

No. 50836-9-I

COURT OF APPEALS,
DIVISION I
OF THE STATE OF WASHINGTON

IN RE: THE GUARDIANSHIP OF:
LOREN STAMM,

An Alleged Incapacitated Person

Appellant,

v.

KAREN A. CROWLEY
and
MICHAEL R. STAMM,

Respondents.

BRIEF OF APPELLANT
LOREN STAMM

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TABLE OF CONTENTS

	Page
A. ASSIGNMENTS OF ERROR	1
B. STATEMENT OF THE CASE	9
1. Introduction	9
2. Factual Background	10
3. Mr. Stamm Begins to See Ms. Inderbitzin	10
4. Mr. Stamm's Children Did Not React Well to Mr. Stamm's Seeing Ms. Inderbitzin	11
5. Mr. Stamm's Children Initiate the Guardianship	12
6. The Guardian ad Litem is Appointed	13
7. The Guardian ad Litem Publicly Commits Herself to the Petitioners' View of the Case	14
8. Dr. Kent's Evaluation	15
9. Dr. Olsen's Evaluation	16
10. Dr. Olsen's Supplemental Report	17
11. The Trial	17
a. The testimony of Richard Edinger	18
b. The guardian ad litem's testimony	18

c.	Hearsay and special status	19
d.	The testimony of Robert Olsen	20
e.	The testimony of Gary Thompson	22
f.	The testimony of Benjamin Hankins	22
g.	The testimony of Karen Crowley and Michael Stamm	23
h.	The testimony of Mr. Stamm	23
12.	The Jury Verdicts	24
13.	Referral to the Commissioner's Department	25
14.	The Order Appointing Guardian	25
15.	Mr. Stamm Appeals	26
16.	The Guardian's Verified Inventory and Proposed Budget	26
17.	Mr. Stamm Obtains an Order to Show Cause	27
18.	The Hearing on the Show Cause Order	28
19.	Ms. Inderbitzin Provides "Valuable In-Kind Services"	29
20.	Mr. Stamm and his Attorney are Restricted	29

21.	Mr. Stamm's Petition for Instructions	30
22.	Mr. Stamm Files an Amended Notice of Appeal; The Record is Supplemented	31
23.	Relief Requested	31
C.	SUMMARY OF ARGUMENT	31
D.	ARGUMENT	33
1.	De Novo Review	33
2.	The Law of Guardianship	33
3.	There is No Clear, Cogent and Convincing Evidence that Mr. Stamm was Incapacitated	35
a.	The guardian ad litem's testimony	36
b.	Dr. Olsen's testimony	37
c.	Other witnesses	38
4.	The "Cure" of the Guardianship is Worse Than the Disease	38
5.	The Alternate Ground for Reversal: The Erroneous Admission of the Guardian ad Litem's Testimony	39
a.	Admission of the guardian ad litem's opinion violated Mr. Stamm's right to trial by a fair and impartial jury	40

b.	The guardian ad litem's testimony was akin to prosecutorial misconduct and/or an improper comment on the evidence by a judicial officer	42
c.	The guardian ad litem's testimony was too unreliable to be admitted	44
d.	<u>Fernando v. Nieswandt</u> should be overruled or distinguished	47
6.	The Proper Remedy is Reversal and Vacation of the Order Appointing Guardian	47
7.	Any Remand Should be to the Original Trial Judge or Another Superior Court Judge	48
8.	The Petitioners Should Pay All of Mr. Stamm's Fees and Costs	49
E.	CONCLUSION	49

APPENDICES:

1.	Special Verdict Form A	A-1 to A-2
2.	Special Verdict Form B	A-3 to A-4
3.	Order Appointing Guardian, Excerpts	A-5 to A-9
4.	Order 9/16/02, Excerpts	A-10 to A-11

5.	Order 10/4/02, Excerpt	A-12
6.	Testimony of Robert Olsen, Excerpts	A-13 to A-15
7.	Testimony of Guardian ad Litem, Excerpts	A-16 to A-21
8.	RCW 11.88.005	A-22
9.	RCW 11.88.010	A-23
10.	RCW 11.88.045	A-24
11.	RCW 11.88.120	A-25
12.	Guardianship Services of Seattle Verified Inventory, Excerpt	A-26
13.	Guardian's Budget	27

TABLE OF AUTHORITIES

Page

Table of Cases

Washington Cases

Akers v. Sinclair, 37 Wn.2d 693,
226 P.2d 225 (1950) 33

Custody of R, 88 Wn. App. 746,
947 P.2d 745 (1997) 49

Fernando v. Nieswandt, 87 Wn. App. 103,
940 P.2d 1380 (1997) 47

In Re Michelson, 8 Wn.2d 327,
111 P.2d 1011 (1941) 34, 35, 36

In Re Nelson, 12 Wn.2d 382,
121 P.2d 968 (1942) 34

Mahler v. Szucs, 135 Wn.2d 398,
957 P.2d 632 (1998) 49

Miguel v. Guess, 112 Wn. App. 536,
51 P.3d 89 (2002) 40

Morse v. Antonellis, 112 Wn. App. 941
(2002) 37

Rasmussen v. Bendotti, 107 Wn. App. 947,
29 P.3d 56 (2001) 33

State v. Carlson, 80 Wn. App. 116,
906 P.2d 999 (1995) 45

State v. Copeland, 130 Wn.2d 244,
922 P.2d 1304 (1996) 45

<u>State v. Darden</u> , 145 Wn.2d 612, 41 P.3d 1189 (2002)	45
<u>State v. Dewey</u> , 93 Wn. App. 50, 966 P.2d 414. (1998)	44
<u>State v. Gonzales</u> , 111 Wn. App. 276, 45 P.3d 205 (2002)	42, 43
<u>State v. MacPherson</u> , 111 Wn. App. 747, 46 P.3d 284 (2002)	41
<u>State v. Nation</u> , 110 Wn. App. 651, 41 P.3d 1204 (2002)	46
<u>State v. Reed</u> , 102 Wn.2d 140, 684 P.2d 669 (1984)	42

Other Cases

<u>In Re Hedin</u> , 528 NW.2d 567 (Iowa 1995)	40
<u>In Re Schiavo</u> , 780 So.2d 176 (2001)	47
<u>In Re Teeter</u> , 537 NW.2d 808 (Iowa 1995)	35
<u>Kumho Tire v. Carmichael</u> , 526 U.S. 137, 119 S.Ct. 1167 (1999)	45

Statutes

RCW 11.88	9
RCW 11.88.010	6, 33, 36
RCW 11.88.010(1)(c)	33, 34
RCW 11.88.090(3)(a)	13
RCW 11.88.090(10)	49

RCW 11.88.045(3)	34
RCW 11.88.120	8
RCW 11.88.120(1)	38, 39
RCW 11.88.120(4)	39
RCW 11.96A.150	49

Rules

CR 60	30
ER 701	44
ER 702	7, 44, 45
ER 703	7, 46
ER 705	44
RAP 18.1	49

Other Authorities

Crippen, Gary, <i>Stumbling Beyond Best Interests of the Child: Reexamining Child Custody Standard-Setting in the Wake of Minnesota's Four Year Experiment with the Primary Caretaker Preference</i> , 75 <u>Minn. Law Rev.</u> 427, 1990	48
Richard Ducote, <i>Guardians Ad Litem in Private Custody Litigation: The Case for Abolition</i> , <u>Loyola Journal of Public Interest Law</u> , Vol. 3, Spring 2002, No. 2, 115	47

Margaret K. Dore, <i>Parenting Evaluators and GAL's: Practical Realities,</i> King County Bar Association, <u>Bar Bulletin</u> , December 1999	47
Raven Lidman and Betsy Hollingsworth, <i>The Guardian ad Litem in Child Custody Cases: The Contours of Our Judicial System Stretched Beyond Recognition, <u>George Mason Law Review</u></i> , Vol. 6:2 (1998)	47
Raven Lidman and Betsy Hollingsworth, <i>Rethinking the Roles of Guardians ad Litem in Dissolutions: Have We Been Seeking Magicians,</i> Washington State Bar Association, <u>Bar News</u> , December 1999	47
Paul F. Stravis, Counsel to the NY Commission on Quality Care, <i>Guardianship: the Problem or a Solution, <u>Quality of Care Newsletter</u>,</i> Issue 40, May-June 1989	40
Denise M. Topolnicki, <i>The Gulag of Guardianship, <u>Money Magazine</u>,</i> March 1989	40

A. ASSIGNMENTS OF ERROR

Assignments of Error

1. The trial court erred by admitting the guardian ad litem's opinion and underlying hearsay.
2. The trial court erred by failing to give a curative instruction as to the guardian ad litem's testimony that she was the "eyes and ears of the court." (TRP 372, lines 12-15).¹
3. Error is assigned to Special Verdict Form A, concluding that Mr. Stamm is incapacitated as to his person.²
4. Error is assigned to Special Verdict Form A, stating that Mr. Stamm's right to possess a license to drive should be restricted.
5. Error is assigned to Special Verdict Form A, stating that Mr. Stamm's right to consent to or refuse medical treatment should be restricted.

¹ There are four volumes of transcripts. The two thicker volumes are from the trial, referenced as "TRP." The two smaller transcripts are from post trial motions, referenced as RP 9/4/02 and RP 9/16/02.

² Verdict Form A is attached infra at A-1 to A-2.

6. Error is assigned to Special Verdict Form A, stating that Mr. Stamm's right to decide who shall provide care and assistance, should be restricted.

7. Error is assigned to Special Verdict Form B, concluding that Mr. Stamm is incapacitated as to his estate.³

8. Error is assigned to Special Verdict Form B, stating that Mr. Stamm's right to manage his financial resources should be restricted.

9. Error is assigned to Special Verdict Form B, stating that Mr. Stamm's right to contract should be restricted.

10. Error is assigned to Special Verdict Form B, stating that Mr. Stamm's right to buy, sell, own mortgage or lease property should be restricted.

11. Error is assigned to Special Verdict Form B, stating that Mr. Stamm's right to appoint someone else to act on his own behalf in financial matters, should be restricted.

12. Error is assigned to Special Verdict Form B,

³ Verdict Form B is attached infra at A-3 to A-4.

stating that Mr. Stamm's right to sue or be sued other than through a guardian, should be restricted.

13. Error is assigned to Special Verdict Form B, stating that Mr. Stamm's right to make decisions about the maintenance of his property, should be restricted.

14. The trial court erred by entering an order on June 25, 2002 appointing a guardian for Mr. Stamm.

15. The trial court erred per the June 25, 2002 order, that Mr. Stamm would be liable for fees.

16. Error is assigned to FF 2.⁴

17. Error is assigned to FF 3.

18. Error is assigned to FF 4.

19. Error is assigned to FF 5.

20. Error is assigned to Conclusion of Law 1.⁵

21. Error is assigned to Conclusion of Law 2.

22. Error is assigned to Conclusion of Law 3.

23. Error is assigned to Conclusion of Law 3A.

⁴ The "findings" are attached infra at A-5.

⁵ The "conclusions of law" are infra at A-5 to A-7.

