Supreme Court No. 99707-1

Court of Appeals No. 374963

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re the Matter of:

MARY EZENWA

Petitioner,

v.

PETER CARLIN

Respondent.

ON APPEAL FROM THE Court of Appeals, Division III, COURT OF THE
STATE OF WASHINGTON FOR SPOKANE COUNTY

The Honorable Judges; Fearing, J., Siddoway, A.C.J. and Staab, J.

AMENDED PETITION FOR REVIEW

Sign:

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INTRODUCTION

Petitioner **MARY EZENWA**, the Appellant below asks this court to grant review of the court of Appeals opinion that affirms the decision of the trial court commissioner Julia Pelc's Vulnerable Adult Protection Order.

Defendant's rights to subpoena relevant documents from third party is a procedural due process issue. Petitioner rely on the due process clauses of the United States and Washington Constitutions.

IDENTITY OF THE PETITIONER

Petitioner is Mary C. Ezenwa, Defendant at the superior court and Appellant at the court of Appeals.

COURT OF APPEALS DECISION

On March 4, 2021, the court of Appeals, Division III, issued a decision affirming the trial court's order of protection entered against Mary Ezenwa. (App. 25-28). The Appeal Court Judges; Fearing, J., Siddoway, A.C.J. and Staab, J. unpublished opinion holds an award to Peter Carlin reasonable attorney fees and costs incurred on appeal. id. (App. 28).

On March 4, 2021, the court of Appeals ordered that its decision should not be published. (App. 29). Appx. 1 ("Opinion").

ISSUES PRESENTED FOR REVIEW

1. ***Whether or not review is appropriate where the court of appeals opinion failed to make pronouncement of Ezenwa's due process rights to subpoena Dr. Debra Brown from Brown and Associate? id at 16***
2. ***Whether or not review is appropriate where the court of Appeals opinion failed to show appearance of impartiality?***
3. ***Whether or not review is appropriate where the court of Appeals decision wrongly holds award for reasonable attorney fees and costs incurred on appeal? id. at 28***

STATEMENT OF THE CASE

Ezenwa, a 35-year-old black female American, and Dr. Alan Carlin 82, joined in matrimony in Virginia on January 24, 2020, without fraud or undue influence after a brief courtship from December 24, 2019.

The Respondent Peter Carlin is the son to Dr. Alan Carlin. Dr. Carlin informed Ezenwa of his fear of his children incessant harassment (Peter Carlin, Nancy Bundics and Danielle Roselin) and of their taking over his life, and he hired an attorney to even contest a guardianship proceeding against his children. (CP at Ex 10).

On or around 1/29/2020 respondent raised false alarm to the Fairfax and Cheney Police Departments stating that his father is missing from Fairfax County VA and have eloped with Ezenwa to Cheney Washington State. (CP at 12).

Whereas, upon investigation, these allegations were false as Police Officer Rocky Hanni indicated that he contacted Alan in Ezenwa's place where he was living happily with Mary in Washington. (CP at 12).

Alan Carlin (purported vulnerable adult) told Cheney Police Officer he is tired of his family "harassing" him. (CP Ex 8).

Alan told Cheney Police Officer his family is trying to say he is not competent so they can stop him from removing him from his will.

Officer Hanni asked Alan if he was in Cheney on his own free will. Alan stated he bought his own plane ticket, boarded the plane by himself, and was not forced to do so. (CP at 12).

Peter Carlin and the Police Officers never contacted Ezenwa to investigate these allegations by Dr. Alan Carlin's adult children before they went and obtained an ex parte Temporary Vulnerable Adult Protection Order from a Judicial Officer; Gregory Hicks on 01/31/2020 and Temporary

Restraining Order from the Spokane County superior court on 02/13/2020. (CP 1-7).

Indeed, two medical professionals **Ellen Jenkins MD and Argye E. Hillis MD,** evaluating Alan Carlin in or around 2018 to 2019 calendar year, and presenting in January 2020, declarations on those past evaluations explained that Mr. Alan Carlin has suffered strokes, has CAA, has deficits in his frontal lobe and he is at risk for personal and financial exploitation in their opinion, while Dr. Hillis also states, I am the treating neurologist for Mr. Alan Carlin, an 82 year old whom I saw in my office in September, 2019 (CP 8, 11).

Peter Carlin and Danielle Roselin (daughter to Alan Carlin), knew the two medical professionals' declarations were based on old medical evaluations and insufficient findings.

