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COURT OF APPEALS  
DIVISION II

2013 SEP -4 PM 12:07

CASE NO. 44340-6 STATE OF WASHINGTON

IN THE COURT OF APPEALS IN THE STATE OF  
WASHINGTON DIVISION TWO  
BY DEPUTY

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LARRY D. CHRISTENSEN, Plaintiff/Respondent

vs.

JENNIFER ROACH, Defendant/ Appellant

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ON APPEAL FROM THE SUPERIOR COURT OF THE STATE  
OF WASHINGTON COUNTY OF KITSAP

THE HONORABLE JEANETTE DALTON, PRESIDING AT  
THE TRIAL COURT

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BRIEF OF RESPONDENT

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Address:  
10419 Olympiad Dr. RICHARD M. SUTHERLAND  
Port Orchard , WA 98366 GUARDIAN OF LARRY CHRISTENSEN

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## **TABLE OF AUTHORITIES**

### **STATUTES:**

RCW 74.34.020(6)

RCW 74.34.020(12)

## **I. ISSUES PERTAINING TO ASSIGNMENT OF ERROR**

I. Did the court error in finding that Jennifer Roach financially exploited Larry Christensen (a vulnerable adult). Was that decision based primarily on her pay of \$100 a day as a caregiver.

II. Did the court error in finding that Jennifer Roach exploited and neglected Larry Christensen based on evidence provided to the court.

## **II. STATEMENT OF THE CASE**

An Order for Protection –Vulnerable Adult ( CP p.1-10) was ordered against Jennifer Roach on Nov. 30 2012 concerning the plaintiff Larry D. Christensen. At the hearing, subsequent to a review of the records and pleadings and having heard oral argument, the Honorable Judge Dalton found that Jennifer Roach financially exploited Mr. Christensen. (RP p. 29) (RP p. 28)(RP p. 30) (RP p. 31). The trial judge also found “...by clear and convincing evidence that Ms. Roach neglected Mr. Christensen”. (RP p. 35) (RP p. 32) (RP p. 33) (RP p.34) (RP p. 36). The trial judge made a finding that “ ...her pattern of both exercising, not making sure he took his Flomax, not making sure that he attended to his

medical needs, removing him from the hospital against medical advice, was, in fact a pattern of action and inaction that did fail to provide services to maintain his physical and mental health”. (RP p. 36). The trial judge also found Jennifer Roach to be “emotional abusive”, and made a finding of exploitation and neglect. The trial judge also made a finding that Mr. Christensen was a vulnerable adult. (RP p.25). Ms. Roach was ordered to provide a full and complete accounting of Mr. Christensen’s finances no later than Feb. 1, 2013(RP p. 38).

### **III . ARGUMENT**

The issue in this case is did Jennifer Roach financially exploit Larry Christensen and did she neglect him and inappropriately care for him.

#### **Financial Exploitation**

1. In referring to Subparagraph (a) RCW74.34.020(6)of the appellant’s argument centers on the payment of \$100 a day for her care giving of Mr. Christensen. Ms. Roach was placed in a position of trust and confidence with respect to Mr. Christensen. The payment of \$100 a day is

only a half truth. According to personal conversations between Rick Sutherland and Larry Christensen, he paid Ms. Roach \$100 a day, **plus** room and board, **plus** expenses. Jennifer Roach moved in with him (RP p.26), she carried his credit and debit cards with her. The exploitation occurs because of the addition of room and board and payment of personal expenses. Jennifer Roach made withdrawals from Mr. Christensen's accounts on a regular basis. A pattern of spending money uncharacteristically began (RP p. 28). For example while Mr. Christensen was in the hospital recovering from his fall down the stairs and surgery, Ms. Roach withdrew \$500 in cash each day on 9/25, 9/27, 9/28, 9/29, 9/30 of 2012 from Mr. Christensen's account using his ATM card. She claims this was with Mr. Sutherland's approval (RP p. 29), however, this was **not approved**. Ms. Roach withdrew \$12,068 in June 2012 and \$10,048 in September 2012 (CP p. 58-63), and \$6,800 of the \$10,048 were cash withdrawals. Mr. Christensen did not pay Ms. Roach by check and they did not have a written contract (RP p. 29). Ms. Roach paid herself with debit card cash withdrawals. Ms. Roach was ordered to provide a full and complete accounting of Mr. Christensen's finances no later than Feb. 1, 2013 (RP p. 38).