24. Error is assigned to Conclusion of Law 3B.
25. Error is assigned to Conclusion of Law 3C.
26. Error is assigned to Conclusion of Law 3D.
27. Error is assigned to Conclusion of Law 3E.
28. Error is assigned to Conclusion of Law 3F.
29. Error is assigned to Conclusion of Law 3G.
30. Error is assigned to Conclusion of Law 3H.
31. Error is assigned to Conclusion of Law 3I.
32. Error is assigned to Order ¶1A.⁶
33. Error is assigned to Order ¶1B.
34. Error is assigned to Order ¶1C.
35. Error is assigned to Order ¶1D.
36. Error is assigned to Order ¶1E.
37. Error is assigned to Order ¶1F.
38. Error is assigned to Order ¶1G.
39. Error is assigned to Order ¶1H.
40. Error is assigned to Order ¶1I.
41. Error is assigned to the award of \$21,256.15 in fees and costs to the petitioners' attorney.⁷

⁶ See: infra at A-7 to A-8.

⁷ See: infra at A-9.

42. Error is assigned to the award of \$6,300.00 to the guardian ad litem.

43. The trial court erred on September 4, 2002, by not requiring the other parties to show cause why Mr. Stamm should not be granted termination or stay of the guardianship.

44. The trial court erred on September 4, 2002, by not requiring the petitioners to pay all of Mr. Stamm's fees. (CP 873, 876).

45. The trial court erred on September 16, 2002, by entering an order denying Mr. Stamm's motion for termination or stay.⁸

46. The trial court erred on September 16, 2002, by entering an order "defining" the role of Mr. Stamm's attorney.

47. The trial court erred on September 16, 2002, by making an oral ruling that Mr. Stamm's motion for reconsideration would be denied when he had not yet made a motion for reconsideration.

48. The trial court erred on October 4, 2002, by

⁸ See: infra at A-10 to A-11.

entering an order confirming its oral ruling that Mr. Stamm's motion for reconsideration would be denied when he had not yet made a motion for reconsideration.⁹

Issues Pertaining to Assignments of Error

1. Whether the order imposing guardianship against Mr. Stamm must be reversed and vacated because there is no clear cogent and convincing evidence that he is incapacitated per RCW 11.88.010? (*Assignments of Error 1, 3-14, 16-40, 43, 45*).
2. Whether as a matter of law, hearsay and speculation do not constitute clear, cogent and convincing evidence of incapacity? (*Assignments of Error 1, 3-14, 16-40, 43, 45*).
3. Whether as a matter of law, a person who is "clever" with thought processing that is "logical and goal directed" is not incapacitated?

⁹ A copy of this order is attached infra at A-12.

(Assignments of Error 1, 3-14, 16-40, 43, 45).

4. Whether the guardian ad litem's opinions were contrary to law and therefore irrelevant?

(Assignments of Error 1, 3-48).

5. Whether the guardian ad litem's testimony was inadmissible under ER 702 and ER 703? (Assignment of Error 1).

6. Whether the trial court violated Mr. Stamm's rights to equal protection and a fair and impartial jury, by admitting the guardian ad litem's opinion that he was incapacitated and needed a guardian? (Assignments of Error 1-48).

7. Whether the guardian ad litem's testimony in front of the jury that she was a "neutral investigator" and the "eyes and ears of the court" was akin to prosecutorial misconduct and/or an improper comment on the evidence? (Assignments of

Error 1-48).

8. Whether a guardianship must be terminated under RCW 11.88.120, where the "cure" of the guardianship is worse than the "disease"?

(Assignments of Error 43-48).

9. Whether any remand should be to the original trial judge or another superior court judge?

(Assignments of Error 43-48).

10. Whether the fee awards against Mr. Stamm should be reversed and imposed against the petitioners? *(Assignments of Error 1-48).*

11. Whether Mr. Stamm is entitled to reimbursement of his fees and costs at trial?

(Assignment of Error 44).

12. Whether Mr. Stamm is entitled to fees and costs on appeal?

B. STATEMENT OF THE CASE

1. Introduction

This is a guardianship case per RCW 11.88. The appellant is, Loren Stamm, a functional alcoholic.¹⁰

Prior to this proceeding, Mr. Stamm spent his disposable income at JR's Tavern and other like establishments. On occasion, he would spend large amounts of money. For example, in June 2001, he spent \$2,600.00 in a six day period. (CP 836). This was probably for pull tabs. (TRP 357-58).

The respondents are the petitioners below, Karen Crowley and Michael Stamm. They are Mr. Stamm's children. Mr. Stamm's other children are Mark Stamm, Linda Weninger, Sharon Harpole and Steven Stamm. (CP 280).

On June 25, 2002, the King County Superior Court entered an order imposing guardianship over Mr. Stamm's person and estate. (CP 272-81). This order is the central issue on appeal.

¹⁰ TRP 354, line 18; TRP 256, line 1-9; RP 342, lines 3-4; TRP 103, lines 7-11.

2. Factual Background

Mr. Stamm was born on August 17, 1930 in Concordia, Kansas. (TRP 313). He lived in Kansas until he joined the United States Navy in 1949. (Id). Prior thereto, he attended Kansas University. (TRP 313-14).

In the Navy, Mr. Stamm became an aviation store keeper. (TRP 314, lines 23-24). He retired from the Navy in 1974, having attained the rank of senior chief. (TRP 315, lines 21-22).

Following the Navy, Mr. Stamm worked in several responsible positions, e.g., with Carl North RV, Todd Shipyard and the Boeing Company. Mr. Stamm retired in 1985. (TRP 316-18).

3. Mr. Stamm Begins to See Ms. Inderbitzin

In 1996, Mr. Stamm's wife of many years passed away. (TRP 318). Shortly thereafter, Mr. Stamm began seeing Ms. Inderbitzin whom he had known for several years. (CP 318).

Ms. Inderbitzin subsequently moved in with Mr. Stamm. Per their agreement, she took on the

role of a traditional wife, i.e., she did the cooking and cleaning, assisted with bill paying, did the shopping, etc. (CP 441; Exhibit 4, pp. 5-7; TRP 356, lines 10-13). As of the time of trial, Mr. Stamm and Ms. Inderbitzin had lived together for six years. (CP 335, ¶1).

4. Mr. Stamm's Children Did Not React Well to Mr. Stamm's Seeing Ms. Inderbitzin

Mr. Stamm's children did not react well to Mr. Stamm's seeing Ms. Inderbitzin. His sons, Mark and Steven, were especially mean and abusive. In November 2000, Mr. Stamm submitted the following declaration in support of a restraining order against them. Mr. Stamm testified:

Steven Stamm and Mark Stamm have both been verbally and physically abusive to my girlfriend, Wanda Inderbitzin. ...

There has been a history of assaults by Steven Stamm ...

Declaration of Loren Stamm, November 21, 2000, CP 1058, lines 2-12.

Mr. Stamm concluded: "I do not want Mark or Steven Stamm near my property." (Id., lines 16-7).

As of the time of trial, Mr. Stamm and his children were estranged. The petitioners, Michael Stamm and Karen Crowley, had barely seen Mr. Stamm for several years.¹¹ His daughter, Sharon Harpole, was living in his home with her boyfriend, Richard Edinger, and not paying rent.¹² Mr. Stamm had asked both of them to leave and served them with a notice of eviction.¹³

5. Mr. Stamm's Children Initiate the Guardianship

On October 18, 2001, the petitioners initiated this proceeding. (CP 1). Their petition claimed that Ms. Inderbitzin was abusing Mr. Stamm. (CP 2). It also raised the concern that Mr. Stamm would change his will, i.e., name Ms. Inderbitzin as beneficiary. (CP 3, line 12).

The petitioners did not claim personal knowledge of their allegations. Rather, the

¹¹ TRP 290, lines 14-22; TRP 261, lines 12-13; TRP 262, lines 20-21; TRP 263, lines 12-19.

¹² TRP 234, lines 17-25, lines 9-17; Exhibit 4, p. 12, last sentence.

¹³ TRP 232; TRP 339, lines 1-8; TRP 356, lines 22-24; Exhibit 4, p.12, last sentence.

petition relied on the reported observations of Ms. Harpole and Mr. Edinger, and conversations with unnamed individuals. (CP 2, lines 18-22).

The petition also stated that Adult Protective Services had already investigated the case including a meeting with Ms. Harpole. (CP 4, lines 21-23). The petition stated that Adult Protective Services had decided to close the case, stating that it was simply a matter of "family infighting." (CP 5, lines 1-3).

6. The Guardian ad Litem is Appointed

On that same date, October 18, 2001, the King County Superior Court appointed Victoria Barr guardian ad litem. (CP 17-21). Ms. Barr had been pre-contacted and specifically nominated by the petitioners, i.e., outside the mandatory rotation of RCW 11.88.090(3)(a). (CP 874, lines 6-8 and 21-25). At trial, she would describe her experience as "at least half a dozen cases." (TRP 42, lines 21-22).

The petitioners provided the guardian ad

litem with a copy of the petition and numerous written statements which are not part of this record.¹⁴ The statements apparently describe Mr. Stamm as being at risk and/or exploited by Ms. Inderbitzin. The petitioners also contacted the guardian ad litem directly.¹⁵

The guardian ad litem subsequently met Mr. Stamm. She found him to be "clever, humorous [and] charming." (TRP 65, line 13). At trial, she would testify that he had seemed "completely baffled" by the petitioners' allegations. (TRP 62, lines 4-10).

7. The Guardian ad Litem Publicly Commits Herself to the Petitioners' View of the Case

On October 31, 2001, the guardian ad litem obtained an ex parte order freezing Mr. Stamm's assets. (Trial Exhibit 3). Her declaration recited concerns that Mr. Stamm "has sustained significant financial losses ... due to the

¹⁴ TRP 68, lines 7-8; TRP 47, lines 21-25.

¹⁵ TRP 49, lines 21-25; CP 229; CP 236; and CP 1135, entry for 10/12/01).

influence and actions of Wanda Inderbitz[i]n." (Id, p. 2, lines 32-36). The guardian ad litem had obtained no documentation to verify whether these losses had in fact occurred. (TRP 164, lines 15-19; TRP 175, lines 9-12).

Perhaps most importantly, the guardian ad litem thereby committed herself to the petitioners' theme of the case, i.e., that Mr. Stamm was in need of immediate court protection.

8. Dr. Kent's Evaluation

On November 15, 2001, Mr. Stamm submitted to a competency evaluation by Alan Kent, Ph.D.

Dr. Kent's subsequent report describes Mr. Stamm as "fully competent." (Exhibit 6, p. 2).

His chart note is to a similar effect:

[Mr. Stamm] is casually dressed and well-groomed and related in a friendly and open manner. He frequently made jokes and used humor throughout the interview. [Mr. Stamm] is fully oriented to all spheres.

Trial Exhibit 8, p. 2, ¶3.

Mr. Stamm provided a copy of Dr. Kent's report to the guardian ad litem. At trial, she

would testify she was "flabbergasted." (TRP 125, line 14). Rather than contact Dr. Kent to determine the basis for his opinion, she determined that she would get a "better" report. (TRP 125-29). She therefore obtained a court order for a second evaluation by Robert Olsen, M.D. (TRP 127, lines 4-6). She also provided Dr. Olsen with a copy of the petition and other written statements. (TRP 89, lines 12-13).

9. Dr. Olsen's Evaluation

Mr. Stamm submitted to the second evaluation by Dr. Olsen on February 4, 2002.

Dr. Olsen's subsequent report describes a three hour examination in which Mr. Stamm showed many strengths, for example, that his "thought processing was logical and goal directed." (Exhibit 4, p. 2, ¶1; p. 10). Dr. Olsen nonetheless concluded that Mr. Stamm was impaired, citing in part the petition and written statements

provided to him by the guardian ad litem.¹⁶

In his report, Dr. Olsen did not purport to apply the statutory standards for guardianship. (Exhibit 4). His report was also result oriented, i.e., designed to find fault. A more obvious example is a series of mock transactions in which he employed "tricks" to wear Mr. Stamm down until he made a mistake. Dr. Olsen's testimony concerning these transactions is attached infra at A-13 to A-15.

