Supreme Court No. 96535-8-III
Court of Appeals No. 33356-6-III

SUPREME COURT
OF THE STATE OF WASHINGTON

IN RE THE GUARDIANSHIP OF : JUDITH HOLCOMB

PETITIONERS' REPLY TO AMICUS CURIAE'S ANSWER

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1. IDENTITY OF REPLYING PARTY

LORI PETERSEN d.b.a. Empire Care Services, an individual; and, HALLMARK CARE SERVICES INC., a Washington Corporation, d/b/a Castlemark Guardianship and Trusts, d/b/a Empire Guardianship and Professional Services (hereinafter "Hallmark") are the Appellants in the above-entitled action, and Replying Party to Amicus's Brief.

2. OBJECTION - AMICUS IS NOT A PARTY AND THEREFORE DOES NOT HAVE STANDING TO FILE AN "ANSWER."

On January 23, 2019, in response to a letter sent by Mr. Kinn, who petitioned, and was appointed by, the Court of appeals to serve as a special amicus, the Clerk of the Supreme Court issued its ruling regarding alignment of the parties. In that ruling, the Clerk stated that the Spokane Guardianship Monitoring Program (the "GMP")[1], represented by the Deputy Prosecutor, Mr. Kinn, could continue to appear in this matter as special amicus, and that the amicus would "not be required to file a motion for permission to file an amicus brief."

In Washington, there is no definition in the Rules of Civil

1 Appellants/Petitioners have argued from the beginning of this action that the GMP was not created pursuant to the procedures required under the Court's rule making authority, that its purported purpose and purview greatly exceeds any administrative office under the court, that its creation was unlawful and unconstitutional, and that it does not legally exist, and therefore has no standing.

Procedure, in the Rules of Appellate Procedure, in case law or in statute of a "special amicus." Although government officials--particularly the solicitors general or attorneys general--have a special amicus curiae status and role in many cases, they may also participate in many roles including: Invited Friend, Friend of a Party, Independent Friend, and Near Intervenor, although most likely not as the Court's Lawyer. Helen A. Anderson, *Frenemies of the Court: The Many Faces of Amicus Curiae*, 49 U. Rich. L. Rev. 361, 376 - 384 (2016). "The Court's Lawyer is the court's hand-picked advocate who is asked to represent a particular position." Id. 376. "But this friend is more of an advocate retained for the court--highly partisan rather than disinterested." Id.

One unique factor of an Amicus is that it does not have to have any standing in the matter to appear as such. Id at 368. But, because it does not have standing to appear as a party, the rights of an amicus in an appellate action are severely limited. For one, RAP 13.4 makes a clear and stark distinction between the rights of a party and Amicus - only a party may file an answer to a petition for review.

The Clerks letter explicitely restricts the Amicus to filing a memorandum pursuant to, and in compliance with RAP 13.4(h).

> The Supreme Court may grant permission to file an amicus curiae memorandum in support of or opposition to a pending petition for review. Absent a showing of particular

> justification, an amicus curiae memorandum should be received by the court and counsel of record for the parties and other amicus curiae not later than 60 days from the date the petition for review is filed. Rules 10.4 and 10.6 should govern generally disposition of a motion to file an amicus curiae memorandum. An amicus curiae memorandum or answer thereto should not exceed 10 pages. RAP 13.4(h).

An Amicus is only allowed to file a maximum 10 page memorandum in support or opposition to a Petitioner's brief. Id. Here, the Amicus improperly filed an answer without legitimate standing to do so. As such, the Answer should be stricken from the records and returned to amicus to conform to the parameters required under the Rules of Appeal.

3. REPLY TO AMICUS

3.1 Hallmark, the Petitioner and Appellant, has stated criteria relating to all four considerations, only one of which is required under RAP 13.4.

Amicus, in its brief, claims that "Petitioner is vague concerning which criteria she is petitioning for review." Reply pg. 6. In its Petition for review the Hallmark stated several criteria and issues that meet the threshold for review before this Supreme Court:

1. The direct conflict of the Commissioner's ruling stating that Hallmark was not an aggrieved party was in direct conflict with the decision of this Supreme Court and regarding the same case. *In re Disciplinary Proceedings Against Petersen*, 180 Wn. 2d 768

(2014). Petition, pg 16-17, RAP 13.4(b)(1).

