CASE NO. 90989-0

SUPREME COURT

STATE OF WASHINGTON

IN RE THE GUARDIANSHIP OF

DOROTHY MAY KERTIS

AN INCAPACITATED PERSON

SUPPLEMENT TO PETITION FOR DISCRETIONARY REVIEW BY THE WASHINGTON SUPREME COURT REGARDING MOOTNESS

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On Monday December 8, 2014, Dorothy Kertis died in her room at Fidalgo Care Center and Rosario Assisted Living (hereafter "Fidalgo"), without her family in attendance. Terry Kertis and his wife Tina had visited her from 3 pm until 4 pm four days earlier on Thursday, December 4, 2014, in her room because she could not be awakened. Tina mentioned to the person, who was supervising the visit, that Dorothy looked like she was dying but that person did not respond. Terry did not see his mother again. No one called him to so that he could be with her as she was dying despite the guardian's obligation to notify Terry promptly of a significant change in Dorothy's medical condition. CP 40. The staff at Fidalgo had been instructed not to give medical information to Terry or Tina.

During the entire course of this case, Dorothy's declining condition had been a concern to Terry. He moved for accelerated review in the Court of Appeals. Also on January 29, 2014, he filed a motion to allow him a total of 3 one-hour visits per week. That motion included photographs of Dorothy and recited that she was very near the end of her life. The motion was specially set before Judge John Meyer because he had heard Terry's Motion to Terminate Restraining Orders Regarding Dorothy May Kertis and

was familiar with the information about the change in Terry and the progress of the visits that had started in early June 2014. The motion also cited RAP 7.2, which allows the trial court to modify a judgment until it is stayed. As a settlement offer, the guardian offered another day of visitation on Thursday between 3 and 4. Terry had asked that there be some flexibility in the time because of weather concerns and his having to walk to Fidalgo, and rejected the offer.

At the hearing on March 26, 2014, Judge Cook appeared instead of Judge Meyer and stated that the case did not need a special setting. At this point, Terry had visited his mother with no incident for almost 9 months. With little if any discussion of the merits of the motion, she proceeded to assess $3500 in attorney fees against Terry for bringing the motion. At that hearing, the guardian renewed the offer of the Thursday visit and Terry had no choice but to agree. From then on, Terry could not look to the Skagit County Superior Court for justice. Two of the four superior court judges had essentially abdicated to the guardian all responsibility for deciding when Terry would be able to see his mother.

THIS APPEAL IS NOT MOOT

Although Dorothy has died, this appeal is not moot. "An appeal is moot when it presents purely academic issues and where it is not possible for the court to provide effective relief." Klickitat County Citizens Against Imported Waste v. Klickitat County, 122 Wn 2d 619, 631, 860 P.2d 390, 866 P.2d 1256 (1993). The main issue raised by this appeal is whether the Order entered under Domestic Violence Protection Act (hereafter "DVPO") was lawful and enforceable. Terry was arrested and prosecuted twice for violation of that DVPO by coming to Fidalgo. So whether that DVPO was lawful and enforceable is not just an academic question. This court can provide effective relief with a ruling that the DVPO was not lawful and enforceable. Terry can then move to expunge from his criminal record convictions for violating that order.

Included in the same pleading as the DVPO at issue in this appeal is the DVPO that applied to the guardian's father Gary Ross. That DVPO suffers from the same lack of proof and finding of domestic violence by Terry against Mr. Ross. A ruling from this court upholding Terry's appeal would allow Terry to move to terminate that DVPO and expunge criminal convictions for violating that order.

PUBLIC INTEREST EXCEPTION

Review of this case is proper under the public interest exception to the mootness doctrine. In Hart v. Dep't of Soc. and Health Servs., 111 Wn.2d 445, 759 P.2d 1206 (1988) the Washington Supreme Court set out its three-factor analysis for determining whether the public interest exception is met. The factors are: "(1) whether the issue is of a public or private nature; (2) whether an authoritative determination is desirable to provide future guidance to public officers; and (3) whether the issue is likely to recur." Id. at 448.

Terry's appeal raises several issues all of which are of a public nature: 1) whether the DVPO was a valid exercise of the trial court's subject matter jurisdiction; 2) whether the DVPO violated Terry's rights to due process and equal protection of the law; 3) whether the trial court should have granted Terry's Motion to Terminate which was brought pursuant to RCW 26.50.130(3); 4) Did the trial court fulfill its duty to restrict Dorothy's liberty and autonomy to the minimum extent necessary to adequately provide for her health and safety?

With regard to whether the DVPO was a valid exercise of the court's subject matter jurisdiction, one would think that all a judge

would have to do is to read the statute and see that a petitioner needs to allege "domestic violence", not "conduct that places his mother at risk of psychological and physical harm." However, two Superior Court Judges and three Court of Appeals judges apparently didn't see much wrong with the DVPO in this case. The Court of Appeals tried to avoid these important omissions by opining that the Motion to Terminate is a collateral attack on the DVPO. The court appears to have treated the DVPO as three different orders. This approach is clearly wrong in view of the entire Domestic Violence Protection Act (especially RCW 26.50.130); the law on injunctions; and Seattle v. May, 171 Wn.2d 847, 256 P.3d 1161 (2011). It seems every judge who has been exposed to this case has been confused.