10. Dr. Olsen's Supplemental Report

On March 5, 2002, Dr. Olsen issued a supplemental report purporting to set forth extracts of Mr. Stamm's medical records. (Exhibit 5). The actual records were not provided. (Id).

11. The Trial

Trial in this matter was held before Superior Court Judge Helen Halpert, from April 30, 2002 through May 2, 2002.

¹⁶ Exhibit 4, p. 1 (listing documents reviewed); Exhibit 4, p.4; p. 13, ¶6; p. 14, ¶1; TRP 101, lines 21-25; TRP 89, lines 12-13.

There were eight witnesses: Richard Edinger; the guardian ad litem; Dr. Olsen; Gary Thompson; Benjamin Hankins; Karen Crowley; Michael Stamm; and Mr. Stamm.

a. The testimony of Richard Edinger

Richard Edinger testified as a witness for the petitioners. He testified that he was the boyfriend of Ms. Harpole and that Ms. Inderbitzin was mistreating Mr. Stamm. (TRP 212-13; TRP 220, lines 9-25). Mr. Edinger also testified that he was living in Mr. Stamm's house for free and that he could not afford to move out. (TRP 234, lines 17-25; TRP 235).

b. The guardian ad litem's testimony

The guardian ad litem also testified as a witness for the petitioners. (TRP 34, lines 19-23). She recommended that a guardianship be imposed. (TRP 144, lines 10-13).

With regard to the guardianship of the person, she stated that Mr. Stamm delegated to Ms. Inderbitzin who in turn, was not doing a "good

job." The guardian ad litem testified:

It's great that he has someone that is caring for him and that he loves being with. They have, apparently, a very full and active intimate relationship and that is great ...

But the drawback is that [Mr. Stamm] has a pattern of delegating. ... [I]t appears that [Ms. Inderbitzin] is managing things for him. The problem is that she's not doing a good job.

Victoria Barr, TRP 137, line 20 to TRP 138.

With regard to the guardianship of the estate, the guardian ad litem's reasoning was that there "may" be exploitation.¹⁷

The guardian ad litem conceded that she had only met Mr. Stamm the one time, and that she did not actually know his financial situation.¹⁸ Her testimony in this regard is attached infra at A-16 to A-22.

c. Hearsay and special status

The guardian ad litem also testified that she was relying on the out-of-court statements of

¹⁷ TRP 198, lines 11-14; TRP 173, lines 3-8; and TRP 178, lines 15-16.

¹⁸ TRP 180, lines 6-8; TRP 181, lines 11-12.

others, i.e., hearsay. See, e.g., TRP 139, lines 2-6. For this reason, the trial court instructed the jury that it was not to consider her testimony as substantive evidence. The court stated:

[A]nything that is coming to the jury from Ms. Barr's mouth, testimony, is admissible only to show you where she arrived at her opinion. It is not being admitted to establish its truth, because those people aren't in court to testify.

Judge Halpert, TRP 143, lines 9-16.

The guardian ad litem also referred to herself as a "neutral investigator" and the "eyes and ears of the court."¹⁹ Mr. Stamm requested a curative instruction, that she was "not the eyes and ears of the court." (TRP 372, lines 12-15). This was denied. (Id).

d. The testimony of Robert Olsen

Dr. Olsen also testified as a witness for the petitioners. (TRP 83, line 21). His most strongly stated opinion was that Mr. Stamm had significant deficits which if left unremedied, would put his life "in jeopardy." (TRP 93, lines

¹⁹ TRP 71, lines 5-6; TRP 139, line 18; CP 478.

3-8).

When asked to give examples, Dr. Olsen focused on an incident a year and a half before trial, i.e., in November 2000, as described in Mr. Stamm's medical records.²⁰

Pursuant thereto, Dr. Olsen testified that Ms. Inderbitzin had called Medic One in connection with Mr. Stamm's suffering chest pain. (TRP 93, lines 17-20). Dr. Olsen was critical of Mr. Stamm, because when Medic One arrived, Mr. Stamm had insisted that he was fine and had been reluctant to go to the emergency room. (Id.). Mr. Stamm then agreed to go after being "prevailed upon" by Medic One and Ms. Inderbitzin. (Id., lines 21-24; Exhibit 5, p. 3, ¶4).

Dr. Olsen also related that per Mr. Stamm's medical record, Mr. Stamm had allowed his high blood pressure medication to run out in the prior month. (TRP 94, lines 7-9; Exhibit 5, p. 2, ¶3).

²⁰ TRP 93, line 9 and lines 17-21; TRP 99, lines 23-25; TRP 114, lines 3-12; and Exhibit 5, pp. 2-3 (regarding November 2000).

Per Trial Exhibit 5, which is Dr. Olsen's summary of these same records, this was an isolated incident.²¹

With regard to guardianship of the estate, Dr. Olsen testified to his "impression" that Mr. Stamm would not be capable of managing his financial affairs alone. (TRP 98, lines 15-19).

e. The testimony of Gary Thompson

Gary Thompson testified that he is a retired chiropractor who had known Mr. Stamm and Ms. Inderbitzin for four or five years. (TRP 294). He testified to their "deep commitment" and that Mr. Stamm had "expressed his love" for Ms. Inderbitzin. (TRP 301, lines 20-24).

f. The testimony of Benjamin Hankins

Benjamin Hankins testified that he knew Mr. Stamm from JR's Tavern and other like establishments. (TRP 237, lines 5-10). He

²¹ See: Exhibit 5, p. 2, ¶2 ("[d]oes have a history of hypertension for which he has been compliant with his medications"). (Emphasis in original). See also: Exhibit 5, p. 2, ¶1 ("[h]is blood pressure is well controlled").

testified to an incident in which Mr. Stamm fell down. (TRP 241-45).

Mr. Hankins conceded that a police officer who had come to the scene had assumed that he, i.e., Mr. Hankins, was drunk. (TRP 245, lines 11-16).

g. The testimony of Karen Crowley and Michael Stamm

The petitioners, Ms. Crowley and Michael Stamm, testified that they were estranged from Mr. Stamm and that they had little contact with him for several years.²²

h. The testimony of Mr. Stamm

Mr. Stamm was the last witness to testify. His testimony was logical and coherent with a touch of his trademark sense of humor. He also testified in the big picture, i.e., he did not provide precise exact dates and amounts.

Mr. Stamm admitted that he has been a heavy drinker for 40 years and that he suffers from

²² TRP 284, line 14; TRP 290, lines 14-22; TRP 261, lines 12-13; TRP 262, lines 20-21; TRP 263, lines 12-13.

heart disease and osteoporosis.²³ He also testified that he loves Ms. Inderbitzin. (TRP 336, lines 1-8). He said that they had talked about marriage. (Id).

Mr. Stamm also testified that he owned his home free and clear and that his bills were paid. (TRP 319, lines 18-23; TRP 325, lines 9-11). He confirmed that Ms. Inderbitzin assisted him and that he was assisted by a financial advisor, Grace Tjoia.²⁴ Mr. Stamm's testimony also included the following:

Q. Why do you think [the petitioners are] doing this?

A. Because they don't want [Ms. Inderbitzin], they want her out of my life.

Testimony of Loren Stamm, TRP 362, lines 7-9.

12. The Jury Verdicts

On May 2, 2002, the jury returned its verdicts, that Mr. Stamm was incapacitated as to

²³ TRP 330 lines 20-25; TRP 352, lines 15-18; TRP 353, lines 4-10; TRP 354, line 18.

²⁴ TRP 356, lines 8-12; TRP 323, lines 22-24.

his person and his estate. (Infra at A-1 to A-4).

Pursuant thereto Mr. Stamm retained his right to see Ms. Inderbitzin. The verdicts state that his right to make decisions regarding social aspects of his life should not be restricted.

(Infra at A-2, lines 8-10).

Mr. Stamm also retained the right to marry Mr. Inderbitzin and the right to make a new will.

(Infra at A-1 to A-4).

13. Referral to the Commissioner's Department

On May 3, 2002, an order was entered referring the case from the trial judge, Judge Halpert, to the Commissioner's Department. (CP 172, ¶2). The order stated that it was for the purpose of appointing a specific guardian, "and for all other proceedings." (Id).

14. The Order Appointing Guardian

On June 25, 2002, a commissioner entered an order appointing Guardianship Services of Seattle (GSS) as "limited" guardian. (CP 272). The order, however, is anything but limited. Pursuant

thereto, Mr. Stamm loses his rights: to drive; to provide informed consent; to choose who will assist or care for him; to contract; to buy, sell, own, mortgage or lease property; to appoint someone else to act on his behalf; to sue or be sued; and to make decisions about the maintenance of his property. (CP 275-76).

The order also required Mr. Stamm to pay the fees of the other parties, i.e., \$21,256.15 to the petitioners and \$6,300.00 to the guardian ad litem. (CP 279).

15. Mr. Stamm Appeals

On July 23, 2002, Mr. Stamm appealed the order appointing guardian and "all other orders."

16. The Guardian's Verified Inventory and Proposed Budget

On August 16, 2002, GSS submitted its initial "Verified Inventory." This document substantiated Mr. Stamm's financial stability. It listed assets of \$349,304.06, with pre-guardianship debt of less than \$5,000.00. (CP 1000; infra at A-26).

On this same date, GSS submitted its initial budget, projecting a shortfall of \$4,227.65 per month, i.e., \$50,731.80 per year. (Infra at A-27). Pursuant thereto, Mr. Stamm's assets would be liquidated to pay for the guardianship.

GSS suggested that a reverse mortgage could be obtained on Mr. Stamm's home. (CP 417, 1st ¶). It also proposed that Mr. Stamm's allowance be set at \$300.00 a week.²⁵

17. Mr. Stamm Obtains an Order to Show Cause

On August 28, 2002, Mr. Stamm moved for termination or stay of the guardianship per RCW 11.88.120. (CP 474).

In support thereof, Mr. Stamm submitted his credit report (no collection accounts and no accounts past due), his driving record ("no violation convictions or accidents") and his financial records (stable historical spending).²⁶

²⁵ The proposed monthly budget lists allowance of \$1,300.00, i.e., \$300.00 per week. (CP 423).

²⁶ CP 333-34; CP 764; CP 451; CP 948, lines 18-25; CP 1075; CP 1081-1103; CP 1013; CP 1015.

On this same date, Mr. Stamm obtained an order from a commissioner requiring the other parties to show cause why the guardianship should not be terminated. (CP 431).

18. The Hearing on the Show Cause Order

On September 4, 2002, the hearing on the show cause order was held before a different commissioner.

This commissioner did not require the other parties to comply with the order. She did not allow Mr. Stamm to present his prepared argument. (RP 9/4/02, p. 11). She instead took the position that as a commissioner, she had no power to grant the relief requested. (Id., p. 10).

In response, Mr. Stamm suggested that the matter should be set before Judge Halpert. (Id., p. 11, lines 10-13). This suggestion was declined, that Judge Halpert had said that it could be heard by the commissioner.²⁷ Mr. Stamm's

²⁷ RP 9/4/02, p. 11, lines 19-21 (Judge Halpert said "it was fine for it to come here").

motions were denied. (CP 909, line 25; CP 910).

