Supreme Court No. 99752-7

Court of Appeals No. 36774-6-III

SUPREME COURT OF THE STATE OF WASHINGTON

In the Matter of the Sanction Order Against Attorney Robert W. Critchlow

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DEPARTMENT'S ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

The Department of Social and Health Services (DSHS) sought protection of a vulnerable adult, Mary Green, by petitioning for a Vulnerable Adult Protection Order and Guardianship. Ms. Green is 100 years old, blind and suffers from dementia. She has a narrowed esophagus that places her at risk of choking. In order to prevent choking, it was necessary for Ms. Green's food to be chopped into small pieces and for her to avoid foods such as nuts and grapes. Her doctors also recommended that she eat sitting up and be monitored for 30 minutes after eating. Jerome Green, Ms. Green's son, frequently put Ms. Green at risk by providing foods to her that were choking hazards and not complying with medical directives put in place to keep his mother safe.

Ultimately, at the request of the guardian ad litem, the trial court imposed monetary sanctions on Jerome Green's attorney, Robert Critchlow, for persistently advancing baseless arguments. The Court of Appeals affirmed the sanction, but reversed the award of fees to the Department because the Department had not sought sanctions. The Department agrees that partial reversal of the fee award was correct.

This response is filed to identify the relevant law and to ensure that additional money is not depleted from the estate of Mary Green by involving the guardian ad litem in further unnecessary litigation.

II. STATEMENT OF FACTS

The Court of Appeals decision accurately summarizes the facts and procedural history.

III. ARGUMENT WHY REVIEW SHOULD BE DENIED

Although Mr. Critchlow raises a number of constitutional and due process arguments, the Court of Appeals accepted review only on one issue—whether sanctions were properly awarded against him[1]—and the appeal proceeded in the Court of Appeals solely on that issue. Accordingly, that is the only issue properly presented in the petition for review. The Court of Appeals decision thoroughly addressed the arguments raised by Mr. Critchlow and properly refused to consider arguments outside the scope of his appeal. Mr. Critchlow has identified no basis for further review under RAP 13.4(b).

A. The Court of Appeals Decision Does Not Conflict with Other Decisions or Raise an Issue of Public Interest

The Department sought appointment of a guardian on behalf of Mary Green under RCW 11.88.030. Once the trial court receives a guardianship petition, the court is *required* to appoint a guardian ad litem

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[1] Commissioner's Ruling dated October 25, 2019 (dismissing the matter as not appealable as of right and lacking any ground on which to grant discretionary review); and Panel Order Granting in Part and Denying in Part Motion to Modify Commissioner's Ruling dated February 18, 2020 (permitting appeal only of the April 5, 2019, sanction order and accompanying judgments entered on May 10, 2019, and ordering the case title to be changed to: In re the Sanction Order Against Attorney Robert W. Critchlow).

(GAL) to represent the best interests of the alleged incapacitated person. RCW 11.88.090(3). Because Ms. Green was not represented at the time the guardianship petition was filed, a GAL was selected from the guardian ad litem registry maintained by Spokane County under LSPR 98.22. Neither Mr. Critchlow nor his client were entitled to prior notice of the appointment. The challenges he raised to the specific appointment of the GAL were not made until it was too late for him to do so. RCW 11.88.090(3).

Mr. Critchlow's contention that *Graham v. Graham,* 40 Wn.2d 64, 240 P.2d 564 (1952), requires a hearing prior to appointment of a guardian ad litem is not correct, and the Court of Appeals decision does not contradict the *Graham* decision. In *Graham*, an alleged incapacitated person involved in ongoing litigation was represented by an attorney and objected to appointment of a GAL. *Graham*, 40 Wn.2d at 65. This Court determined that even though it was well-established principle that a guardian ad litem should be appointed for a litigant reasonably thought to be incompetent and unable to intelligently understand legal proceedings involving them, whether or not appointment was proper was a serious question when objected to by the alleged incapacitated person or their attorney. *Id.* At 67. The facts are different here than in *Graham*. Ms. Green was not represented nor did she object to appointment of the GAL. The

Court of Appeals also properly distinguished *In re Marriage of Blakely*, 111 Wn. App. 351, 44 P.3d 924 (2002), which applied a different statute, RCW 4.08.060, than the one governing this case. RCW 4.08.060 addresses the appointment of a GAL for a *party to litigation* the court determines is incapacitated and either has no guardian or a guardian the court determines is an improper person to appear in the litigation on the party's behalf. Mary Green is not a party to litigation, and this case involves the general guardianship statute, RCW 11.88. The Court of Appeals held that the trial court followed the procedures set out in that statute, specifically including the ex parte appointment of a GAL to investigate the circumstances and recommend whether a guardian or limited guardian is needed. *See* RCW 11.88.090. There is no conflict with any decision of this Court or the Court of Appeals.

Neither is the issue presented—whether the trial court acted within its discretion in awarding a monetary sanction against this attorney for persistently advancing baseless arguments—one of public importance warranting this Court's attention. There is no basis for review under RAP 13.4(b).

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B. The Challenge to Pro Tem Commissioner Grovdahl's Authority to Sign Civil Orders Was Raised for the First Time On Appeal and Need Not Be Considered Further

The local rule prohibiting pro tem court commissioners from signing guardianship orders, LSPR 98.22(a), was not raised by Mr. Critchlow at the trial court level and cannot be raised for the first time on appeal. RAP 2.5(a); *State v. Gentry*, 125 Wn.2d 570, 616, 888 P.2d 1105 (1995) (alleged violation of court rule could not be raised for first time on appeal). The issue is not properly before this Court.

C. Mr. Critchlow's Arguments that the Court of Appeals "Changed the Factual Record" Are Unsupported

Mr. Critchlow repeatedly suggests the Court of Appeals changed the factual record, but provides no credible support for this proposition. Pet. at 7, 9, 14, 15, 17. Because he cannot demonstrate that the Court of Appeals changed the factual record, there is no conflict with *Sunderland Fam. Treatment Servs. v. City of Pasco*, 127 Wn.2d 782, 790, 903 P.2d 986 (1995).

IV. CONCLUSION

The Court of Appeals fully reviewed the issue properly presented in this appeal, and explained why it would not allow Mr. Critchlow to bring in

other issues. Mr. Critchlow has demonstrated no basis under RAP 13.4(b) for further review by this Court. His petition should be denied.

RESPECTFULLY SUBMITTED this 1st day of June, 2021.

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CERTIFICATE OF SERVICE

I certify that I served all parties, or their counsel of record, a true and correct copy of the Department's Answer to Petition for Review at the following addresses:

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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 3rd day of June, 2021 at Spokane, Washington.

MARCIE W. BERGMAN
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SPOKANE SHS

June 03, 2021 - 10:49 AM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	99752-7
Appellate Court Case Title:	In the Matter of the Sanction Order Against Attorney Robert W. Critchlow
Superior Court Case Number:	19-4-00298-2

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