Clearly this court needs to review this case to provide guidance to the public and judges on the process for challenging the validity of a DVPO. In many cases involving the issuance of a DVPO the parties are pro se and do not understand the process and the consequences. They also cannot appeal because of lack of money and the complicated appellate procedure.

Also, review of this case would clarify Marriage of Buecking, 179 Wn.2d 438, __P3d__(2013) and answer the question of

whether a person who violates the terms of a DVPO, which was entered without the prerequisites for the exercise of jurisdiction, can be convicted of a crime for violating that order.

Reviewing this case would give this Court the opportunity to provide guidance to trial judges and guardians on their duty to "restrict the liberty and autonomy only to the minimum extent necessary to adequately provide for their own health and safety.' RCW 11.88.005. As the baby boom generation is aging, more guardianships are being established. Terry has clearly demonstrated that he never committed domestic violence against his mother; yet, his mother was not allowed to see, or talk to or get messages or presents from Terry for more than 3 years. These restrictions were not necessary to adequately provide for her health and safety.

On August 15, 2013 when Judge Meyer signed the order denying Terry's Motion to Terminate, he knew several things. One, Terry had not committed domestic violence against Dorothy. Two, Terry had visited with his mother once a week for eleven weeks without incident. Three, he had not violated any court order since early Fall of 2010. Four, Terry had completed an alcohol relapse program, gotten a positive mental health evaluation and had

learned his lesson after spending in 100 days in jail due to the DVPO violations. Five, the change in his behavior was noted Fidalgo, and his mother enjoyed his visits. Six the guardian hated Terry. In spite of all this and for no good reason, Judge Meyer chose to continue the illegal DVPO and to allow Dorothy's liberty to be restricted by the guardian. Instead of ordering expanded visitation, he encouraged the guardian to expand Terry's visitation. Review of this case would allow this court to clarify the duties of a trial court and volunteer guardian in allowing friends and family to have relationships with, to visit and to communicate with the person who is subject to the guardianship.

The third criteria for the public interest exception to the doctrine of mootness) is whether the issues are likely to recur. In this case, the trial judge who signed the temporary order and the DVPO in 2010 and the trial judge who extended and modified the DVPO in 2011 did not require the guardian to allege and prove domestic violence. They signed orders that collectively cut off all communication between Dorothy and Terry for six years. The only reason that Terry was able to see Dorothy was the filing of the Motion to Terminate in 2013. When the error was brought to the attention of these judges, they took no action except to assess

$3500 attorney fees against Terry. These are good judges but they may not provide needed scrutiny of DVPO petitions or other actions involving an unrepresented party.

Cases that deal with the conflict between what is best for the incapacitated person and his/her liberty to choose are generally in the area of medical treatment. There are no cases that concern a guardian's power to restrict an incapacitated person's access to family and friends. Without guidance and rules, it is very likely that volunteer guardians will restrict the incapacitated person's access to some friends and family based on what these guardians feel is best, not what the incapacitated person may want or need. The declarations submitted by the guardian show that long time family issues and conflicts can enter into decisions to prevent mothers from being able to have a relationship with their children. There is no question that this is occurring now and will recur.

Respectfully submitted this 6th day of February, 2015

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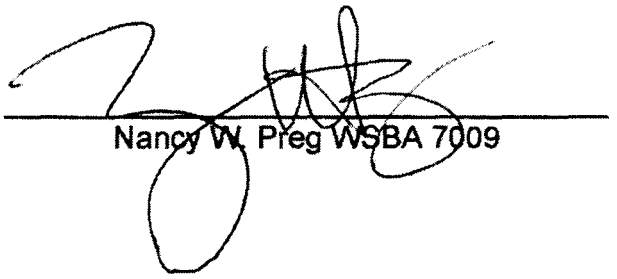
Respectfully submitted this 6th day of February, 2015



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Cc: Dewey Weddle
Subject: RE: 90989-0 - Guardianship of Dorothy May Kertis; Dianna Parish v. Terry L. Kertis

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To: OFFICE RECEPTIONIST, CLERK
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Importance: High

Attention

Melissa Perez
Administrative Office Assistant
Washington State Supreme Court
melissa.perez@courts.wa.gov

Ms. Perez,

Attached to this email is a letter to Susan Carlson, Deputy Clerk, the Supplement to the Petition for Discretionary Review that responds to Ms. Carlson's letter and the last of the Supplement with my scanned signature. I will send the hard copy by mail today. You will note that Dewey Weddle is being forwarded this email and attachments also.

Sincerely,

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