Further, Alan Carlin's most recent evaluations carried out by his current Medical Providers: Dr. Debra Brown from Brown and Associates and Alan Carlin's Physician at Sacred Heart Hospital show that he is competent and in good health, and not in any financial exploitation.

Copies of Alan Carlin's current medical records from January to February 2020 calendar year showing he was in good health were intentionally omitted, as evidenced by the Declaration of Danielle

Roselin, claiming that she tried to obtain medical records but the hospital is requiring a subpoena to provide them which takes time. (CP 10, 12).

Danielle Roselin, falsely stated in her Declaration that at the time when she finally found Mr. Carlin, he lacked insight. He was in the hospital due to dehydration, sepsis and the condition he was found in. (CP 10, 12).

Based on the record, Mary Ezenwa's declaration highlights a subpoena request for Dr. Debra Brown from Brown and Associates. Gary Stenzel (Attorney for Defendant at the superior court) noted that Alan Carlin was evaluated by Dr. Brown in Spokane and she is being subpoenaed to testify about his competency. (CP 19, 21).

In Danielle Roselin's declaration, the record indicates that there is some critical piece of factual information that the commissioner was missing when the VAPO was entered, as evidenced by omission of the most recent medical records from Alan Carlin's Medical Providers: Dr. Debra Brown from Brown and Associates and Alan Carlin's Physician from Sacred Heart Hospital. (CP at 10).

LEGAL ARGUMENT

1. WHETHER OR NOT REVIEW IS APPROPRIATE WHERE

THE COURT OF APPEALS OPINION FAILED TO MAKE PRONOUNCEMENT OF EZENWA'S DUE PROCESS RIGHTS TO SUBPOENA DR. DEBRA BROWN FROM BROWN AND ASSOCIATE? ID AT 16

I. Subpoenaing a third party is a Due Process Right Vested in Petitioner

The primary body of law governing subpoenas in Washington is the Washington Superior Court Civil RCW 5.56.010 to 5.56.100 (use of subpoenas to compel attendance of witnesses in civil actions and proceedings).

Given the important purposes served by the due process law, Washington courts review decisions concerning subpoenas under an abuse of discretion standard (*Eugster v. City of Spokane*, 91 P.3d 117, 121 (Wash. Ct. App. 2004)). A court abuses its discretion when its decision is based on untenable grounds or reasoning (Eugster, 91 P.3d at 121).

The opportunity to present evidence in trial proceedings is seriously compromised by the absence of the subpoena power.

The decision below stands in direct conflict with the decision of the other courts. Petitioner's due process rights were violated by her inability to subpoena a key witness, and to subpoena that witness testimony. *Prebble v. Brodrick* 535 F.2d 605 (10th Cir. 1976).

Petitioner argues that the subpoena power is a due process right vested in Petitioner. There is a risk of erroneous deprivation and the value of the subpoena power is explored. See *Murray's Lessee v. Hoboken Land & Improvement Co*., 59 U.S. 272, 276 (1855)

The risk of erroneous deprivation of a litigant's property interest and the value of additional safeguards is the major factor when considering the subpoena as a due process requirement, and perhaps the most important due process consideration generally. See *Greenholtz v. Inmates of Neb. Penal & Correctional Complex,* 442 U.S. 1, 13 (1979) ("[T]he quantum and quality of the process due in a particular situation depend upon the need to serve the purpose of minimizing the risk of error.")

Without the ability to subpoena an important witness, cross-examination of that witness may be foreclosed. The court of appeals, look at a record that may lack evidence that could be dispositive of the case. Witnesses may remain unimpeached and events may remain uncorroborated or unrecounted.

The court of Appeals opinion failed to review the insufficiency of the petition. The major question is whether an evidence can be viewed as sufficient, in spite of the trial court's failure to make pronouncement of

Ezenwa's due process rights for subpoena of Dr. Debra Brown from Brown and Associates as a key witness. Id. at 16.

The court of Appeals opinion failed to make pronouncement of Ezenwa's due process rights for subpoena of Dr. Debra Brown from Brown and Associates as a key witness. Id. at 16. " *In re Murchison*, 349 U.S. 133, 136, 75 S. Ct. 623, 99 L. Ed. 942 (1955) (A "fair trial in a fair tribunal is a basic requirement of due process)

Judgment based solely on declarations without giving opportunity to Appellant to subpoena the Clinical Psychologist constitutes a deprivation of interest, liberty, life, and property, in violation of the procedural due process required by the fourteenth amendment to the United States Constitution and article 1, section 3 of the Washington State Constitution. Thus, "at a minimum" the due process clause of the Fourteenth Amendment demands that a deprivation of life, liberty or property be preceded by "notice and opportunity for hearing appropriate to the nature of the case". Mullane at 313. Moreover, this opportunity "must be granted at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552, 14 L. Ed. 2d 62, 85 S. Ct. 1187 (1965).