19. Ms. Inderbitzin Provides
"Valuable In-Kind Services"

At the hearing, the commissioner also ruled that Ms. Inderbitzin provided "valuable in-kind services" to Mr. Stamm.²⁸ The commissioner also acknowledged that the jury had made no finding against Ms. Inderbitzin. The commissioner stated:

I think we need to get this issue laid to rest one way or the other as to whether there's any overreaching or whether this is a normal relationship as indicated, a loving relationship, where they both -- there's give-and-take on both sides.

RP 9/4/02, p. 36, lines 5-9.

20. Mr. Stamm and his Attorney are
Restricted

On September 16, 2002, the commissioner entered her order from the prior hearing. (CP 904). The order stated that there was "no basis in law" for Mr. Stamm's motions to terminate or stay. (CP 905, line 15-22; CP 906, lines 1-3). The order also restricted the role of Mr. Stamm's

²⁸ RP 9/4/02, p. 35, line 25; p. 36, lines 1-2.

attorney. It stated that his attorney would have to file a petition for instructions before "perform[ing] any additional services for [Mr.] Stamm." (CP 909, lines 11-12, infra. at A-10).

During the hearing, the commissioner also ruled that Mr. Stamm would not be allowed to move for reconsideration regarding his motions to terminate or stay. (RP 9/16/02, p. 5, lines 21-25). This prompted his attorney to respond:

[F]or the record, I would just raise the due-process issue that I haven't even made the motion for reconsideration, and I don't even know what I'm going to write yet, and I'm being restricted when we're concerned with a fundamental liberty interest.

RP 9/16/02, p. 6, line 25; p. 7, lines 1-5.

21. Mr. Stamm's Petition for Instructions

On September 25, 2002, Mr. Stamm filed a petition for instructions asserting his right to move for reconsideration and seeking other relief. (CP 923-24). His argument included that he was also entitled to relief under CR 60. (CP 929-934).

On October 4, 2002, the commissioner responded via order stating in part:

Motion for reconsideration and request to make such motion was denied on 9/16/02.

Order, 10/4/02, infra at A-12, lines 19-20.

22. Mr. Stamm Files an Amended Notice of Appeal; The Record is Supplemented

On October 9, 2002, Mr. Stamm filed an amended notice of appeal to include the commissioner's orders. On December 6, 2002, this Court granted his motion to supplement the record with these materials.

23. Relief Requested

Mr. Stamm requests reversal of the order appointing guardian. He requests that the fee awards against him be reversed, and that the petitioners be required to pay his fees. He also requests fees and costs on appeal.

C. **SUMMARY OF ARGUMENT**

A guardianship is not to be imposed unless the person's decision-making process is so

impaired that he is unable to care for his own personal safety and provide himself with the necessities of life. A person may not be deemed incapacitated, i.e., incompetent and subject to guardianship, unless he has a demonstrated inability to "adequately" manage his affairs.

In the case at bar, Mr. Stamm is clever with logical and goal directed thinking. He was also adequately handling his affairs. He had good credit, a home and a significant other who assisted him. When he had an incident requiring a trip to the emergency room, he went, his initial reluctance notwithstanding.

With these circumstances, the order appointing guardian cannot be sustained and must be reversed.

In the alternative, the order must be reversed due to the erroneous admission of the guardian ad litem's testimony. Per the trial judge's assessment, this issue was the "crux of the case" and possibly error. The trial judge

stated:

I think this is the complete crux of this case, is whether her opinion comes in. ...

[Y]ou think I am wrong, and the truth is I would not be shocked were the Court of Appeals to find I am wrong, ...

TRP 309, lines 19-21, and TRP 310, lines 6-8.

For both these reasons, the order appointing guardian should be immediately vacated and Mr. Stamm's rights restored. He should also be awarded fees.

D. ARGUMENT

1. De Novo Review

Incapacity is a legal issue. RCW 11.88.010(1)(c). Review of the jury's verdicts and the order appointing guardian is therefore de novo as a matter of law. Rasmussen v. Bendotti, 107 Wn. App. 947, 954, 29 P.3d 56 (2001). See also: Akers v. Sinclair, 37 Wn.2d 693, 701, 226 P.2d 225 (1950).

2. The Law of Guardianship

Per RCW 11.88.010, a person can only be

deemed "incapacitated," i.e., incompetent and subject to guardianship, if he is unable to "adequately" handle his affairs. This determination requires a demonstration of "management insufficiencies over time." RCW 11.88.010(1)(c). The standard of proof is "clear, cogent and convincing evidence." RCW 11.88.045(3).

There is apparently no case law applying these provisions. Prior caselaw is, however, clear that the burden of proof is extremely high. For example, In Re Nelson, 12 Wn.2d 382, 397, 121 P.2d 968 (1942), a guardianship was terminated although the ward was "physically weak," "nervous" and with a mind less keen or quick than "years ago."

Similarly, In Re Michelson, 8 Wn.2d 327, 329, 111 P.2d 1011 (1941), a guardianship was terminated although the ward could not read or write in English and required the assistance of her children. Michelson states:

Guardians should not be appointed either of the person or of the property of one simply because he is aged or infirm, or because his mind is, to some extent, impaired by age or disease.

Michelson, 8 Wn.2d at 335-36.

3. There is No Clear, Cogent and Convincing Evidence that Mr. Stamm was Incapacitated

A guardianship can only be imposed if the proposed ward's decision-making process is so impaired that he is "not able to care for his or her own personal safety and is not able to provide necessities of life." In Re Teeter, 537 NW.2d 808, 810 (Iowa 1995).

In the case at bar, Mr. Stamm's decision-making process was intact. He was "clever" with thought processing that was "logical and goal directed."²⁹ He was also adequately handling his affairs. Indeed, he was doing better than many people. He had a home, a car and a significant other.

With this situation, there is no

²⁹ TRP 65, line 13; Exhibit 4, p. 10, p. 2, ¶1.

"incapacity." The order appointing guardian is not sustainable.

The specific evidence against Mr. Stamm is discussed below.

a. The guardian ad litem's testimony

As set forth above, the guardian ad litem opined that there "may" be exploitation. (TRP 198, lines 11-14). This testimony was not only speculation, but irrelevant. Michelson states:

So far as we are informed, there are no authorities holding that, when one group of children are of the view that a parent will not deal fairly with them in his disposition of his property, in the absence of overreaching or fraud, that furnishes any basis for the appointment of a guardian ... Apprehension in that regard is not to be indulged in.

Michelson, 8 Wn.2d at 336.

The guardian ad litem's opinion that Ms. Inderbitzin was not doing a "good job" is also irrelevant. (TRP 138, lines 1-5). The question is not whether Ms. Inderbitzin was doing a "good job," but whether Mr. Stamm was adequately handling his affairs. RCW 11.88.010.

The guardian ad litem also testified as to the hearsay underlying her opinion. As set forth above, this testimony was not admitted as substantive evidence but only to show the basis for her opinion. It cannot be substantively considered to uphold the verdict.

b. Dr. Olsen's testimony

Dr. Olsen's "impression" that Mr. Stamm was incapable of handling his financial affairs alone, is irrelevant. (TRP 98, lines 15-19). Mr. Stamm was not handling his affairs alone. He was assisted by Ms. Inderbitzin and Ms. Tjoia.³⁰ An "impression" is also insufficient to sustain a verdict. Cf. Morse v. Antonellis, 112 Wn. App. 941, 946 (2002) (a verdict "cannot be founded on mere theory or speculation").

Dr. Olsen's testimony that Mr. Stamm had failed to renew his medication a year and a half before trial, is also of little or no relevance. Per Dr. Olsen's own exhibit, it was an isolated

³⁰ TRP 356, lines 8-12; TRP 323, lines 22-25).

incident. (Exhibit 5, p. 2, ¶3). Mr. Stamm's reluctance to go to the emergency room would also seem a normal tendency. (Id., p. 3, ¶4). He had, regardless, agreed to go. (Id.).

Dr. Olsen's opinion provides little or no support for the conclusion of incapacity.

c. Other witnesses

The testimony of Mr. Edinger, that Mr. Stamm was mistreated by Ms. Inderbitzin, was given no weight by the jury. As set forth above, the jury determined that Mr. Stamm should retain his right to see Ms. Inderbitzin. He also retained the right to marry her and make a will. (A-1 to A-4).

Viewing the evidence as a whole, the verdicts of incapacity cannot be sustained. The order appointing guardian should be immediately reversed and vacated.

4. The "Cure" of the Guardianship is Worse Than the Disease

11.88.120(1) allows a ward to move for termination of guardianship "[a]t any time." The standards for granting relief are that there be a

"good reason" and that relief be "just and in the best interest of the incapacitated person." RCW 11.88.120(1) and (4).

In the case at bar, Mr. Stamm had stable spending and assets. With the guardianship, his assets are instead being liquidated. He also lives on an allowance doled out by a company. His rights are otherwise curtailed. Perhaps most obviously, he has a perfect driving record, but is no longer allowed to drive. (CP 334).

With this circumstance and as a matter of law, it is "just and in the best interest" of Mr. Stamm, that the guardianship be terminated. For this reason also, the order imposing guardianship should be reversed and vacated.

5. The Alternate Ground for Reversal: the Erroneous Admission of the Guardian ad Litem's Testimony.

In the event this Court does not reverse and vacate for the reasons set forth above, it will be necessary to reach the alternate ground for reversal, i.e., the erroneous admission of the

guardian ad litem's testimony.

The legal analysis demonstrating this error is set forth below.

a. Admission of the guardian ad litem's opinion violated Mr. Stamm's right to trial by a fair and impartial jury

In a criminal case, the defendant's physical liberty is at stake. In a guardianship case, there is a similar situation." In Re Hedin, 528 NW.2d 567, 573-74 (Iowa 1995), states:

Although the determination of incompetency is in no way a criminal proceeding, the result in terms of the defendant's liberty interests may be very similar. He may be deprived of control over his residence, his associations, his property, his diet, and his ability to go where he wishes.³¹

Equal protection "requires similar treatment under the law for similarly situated people."

Miquel v. Guess, 112 Wn. App. 536, 552, 51 P.3d 89

³¹ See also: Paul F. Stravis, Counsel to the NY Commission on Quality Care, Guardianship: the Problem or a Solution, Quality of Care Newsletter, Issue 40, May-June 1989, CP 941 ("[i]ndividuals ... subject to guardianship typically retain fewer rights than are retained by convicted felons"); and Denise M. Topolnicki, The Gulag of Guardianship, Money Magazine, March 1989, CP 1152-53.

(2002). If Mr. Stamm had been a criminal defendant, admission of the guardian ad litem's opinion as to his incapacity, i.e., his "guilt," would have been clearly inadmissible. State v. MacPherson, 111 Wn. App. 747, 763, 46 P.3d 284

(2002) states:

It is well settled that no witness, expert or lay, may utter an opinion as to the guilt or innocence of a criminal defendant, whether the opinion is a direct statement or an inference. A witness opinion as to guilt or innocence violates the defendant's constitutional right to have the jury make an independent determination of the facts and render its verdict. (Citations omitted).

With Mr. Stamm in a similar situation as a criminal defendant, equal protection required his similar rights. This Court should therefore hold that admission of the guardian ad litem's opinion, was error. Per MacPherson, it violated Mr. Stamm's constitutional right to have the jury make an independent determination of the facts and render its verdict.