2. Review of standing and legitimacy of the Spokane GMP as a substantial public interest. Petition, pg. 14-15, RAP 13.4(b)(4);

3. This case involves significant questions of law, specifically Due Process under the 14th Amendment of the U.S. Constitution and Section 3 of the Washington. Petition, pg. 20-23. RAP 13.4(b)(3); and,

4. The Appellate Court prohibition on asserting specific errors, which conflicts with RAP 10.3(4), sets a precedent that involves a substantial and significant public interest. Petition pg. 19. RAP 13.4(b)(3).

With respect to the "termination of a guardianship[2]" (in this matter the removal of a guardian), a guardian is "entitled to due process prior to imposition of the superior court's final order". *In re Guardianship of Fowler*, 32979-8-III, pg (2017 Div. III). "To comport with due process, a court procedure must provide notice and a meaningful opportunity to be heard." Id. quoting *Morrison v. Dep't of Labor & Indus.*, 168 Wn.App.

2 In *Fowler*, it is my opinion that the Court of Appeals confused, and improperly conflated the "termination of a guardianship", to the "removal of a guardian". They are not the same. A guardianship terminates when the ward no longer requires the guardianship protection. Removal of a guardian is separate and distinct from this. *See* Wash. Rev. Code § 11.88.120.

269, 273, 277 P.3d 675 (2012). In addition to the above-stated reasons for acceptance, the Opinion based on which the Petition for Review was submitted, is in direct conflict with another recent decision of the same Court of Appeals. RAP 13(4)(b)(2).

This matter does not only meet one of the standards for consideration giving rise to a right to be reviewed by this Supreme Court; it meets all of the four considerations.

3.2 Amicus improperly reads and asserts RAPs 17.7 and 13.3(e) as relevant to this action at this stage.

The Amicus Curiae's argument that Petitioner's issues on appeal are not subject to review by the Supreme Court under RAP 17.7 and 13.3(e) is upended by its own citations in footnote 4. *Det. of Broer v. State*, is an appellate court ruling in which the court of appeals held that its own ruling would be bound by a commissioner's ruling during that appeal action. *Det. of Broer v. State*, 93 Wn. App. 852, 857(1998). But, appellate court final rulings are subject to review. And, this Appellant's petition is to review the appellate court's ruling, and under all four considerations, not least of which is that the Court of Appeals Opinion, specifically the part of the opinion upholding the Commissioner's ruling, is in direct conflict with its own ruling *In re Guardianship of Fowler,* 32979-8-III, (2017 Div. III), and is in direct conflict with a prior ruling by this Supreme Court *In re*

Disciplinary Proceedings Against Petersen, 180 Wn. 2d 768 (2014). Contrary to the tenuous argument made by the Amicus that the Petitioners are improperly seeking review of a Commissioner's ruling, the Petitioners are seeking review of the Opinion of the Court of Appeals in which that improper ruling is incorporated.

3.3 The Amicus argues that the trial court action was an necessary "administrative action" rather than a judicial one.

The Amicus argues, in section C, that "[t]he appointment of the Guardianship Monitoring Program as a Special Amicus was a necessary administrative action to assist the court." Amicus cites no law, no statute, no precedent, no rule, and no basis for this assertion. But, if that is the case, it would still not abrogate the Hallmark's right to due process. Both this Supreme Court and the Court of Appeals have ruled that a guardian has a statutory and legal right to due process. *In re Disciplinary Proceedings Against Petersen*, 180 Wn. 2d 768, *In re Guardianship of Fowler*, 32979-8-III. In fact, if it was an administrative action, as the Amicus alleges, then it would be subject to due process under the Washington APA, the decisions of which are still appealable.[3]

But, this does bring up another important tangential issue.

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3 "Adjudicative proceeding" means a proceeding before an agency in which an opportunity for hearing before that agency is required by statute or constitutional right before or after the entry of an order by the agency. RCW 34.05.010(1).

Judges are generally immune from civil damages suits for judicial acts. *Taggart v. State*, 118 Wn.2d 195, 204 (1992). But, that is not necessarily the case for "administrative acts." *Forrester v. White*, 484 U.S. 219, 229 (1988). The federal courts, like the parallel action in this matter, distinguish between judicial and administrative or ministerial proceedings. *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 476 (1983).