The Superior Court erred when it issued a blanket protective order precluding Ezenwa from obtaining any discovery from Dr. Debra Brown

whose opinions played a critical role in this case and to subpoena the Clinical Psychologist's testimony.

Thus, the required elements of due process are those that "minimize substantively unfair or mistaken deprivations" by enabling persons to contest the basis upon which a state proposes to deprive them of protected interests. The core of these requirements is notice and a hearing before an impartial tribunal. Due process may also require an opportunity for confrontation and cross-examination, and for discovery. See, *Fuentes v. Shevin,* 407 U.S. 67, 81 (1972). (At times, the Court has also stressed the dignitary importance of procedural rights, the worth of being able to defend one's interests even if one cannot change the result)

II. Decision based solely on declarations violated due process principles

This case challenges the procedural due process of law to the extent that judgment based solely on declarations and exclusion of key relevant evidence constitutes a deprivation of interest, liberty, life, and property without that procedural due process required by the fourteenth amendment to the United States Constitution and article 1, section 3 of the Washington State Constitution. *Armstrong v. Manzo,* 380 U.S. 545, 552, 14 L. Ed. 2d 62, 85 S. Ct. 1187 (1965).

The court of Appeals opinion incorrectly held that overwhelming evidence and the law supports the trial court's ruling. *Id at* 380 U.S. 545, 552, 14 L. Ed.

The trial court's factual finding were not supported by substantial evidence, as evidenced by the superior court's decision to allow Peter Carlin to introduce medical professionals' declarations based on old evaluations (from Alan's previous medical professionals, Ellen Jenkins MD and Argye E. Hillis MD) and overlooking Peter Carlin's omission of the most recent medical records from Alan Carlin's current Medical Providers: Dr. Brown from Brown and Associates and Alan Carlin's Physician from Sacred Heart Hospital.

2. **WHETHER OR NOT REVIEW IS APPROPRIATE WHERE THE COURT OF APPEALS OPINION FAILED TO SHOW APPEARANCE OF IMPARTIALITY?**

I. Appearance of implicit racial and identity bias exist in the Court of Appeals' unpublished opinion

The court below erred in dismissing the appeal by stating in its opinion that Appellant stated no relevant case laws. (App at 18) Appeal court Opinion at 18.

This court needs to consider the fact that a large majority of the court of Appeals opinion were not based on facts that can be found on the record. *State v. Stevenson,* 16 Wn. App. 341, 345, 555 P.2d 1004 (1976).

In a case where there are no fact-finding, it is a mistake to use strong and consistent language that are evidence of implicit racial and identity bias, as evidenced by the unpleasant or negative concepts associated with Mary Ezenwa because she is an African American Asexual, whereas European-American Peter Carlin is more frequently associated with pleasant or positive concepts. The results have stark implications for the outcome of this case. *State v. Monday,* 171 Wn.2d 667, 257 P.3d 551 (2011)

The court of Appeals' opinion dishonestly and maliciously maligned Ezenwa with many fabricated untrue facts. (App at 10) Appeal court Opinion at 10. “The need for the judiciary to avoid the appearance of partiality exists even in the absence of actual wrongdoing or favoritism. In a democracy, the enforcement of judicial decrees and orders ultimately depends upon public cooperation. The level of cooperation, in turn, depends upon a widely held perception that judges decide cases impartially…. Consequently, judges are called upon to avoid all activity that so much as suggests that their rulings are tempered by favoritism or self-interest." *See Alfini, James J.; Lubet, Steven; Shaman, Jeffrey M.; Geyh, Charles*

Gardner. Judicial Conduct and Ethics, Fifth Edition §10.03 (Kindle Locations 20973-20977). LexisNexis. Kindle Edition.

In its opinion, the Appellate Court goes to great lengths to present Ezenwa in an extremely unfair and biased light. Their personal perspectives and experiences clearly serve as the backdrop for the statement. "…The judicial officer is required to perform judicial duties without bias or prejudice. The judicial officer must guard against manifesting any bias or prejudice or the appearance of partiality in any public comments…." *Ethics Advisory Opinion 02-12.*

The findings and conclusions gratuitously were not based on competent evidence, but rather on mere speculation, which created a perception of unfairness and partiality that were improperly based in part on hearsay information. (App at 9-28) Appeal court opinion at 9-28.

