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Washington State Supreme Court

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No. 92266-7

SUPREME COURT OF THE
STATE OF WASHINGTON

No. 44340-6-II

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

LARRY D. CHRISTENSEN, Respondent,

v.

JENNIFER ROACH, Appellant

On Appeal from Kitsap County Superior Court
Cause No. 12-2-02397-4
HON. JEANETTE DALTON

RESPONSE TO MOTION [SIC] FOR DISCRETIONARY REVIEW

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WSBA# 18424, CPG# 4870,
Successor Guardian of the Person &
Estate of Larry D. Christensen

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RESTATED ASSIGNMENTS OF ERROR

- A. The trial court did not err by not holding a trial when the Appellant failed to demand one, RCW 74.34 does not provide for one, when the Vulnerable Adult did not advise the court that he did not want all or part of the protection sought in the Petition, and when there is no right to trial in an equitable action for a protective order..... 1

- B. The trial court did not err by not entering Findings of Fact and Conclusions of Law in its VAPA Order2

I. RESPONSE TO PETITION FOR REVIEW

Jennifer Roach’s “Motion [sic] for Discretionary Review” identifies two issues for review: Whether the Court of Appeals erred when it did not require the trial judge to conduct a trial before issuing a Vulnerable Adult Protection Order, and whether the Court of Appeals erred when it found that Findings of Fact and Conclusions of Law were not necessary before issuing a Vulnerable Adult Protection Order. Roach flatly misstates Washington law in support of the first issue for review, and flatly misstates the unpublished appellate opinion in support of the second issue for review. She fails to brief or argue any of the factors governing discretionary review in Rule of Appellate Procedure 13.4(b).

No Right to Trial in Equitable Proceeding

Jennifer Roach did not request a trial, either to the bench or a jury. It was not error to not conduct a trial when a trial was not sought. And contrary to assertion of Jennifer Roach’s counsel, Title 74.34 does not provide for a trial by jury—it does not even provide for trial at all. The law only provides for evidentiary hearings. *See* RCW 74.34.135 (Court may take testimony or evidence, or order additional evidentiary hearings). This is entirely consistent with longstanding Washington law pertaining to equitable proceedings: A defendant is not constitutionally-entitled to a jury trial in a Domestic Violence Protection Act proceeding because that type of case was

within the exclusive equitable jurisdiction of state courts when the state constitution was adopted: “[W]hen a person petitions the court solely for a ...protection order, neither [the Petitioner] nor the party she seeks to have restrained is entitled to have a jury decide whether a judge should issue a protection order.” *Blackmon v. Blackmon*, 155 Wn.App.715, 721-22, 230 P.3d 23 (2010). There is no right to a trial by jury when an action is purely equitable in nature. *Brown v. Safeway Stores, Inc.*, 94 Wn.2d 359, 365, 617 P.2d 704 (1980). A Petition for an Order for Protection for a Vulnerable Adult is obviously a petition for a protective order, which is an equitable proceeding, and there is no right to a jury trial on a VAPA Petition.

The Court Made Findings of Fact

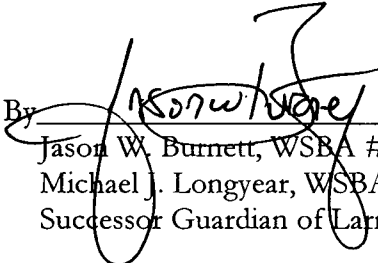
Jennifer Roach alleges the appellate court held that findings of fact and conclusions of law were not necessary before issuing a Vulnerable Adult Protection Order. But the appellate court did not make this holding. Rather, it held that the VAPO itself contained the necessary finding and conclusion sufficient to enable appellate review. *See Christensen v. Roach*, No. 44340-6 II at 11 (“Christensen argues that the order itself contained the necessary finding and conclusion. Again, we agree with Christensen.”). There is no issue presented for review on this account.

II. CONCLUSION

The appellate court did not err in any respect in this matter, and Jennifer Roach presents no issue deserving of discretionary review by this Court. Respondent respectfully submits that this Court should deny the Motion [sic] for Discretionary Review.

DATED this 30th day of September 2015.

REED, LONGYEAR, MALNATI, &
AHRENS, PLLC

By  _____
Jason W. Burnett, WSBA #30516, Attorney for
Michael J. Longyear, WSBA #18424, CPG #4870
Successor Guardian of Larry Dale Christensen

No. 44340-6-II

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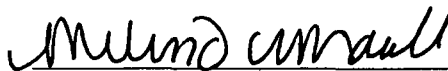
Jennifer Roach, Appellant.

CERTIFICATE OF SERVICE

I declare under penalty of perjury, under the laws of the State of Washington, that on September 30, 2015 I caused true and correct copies of the RESPONDENT'S BRIEF, and this Certificate of Service, to be served to the parties and counsel of record as follows:

<i>Person / Address</i>	<i>Via</i>
F. Michael Misner 3007 Judson Street Gig Harbor, WA 98335	<input checked="" type="checkbox"/> U.S. Postal Service (1 st Class) <input type="checkbox"/> Legal messenger <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail <input type="checkbox"/> Hand delivery

DATED this 30th day of September, 2015.



Melissa R. Macdonald, RP, CRP
Paralegal