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No. 995371

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

DOROTHY HELM O'DELL,
Petitioner,

v.

KRISTYAN CALHOUN,
Respondent.

ON DISCRETIONARY REVIEW FROM
THE COURT OF APPEALS, DIVISION III

Court of Appeals No. 36820-3-III
(Consolidated with No. 36826-2-III)
Yakima County Superior Court No. 18-4-00054-4

**MEMORANDUM OF AMICUS CURIAE BY AMERICANS
AGAINST ABUSIVE PROBATE GUARDIANSHIPS (AAAPG)**

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INTRODUCTION

As described in its Motion filed with this Memorandum, *Amicus Curiae* Americans Against Abusive Probate Guardianship (AAAPG) was formed in 2013 primarily to promote public awareness of abusive guardianship issues and their possible remedies in the public interest.

AAAPG since at least 2015 has maintained a website at <https://aaapg.net> to support its public outreach and education. It publishes monthly or more frequent emailed newsletters about guardianship abuses to over 1,300 subscribers nationally, most of whom have experienced an abusive guardianship of a loved one. With such a network, AAAPG continuously is informed of new abusive guardianship cases occurring throughout the country and of efforts to expose and correct such abuses. As a consequence, it is familiar with the commonly encountered conditions and actions by guardianship practitioners and jurists that result in abusive guardianships. As this Memorandum illustrates, this case includes many elements or earmarks that are common to many abusive guardianship cases, commonly leaving the “protected person” destitute.

AAAPG is being represented in this case by Washington attorney Douglas A. Schafer, who since the early 1990's has taken active steps to promote improvements in the guardianship procedures of this state, as summarized in the Motion for acceptance of this Memorandum.

STATEMENT OF FACTS

AAAPG will not duplicate the factual summaries in the Petition for Review of Dorothy Helm O'Dell (Dorothy) and the Memorandum of *Amicus Curiae* Spectrum Institute. But it wishes to point out selected facts from the 1200-page Clerk's Papers (CP) that may not have been previously noted.

Jurisdiction Issues. On January 23, 2018, the Yakima Superior Court (the Probate Court) entered an order revoking Dorothy's right to revoke her previously signed power of attorney (POA). CP 9. At that time, the Probate Court had no personal jurisdiction over Dorothy, nor did it give her advance notice or afford her any due process whatsoever before revoking her civil right to revoke her POA. The Probate Court did not comply with the procedures of RCW Ch. 7.40 that have been required since 1996 for emergency orders in guardianship cases. RCW 11.88.045(5). See *infra* at 7.

Dorothy appears never to have been personally served with the guardianship petition and other papers as required by RCW 11.88.030(5). The Certificate of Service (CP 27) recites that an individual, Alan Port, served the documents at a post office box. An assistant to Calhoun's attorneys had emailed the documents to Eastern State Hospital. CP 87. Without proper personal service upon Dorothy, the Probate Court never

acquired personal jurisdiction and its orders abrogating her civil rights and assessing crushing fees against her were void.

Petitioner Calhoun's Financial Motive for Appointment. The guardianship petitioner, Kristyan Calhoun, a certified professional guardian (CPG), had an obvious self-interested financial motive. She petitioned specifically for appointment of a CPG as guardian, knowing that the Probate Court's only other possible CPG's had full case loads. CP 470 (12/18/17 entry), 646. Calhoun's for-profit business, Senior Avenues, since December 2016 was excessively paying itself well over \$1,000 per month from Dorothy's funds as her POA agent with no judicial or other supervision. CP 1202-3. Calhoun learned that Dorothy sought to revoke the POA and instead appoint her trusted brother, Glenn Helm (Glenn). CP 12, 19. And Calhoun knew that her own appointment as Dorothy's guardian would bar Dorothy or anyone assisting from her from challenging Calhoun's 2017 below-market sale of Dorothy's Rhapsody Rd. rental property to Calhoun's friend. CP 110 ¶37. That obvious below-market sale had been questioned by the occupancy screener when Calhoun sought to financially qualify Dorothy for subsidized housing in Sun Towers. CP 803. Calhoun's property sales had also been questioned by Glenn. CP 770.

Dorothy Was Stable Throughout the Proceeding. From before

Calhoun filed the guardianship petition, she and her staff recognized that Dorothy was “very stable when she is taking medications as prescribed,” as she continued doing throughout the 15-month proceeding. CP 11 ¶4, 12 ¶8, 34 ¶2, 1173 (7/25/18), 1174 (8/17/18 & 9/4/18). In the only medical report prepared and filed pursuant to RCW 11.88.045(4), the physician opined on January 8, 2019 that “Dorothy currently has the assistance she needs and is well positioned should she decline in the future and need more assistance.” CP 1210.