Historically, judicial immunity then developed as a way to protect the appellate system from collateral attacks on judgments. *Taggart* at 204. The purpose of this immunity is not to protect judges as individuals, but to ensure that judges can administer justice without fear of personal consequences. Id. But, even this Supreme Court conceded that the doctrine should be applied only when the system is otherwise structured to provide safeguards against judicial errors. Id.

In an attempt to limit blanket immunity, Washington has adopted a functional approach wherein judicial immunity is applied only when they are acting in a judicial capacity and with color of jurisdiction. *Lallas v. Skagit County*, 167 Wn.2d 861, 865 (2009). In *Forrester*, judicial immunity did not apply to administrative decisions made by judges. *Forrester v. White*, 484 U.S. at 229. Absolute immunity, is "strong medicine" that can only be justified when the likelihood of collateral

liability for a judge performing his or her duties is high. Id. at 230.

Based on the assertions by the Amicus, a crucial question in this matter is whether the proceedings before the Spokane County Superior Court were judicial in nature or whether they were administrative actions as argued by the Amicus. If this action was an "administrative" action rather than a "judicial" action, as the Amicus and representative of the Spokane County Superior Court Guardianship Monitoring Program argues, then judicial immunity would not apply. And, the Petitioners will stipulate to the Amicus's assertion.

This adds yet another consideration for review in this matter as it involves an issue of substantial public interest that should be determined by the Supreme Court on whether removal of a guardian is an "administrative" or "judicial" action.

4. CONCLUSION

The trial court's actions giving rise to this Petition were fraught with impropriety and a willful avoidance of due process.

To be clear, what we have here is the argument of the Amicus, purporting to represent a Guardianship Monitoring Program[4], but

4 An alleged component of the Spokane Court Administrator's office that has no originating rule-making, no originating statute, no originating court rule, and no definition of its powers and parameters of existence.

advocating on behalf of the actions of the Spokane County Superior Court.

The Amicus, the Deputy Prosecutor of Spokane County, argues that a Washington court of law can, sua-sponte, take action by initiating ex-parte communications with counsel for a party, dozens of guardians ad litem, and other judges[5]; that the court can enter orders against parties in that action without service of process, notice, or hearing[6]; and, then the court can holding a barrage of 126 hearings - a drumhead - at which the court's counsel never appeared; at which the court failed to actually state a complaint and allow Hallmark to present evidence in support of its defense; and, where the court based its actions on the fact that Hallmark did not disclose it ownership despite the fact there was no duty to do so.[7]

This Orwellian action may be the expected product of a despotic dictatorship - but it is antithetical to our American justice system. Traditionally, drumhead proceedings were reserved for Lincoln conspirators, Nazi war criminals, and terrorists detained on non U.S. soil[8] - not a Certified Professional Guardian who was subject to a one year suspension. Our great State of Washington can, and should, aspire to do better.

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5 In direct violation of CJC rule 2.9.
6 In direct violation of CJC rules 1.1, 1.2, 1.3, 2.2, 2.3, 2.4, 2.5, and 2.6.
7 Id.
8 Depite these summary hearings being questioned as to their morality and constitutionality so that they are no longer even held on U.S. soil.

There are severe and unaddressed issues in this matter relating to the conduct of the trial court and the willful violation by the court of Hallmark's rights under both our the Washington and U.S. Constitutions.

The Court of Appeals has already ruled that the trial court violated Hallmark's due process rights by entering judgments without notice, without hearing and without due process. Opinion pg. 20. The Court of Appeals ruled that the trial court had no authority to question the ownership of the Agency. Id. pgs. 23-24. The Court of Appeals ruled that the trial court could not act arbitrarily in the removal of a guardian. Id. pg. 21-22. And, the Court of Appeals made clear that "nothing in GR 23 suggests that in addition to suffering the suspension, a CPG should lose her entire investment in a CPGA or that the CPG's coworkers should all be thrown out of work." Id. pg. 23-24. But, the Court of Appeals mistakenly upheld an errant commissioners ruling that wrongfully denied standing to Hallmark to appeal its removal, a ruling in direct violation of Hallmark's constitutional rights and this Supreme Court's prior ruling.

Petitioners ask this court to review this matter in its entirety, and to correct the errors, and miscarriage of justice of the lower courts.

Respectfully Submitted this 4th day of March, 2019.

By: s/John Pierce/
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CERTIFICATE OF SERVICE

I certify a copy of the foregoing Appellants' Petition for Review was served by the method below, and addressed to the following:

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DATED, this 4th day of March, 2019.

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