2. The appellant sites subparagraph (c) RCW74.34.020(6) in the appellants legal argument as not relevant. I firmly believe that subparagraph (c)RCW74.34.020(6) is very relevant because Ms. Roach was in fact using Mr. Christensen's property and resources without lawful authority. For example, the repeated \$500 cash withdrawals while Larry was in the hospital (CP p. 62). Another example is Ms. Roach occupying Mr. Christensen's home after she was dismissed as his caregiver and refused to leave (CP p. 109-110). Regarding his car, Mr. Christensen requested via phone calls witnessed by Richard and Loretta Sutherland, that his car be delivered to him in order for him to take his driving test. Ms. Roach refused to return the car (CP p. 352 ). Judge Dalton demanded the keys to the home and the car in the courtroom and Ms. Roach was not allowed to return to Mr. Christensen's home without a police escort. (RP p. 37). Mr. Christensen himself wrote to the trial Judge of his desires for Ms. Roach to return his car and leave his home. (CP p. 352).

### **Neglect**

1. RCW74.34.020(12)Statements of neglect

Regarding the appellant's argument that neglect was not shown in the case against Ms. Roach, the trial judge made several findings of neglect. Ms. Roach did not maintain a clean and healthy environment in

the home (RP p. 32)(RP p. 33) and see photos (CP p. 80-83), and statements by Mr. Christensen's nephew Marlin Pilcher (CP p. 84-87).

Additionally Dr. Moore's report of 11/12/12. Page 2 states "the patient has been seen by neurology and also there is a APS referral due to concerns at home. There are pictures supplied to me today regarding his home in Woodinville and it is extremely cluttered including the counters the halls and throughout the home, making it very unsafe for someone who has balance difficulties as a result of Parkinson's." (CP p.353-361). This pattern of conduct and inaction of duty and care, did, in fact fail to provide the goods and services that maintain physical and mental health of a vulnerable adult, and failed to avoid or prevent, physical or mental harm or pain to a vulnerable adult.

2. In response to the issue of improper medication regarding the Flomax, there is evidence provided to the court in Dr. Moore's report of 11/12/12 "...when we reviewed the medication list it was clear that despite his prior caregiver's (Jennifer) help he was not getting the medications that were prescribed including the Flomax and Simvastatin." (CP p.353-361 and CP p.48). It was clear to the doctor that he wasn't getting the prescribed medicine.

3. In response to evidence provided by Ms. Roach in her appeal, the declaration of Ali J. Naini M.D. (CP p.115-116) does not address that Ms.



Roach was caring for Mr. Christensen “appropriately”, only a statement of the patient’s condition and the doctor’s concern for the urinary urgency.

The appellants brief reads “...and specifically that there was reference to removal of Mr. Christensen **from** rehab on Oct 3 but there was no concern about leaving early”. The doctor’s statement actually reads “...patient was discharged **to** Virginia Mason for Intensive Rehab on 10/3/2012 with no restrictions on activity”. Mr. Christensen was being released from Evergreen Hospital to rehab. It was at Virginia Mason for Intensive Rehab that Mr. Christensen was removed against medical advice on 10/6/2012. There is no reference at all in Dr. Naini’s report of the quality of care that Ms. Roach was providing to Mr. Christensen. There is also no reference at all that Dr. Naini had “...no concern about leaving early”.

( CP p.115-116). Therefore misleading the court by changing one word (i.e “to” to “from”) gives an entirely different meaning to the statement.

