 38157, in the names of Petitioner and both Former Co-Conservators, from which Leigh Anne Tuohy regularly wrote checks, including to herself and to “cash,” without notice to this Court or approval from this Court. Former Co-Conservators should be required to fully account for every dime they spent from that account.

6. Petitioner objects to the “Accounting” because it does not account for the money paid to Former Co-Conservators in connection with the publication of their book *In A Heartbeat: Sharing the Power of Cheerful Giving*⁸ or Leigh Anne Tuohy’s book *Turn Around: Reach Out, Give Back, and Get Moving*.⁹ Former Co-Conservators capitalize on Mr. Oher’s NIL in promoting both books. For example, on the Amazon.com webpage advertising *Turn Around*, the description promotes the book in noting the author, “Leigh Anne Tuohy, whose family inspired the hit film *The Blind Side*. . . .”¹⁰ In the “About the Author” section, the page notes Former Co-Conservator Leigh Anne Tuohy’s claim to fame: “Leigh Anne Tuohy [was] . . . made famous in Michael Lewis’ bestselling novel *The Blind Side* [which] was later made into a blockbuster movie.”¹¹ Amazon also describes Former Co-Conservators in another section about the author: “The Tuohy family’s life, as chronicled in Michael Lewis’ *New York Times* number one best-seller *The Blind Side*, went on to become a record-breaking Hollywood blockbuster that earned more than \$300 million at the box office and became the number one opening weekend sports film in history.”¹²

Former Co-Conservator Leigh Anne Tuohy’s other book, *In a Heartbeat*, is substantially about Mr. Oher’s life. It describes the Tuohys’ early life before describing how they met Mr. Oher and comparing *The Blind Side* movie to what the Tuohys claim is real life. The description section on the book’s Amazon.com page describes this:

First came the bestselling book, then the Oscar-nominated movie—the story of Michael Oher and the family who adopted him has become one of the most talked-about true stories of our time. But until now, Leigh Anne and Sean Tuohy have never told this astonishing tale in their own way and with their own words. . . . one

⁸ See Amazon, Sean Tuohy & Leigh Anne Tuohy, *In a Heartbeat: Sharing the Power of Cheerful Giving, Hardcover Book*, Amazon.com, <https://a.co/d/6WP7Trk> (last visited Nov. 21, 2023).

⁹ See Amazon, Leigh Anne Tuohy, *Turn Around: Reach Out, Give Back, and Get Moving, Hardcover Book*, Amazon.com, <https://a.co/d/9DI3421> (last visited Nov. 21, 2023).

¹⁰ See Amazon, *Turn Around*.

¹¹ *Id.*

¹² *Id.*

day Leigh Anne met a homeless African-American boy named Michael and decided that her family could be his. She and her husband taught Michael what this book teaches all of us: Everyone has a blind side, but a loving heart always sees a path toward true charity. Michael Oher's improbable transformation could never have happened if Leigh Anne and Sean Tuohy had not opened their hearts to him.¹³

In a Heartbeat is not only substantially about Mr. Oher's life and uses his NIL in its promotion, but also includes a chapter supposedly written by Mr. Oher.¹⁴ All moneys received from the publication of these books should be paid to Petitioner, together with interest at the highest lawful rate from the date of their receipt.

7. Petitioner objects to the "Accounting" because even the tiny portion of the Petitioner's estate which purports to be accounted for – the movie royalties – is replete with mathematical errors, ambiguities, and confusing references which make it grossly inadequate.

8. Petitioner also objects to the Former Co-Conservators' Preliminary Statement To Accounting, in which the Former Co-Conservators through their attorneys state they "have never received any money as conservators on behalf of Michael Oher, and further never had control over any funds or any dealings on behalf of Mr. Oher."¹⁵ This unsworn statement is contradicted by the sworn "Accounting" they filed at the same time.¹⁶ In the "Accounting," the Former Co-Conservators submitted tax documents naming Former Co-Conservator Sean Tuohy as the recipient of amounts corresponding to funds they purportedly disbursed to Mr. Oher. The Former Co-Conservators assert their attachment "represent[s] payments made to Sean and Leigh Anne Tuohy from the movie proceeds from *The Blind Side*."¹⁷

¹³ See Amazon, *In a Heartbeat*.