"When a defendant is denied his or her

constitutional right to a fair and impartial jury, the remedy is reversal." State v. Gonzales, 111 Wn. App. 276, 282, 45 P.3d 205 (2002). Equal protection requires that this remedy be applied to Mr. Stamm. For this reason also, the order appointing guardian should be reversed.

b. The guardian ad litem's testimony was akin to prosecutorial misconduct and/or an improper comment on the evidence by a judicial officer

As set forth above, the guardian ad litem testified that she was a "neutral investigator" and the "eyes and ears of the court." (TRP 71; TRP 139, lines 17-18). A prosecutor is also a "neutral" figure. Cf. State v. Reed, 102 Wn.2d 140, 147, 684 P.2d 669 (1984). Similar comments by a prosecutor are so prejudicial as to constitute reversible error. See below.

In Gonzales, supra, the following remarks were improper and "clearly [had] the potential to affect a verdict, which would necessitate reversal." 111 Wn. App. at 284. The prosecutor

had argued:

I do not have a client, and I do not have a responsibility to convict. I have an oath and an obligation to see that justice is served. ...

Gonzales, 111 Wn. App. at 283.

Gonzales states that this argument sought to "draw a cloak of righteousness" around the State's position, and that it also established in the jurors' minds the false notion that unlike defense attorneys, prosecutors take an oath to "see that justice is served." Id. at 282 and 284.

In the case at bar, the guardian ad litem's testimony was closely analogous, that she was a "neutral investigator" with special status and credibility. In fact, her opinion was inherently less reliable than other witnesses, i.e., the product of hearsay and speculation. Cf. §D.5.c., infra. An analogous false notion was created.

The guardian ad litem compounded the problem by equating her role to that of a judge, i.e., "the eyes and ears of the court." (TRP 139, line 18). Her testimony was not only akin to

prosecutorial misconduct, but akin to an improper comment on the evidence by a judicial officer. Cf. State v. Dewey, 93 Wn. App. 50, 58-59, 966 P.2d 414 (1998).

For these reasons also, there is reversible error. The order appointing guardian is not sustainable.

c. The guardian ad litem's testimony was too unreliable to be admitted

The trial court treated the guardian ad litem as an expert witness, i.e., it admitted her opinion on the ultimate issue as well as hearsay underlying her opinion. Cf. TRP 28, lines 18-25; TRP 29; and ER 702 and 705. If the court had instead treated her as a lay witness, her opinions would have been limited to those "rationally based on ... perception." ER 701.

The admission of expert testimony is governed by ER 702. The test for admissibility is "whether the expert qualifies as an expert, and whether the expert's testimony would be "helpful to the trier

of fact."³² Evidence is not "helpful" if it is not reliable.³³

In the case at bar, the guardian ad litem's testimony was too unreliable to meet this minimum threshold.

As set forth above, the guardian ad litem's opinion was based on hearsay, i.e., the out of court statements of other people. Hearsay is, of course, inherently unreliable. Cf. State v. Darden, 145 Wn.2d 612, 620, 41 P.3d 1189 (2002) ("[w]henver the right to confront is denied, the ultimate integrity of the fact-finding process is called into question"). The guardian ad litem's testimony that there "may" be exploitation concedes this point. She did not know beyond speculation. Her testimony was therefore "not helpful to the trier of fact." It was error to admit it under ER 702.

³² State v. Copeland, 130 Wn.2d 244, 256, 922 P.2d 1304 (1996).

³³ Cf. State v. Carlson, 80 Wn. App. 116, 123, ¶2, 906 P.2d 999 (1995); and Kumho Tire v. Carmichael, 526 U.S. 137, 147, 119 S.Ct. 1167 (1999) (regarding Daubert).

Another way to look at the lack of reliability is via ER 703. State v. Nation, 110 Wn. App. 651, 663, 41 P.3d 1204 (2002), states:

[S]ince [ER 703] is concerned with trust-worthiness of the [expert's] resulting opinion, ... "The expert must establish that he as well as others would act upon the information for purposes other than testifying in a lawsuit."

In Nation, admission of the opinion of a crime lab supervisor based on hearsay, was reversible error. Id. at 666. The supervisor had given "no testimony that others outside his office customarily rely on the material other than for litigation purposes." Id. at 663.

In the case at bar, the guardian ad litem's hearsay was also for the purpose of litigation only. For this reason also, her opinion must be seen as too unreliable for admission.

With the trial judge's assessment that the guardian ad litem's opinion was the "crux of the case," the erroneous admission of the guardian ad litem's testimony must be seen as material to the

outcome, i.e., reversible error. For this reason also, the order appointing guardian must be reversed and vacated.

d. Fernando v. Nieswandt should be overruled or distinguished

The trial court supported its decision to admit the guardian ad litem's testimony with Fernando v. Nieswandt, 87 Wn. App. 103, 106-08, 940 P.2d 1380 (1997). (TRP 312).

Fernando is not a guardianship case. It has also been criticized.³⁴ Fernando should be distinguished or overruled herein.

6. The Proper Remedy is Reversal and Vacation of the Order Appointing Guardian

It has been documented that remand for

³⁴ See: Raven Lidman and Betsy Hollingsworth, *Rethinking the Roles of Guardians ad litem in Dissolutions: Have We been Seeking Magicians?*, Washington State Bar News, December 1997, CP 760 (regarding the "contradictory impulses" of Fernando); Richard Ducote, *Guardians Ad Litem in Private Custody Litigation: The Case for Abolition*, Loyola Journal of Public Interest Law, Vol. 3, Spring 2002, No. 2, p. 115, CP 556; Lidman and Hollingsworth, *The Guardian ad Litem in Child Custody Cases: The Contours of Our Judicial System Stretched Beyond Recognition*, George Mason L. Rev., Vol. 6:2, (1998), CP 705; Margaret K. Dore, *Parenting Evaluators and GALs: Practical Realities*, King County Bar Association, Bar Bulletin, December 1999, CP 537; and In Re Schiavo, 780 So.2d 176, 179 (2001), CP 701, last sentence.

additional findings is an illusory remedy. Former Minnesota Court of Appeals Judge Gary Crippen states:

The results of appellate demands for particularized findings become illusory because remands for additional findings are not likely to change the end result.³⁵

In the case at bar, there is the additional circumstance that with the guardianship, Mr. Stamm's is suffering ongoing liquidation. He is also not getting any younger.

With this situation, the proper remedy is reversal and vacation of the order appointing guardian. This is the remedy that will give Mr. Stamm relief. Otherwise his remaining income and assets, could all go for fees.

7. Any Remand Should be to the Original Trial Judge or Another Superior Court Judge

In the event this Court would order remand, Mr. Stamm would request that it be to Judge

³⁵ Crippen, Gary, *Stumbling Beyond Best Interests of the Child: Reexamining Child Custody Standard-Setting in the Wake of Minnesota's Four Year Experiment with the Primary Caretaker Preference*, 75 Minn. Law Rev. 427, 1990 at 485.

Halpert or another superior court judge.

Remand should not be to the commissioner's department in which a commissioner may again be unsure of his or her power to act. This result would also seem required to maintain the appearance of fairness. Cf. Custody of R, 88 Wn. App. 746, 762-63, 947 P.2d 745 (1997), and supra at §§B.20 and B.21 (regarding reconsideration).

8. The Petitioners Should Pay All of Mr. Stamm's Fees and Costs

RCW 11.88.090(10) and RCW 11.96A.150 provide for fee allocation on such terms as are "just" or "equitable."³⁶

In the case at bar, the petitioners started this proceeding. They should pay for it.

This would include fees incurred at trial and on appeal, i.e., per RAP 18.1.

E. CONCLUSION

Mr. Stamm is a clever man with logical and goal directed thinking. He had good credit. He

³⁶ See also: Mahler v. Szucs, 135 Wn.2d 398, 434, 957 P.2d 632 (1998).

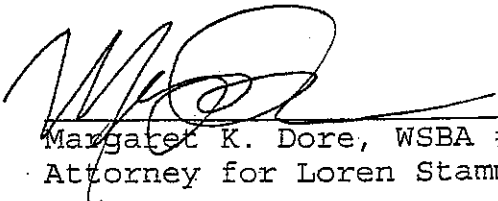
owned his own home free and clear. He had essentially no debt.

With this context, there are multiple grounds for reversal. The most basic is the lack of incapacity. For this reason alone, the order appointing guardian should be immediately reversed and vacated.

Reversal is also required due to the improper admission of the guardian ad litem's testimony. It was not only too unreliable for admission, but violated Mr. Stamm's right to a fair trial.

Mr. Stamm would also request immediate reversal and vacation of the order appointing guardian, with the Court's opinion to be written later. He needs to get on with his life. He should also be awarded fees.

Respectfully submitted this 26th day of June, 2003.


Margaret K. Dore, WSBA #16266
Attorney for Loren Stamm

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

IN THE MATTER OF THE)	NO. 01-4-05323-7 SEA
)	
GUARDIANSHIP OF)	SPECIAL VERDICT FORM A
)	
LOREN W. STAMM,)	RE: PERSON
)	
An Alleged Incapacitated Person.)	

We, the jury, make the following answers to the questions submitted by the Court:

QUESTION NO. 1: Is LOREN W. STAMM incapacitated as to his person?

Answer: Yes (yes or no)

QUESTION NO. 2: If your answer to Question No. 1 is "yes", which right or rights of LOREN W. STAMM should be restricted:

(1) The right to marry or divorce?

Answer: No (yes or no)

(2) The right to vote or hold elective office?

Answer: No (yes or no)

SPECIAL VERDICT FORM
RE: PERSON - 1

Verdict A

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(3) The right to possess a license to drive?

Answer: Yes (yes or no)

(4) The right to consent to or refuse medical treatment?


Answer: Yes (yes or no)

(5) The right to decide who shall provide care and assistance?

Answer: Yes (yes or no)

(6) The right to make decisions regarding social aspects of his life?

Answer: No (yes or no)


Foreperson OF THE JURY

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KING COUNTY, WASHINGTON

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

IN THE MATTER OF THE)	NO. 01-4-05323-7 SEA
)	
GUARDIANSHIP OF)	
)	SPECIAL VERDICT FORM B
LOREN W. STAMM,)	
)	RE: ESTATE
An Alleged Incapacitated Person.)	

We, the jury, make the following answers to the questions submitted by the Court:

QUESTION NO. 1: Is LOREN W. STAMM incapacitated as to his estate?

Answer: Yes (yes or no)

QUESTION NO. 2: If your answer to Question No. 1 is "yes", which right or rights of LOREN W. STAMM should be restricted:

(A) The right to manage his financial resources?

Answer: Yes (yes or no)

(B) The right to contract?

Answer: Yes (yes or no)

Verdict B

SPECIAL VERDICT FORM
RE: ESTATE - 1

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(C) The right to make or revoke a will?

Answer: No (yes or no)

(D) The right to buy, sell, own, mortgage or lease property?

Answer: Yes (yes or no)

(E) The right to appoint someone else to act on his own behalf in financial matters?

Answer: Yes (yes or no)

(F) The right to sue and be sued other than through a guardian?

Answer: Yes (yes or no)

(G) The right to make decisions about personal property?

Answer: No (yes or no)

(H) The right to make decisions about the maintenance of property?

Answer: Yes (yes or no)

Julie Havel
FOR PERSON TO THE JURY

Verdict B

SPECIAL VERDICT FORM
RE: ESTATE - 2

A-4

149

1 having heard the presentation of counsel, the Court makes the following
2 Findings of Fact and Conclusions of Law.

3 **FINDINGS OF FACT**

4 1) A jury trial was held April 30, 2002 through May 2, 2002 on the
5 Petition previously filed herein requesting Guardianship of the Person and
6 Estate of LOREN W. STAMM.