The opinion language reasonably appeared to manifest bias or prejudice, evidenced a personal animus toward Ezenwa and suggested that their decision resulted from their individual experience and feelings rather than the rule of law. The majority of the language in the order created the appearance that they were biased and/or prejudiced against Appellant. It

conveys the impression that the opinion is made out of emotion or personal preference, rather than reason and impartial accordance with the law. Id

The Court of Appeals' opinion erred by framing the case at the outset in prejudicial terms, and the misleading commentary created the appearance of bias in favor of Respondent. Because of the power disparity between a judge and others in a case, berating or demeaning a litigant is an abuse of judicial power. The court opinion attacks the integrity of Ezenwa without a proper basis, and does so by employing the weight of officially adjudicated findings and conclusions. This opinion has been injurious to the professional reputation of Ezenwa, publicly and gratuitously attacking her character without notice and without a reasonable evidentiary basis. (App at 7-28), *see also Mina Cikara et al., Us and Them: Intergroup Failures of Empathy, 20 Current Directions Psychol. Sci. 149, 150 (2011) (studies have demonstrated that, as a result of implicit favoritism toward one's own "group," people are more likely to empathize with their in-group than those in the out-group)*

In court of Appeals opinion, the court of Appeals biased reasoning was replete with examples of the Appellate judges' reliance on irrelevant facts and inaccurate stereotypes. The opinion identified the court of Appeals' express and implicit assumptions (i.e., race and identity based implicit

biases) which are unsupported by evidence and, in this case, likely affected the ultimate decision. (App at 7-28)

The opinion contained several inaccurate statements, particularly shocking were comments centered on Ezenwa's sexual orientation. Another comment more racially based referred her as a "physical threat." The court of Appeals opinion needs to reference properly the records of appeal, striving to do at least three things, within limited space: identify the document and document part to which the court is referring; provide the parties with sufficient information to find the document; and furnish important additional information about the referenced material and its connection to the court's opinion to assist parties in deciding whether or not to pursue the reference. *Smith, Opinion Writing for New Judges, supra note 35, at 205*.

Passing reference to summary of material facts in the Respondent's brief of argument, and statements made on the trial court offered without substantively looking at the record in support (such as the affidavits evidence), are insufficient to constitute raising the issue. In the first place, the court cannot consider matters referred to in the brief but not included in the record. See *State v. Stockton*, 97 Wn.2d 528, 530, 647 P.2d 21 (1982)

II. <u>The statement of reasons and opinion issued by the lower</u>

courts were conclusory in nature

Conclusory allegations alone will not suffice to create an issue of material fact. *Hansen v. United States*, 7 F.3d 137, 138 (9th Cir. 1993)

The statement of reasons issued with the first trial court order and the court of Appeals opinion issued on March 4, 2021 were deemed conclusory in nature. (App at 7-28)

The court of Appeals opinion erred when it held an award to Peter Carlin reasonable attorney fees and costs incurred on appeal. Id. at 28

The court of Appeals opinion erred when it concludes that the trial court's commissioner commented that courts generally resolved proceedings involving vulnerable adults by declarations.

The court of Appeals opinion further erred when it stressed that Ezenwa presented no lay witnesses, expert testimony, or third-party affidavits to support her position. Commissioner did not ask for live testimony. After argument by counsel, the court commissioner decided the petition based on the declarations. Id. (App 12)

The trial court erred by failing to make requisite findings pursuant to Vulnerable Adult Protection Act RCW 74.34.020.

III. The allegations alleged by Respondent are unreasonable or exercised on untenable grounds, as they do not constitute

financial, physical, emotional or personal exploitation under RCW 74.34.

RCW 74.34 provides protection to a vulnerable adult whenever there is financial, physical, emotional or personal exploitation.

Alleging that Mary accessed Alan's email unlawfully and intercepted Alan's private privileged communications with Alan's attorney, and in addition, spammed several of Alan's friends through his email account seeking money for representation in this matter without no evidence to proof or show same is unreasonable. (RP. at 12 line – 5-7). No evidence was shown to proof those false allegations and the court relied on such allegations to enter the permanent Vulnerable Adult Protection Order.

Alleging that Ezenwa went into a romance scam with Alan is unreasonable. (RP. at 12).

