No. 32127-4

COURT OF APPEALS
OF THE STATE OF WASHINGTON, DIVISION THREE

MICHAEL CHIOFAR GUMMO BEAR, *Adjudicated Incapacitated Person*

v.

MICHAEL UNDERWOOD *et al Respondents*

ON APPEAL FROM PIERCE COUNTY SUPERIOR COURT
STATE OF WASHINGTON

PETITIONER'S REPLY BRIEF

Michael Chiofar Gummo Bear
pro se
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INTRODUCTION

The Respondent Michael Underwood has, for the most part, ignored the issue raised in this case and has instead attempted to create a smokescreen of irrelevant issues, in some cases, misrepresenting the record before the court. The only issue considered by the trial court was a summary judgment motion that the petitioner was powerless to respond to because he is unquestionably incompetent and could not legally respond until a guardian ad litem or a guardian was appointed. Contrary to the misrepresentations of the respondent, the petitioner never requested a guardian ad litem be appointed. That would have been a waste of time, since a guardianship action had already been started and was very close to completion.

The respondent was given notice of that action, and if he truly had concerns as to the competency of the plaintiff, he could simply have filed an appearance and brought his point of view to the only court that had jurisdiction to hear the issue. That court, not only had the benefit of access to the biased record the respondent present here, but a lengthy report from a guardian ad litem who spent several months studying the situation of the appellant, along with reports that were filed with the court by certified medical professionals.

Instead, the respondent comes to this court, who has absolutely no jurisdiction at this point to even consider the issue of competency, since it was not argued below, and asks this court to second guess the reasoned opinion of a King County Superior Court Commissioner, after that order is final and done with.

It should be readily apparent to this court that the respondent's arguments are an improper attempt to collaterally attack a final order finding the petitioner incompetent and appointing a guardian.

A. The Respondent's Assignments of error

The appellant never requested the court appoint a guardian ad litem and therefore the court never considered it.

B. Issues relating to the Respondent's Assignment of error

The Respondent has raised a number of issues that are irrelevant to this suit because the court never considered appointing a guardian ad litem. Among them are that the respondent has supposedly filed 210 cases in Washington State, the fact that he sued his former attorneys and guardian as a pro se, was declared a vexatious litigant at some point, the fact that he reserved the right to amend the suit once counsel had been appointed and whether he understands the nature of his legal actions. All of these arguments and issues should be stricken from the record because there is no evidence they were considered below and the respondent offers no authority as to why they could be raised for the first time on appeal.

THE RESPONDENT'S STATEMENT OF THE CASE

The appellant objects to the use of the pejorative term "disbarred attorney" to describe his attorney in the ninth circuit John Scannell. Whether Mr. Scannell has been disbarred is a matter of continuing legal dispute, and at any rate, irrelevant to the issues in this case and is an attempt by the defendant to denigrate the arguments of the petitioner without addressing their logic.

At oral argument, Scannell never appeared for the petitioner and was there to simply deliver a supplementary response from the petitioner. As such, the fact that he was in the courtroom is irrelevant to the issues before the court.

The fact that Larry Garrett had been appointed a guardian ad litem in previous suits is irrelevant except for the fact that the court was put on notice that the plaintiff had previously been declared incompetent. There is no evidence that Garrett or anyone else had been named as

a guardian in this case. The fact that other defendants in other suits had cases dismissed or that a bar complaint had been dismissed against Garrett, is irrelevant to the issue in this case.

THE RESPONDENT'S ARGUMENT

1. THE RESPONDENT NEVER ADDRESSED THE ISSUE THAT RCW 4.08.060 REQUIRES AN INCAPACITATED PERSON HAVE A GUARDIAN OR GUARDIAN AD LITEM BE APPOINTED BEFORE A CASE CAN PROCEED.

The petitioner argued that RCW 4.08.060 required that he could not appear until a guardian or guardian ad litem had been appointed. The issue of the need for a guardian ad litem or guardian has been determined by several courts including the King County Superior Court that appointed Mr. Scannell as guardian. The respondent offers no reason that controverts this other than his own biased reading of the public record. The issue of the need for a guardian has been resolved and is no longer subject to debate, especially in this action where there was no request for a guardian ad litem requested and it was not considered by the court.

2. THE RESPONDENT DOES NOT ADDRESS THE POSSIBLE DEFENSES TO STATUTE OF LIMITATIONS THAT THE PETITIONER COULD HAVE RAISED HAD A GUARDIAN BEEN APPOINTED.