7 2) On May 2, 2002, the jury entered its Special Verdict Form A and
8 Special Verdict Form B, finding that LOREN W. STAMM is in need of a Limited
9 Guardianship of his Person and a Limited Guardianship of his Estate as more
10 fully detailed in said Special Verdict forms, copies of which are attached to
11 the above-captioned Petition.

12 3) The Honorable Judge HELEN L. HALPERT entered an Order
13 Referring to Commissioner's Department for Entry of Limited Guardianship in
14 these proceedings on May 3, 2002, stating that all parties had agreed to
15 appointment of a professional guardian.

16 4) All parties have received copies of the jury's Verdicts and have
17 received copies of the Petition for Agreed Order and Note for Hearing.

18 5) All parties have agreed to the appointment of GUARDIANSHIP
19 SERVICES OF SEATTLE as Limited Guardian of the Person and Estate of
20 LOREN W. STAMM, as evidenced by signatures of counsel to the Petition for
21 Order Appointing Limited Guardian.

22 **CONCLUSIONS OF LAW**

23 1) Pursant to verdicts rendered following trial by jury, LOREN W.
24 STAMM is an incapacitated person within the meaning of RCW 11.88, and a

ORDER APPOINTING
LIMITED GUARDIAN - 2

WILLIAM L. E. DUSSAULT, PS
PROFESSIONAL CORPORATION

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SEATTLE
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Order Appointing
Guardian

273

A-5

1 Limited Guardian of the Person and Estate of LOREN W. STAMM should be
2 appointed pursuant to the Jury Verdicts.

3 2) All notices required by law have been given.

4 3) GUARDIANSHIP SERVICES OF SEATTLE is a fit and proper
5 entity as required by RCW 11.88.020 to be appointed as Limited Guardian of the
6 Person and Estate of LOREN W. STAMM, and shall exercise the following
7 powers and authorities:

8 A) LOREN W. STAMM shall not have the right to possess a
9 license to drive;

10 B) LOREN W. STAMM shall not have the right to consent to or
11 refuse medical treatment; the Limited Guardian shall exercise
12 this authority over the person of LOREN W. STAMM;

13 C) LOREN W. STAMM shall not have the right to decide who
14 shall provide care and assistance to LOREN W. STAMM; the
15 Limited Guardian shall exercise this authority;

16 D) LOREN W. STAMM shall not have the right to manage his
17 financial resources; the Limited Guardian shall exercise this
18 authority;

19 E) LOREN W. STAMM shall not have the right to enter into
20 contracts on his own behalf; the Limited Guardian shall
21 exercise this authority;

22 F) LOREN W. STAMM shall not have the right to buy, sell, own,
23 mortgage or lease property; the Limited Guardian shall
24 exercise this authority;

G) LOREN W. STAMM shall not have the right to appoint
someone else to act on his own behalf in financial matters; the
Limited Guardian shall exercise this authority;

WILLIAM T. H. DESSAINT PS

274

A-6

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H) LOREN W. STAMM shall not have the right to sue or be sued other than through the Limited Guardian;

I) LOREN W. STAMM shall not have the right to make decisions about the maintenance of property; the Limited Guardian shall exercise this authority.

THE COURT HAVING made the foregoing Findings of Fact and Conclusions of Law, now, therefore, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

1) GUARDIANSHIP SERVICES OF SEATTLE, a bonded or insured Washington non-profit organization, is hereby appointed as Limited Guardian of the Person and Estate of LOREN W. STAMM, and pursuant to the Jury Verdicts, shall serve with all of the following duties, powers and authorities:

- A) LOREN W. STAMM shall not have the right to possess a license to drive;
- B) LOREN W. STAMM shall not have the right to consent to or refuse medical treatment; the Limited Guardian shall exercise this authority over the person of LOREN W. STAMM;
- C) LOREN W. STAMM shall not have the right to decide who shall provide care and assistance to LOREN W. STAMM; the Limited Guardian shall exercise this authority;
- D) LOREN W. STAMM shall not have the right to manage his financial resources; the Limited Guardian shall exercise this authority;
- E) LOREN W. STAMM shall not have the right to enter into contracts on his own behalf; the Limited Guardian shall exercise this authority;

WILLIAM L. E. DUSSAULT, PS

Order Appointing
Guardian

275

A-7

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- F) LOREN W. STAMM shall not have the right to buy, sell, own, mortgage or lease property; the Limited Guardian shall exercise this authority;
- G) LOREN W. STAMM shall not have the right to appoint someone else to act on his own behalf in financial matters; the Limited Guardian shall exercise this authority;
- H) LOREN W. STAMM shall not have the right to sue or be sued other than through the Limited Guardian;
- I) LOREN W. STAMM shall not have the right to make decisions about the maintenance of property; the Limited Guardian shall exercise this authority.

2) The Clerk of the Court is directed to issue Letters of Limited Guardianship of the Person and Estate of LOREN W. STAMM to GUARDIANSHIP SERVICES OF SEATTLE upon filing of its oath;

3) As Limited Guardian, GUARDIANSHIP SERVICES OF SEATTLE:

- A) shall be required to obtain a bond in the amount of \$25,000;
- B) shall place \$_____ of Guardianship assets into blocked account(s); or
- C) Bonding and blocking requirements are hereby waived, provided that the Guardian is required to report to the Court any changes in the total assets of the incapacitated person increasing their value to twice that of the State Homestead Exemption of Eighty Thousand Dollars (\$80,000.00), at which time the Court will review the guardianship bonding/blocking requirements;

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A-8

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incapacitated person, this transfer shall be processed on request of the Limited Guardian.

D) Any holder of financial information, including tax information, about the incapacitated person shall deliver records in holders possession to the Limited Guardian upon request.

8) The Limited Guardian is authorized to advance funds from the ward toward accrued guardianship fees on a month to month basis, subject to review of Limited Guardian fees at the next regular accounting PROVIDED that the Limited Guardian shall not advance itself funds in excess of \$5,000.00 from the date of this order to the hearing on the Verified Inventory. Limited Guardian's Fees over this amount shall be submitted for approval in advance of payment;

9) This Guardianship shall continue in effect until terminated pursuant to RCW 11.88.140, with reports to the Court to be made at 12 ^{WLD} _{12/15} ^{twelve} month intervals from the date of entry of this Order;

10) Attorneys' fees and costs incurred by WILLIAM L. E. DUSSAULT, P.S. in representing the Petitioners through presentation of this Report and ^{as reasonable with} ~~for~~ payment by the Petition in the total amount of \$21,256.15 are approved ^{to be negotiated based upon} ~~for~~ the Limited Guardian from the Guardianship Estate ^{availability of assets/ income with the Limited guardian -}

11) The fees and costs requested by VICTORIA BARR, the Guardian Ad Litem, are found to be reasonable and are hereby approved in the ~~total~~ amount of ^{6300.-} ~~\$10,021.19~~ for payment by the Limited Guardian from the Guardianship Estate; ^{with the balance to be presented to the} ~~total~~ ^{trial judge for approval.}

12) The Guardian Ad Litem is hereby discharged and authorized to discontinue acting as Guardian ad Litem herein; and

W

WILLIAM E. DUSSAULT DC
Order Appointing
Guardian

ORDER APPOINTING
LIMITED GUARDIAN - 8

279

A-9

1 cooperate fully with the Limited Guardian in providing in information on her
2 income, assets, and liabilities.

3 L. **Retention of Bonds.** The Limited Guardian shall be and hereby is
4 directed to retain all bonds purchased by Loren Stamm in the name of minors until
5 the dates that the named minors attain the age of majority.

6 M. **Role and Responsibility of Margaret Dore.** Margaret Dore, as
7 counsel for Loren Stamm, shall have the following roles and responsibilities in the
8 matter of this limited guardianship and the appeal of the jury verdict of incapacity:

9 There are no restrictions on the services she may provide in the matter of the
10 pending appeal ~~or~~ ^{and} from an appeal of this Order. She shall file and serve a Petition

11 For Instructions should she believe it necessary to file a pleading seeking
12 affirmative relief or perform any additional services for Loren Stamm in this

13 guardianship proceeding. She may file pleadings with respect to relief requested

14 by other parties. *she may file a motion for reconsideration if she believes*
that requirements of CR 7 have been met
i.e. new evidence could not be introduced due diligence presented to court.

15 N. **Consolidation of Funds.** The Limited Guardian is authorized to hold
16 its operating funds for the guardianship in US Bancorp Piper Jaffray account
17 number 3905-1344, a money market account. The Limited Guardian is directed to
18 credit the Incapacitated Person with his proportionate share of the earnings of the
19 account and his proportionate share of the fees and charges assessed with respect
20 to this account.

21 O. **Miscellaneous Expenses.** The Limited Guardian is authorized to pay
22 when due all expenses incurred by way of fees to the Clerk of the court, together
23 with any additional expenses incurred up to the amount of \$50.00 in connection
24 with this limited guardianship.

25 P. **Motions of Loren Stamm.** Loren Stamm's Motion To

26 *+ that there is a legal basis for court reconsidering its*
order denying motion to extend Ms Pore seeks reconsideration of
court's order denying motion to vacate or stay jury verdict
verdict + order court does not grant instructions for her to do so

27 **ORDER APPROVING INVENTORY, BUDGET**
AND FEES - 6
OrderFeesv.5STAMM9481069.wpd
HI
Order
Seattle
(206) 587-6556 FAX (206) 587-6553
A-10
909
- 520 9/16/02

1 Terminate Guardianship, Set Aside Fee Awards And Obtain Reimbursement Or,
2 In The Alternative, Stay Guardianship Pending Appeal shall be and hereby is
3 DENIED.


4 Q. **Loren Stamm's Motion Regarding Fees.** Loren Stamm's Motion
5 Regarding Fees is GRANTED to the extent that the court orders a stay of payment
6 of the fees and costs of William L. E. Dussault and the guardian ad litem as set
7 forth above and the court approves the fees and costs of Margaret Dore for her
8 representation of Loren Stamm during the period from July 8, 2002 through
9 August 2, 2002 in the amount of \$8,732.60. The remainder of the relief
10 requested in said Motion is DENIED.

11 DONE IN OPEN COURT THIS ^{16th} DAY OF SEPTEMBER, 2002.

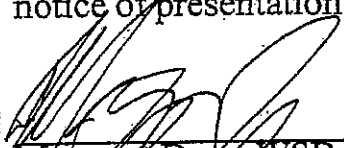
12
13 
14 JUDGE/COURT COMMISSIONER

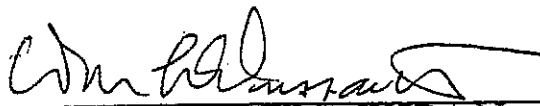
15 Presented by:

16 HERTOG & COSTER

17 
18 John H. Hertog, WSBA No. 7205
19 Richard L. Furman Jr., WSBA No. 31101
20 Attorneys for Limited Guardian of the Person and Estate

21 Approved for entry, copy received and
22 notice of presentation waived:

23 
24 Margaret Dore, WSBA No. 16266
25 Attorney for Loren Stamm

26 
27 William L.E. Dussault, WSBA No. 4611
28 Attorney for Karen Crowley and Michael Stamm

ORDER APPROVING INVENTORY, BUDGET
AND FEES - 7

OrderFeesv.5STAMM9481069.wpd

910

HERTOG & CO
Attorneys at Law

520 Pike Street, Suite 2000
Seattle, Washington 98101-4023
(206) 587-6556 FAX (206) 587-6553

Order
9/16/02

A-11

1 authorized to draft and execute a will as requested. The
2 guardian is directed to pay such sum upon submission of an
3 invoice regarding same.