Ezenwa never attempted to exploit Alan Carlin, Ezenwa and Mr. Carlin were legally married. An evidentiary hearing will prove that those allegations are false and did not clearly fit within that scope. There are no actions of deception, and inducement on any alleged ruse that Ezenwa was Mr. Carlin's soulmate.

IV. Ezenwa never consented to the hearing by declarations

The court of Appeals opinion states that Ezenwa agreed for the case to be decided by Declarations. Opinion Id. at 12. The opinion stressed that

assuming a decision based solely on declarations violated due process principles, Ezenwa's direction to the court commissioner to base her decision on the declarations constitutes invited error. Id. at 16. There was no place in the records that Ezenwa directed the lower court to base the decision on declarations. (CP at 23).

Ezenwa never agreed for the hearing to be based on declarations, the court proceeded with the hearing and promised that as the hearing happens, and it unfolds, the court will see what the testimony brings, whether or not there will be a need for additional live testimony. (RP at 7 line 14-19).

V. Ezenwa never orchestrated the marriage with Alan Carlin nor financially exploited Alan Carlin

Ezenwa was accused of financial exploitation; however, Peter Carlin never offered any evidence that Ezenwa had actually harmed her husband or financially exploited her husband. (CP at 16).

Under the extant provision **RCW 74.34.020**, to financially exploit a vulnerable adult, means: the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage.

The above elements of financial exploitation are subject to proof and must be proved by a preponderance of the evidence by Peter Carlin that Ezenwa takes the property of Alan Carlin without permission or with intent not to properly return it.

3. **WHETHER OR NOT REVIEW IS APPROPRIATE WHERE THE COURT OF APPEALS DECISION WRONGLY HOLDS AWARD FOR REASONABLE ATTORNEY FEES AND COSTS INCURRED ON APPEAL? ID. AT 28**

The court of Appeals opinion wrongly held Ezenwa's appeal is frivolous when it awarded Peter Carlin Attorney fees and cost incurred. An appeal is only frivolous if there are no debatable issues upon which reasonable minds might differ and it is so totally devoid of merit that there was no reasonable possibility of reversal. *Green River,* 107 Wash.2d at 442-43, 730 P.2d 653 (quoting Boyles, 105 Wash.2d at 509, 716 P.2d 869 (Utter, J., concurring in part, dissenting in part)). Ezenwa's contention that she was denied fair hearing and due process of law when the case was solely determined on declaration among et al, is a debatable issue full of merit.

Following the traditional rule in the United States (the "American rule"), civil actions in Washington generally require that each party pay its own attorney's fees and costs.

A court must enter findings of fact and conclusions of law supporting an award of attorney fees. *Mahler v. Szucs*, 135 Wn.2d 398, 435, 957 P.2d 632 (1998). In Mahler, the Supreme Court noted the need for an adequate record to review a fee award, the absence of which "will result in a remand of the award to the trial court to develop such a record." Id. Specifically, the reviewing court needs to know if the services of the attorneys "were reasonable or essential to the successful outcome. . . [,] if there were any duplicative or unnecessary services. . . [and] if the hourly rates were reasonable." Id. We need an adequate record to "exercise our supervisory role to ensure that discretion is exercised on articulable grounds." Id.

Here, the court below did not enter specific and detailed findings and conclusions in support of its reasonableness determinations. The award of attorney fees by the Appeal court is manifestly unreasonable or based on untenable grounds. *Clausen v. Icicle Seafoods, Inc.*, 174 Wn.2d 70, 81, 272 P.3d 827 (2012)

An evidentiary hearing will provide Ezenwa with opportunity to prove the false statements are frivolous and baseless, and confirm Ezenwa did not abuse and isolate Alan Carlin, and engage in the several other allegations noted on the police report. See (Appellant's Ex. 1-17); (CP at 20); (RP. at 15-line 15-25).

CONCLUSION

A genuine dispute as to material facts warrants an evidentiary hearing to make findings of fact in respect to the Vulnerable Adult Protection Order. Accordingly, Ezenwa respectfully ask that this court grant review, reverse the court of Appeals, and remand for a full evidentiary hearing on the issues.

Respectfully submitted, this 10th day of May 2021.