The petitioner argued that his incapacity may very well have allowed him to make an argument that the statute of limitations had been tolled or equitably tolled. The respondent did not address this argument other than try and argue that the public record demonstrates capacity. This puts the cart before the horse. There is no evidence that the court ever considered the mental capacity of the plaintiff, or whether a guardian ad litem should be appointed because it was never requested. Even if the court considered the capacity of the petitoner (something the record does not confirm,) it was improperly done because the court never requested an investigation by a gurdian ad litem to determine capacity.

3. THE COURT ERRONEOUSLY CLAIMED THAT THE COURT CONSIDERED APPOINTING A GUARDIAN AD LITEM.

The plaintiff requested a continuance for the purpose of having King County Superior Court finish the process of appointing a guardian for the petitioner. The respondents apparently were trying to get the case dismissed before the petitioner could get his guardian appointed so he could address the merits of his case.

4. THE RESPONDENT MISREPRESENTS THE DECISION OF THE COURT BELOW TO THIS COURT BY CLAIMING FINDINGS THAT WERE NEVER MADE.

In his response, the respondent claims that the court made a finding that the petitioner "has extensive experience as a party litigant and is capable of understanding the significance of legal proceedings, and recognizing the request for what it really was: a request for court appointed counsel to litigate a civil matter." There is no evidence that such a finding was made or that the Respondent had requested appointment of counsel.

5. RESPONDENT NEVER ADDRESSES PETITIONER'S ARGUMENT THAT HE COULD NOT RESPOND TO SUMMARY JUDGMENT UNTIL A GUARDIAN OR GUARDIAN AD LITEM HAD BEEN APPOINTED.

The Respondent goes to great length to point out that the petitioner did not respond to summary judgment but ignores the obvious, that the petitioner could not legally address those arguments until a guardian or guardian ad litem had been appointed. All the cases cited to by the respondent are irrelevant because they do not involve incompetent persons who had no guardian or guardian ad litem appointed as required by RCW 4.08.060.

6. THE COURT'S FINDING THAT UNDERWOOD WAS NOT PROPERLY SERVED IS IRRELEVANT TO THE ISSUE BEFORE THIS COURT.

The fact that Underwood may or may not have been served is irrelevant to the issue before this court. The fact remains that the petitioner was never given an opportunity to address this issue because a guardian or guardian ad litem was never appointed as required by RCW 4.08.060.

7. ALL OF RESPONDENT'S ARGUMENTS AS TO WHETHER THE PETITIONER IS INCAPACITATED SHOULD BE STRICKEN.

As the respondent points out in his brief, apparently the only requirement that is mandatory for a GAL to be appointed is that it be properly applied for. There is no evidence in the record that the petitioner applied for a guardian ad litem other than the fact that he applied for a guardian ad litem for the purpose of investigating whether a guardian should be appointed. That was done in King County Superior court, not in this case. All of the respondent's arguments that the petitioner is not entitled to a guardian or guardian ad litem are therefore without merit and should be stricken from the record.

8. THE RESPONDENT OFFERS NO AUTHORITY FOR CHALLENGING THE FINDINGS IN KING COUNTY SUPERIOR COURT WITH A COLLATERAL ATTACK IN THE COURT OF APPEALS.

This court has been made aware that John Scannell has been appointed a guardian for the petitioner. The respondent then makes specious and unsupported arguments that the public record in other cases somehow demonstrates capacity on the part of petitioner. Since the Pierce County Superior Court never considered the capacity of the petitioner, it is not an issue for this court to even consider, and the respondent has not offered any authority as to why this court could or should consider an issue like this on appeal of an unrelated case. The respondent was given notice of the action in King County Superior Court, chose not to participate, and as a result

the King County Superior Court Order finding the petitioner incapacitated and appointing Mr. Scannell as guardian is final, non-appealable, and not subject to collateral attack.

CONCLUSION

For reasons given herein, the cited arguments of the respondent should be stricken and the case should be remanded to Pierce County with instructions for the court to allow the petitioner to litigate his suit, including allowing him to defend against any summary judgment motions, now that a guardian has been appointed.

Dated this 9th day of June, 2014,

Michael Chiofar Gummo Bear

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

CHIOFAR GUMMO BEAR, MICHAEL, by and through his **DPOA: RICHARD LENNSTROM,** Plaintiff vs. **MICHAEL UNDERWOOD, JD,** Defendant	**COURT OF APPEALS NO. 321274-III** **DECLARATION OF MAILING**

Undersigned declares as follows:

On June 9, 2014 I mailed the appellants reply brief in this matter to

Sam Breazeale Franklin
Michael Patrick Ryan
701 Pike St Ste 1800
Seattle, WA 98101-3929

Dated this 9th day of June, 2014

John R. Scannell
Limited guardian for the appellant
Michael Chiofar Gummo Bear

ORIGINAL

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