4 **B. Petition for Instructions**

5 This Court hereby grants Mr. Stamm's petition for
6 instructions as follows:

7
8 1. Ongoing legal representation *Court clarifies previous*
9 *order to provide that Ms. Dore need not seek instructions as to:*
10 Mr. Stamm is entitled to ongoing legal representation. His
11 attorney is authorized to provide ongoing advice and
12 consultation. This includes representation via telephone, in
13 person consultation and via letter. His attorney is allowed to
14 consult with other parties on issues of concern to Mr. Stamm.

15 2. Reconsideration

16 The court hereby clarifies that Mr. Stamm is allowed to move
17 for reconsideration per CR 59 (a) (1) through (a) (9). Mr.
18 Stamm is directed to file and note his motion within 10 days
19 of this order. *Motion for reconsideration and request to make*
20 *such motion was denied on 9/16/02.*
21 ~~The court hereby confirms that Mr. Stamm is not allowed to~~
22 ~~move for reconsideration.~~

23 DATED this _____ day of _____, 2002.

24 ORDER & ATTACHMENT
25 APPROVED

26 OCT 04 2002

27 Kimberly Prochnau
28 COURT COMMISSIONER


COMMISSIONER PROCHNAU

Order
10/4/02

ORDER ON LOREN STAMM'S MOTION FOR
RULING ON OMITTED WILL ISSUE, ETC. - Page 2
H:\DOX\CLIENTS\Stamm.Grd\Order on Omitted Will.wpd

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SEATTLE, W
(206) 223-1922; 1
Facsimile (206) 464-9559

A-12

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1 little past 4:00. Is there anyone who's got a
2 bus to take? We won't go real late, but we may
3 go a bit longer.

4 (Off-record discussion)

5 Q. (BY MR. BRANDT) We were talking about the
6 change make. You had asked him for \$1.73?

7 A. No, no. We engaged in a mock purchase. One
8 of the items was 63 cents, the other item was --
9 had -- I put a price tag on of \$1.73. I asked
10 him to make -- to engage in a purchase as if he
11 were purchasing that from me.

12 Q. The item for \$1.73?

13 A. Right.

14 Q. You asked him to give you \$1.73, is that not
15 correct?

16 A. No, I asked him to purchase the item. I
17 didn't say give me \$1.73.

18 Q. Okay. The trick was there was not proper
19 change to give you exactly \$1.73, right?

20 A. That is correct.

21 Q. And so he gave you \$1.70 and said, "I'll owe
22 you three cents"?

23 A. Right.

24 Q. So he knew how much it cost?

25 A. Yes.

Dr. Olsen employed "tricks" to wear Mr. Stamm down until he made a mistake see infra

1st "trick" Mr. Stamm gets it right.

498

Dr. Olsen's
Testimony

A-13

1 Q. Knew he had to give you \$1.73?
2 A. Yes.
3 Q. But knew he didn't have the right change to
4 do it?
5 A. That is correct.
6 Q. So then you said, no, I am not taking the
7 \$1.70, I want \$1.73, so he gave you two bucks, right?
8
9 A. Yes.
10 Q. You said something about that you owe him
11 change?
12 A. Correct.
13 Q. And he correctly identified that you owed
14 him 27 cents, right?
15 A. That is correct.
16 Q. So he was able to make change off \$2 in his
17 head, right?
18 A. Yes, he was.
19 Q. Then you tried to trick him again by saying,
20 no, no, no, it's 37 cents, not 27, right?
21 A. I didn't try to trick him again.
22 Q. I thought part of the test was to see if --
23 A. Right, this was part of the test.
24 Q. Okay.
25 A. Right.

" 2nd trick
Mr. Stamm
gets
it
right

Dr. Olsen's **A-14**
Testimony

499

1 Q. And he said, no, 27.
2 A. Right.
3 Q. You persisted and he started to doubt
4 himself?
5 A. Right.
6 Q. Now, didn't he pass that part of the test?
7 A. Well, he passed it halfway, that is, he got
8 the 27 cents right, and I queried him and he
9 became unsure.
10 Q. Isn't he there to be evaluated by a doctor
11 to find out if he's mentally competent?
12 A. Right.
13 Q. Did you explain to him that these tests
14 might have tricks in them?
15 A. No.
16 Q. So he's being asked to prove his competency
17 and you are the doctor, the physician, somebody
18 people are supposed to trust, continually tries
19 to insist he got the change wrong, and even
20 though he got it right, you are saying that he
21 failed half the test?
22 A. No, no, that's not what I am saying at all,
23 nor did I continually tell him that he was
24 wrong. I challenged him once, that is all, one
25 time.

*Third time
Mr. Stamm is
"tricked"*



Dr. Olsen's **A-15**
Testimony

500

1 Q. How long did you spend with Mr. Stamm in
2 your entire evaluation?

3 A. I'd have to look back to my report.

4 Q. You met with him one day, right?

5 A. Pardon?

6 Q. You met with him just the one day?

7 A. Yes, I met with him just the one day. I
8 would have been happy to have spent more time
9 with Mr. Stamm, but it was not possible given the
10 tension that was created or the tension that was
11 present in that circumstance, because Wanda did
12 not want him to talk to me any further and, in
13 fact, had been advised that as far as he
14 understood it, not to talk to me.

15 Q. You already described yourself as the eyes
16 and ears of the court. As the eyes and ears of
17 the court, don't you have the authority to obtain
18 financial records, to require an interview with
19 the accused person, to obtain any other records
20 that you feel are necessary for you to render an
21 opinion, to obtain medical records, don't you
22 have all of that authority?

23 A. I have that authority and there are times
24 when I have to fight to exercise it. This was
25 one of those times. I did spend enough time with

1 Loren Stamm that I felt I understood a good deal
2 about him and I didn't see anything to be gained
3 by interviewing Loren Stamm in the presence of
4 his attorney, under an order for him to meet with
5 me in that way. I just didn't feel that that was
6 going to be productive.

7 Q. You spent about 10 minutes with him, isn't
8 that true?

9 A. No.

10 Q. 15 minutes, 20?

11 A. Probably 15 or 20 by ourselves, yes. Longer
12 with Wanda there, before and after.

13 Q. In fact, you spent more time with Mr. Stamm
14 in the same room during this trial than you did
15 during your evaluation, isn't that true?

16 A. Yes.

17 Q. In addition to having the authority to gain
18 these records, don't you have a duty to
19 investigate all of the circumstances?

20 A. I have a duty to investigate. I have a duty
21 to satisfy myself that I have enough evidence to
22 support a recommendation. I don't have, in fact,
23 I have a duty not to overinvestigate.

24 I am not a guardian, I am a guardian ad
25 litem. I don't explore issues like where did his

1 it a sign of incompetence if he has the money to
2 do so?

3 A. If he is the one making the choice to spend
4 that money on pull tabs, then fine. If he is
5 having someone make that choice for him when he
6 may not even be cognizant of it, which is what
7 he's presented to me, that he's not aware of that
8 kind of expenditure, then no.

9 Q. Of course you don't even know how much money
10 he spends on pull tabs because you didn't get his
11 records, right?

12 A. I don't have documentary evidence from the
13 bank about that, but I certainly talked to enough
14 people who know.

15 Q. The bartender?

16 A. Some bartenders, some friends, and community
17 members.

18 Q. Well, how would friends know how much he
19 pays somebody else? They wouldn't, would they?

20 A. Yes, I believe they would.

21 Q. There's a friend who is with him 24 hours a
22 day, who can tell you how much he spends?

23 A. Not 24 hours a day, but it's a fairly
24 close-knit community and the tavern where they
25 spend a lot of time and, you know, when you see

1 A. I don't believe those are --
2 Q. Can he transfer them in any way?
3 A. I don't believe -- well, basically, no.
4 Q. How long do those pensions last?
5 A. Probably for his life.
6 Q. So there's no way he can impair those
7 pensions, is that correct?
8 A. The money would keep coming in, yep.
9 Q. Those total up to be how much?
10 A. I understand them to be about 3,000. I
11 don't really know, but Mr. Rankin gave me that.
12 Q. He doesn't have a mortgage payment, right?
13 A. No.
14 Q. What are his monthly bills?
15 A. I don't know what they are.
16 Q. Do you know if they exceed \$3,000?
17 A. I would imagine they don't.
18 Q. If they're \$1,000, let's say they are food,
19 electricity, garbage, whatever, taxes, real
20 estate taxes apportioned over the year, are you
21 saying he should be restricted from spending the
22 rest of the money that he gets from his
23 pensions?
24 A. No, I am not saying that. I am saying as
25 long as his bills are paid, I don't see why he

172

1 to about 70,000, you said?

2 A. No, that includes the one managed account.

3 Q. That is what I mean, aside from the real
4 estate and pensions, the other investment stuff
5 adds up to about 70,000?

6 A. As far as I know. There may be more, but I
7 know that is there. Those amounts I am sure of.
8 There may be more. It's not less.

9 Q. How much has Mr. Stamm deducted from those
10 accounts in the past three years?

11 A. I don't know. I don't know.

12 Q. Do you know if those accounts have increased
13 or decreased over the last three years?

14 A. I know that the managed account has
15 decreased. The financial advisor did tell me
16 that that account had decreased and that she
17 actually had some concerns about the rate of
18 depletion. She was unwilling to tell me how much
19 it had -- how much had been withdrawn.

20 Q. That account consists of stocks, isn't that
21 true?

22 A. I imagine it primarily does, but I am not --
23 again, she didn't apprise me of the distribution
24 of investments.

25 Q. You talked to her in October of last year?

1 Mr. Stamm's general medical doctor, right?

2 A. Dr. Olsen had those.

3 Q. But you didn't obtain them?

4 A. No. He had a medical release from Loren
5 Stamm.

6 Q. A lot of people told you that checks were
7 written that were -- whatever they had concerns
8 about checks. Did you obtain copies of those
9 checks?

10 A. No. As I said, I didn't have that kind of
11 cooperation in this case and I was trying to
12 conserve time and money as well.

13 I found credible the witnesses that I
14 talked to, the list that I was given of at least
15 one month, the offer to go and produce that, but
16 as I said, I expected to and preferred to have
17 obtained that information from Mr. Stamm. I felt
18 it was more respectful and, as I said, I regret
19 that I didn't do that.

20 But since my determination didn't hinge
21 on any one of these little things, I didn't feel
22 it was necessary to go into court and ordinarily
23 I don't have to obtain orders to do this kind of
24 thing, but because I didn't have the cooperation,
25 I was continually, you know, in the position of

Citation/Title
WA ST 11.88.005, Legislative intent

*5913

WEST'S REVISED CODE OF WASHINGTON UNANNOTATED
TITLE 11. PROBATE AND TRUST LAW
CHAPTER 11.88. GUARDIANSHIP--APPOINTMENT, QUALIFICATION, REMOVAL OF
GUARDIANS

Current through Chapter 3 of 2003 Regular Session

11.88.005. Legislative intent

It is the intent of the legislature to protect the liberty and autonomy of all people of this state, and to enable them to exercise their rights under the law to the maximum extent, consistent with the capacity of each person. The legislature recognizes that people with incapacities have unique abilities and needs, and that some people with incapacities cannot exercise their rights or provide for their basic needs without the help of a guardian. However, their liberty and autonomy should be restricted through the guardianship process only to the minimum extent necessary to adequately provide for their own health or safety, or to adequately manage their financial affairs.