Mary Ezenwa, Petitioner Pro Se

CERTIFICATE OF SERVICE

I, hereby certify that on this day May 10, 2021, I filed the Amended Petition for Review with this court's electronic filing system which served the Petition among the parties:

Dianna Joy Evans
Law Office of Richard W. Perednia
28 W Indiana Ave Ste E
Spokane, WA, 99205-4751
(**Attorney For Respondent**)

Mary Ezenwa, Petitioner Pro Se

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Division III

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March 4, 2021

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CASE # 374963
Alan Carlin v. Mary C. Ezenwa
SPOKANE COUNTY SUPERIOR COURT No. 202003918

Counsel:

Enclosed please find a copy of the opinion filed by the Court today.

A party need not file a motion for reconsideration as a prerequisite to discretionary review by the Supreme Court. RAP 13.3(b); 13.4(a). If a motion for reconsideration is filed, it should state with particularity the points of law or fact which the moving party contends the court has overlooked or misapprehended, together with a brief argument on the points raised. RAP 12.4(c). Motions for reconsideration which merely reargue the case should not be filed.

Motions for reconsideration, if any, must be filed within twenty (20) days after the filing of the opinion. Please file the motion electronically through the court's e-filing portal or if in paper format, only the original need be filed. If no motion for reconsideration is filed, any petition for review to the Supreme Court must be filed in this court within thirty (30) days after the filing of this opinion (may be filed by electronic facsimile transmission). The motion for reconsideration and petition for review must be received (not mailed) on or before the dates they are due. RAP 18.5(c).

Sincerely,

Renee S Townsley

Renee S. Townsley
Clerk/Administrator

RST:sh
Enclosure
c: **E-mail** Honorable Julia M. Pelc

FILED
MARCH 4, 2021
In the Office of the Clerk of Court
WA State Court of Appeals Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

In re the Matter of the Vulnerable Adult Petition for:	)	No. 37496-3-III
ALAN CARLIN,	)	
PETER CARLIN,	)	
Respondent,	)	UNPUBLISHED OPINION
v.	)	
MARY C. EZENWA,	)	
Appellant.	)	

FEARING, J. — Mary Ezenwa appeals from the superior court's entry of an order restraining her from contact with eighty-two-year-old Alan Carlin. The trial court found Ezenwa to have isolated and abused Carlin in violation of the Vulnerable Adult Protection Act. Overwhelming evidence and the law support the trial court's ruling. We therefore affirm.

FACTS

Never advertise oneself as a millionaire.

Alan Carlin, born April 28, 1937, resided in Fairfax, Virginia. His wife died in 2018. Alan has three adult children: Nancy Bundics, Danielle Roselin, and Peter Carlin. Although Alan lives independently, he receives food, cleaning, and yard care assistance.

On the evening of December 24, 2019, Alan Carlin connected with Mary Ezenwa, born July 22, 1984, after she sent him a message through the dating website millionairematch.com, the leading millionaire dating service, serving only developed countries since 2001. Alan responded with information regarding his education, work, and family. E-mail messages show that Ezenwa and Alan's relationship developed instantaneously. In her second e-mail on December 24, Ezenwa expressed her love for Alan. She also conveyed a conviction that the couple would successfully bear a family. Alan replied with an offer for Ezenwa to visit him. Ezenwa responded with her own invitation for Alan to travel to Spokane and live with her at her apartment for eight months, after which they could consider marriage and children.

On Christmas day, 2019, Alan Carlin informed Mary Ezenwa that his physician advised him not to fly. Alan invited Ezenwa to travel to Fairfax because of his commodious home and convenient transportation facilities in adjacent Washington, D.C. He volunteered to purchase meals for them. Ezenwa accepted the invitation and, that same day, informed Alan of her intended arrival date of January 3. She, however, ultimately obtained a ticket for January 18.

Between Christmas and January 18, Alan Carlin and Mary Ezenwa focused e-mail communications on Alan's work and Ezenwa's desire to assist him for free on grant-funded projects. Ezenwa offered to split revenue accrued from the grants. She inquired of Alan as to his experience with obtaining grant funding. On December 26, Ezenwa sent two lists of potential projects for which the duo could seek grants.

On January 18, 2020, Mary Ezenwa, at her own expense, flew from Spokane to Virginia to meet Alan Carlin. She there resided at Alan's home. Alan's children knew of a female visiting Alan, but could not discover her name. On January 24, 2020, Alan and Mary Ezenwa joined in matrimony.

On January 24, Alan Carlin's son, Peter, filed a petition, in Fairfax County, Virginia Circuit Court, seeking appointment as guardian and conservator for Alan. Peter alleged in the petition that his father faced financial and physical risk as a result of his permitting a stranger to live with him. Peter highlighted the stranger's refusal to identify herself. In the petition, Peter outlined his father's finances:

> Alan Carlin's estate includes his residence . . . which has an assessed value of $783,830; and bank and brokerage accounts with a total value of approximately $1.5 million. Alan Carlin has income from his Federal government retirement annuity and investment income of approximately $150,000 annually.