¹⁴ See Sean Tuohy & Leigh Anne Tuohy, *In a Heartbeat: Sharing the Power of Cheerful Giving*, at 181-83 (2010), excerpts attached hereto as Exhibit A.

¹⁵ See Preliminary Statement to Accounting, ¶ 2.

¹⁶ See Accounting, at 1.

¹⁷ *Id.* at 3.

9. Petitioner reserves the right to make further objections upon the completion of discovery.

In addition to objecting to the Former Co-Conservators' "Accounting," and asking the Court to strike said pleading, Petitioner respectfully asks this Court to require the Former Co-Conservators' to file a full, true accounting, including but not limited to, remedying the deficiencies identified herein, and also respectfully asks the Court after a full inquiry to appropriately sanction the Tuohys for their flagrant violations of their duties to this Court and to Petitioner in this cause.

ARGUMENT

Under TCA § 34-3-108, when a conservatorship is terminated, the former conservators are required to file, within 120 days after the conservatorship termination date, a preliminary final accounting. TCA § 34-3-108(e). This accounting "shall account for all assets, receipts, and disbursements from the date of the last accounting until the date the conservatorship terminates, and shall detail the amount of the final distribution to close the conservatorship." *Id.*

Pursuant to TCA § 34-1-111(d), an accounting must, *inter alia*, "itemize the receipts and the expenditures made during the period covered by the accounting" and "detail the property held by the fiduciary at the end of the accounting period." TCA § 34-1-111(d)(1). To support the financial information reported, bank statements and cancelled checks must accompany the accounting. *Id.*

Here, the Former Co-Conservators have utterly failed to fully and accurately account for Mr. Oher's estate. The Accounting they filed with the Court fails to include millions of dollars of income the Former Co-Conservators have received for their misuse of Mr. Oher's NIL. In their accounting, the Former Co-Conservators report only partial proceeds from *The Blind Side* movie that are owed to Mr. Oher, and even more disturbingly refuse to report every other category in

which they have used Mr. Oher's property, including, but not limited to, speaking engagements and books. Mr. Oher objects in full to the Former Co-Conservators' accounting because it fails to "account for all assets, receipts, and disbursements from the date of the last accounting until the date the conservatorship terminates, and []detail the amount of the final distribution to close the conservatorship." TCA § 34-3-108.

"When a party . . . challenges a conservator's final accounting, the burden is on the conservator to establish the correctness of the accounting." *In re Hudson*, 578 S.W.3d 896, 911-12 (Tenn. Ct. App. 2018) (quoting *In re Conservatorship of White*, No. 01A01-9704-PB-00154, 1997 WL 629958, at *5 (Tenn. Ct. App. Oct. 14, 1997)). A fiduciary who fails to account "may be charged with the value of the assets," an amount which "shall accrue interest at the prejudgment rate and compound annually until a proper accounting is made and approved." TCA § 34-1-111(h). They may also be held in contempt for their failure to properly account. TCA § 34-1-111(f) (outlining the procedure for holding a conservator who fails to provide accounting in contempt).

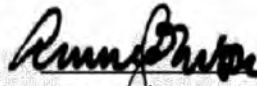
The conservatorship statute further provides for the imposition of attorney fees as a sanction for failure to account: "If a fiduciary is cited for failure to file an inventory or accounting, the costs incurred in citing the fiduciary, in the discretion of the court, may be charged to and collected from the cited fiduciary." TCA § 34-1-114. Additionally, because the Former Co-Conservators failed to comply with this Court's order requiring an accounting, the Court may, in its discretion, impose sanctions against the Former Co-Conservators. *See* Tenn. R. Civ. P. 37.02.

The intentional and flagrant discrepancies and omissions in the Former Co-Conservators' Accounting warrants the imposition of prejudgment interest as provided by TCA § 34-1-111(h), as well as attorneys' fees for the time and expenses incurred in bringing this Objection, and all other sanctions and relief this Court deems necessary.