CREDIT(S)

1998 Main Volume

[1990 c 122 § 1; 1977 ex.s. c 309 § 1; 1975 1st ex.s. c 95 § 1.]

RCW 11.88.005

Citation/Title

RCW 11.88.010, Authority to appoint guardians--Definitions--Venue--Nomination by principal

5915

WEST'S REVISED CODE OF WASHINGTON UNANNOTATED
TITLE 11. PROBATE AND TRUST LAW
CHAPTER 11.88. GUARDIANSHIP--APPOINTMENT, QUALIFICATION, REMOVAL OF
GUARDIANS

Current through Chapter 3 of 2003 Regular Session

11.88.010. Authority to appoint guardians--Definitions--Venue--Nomination by principal

(1) The superior court of each county shall have power to appoint guardians for the persons and/or estates of incapacitated persons, and guardians for the estates of nonresidents of the state who have property in the county needing care and attention.

(a) For purposes of this chapter, a person may be deemed incapacitated as to person when the superior court determines the individual has a significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety.

(b) For purposes of this chapter, a person may be deemed incapacitated as to the person's estate when the superior court determines the individual is at significant risk of financial harm based upon a demonstrated inability to adequately manage property or financial affairs.

(c) A determination of incapacity is a legal not a medical decision, based upon a demonstration of management insufficiencies over time in the area of person or estate. Age, eccentricity, poverty, or medical diagnosis alone shall not be sufficient to justify a finding of incapacity.

(d) A person may also be determined incapacitated if he or she is under the age of majority as defined in RCW 26.28.010.

(e) For purposes of giving informed consent for health care pursuant to RCW 7.70.050 and 7.70.065, an "incompetent" person is any person who is (i) incompetent by reason of mental illness, developmental disability, senility, habitual drunkenness, excessive use of drugs, or other mental incapacity, of either managing his or her property or caring for himself or herself, or both, or (ii) incapacitated as defined in (a), (b), or (d) of this subsection.

(f) For purposes of the terms "incompetent," "disabled," or "not legally competent," as those terms are used in the Revised Code of Washington to apply to persons incapacitated under this chapter, those terms shall be interpreted to mean "incapacitated" persons for purposes of this chapter.

(2) The superior court for each county shall have power to appoint limited guardians for the persons and estates, or either thereof, of incapacitated persons, who by reason of their incapacity have need for protection and assistance, but who are capable of managing some of their personal and financial affairs. After considering all evidence presented as a result of such investigation, the court shall impose, by order, only such specific limitations and restrictions on an incapacitated person to be placed under a limited guardianship as the court finds necessary for such person's protection and assistance. A person shall not be presumed to be incapacitated nor shall a person lose any legal rights or suffer any legal disabilities as the result of being placed under a limited guardianship, except as to those rights and disabilities specifically set forth in the court order establishing such a

Citation/Title

WA ST 11.88.045, Legal counsel and jury trial--Proof--Medical report--Examinations--Waiver

*5924

WEST'S REVISED CODE OF WASHINGTON UNANNOTATED
TITLE 11. PROBATE AND TRUST LAW
CHAPTER 11.88. GUARDIANSHIP--APPOINTMENT, QUALIFICATION, REMOVAL OF
GUARDIANS

Current through Chapter 3 of 2003 Regular Session

11.88.045. Legal counsel and jury trial--Proof--Medical report--Examinations--Waiver

(1)(a) Alleged incapacitated individuals shall have the right to be represented by willing counsel of their choosing at any stage in guardianship proceedings. The court shall provide counsel to represent any alleged incapacitated person at public expense when either: (i) The individual is unable to afford counsel, or (ii) the expense of counsel would result in substantial hardship to the individual, or (iii) the individual does not have practical access to funds with which to pay counsel. If the individual can afford counsel but lacks practical access to funds, the court shall provide counsel and may impose a reimbursement requirement as part of a final order. When, in the opinion of the court, the rights and interests of an alleged or adjudicated incapacitated person cannot otherwise be adequately protected and represented, the court on its own motion shall appoint an attorney at any time to represent such person. Counsel shall be provided as soon as practicable after a petition is filed and long enough before any final hearing to allow adequate time for consultation and preparation. Absent a convincing showing in the record to the contrary, a period of less than three weeks shall be presumed by a reviewing court to be inadequate time for consultation and preparation.

(b) Counsel for an alleged incapacitated individual shall act as an advocate for the client and shall not substitute counsel's own judgment for that of the client on the subject of what may be in the client's best interests. Counsel's role shall be distinct from that of the guardian ad litem, who is expected to promote the best interest of the alleged incapacitated individual, rather than the alleged incapacitated individual's expressed preferences.

(c) If an alleged incapacitated person is represented by counsel and does not communicate with counsel, counsel may ask the court for leave to withdraw for that reason. If satisfied, after affording the alleged incapacitated person an opportunity for a hearing, that the request is justified, the court may grant the request and allow the case to proceed with the alleged incapacitated person unrepresented.

(2) During the pendency of any guardianship, any attorney purporting to represent a person alleged or adjudicated to be incapacitated shall petition to be appointed to represent the incapacitated or alleged incapacitated person. Fees for representation described in this section shall be subject to approval by the court pursuant to the provisions of RCW 11.92.180.

*5925 (3) The alleged incapacitated person is further entitled to testify and present evidence and, upon request, entitled to a jury trial on the issues of his or her alleged incapacity. The standard of proof to be applied in a contested case, whether before a jury or the court, shall be that of clear, cogent, and convincing evidence.

(4) In all proceedings for appointment of a guardian or limited guardian, the court must be presented with a written report from a physician licensed to practice under chapter 18.71 or 18.57 RCW, psychologist licensed under chapter 18.83 RCW, or advanced registered nurse practitioner licensed under chapter 18.79 RCW, selected by the guardian ad litem. If the alleged incapacitated

Citation/Title
WA ST 11.88.120, Modification or termination of guardianship--Procedure

*5947

WEST'S REVISED CODE OF WASHINGTON UNANNOTATED
TITLE 11. PROBATE AND TRUST LAW
CHAPTER 11.88. GUARDIANSHIP--APPOINTMENT, QUALIFICATION, REMOVAL OF
GUARDIANS

Current through Chapter 3 of 2003 Regular Session

11.88.120. Modification or termination of guardianship--Procedure

- (1) At any time after establishment of a guardianship or appointment of a guardian, the court may, upon the death of the guardian or limited guardian, or, for other good reason, modify or terminate the guardianship or replace the guardian or limited guardian.
- (2) Any person, including an incapacitated person, may apply to the court for an order to modify or terminate a guardianship or to replace a guardian or limited guardian. If applicants are represented by counsel, counsel shall move for an order to show cause why the relief requested should not be granted. If applicants are not represented by counsel, they may move for an order to show cause, or they may deliver a written request to the clerk of the court.
- (3) By the next judicial day after receipt of an unrepresented person's request to modify or terminate a guardianship order, or to replace a guardian or limited guardian, the clerk shall deliver the request to the court. The court may (a) direct the clerk to schedule a hearing, (b) appoint a guardian ad litem to investigate the issues raised by the application or to take any emergency action the court deems necessary to protect the incapacitated person until a hearing can be held, or (c) deny the application without scheduling a hearing, if it appears based on documents in the court file that the application is frivolous. Any denial of an application without a hearing shall be in writing with the reasons for the denial explained. A copy of the order shall be mailed by the clerk to the applicant, to the guardian, and to any other person entitled to receive notice of proceedings in the matter. Unless within thirty days after receiving the request from the clerk the court directs otherwise, the clerk shall schedule a hearing on the request and mail notice to the guardian, the incapacitated person, the applicant, all counsel of record, and any other person entitled to receive notice of proceedings in the matter.
- (4) In a hearing on an application to modify or terminate a guardianship, or to replace a guardian or limited guardian, the court may grant such relief as it deems just and in the best interest of the incapacitated person.
- (5) The court may order persons who have been removed as guardians to deliver any property or records belonging to the incapacitated person in accordance with the court's order. Similarly, when guardians have died or been removed and property or records of an incapacitated person are being held by any other person, the court may order that person to deliver it in accordance with the court's order. Disobedience of an order to deliver shall be punishable as contempt of court.

*5948 CREDIT(S)

1998 Main Volume

[1991 c 289 § 7; 1990 c 122 § 14; 1977 ex.s. c 309 § 9; 1975 1st ex.s. c 95 § 14; 1965 c 145 § 11.88.120. Prior: 1917 c 156 § 209; RRS § 1579; prior: Code 1881 § 1616; 1860 p 227 § 333; 1855 p 17 § 11.]

RCW 11.88.120

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A-25

Residence located at: 8218 NE 145 th St. Kenmore, WA: Tax-assessed value.	\$220,000.00
Real property located at Salton Springs, California: Tax- assessed value.	\$1,603.00
TOTAL ASSETS	<u>\$349,304.06</u>

LIABILITIES

NW Federal CU Visa: Balance as of 06-20-2002	\$4,104.92
Discover Credit Card #6011 0092 8350 3170: Balance as of 06-20-2002	\$426.25
Verizon # 425-488-1871: Balance as of 07-16-2002	\$39.37
William L.E. Dussault, Attorney at Law: "approved as reasonable" per Court Order dated 06/25/2002	\$21,256.15
Victoria Barr, Guardian ad Litem: per Court Order dated 06/25/2002	\$6,300.00
Robert Rankin, Attorney at Law: per Court Order dated 06/25/2002	\$6,209.51
TOTAL LIABILITIES	<u>\$38,336.20</u>

4570.51

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5. LIQUIDITY

Although Loren Stamm has a variety of assets as set forth above, not all of the assets are readily available or easily liquidated. The American Express Portfolio, the two US Government Series EE Bonds and the two NW Federal Credit Union accounts can be readily liquidated and used for current expenses and approved professional fees and costs. The total value of these assets is \$35,761.36. The Washington Federal and GE Finance stock and the life insurance policies showing accrued cash balances could be available in approximately six months; after the Limited Guardian has researched tax and beneficiary information and implications if liquidated. The total estimated value of the assets available in six months is \$91,610.56.

A-26

1000
1107

Attorney Fees: William Dussault	<u>\$1,771.35</u>	
Asset Management Fees	<u>\$0.00</u>	
Bond Premium	<u>\$11.25</u>	
Medical Claims Assitance	<u>\$25.00</u>	
Accountant/Tax Preparation Fees	<u>\$0.00</u>	
Other:	<u>\$0.00</u>	<u>\$2,850.06</u>
<i>Real Property Expenses</i>		
Maintenance & Repair	<u>\$833.33</u>	
Property Taxes	<u>\$134.85</u>	
Mortgage	<u>\$0.00</u>	
Insurance	<u>\$43.11</u>	
Other: Storage	<u>\$0.00</u>	<u>\$1,011.29</u>
<i>Investment Property Expenses</i>		
	<u>\$0.00</u>	<u>\$0.00</u>
<i>Other Expenses</i>		
Employment Taxes	<u>\$0.00</u>	
Income Tax Payments	<u>\$0.00</u>	
Costs Advanced	<u>\$0.00</u>	
Bank/Service Fees	<u>\$0.00</u>	
Other:	<u>\$0.00</u>	<u>\$0.00</u>
C. Total Disbursements		<u>\$7,265.96</u>
D. NET MONTHLY CASH FLOW		<u>(\$4,227.65)</u>

Guardian's
Budget

424

A-27