Clerk's Papers (CP) at 32. Peter Carlin declared in his petition that his father suffered from cerebral amyloid angiopathy, a disorder that leads to damage in blood cells and subsequent progressive strokes.

With his petition for guardianship, Peter Carlin filed a letter from Argye E. Hillis, Alan Carlin's treating neurologist. Dr. Hillis confirmed that Alan suffered from cerebral amyloid angiopathy. Cognitive testing, in September 2019, showed that Alan suffered from "significant deficits in areas of the brain responsible for frontal lobe functioning." CP at 37. Hillis opined that the brain damage impacts Alan's decision making capacity and poses a risk for personal and financial exploitation by others.

On January 24, 2020, Peter Carlin served the petition for appointment of guardianship on Alan. Peter also served notice of a hearing for January 31, 2020, which hearing would determine the necessity of the appointment for a guardian. The notice informed Alan that appointment of a guardian may impact the spending of his money, the management of his property, and the rendering of medical decisions.

On January 27, the newlyweds, octogenarian Alan Carlin and tricenarian Mary Ezenwa, flew to Spokane. Alan purchased the airline tickets. Alan sent a message to his three children that informed them of his marriage and his plans to visit his new wife's home. An acquaintance of Ezenwa's, Sara Miller, retrieved the couple from the Spokane airport and drove them to her apartment in Cheney.

On January 29, Alan Carlin's daughter, Danielle Roselin, contacted Officer Rocky Hanni of the Cheney Police Department and expressed concern for her father. Roselin believed, based on tower pings from Alan's cellphone, her father to be present in Cheney. Officer Hanni contacted Fairfax County law enforcement authorities, who informed

Hanni that they did not consider Alan a missing person since he was an adult without any history of incompetency. Officer Hanni decided to perform a welfare check anyway.

On January 30, Officer Rocky Hanni traveled to 515 West 6th Street, Cheney, the apartment of Sara Miller. He encountered a nervous and shaking Mary Ezenwa. Ezenwa exited the residence to speak with Officer Hanni. Ezenwa informed Hanni that she rented a room with her husband, Alan. Ezenwa disclosed her last name. Officer Hanni asked Ezenwa how she spelled her last name. Ezenwa looked at a document in her hand before responding. Hanni asked Ezenwa to spell her middle name, and she again peered at the document. Hanni told Ezenwa that he failed to write down the middle name, and he asked her to repeat the spelling. Ezenwa viewed the document in her hand a third time. Finally, Hanni asked Ezenwa to pronounce her middle name. Ezenwa answered that she never learned how to pronounce the name.

Officer Rocky Hanni requested of Mary Ezenwa that she grant him the opportunity to speak with Alan Carlin. Ezenwa replied that Alan just finished showering and would need time to prepare to see others. Ezenwa reentered the apartment.

Five minutes later Officer Rocky Hanni knocked again on the apartment door. Mary Ezenwa appeared outside again and informed Hanni that Alan needed an additional thirty minutes to place hearing aids in his ears. A patient Officer Hanni returned to the address in thirty minutes and spoke with Alan. Alan informed Hanni that his children were attempting to declare him incompetent in order to prevent him from disinheriting

them. Alan protested that he purchased a plane ticket, boarded the plane, and journeyed to Spokane of his own free will.

After his conversation with Alan Carlin on January 30, Officer Rocky Hanni contacted Adult Protective Services to alert the agency to the situation of Alan. Then on January 31, Officer Rocky Hanni contacted Sara Miller, the principal occupant of 515 West 6th Street, Cheney. Miller told Officer Hanni that she met Mary Ezenwa two years earlier. Ezenwa, however, had never stayed with her before arriving in Spokane with Alan Carlin. Miller explained that Ezenwa informed her that she lived with Alan in Virginia for two years and that the two recently married. Miller first believed that the wedded pair planned on staying at her residence for two nights, but then Ezenwa asked to stay for multiple weeks. Miller told Ezenwa that she and Alan could stay until February 12, when another resident would move into their room. Miller also told Officer Hanni that Ezenwa told her that she and Alan came to the state of Washington for a psychiatric evaluation, but Miller did not know the reason for the evaluation.