Also by rephrasing the Dr’s statement in the appellant’s brief by adding “...no concern about leaving early”, it would appear to allow authorization to remove Mr. Christensen from the Virginia Mason Intensive Rehabilitation program.

4. Regarding the early withdrawal from the hospital Against-Medical-Advice (AMA) and the appellant’s statement of “...no concern of leaving early...”, refer to page 2 of Dr. Moore’s report 11/12/12. (CP p. 353-361)

“...The Virginia Mason Medical Center Notes indicate the patient’s caregiver and DPOA has elected to have the patient leave AMA . Discharge paperwork was filled out.” Again on page 5, Dr. Moore says “...I think it would have been very helpful had he stayed at inpatient rehabilitation at Virginia Mason and I do not understand why he was encouraged to leave against medical advice: this is outlined in the Discharge Summary”. It should be noted that Jennifer Roach had acquired and was acting as Larry’s Medical POA when these events took place.

#### 5. Comments on excessive exercise

Even after Mr. Christensen’s fall, while black and blue, and unable to walk without assistance, Ms. Roach insisted on floor exercises and going to the gym. This pattern continued until Mr. Christensen reached a point of exhaustion and was unable to be awakened in the afternoon. The hard work during the day, combined with poor sleeping at night due to lack of urinary medication, left an exhausted man. This was witnessed by Richard and Loretta Sutherland, the emergency medical technicians, and the emergency room doctor, Dr Brenner at Harrison Hospital when they treated Mr. Christensen. (RP 34, 35 ) (CP p.48).

## 6. Verbal Abuse

Also Ms. Roach was witnessed yelling at Mr. Christensen on three occasions within a week. (CP p.93,94,97). These outbursts required intervention by Loretta Sutherland on at least one occasion. This was viewed by the court as abuse "...and demonstrated a serious disregard of the consequences and is such a magnitude as to constitute a clear and present danger to MR. Christensen's health and welfare" (RP p.36, 37).

## **Undue Influence**

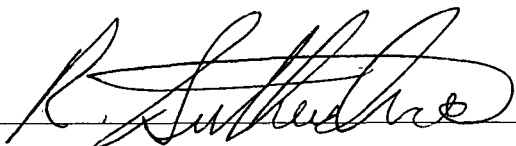
Ms. Roach had undue influence on Mr. Christensen to get what she desired. This was noted in Dr. Moore's report 11/12/12 on page 3. (CP p.353-361 ), "...when asked whether he should obtain a new caregiver or retain the prior caregiver, Jennifer, he indicated that the problem was that he was "emotionally involved" with Jennifer making this a difficult situation." Also Judge Dalton found Ms. Roach to be "emotionally abusive" in her conduct (RP p. 37)and (RP p.43). Ms. Roach took Mr. Christensen to Europe on a five-week folk dancing trip. He was required to pay her share of the rental car as part of their expenses.

It is to be noted that Mr. Christensen does not folk dance and Ms. Roach does folk dance.

### CONCLUSION

The argument presented above supports the decision that the trial judge did not err in finding that Ms Roach did financially exploit, emotionally exploit and neglect Mr. Christensen. Therefore the entry of the Vulnerable Adult Protection Order against Ms Roach was appropriate and should stay in effect.

SUBMITTED on this 5<sup>th</sup> day of September, 2013

By  9/3/13

RICHARD M. SUTHERLAND, Guardian for LARRY D.  
CHRISTENSEN

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STATE OF WASHINGTON

## Transmittal Letter

Richard M. Sutherland  
Sept 03, 2013 – 8:00 PM Transmittal Letter

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**Attachments:** Transmittal Letter.docx 443406-Respondent's Brief.pdf

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Attached is a copy of the Transmittal Letter and document named 443406-Respondent's Brief~2.pdf that Richard Sutherland electronically filed with the Court of Appeals, Division Two in case number 44340-6. The court will treat the attached transmittal letter as proof of service on you.

Richard Sutherland  
Guardian of Larry Christensen

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