Role of Judiciary and Guardianship Petitioners. The protection of vulnerable and incapacitated persons is a governmental responsibility, borne by the judiciary. RCW 11.88.010. The state attorney general is responsible for petitioning for an apparently necessary guardianship if no private party does so, without reimbursement from the AIP. RCW 11.88.030(3)(a), -.090(10). Case law holds that a petitioner’s role is limited to alerting the applicable court. *In re Guardianship of Matthews*, 156 Wn.App. 201, 210, 232 P.3d 1140 (2010) (“The guardianship petitioner’s role is essentially to alert the trial court of the potential need and reasons for a guardianship of an incapacitated person and to respond to any inquiries from the trial court. ... Once a trial court accepts a guardianship petition for review, the petitioner’s role in the process essentially ends.”) Notwithstanding this law, Calhoun aggressively

litigated her self-serving petition against Dorothy incurring nearly \$68,900 in attorney fees that the Probate Court ordered Dorothy to pay, in addition to the over \$29,000 that Calhoun took from Dorothy's funds during her 28 months as Dorothy's POA agent.¹

COMMON ELEMENTS OF ABUSIVE GUARDIANSHIPS

This case illustrates elements that are commonly seen in cases of abusive guardianships.

Tight Circle of Local Guardianship Practitioners. Though Yakima County had eight judges in the Probate Court, a small tight circle of guardianship practitioners (lawyers, CPG, and GALs) appeared in most of its guardianship cases. It reportedly had only two or three CPGs (CP 470 (12/18/18), 646), and the Probate Court's statutorily required GAL registry listed only Calhoun, three lawyers from her hired law firm (two of whom represented her opposing Dorothy), and Ms. Clark² (who Calhoun chose as the GAL for Dorothy). CP 646, 814–18. Ms. Clark was regularly the GAL in cases where Calhoun was the proposed guardian. CP 515–6. Calhoun's lawyers discussed Dorothy's case with Clark before naming her in their initial pleadings as the appointed GAL—that the Probate Court

¹ CP 1117–8, 841, 1161–2, 1202–3. Calhoun never disclosed her fees for March and April, 2018, so this total figure assumes for those months the average of \$1,140 from the previous 15 months.

² GAL Clark's business name is Clark Superior Court Services, appearing to be a judicial department to uninformed persons. CP 32.

“rubber stamped.” CP 86 (1/23/18), CP 20. It is common in abusive guardianship cases that the participating practitioners are, like here, in a tight-knit, symbiotic relationship. It is plainly not in their self-interest to question the motives or actions of their local colleagues.

Consistent with the foregoing, GAL Clark declined to stipulate to the appointment of Dorothy’s chosen non-local lawyer, Mr. Young, to replace the local lawyer that Clark had chosen for her, forcing a costly hearing to confirm Mr. Young’s appointment. CP 29–51. And GAL Clark by motion requested that the Probate Court scrutinize Mr. Young’s fees and Dorothy’s understanding of his defensive actions, though she expressed no concerns over the exorbitant fees (nearly \$69,000) that Calhoun’s local attorneys were accruing from their very aggressive litigation tactics. CP 391, 1118.

Probate Court Lacking Fidelity to the Law. Since 1996, RCW 11.88.090(4)(a) has required that the Probate Court maintain a registry of qualified GALs for guardianship cases and to make appointments sequentially from that list absent extraordinary circumstances that must be explained in the appointing order. The Probate Court appears to have unfaithfully ignored that law. When told of the law requiring GAL appointments from a list, Judge Michael McCarthy asserted, “We don’t have a list.” In fact, there was a very short GAL list (CP 646, 814–18), likely very short because the Probate Court judges do not use it so why

would a practitioner seek to be listed?

Since 1996, RCW 11.88.045(5) has required courts in guardianship case to follow the procedures of RCW Chapter 7.40 when addressing alleged emergencies during the pendency of a guardianship proceeding. Those procedures are intended to ensure due process for all affected persons by requiring that they have notice and an opportunity to be heard by the court at a hearing *before* it enters any injunction impacting them, though “the court may grant a restraining order until notice can be given and hearing had thereon.” RCW 7.40.050. An adequate bond also is required of the applicant as a condition of any restraining order or injunction to cover possible damages and costs of an adverse party. RCW 7.40.080. Dorothy sought to replace Calhoun with her brother Glenn to escape her high monthly fees and suspicious transactions, but the Probate Court entered, without notice to her or a bond to protect her, an order revoking her civil right to do so for the duration of the guardian proceeding. CP 9–10. That demonstrated the Probate Court’s utter lack of fidelity to the law, to the profound detriment of Dorothy.