CONCLUSION

WHEREFORE, Petitioner respectfully requests the Court review the Accounting and order the Former Co-Conservators to provide the missing or incomplete information with documentation, and to correct errors and discrepancies as outlined above. Petitioner also requests this Court award Petitioner pre-judgment interest on all of Petitioner's property which was not properly accounted for and attorneys' fees as a result of the Former Co-Conservators failure to provide a full accounting to this Court, as is their duty, and for their failure to perform their fiduciary duty under this Court's Order.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon all counsel of record via the

U.S. Postal Service and/or electronic mail on November 28, 2023.

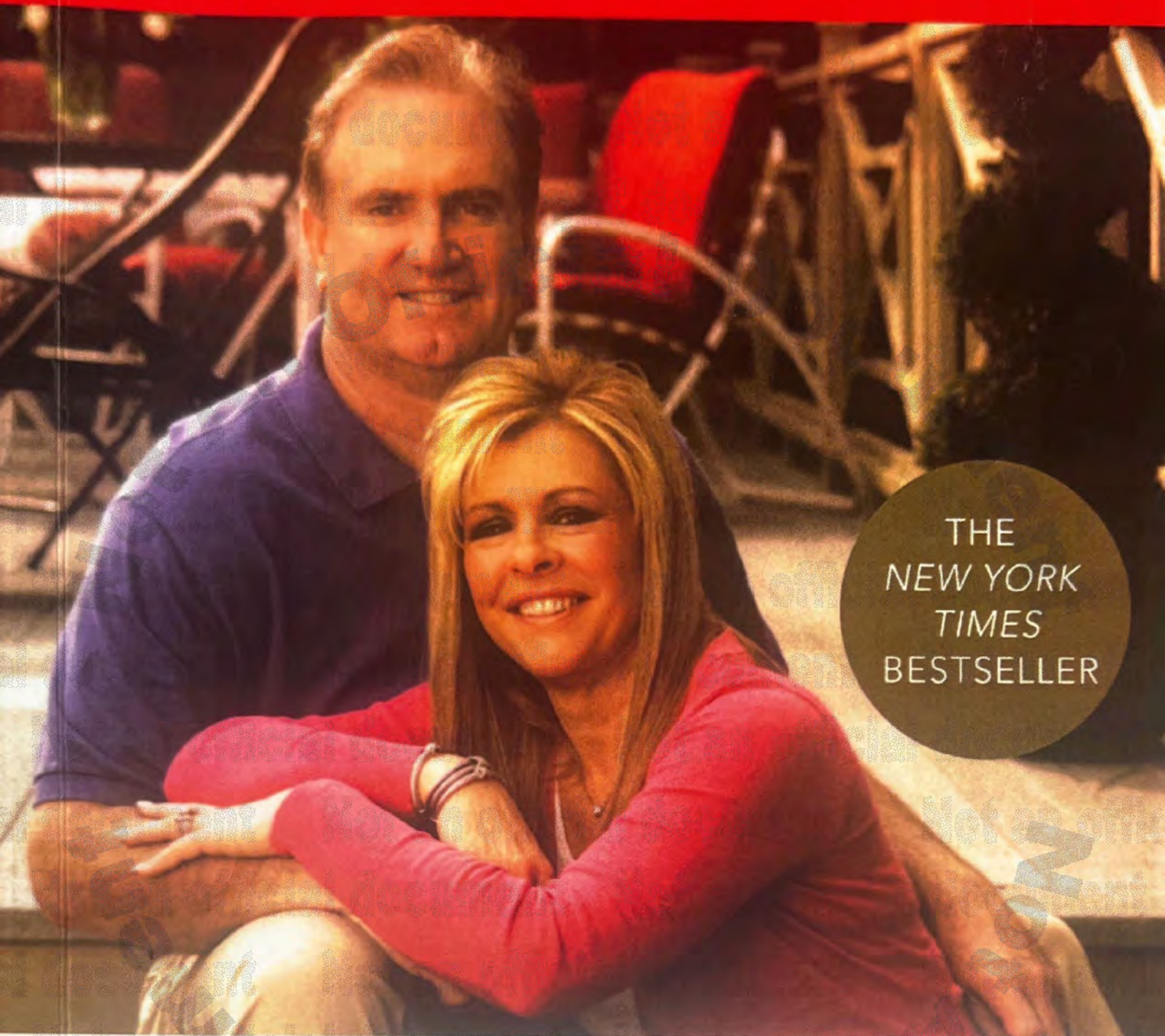
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FROM THE INSPIRING COUPLE FEATURED IN **THE BLIND SIDE**