The Probate Court further demonstrated its laxity toward the law by failing to require Calhoun, as guardianship petitioner, to comply with the law. RCW 11.88.030(1) requires a guardianship petitioner to describe the nature of the AIP’s alleged incapacity and to identify by name and address

the persons most closely related to the AIP. Calhoun repeatedly claimed in the petition that Dorothy was diagnosed with untreatable dementia (CP 1–5), and only ten months later correcting that as schizoaffective disorder, a treatable illness. CP 103. Though Calhoun had been Dorothy’s POA agent for 13 months, her petition only named (with erroneous surnames), and gave only phone numbers of, her brothers Glenn and Pete. CP 2. But two days later she mailed Glenn the petition and related papers. CP 26. Though Calhoun in 13 months apparently failed to inquire about, and knew nothing of, Dorothy’s five other brothers and two sisters (CP 136 ln.11, 550 n.1), Calhoun and her staff had communicated and/or met many times with Glenn over the prior 13 months. CP 470 (1/22/18), 764, 770, 777, 779–80. Calhoun knew that Glenn was suspicious of wrongdoing concerning her sale of Dorothy’s properties. CP 770. So rather than investigate his motives or qualifications to serve as Dorothy’s POA agent, Calhoun accused him of seeking to financially exploit her. CP 1–5. Glenn is a responsible businessman whose concern for his sister Dorothy should not reasonably have been considered evidence of financial exploitation. CP 158–9. But family members are nearly always viewed with suspicion and distrust by the insiders who control abusive guardianship cases. Glenn in or about April 2018 was appointed by the Probate Court as co-personal representative, with his sister Esther, of their sister Anne’s

substantial estate. CP 550 n.1, CP 74 ¶12.

As is also common in abusive guardianship cases, Calhoun's petition requested that the Probate Court waive Dorothy's presence at the hearing on the petition—another constitutional and statutory right commonly tread upon. CP 4 ¶ XV.C., RCW 11.88.030(5)(b) (“YOU HAVE THE RIGHT TO BE PRESENT IN COURT AND TESTIFY WHEN THE HEARING IS HELD ...”).

Probate Court Judge Not Reading Pleadings. It is common to encounter unprepared jurists making decisions in abusive guardianships, as is apparent in this case. Judge Michael McCarthy interrupted Calhoun's attorney during a hearing on January 10, 2019, to state, “I think this is the first I've heard about an inheritance.” The jurist patently had not read the pleadings submitted to him for that hearing or for the two previous hearings that he held on November 26, 2018, and December 10, 2018, and from which he had entered orders. Dorothy's expected inheritance from her recently deceased sister Anne was mentioned thrice in the pleadings submitted for the November 26, 2018 hearing. CP 68 ¶12, 74 ¶12 & ¶ 13. The inheritance was mentioned five times in the pleadings submitted for the December 10, 2018 hearing. CP 150 ln.16, 180 ¶4, 201 ¶14 & n.1, 223 ¶14. And the inheritance was mentioned five times in the pleadings submitted for the January 10, 2019 hearing. CP 498 ¶14, 545 ln.8, 550

ln.19 & n.1, 554 ln.7.

Courts and GALs Showing Bias Favoring Local Professionals. It is common in abusive guardianships for courts and their agents to demonstrate a bias against non-local lawyers who appear in guardianship cases opposing the familiar, regularly appearing lawyers and GALs. Judge McCarthy plainly demonstrated this when he belittled at and rejected Mr. Young's objections (CP 199–207) that his Seattle office had received only an emailed notice of the November 26, 2018, hearing on a restraining order sent merely 87 minutes (and during the lunch hour) before the 1:30 pm hearing. CP 725. The Judge further demonstrated that bias when he awarded judgment for Calhoun against Dorothy for her local attorneys' fees of nearly \$69,000, while allowing no basis for Dorothy to pay well-earned fees and costs to her attorney, Mr. Young. CP 1117–8.

CONCLUSION

Because of the great interest in guardianship abuses as illustrated above in this case, the Court should accept Dorothy's Petition for Review and closely scrutinize the actions of its parties, counsel and jurists.

Respectfully submitted this 30th day of April, 2021.

/s/ Douglas A. Schafer

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Proof of Service

I certify that today I served a copy of this Memorandum on the following counsel by email at their below addresses:

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