THE
NEW YORK
TIMES
BESTSELLER

In a Heartbeat

Sharing the Power of
Cheerful Giving

Leigh Anne and Sean Tuohy
with Sally Jenkins

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INTERLUDE

Michael Oher

SON

IMAGINE A SEVEN-YEAR-OLD KID, ALL ALONE AND MILES away from home. Imagine him making it by himself to the other side of town, where he stands in front of stores, looking in the windows for something to eat. I was in that situation a thousand times. I wouldn't have a place to stay. I'd sleep in a car one night and I'd sleep on a porch the next night. I was just trying to survive another night.

But I've always had a strong will. I knew at thirteen years old I was going to be something. Whether I was an athlete, a basketball or football player, or a nonathlete, I was going to have a successful life. Coming across the Tuohys made my road so much easier but, even if I hadn't run across them, I was still going to be something. It would've been a lot harder—but I was going to do it.

I grew up very tough, homeless, not eating a lot. I went to school just to eat. I came from a neighborhood where nobody makes it out. Zero make it out. There was a lot of violence, a lot of drugs, and a lot of bad people. But there's a reason I didn't

go in that direction: I wasn't going to get off course. I wasn't going to get caught up in the ghetto. I was going to get out. I was going to go to work and do something. One thing I've always done was stay true to myself.

People ask me, how did I survive? You just wait, and keep your head up. I just kept going, knowing it had to get better. It can't get any worse than the situation that I was in. So, if you're going through any kind of problem, I can tell you: it's going to get better. It has no choice. If you just stay focused and keep doing the right thing, it has no choice but to get better.

The Lord kept his hand on me by finding the Tuohy family, my family, and bringing me to them. That was nothing but the man above. I was blessed to be taken in by a family that showed me a lot, taught me a lot. It was one of the best feelings I ever had. I just needed that chance. It's interesting because other people had the opportunity to help me, Sean and Leigh Anne weren't the only ones who knew my situation. But they were the two who stepped in and reached out.

It wasn't important to them where I was from, and I still can't believe that. To take somebody from my neighborhood into your house? Nobody does that. I don't think I'd even do that. With all the violence and drugs where I come from? They've got big hearts.

I always felt part of their family. It was never an awkward feeling. They opened their hearts to me and it's like we've been together from day one. I was going from house to house, but at other people's houses I'd get the feeling they didn't want me there. With the Tuohys, it was like I belonged there, and they wanted me there. They all welcomed me with open arms. I felt like, there was my mom, there was my dad, and there was

my little brother S.J., and my sister Collins. And we went from there.

Looking back on it, I probably would have been jealous or upset if somebody was moving in my house and taking all my parents' time. But nobody got mad, nobody got upset because I got attention, there wasn't any of that. They just took me in like I was a big brother. I'm pretty sure they get it from their mom and dad rubbing off on them. That's just the way they were raised.

We spent most of our time at the dining table. Everybody would be at that table and we grew so close around it. We'd eat, study; we bonded around it, and revolved around it. It was where we always were, where everything happened.

I don't dwell on the past. I'm not going to feel sorry for myself because I didn't have a place to stay a lot of the time. It is what it is. Take it and run with it. That's why I'll never, ever wake up one day and be comfortable with my situation—it'll always be unbelievable. But I am never ashamed of where I came from. I think it has made me a better player, a tougher person.