During the afternoon of January 31, 2020, Cheney Police Department Officers Timothy Ewen, Chris English, and Zebulon Campbell visited the residence at 515 West 6th Street. Mary Ezenwa answered their knock on the door, and she invited the three officers inside. The officers served documents on Ezenwa and Alan Carlin. The documents included a temporary order of protection obtained by Peter Carlin in Spokane

County Superior Court, which order declared Alan a vulnerable person. The officers afforded Ezenwa the opportunity to collect her belongings and depart the residence.

While still at the residence, Officer Zebulon Campbell concluded that, because a court had determined Alan Carlin to be a vulnerable adult and because Alan could not articulate any plans to care for himself, Alan should be placed in protective custody. Law enforcement transported Alan involuntarily to Sacred Heart Medical Center in Spokane.

Daughter Danielle Roselin traveled to Spokane and visited Alan at the hospital. According to Roselin, on Alan's admission to the hospital, hospital staff found him to be dehydrated, anemic, and agitated. Alan also suffered from reduced kidney function, a urinary tract infection, and an elevated lactic acid level, the latter condition which can occur during a worsening infection and places the patient at risk of sepsis. Alan told his daughter that he had fallen during his stay in Cheney. The fall resulted from a low airbed on which he slept or from a room that lacked light and was sprinkled with trash that created obstacles to walking.

On February 4, 2020, Officer Rocky Hanni visited Alan Carlin in the hospital. Alan informed Officer Hanni that, before leaving Virginia, Mary Ezenwa requested that Alan go to the post office and change his mailing address to 210 E. Lincoln Road, Apartment 156, Spokane. When he returned from the post office, Ezenwa informed him that his new address should instead be Apartment 157. This change of address concerned Alan because he did not know who resided there. Alan further explained to Hanni that,

on arriving in Cheney, he opened a bank account, in which he deposited $6,000.01. He believed Ezenwa possessed paperwork for the account. Alan did not know whether Ezenwa could withdraw money from the account. Alan informed Officer Hanni that Ezenwa claimed to be a patient advocate, who owned two tech firms. Ezenwa boasted of a net worth $5 million.

PROCEDURE

As previously written, on January 31, 2020, Peter Carlin filed a petition for a vulnerable adult protection order on behalf of his father, Alan. Peter alleged in his petition that he was an interested person concerned about the welfare of his father. Peter declared a good faith belief that his father needed protection. Peter, as he did in the petition in Virginia, explained that Carlin suffers from cerebral amyloid angiopathy. Peter alleged that Alan's illness interfered in his ability to render rational decisions and placed him at risk for abuse and personal and financial exploitation by others. Peter added that Alan had been subject to online scams in the recent past as a result of his profile on millionairematch.com. Alan's treating neurologist, Argye Hillis, and his primary care physician, Ellen Jenkins, submitted declarations in support of the petition. The two physicians averred that Alan recently was the target of financial scams.

In an exhibit to the petition, Peter Carlin outlined recent events in his father's life. According to the outline, on September 11, 2019, Alan Carlin executed a limited durable power of attorney naming his daughter Nancy Bundics as attorney-in-fact. The document

authorized Nancy to assist in the handling of her father's finances. Alan executed the power of attorney shortly after he lost $30,000 to scammers. He had earlier sent $110,000 to other scammers. These transactions depleted his checking and primary savings accounts. At the time he signed the durable power of attorney, he used funds in his retirement account for everyday expenses.

On January 31, Peter Carlin obtained a temporary order for protection that declared his father to be a vulnerable adult. The notice and temporary protection order gave notice of a hearing on February 13, 2020.

On February 13, 2020, the Spokane County Superior Court commissioner entertained Peter Carlin's request for a final order of protection. Alan Carlin did not attend the hearing, but submitted a declaration in support of the petition. In the declaration, he agreed to the restrictions against Mary Ezenwa planted in the preliminary protection order and asked the court to make the restrictions permanent.

On February 13, the court commissioner continued the hearing to February 27, 2020. The commissioner extended the temporary protection order in the interim. Thereafter Alan Carlin filed another declaration and Mary Ezenwa filed two declarations.

Alan Carlin's second declaration outlined his experience with Mary Ezenwa. Alan asserted that, before he left Virginia, a social services specialist from Adult Protective Services of Fairfax County visited his home in Virginia at the request of one of his children. Since no one was then present at the abode, the social worker left his card.

Ezenwa informed Alan that Virginia APS was a regulatory agency that would severely restrict his freedom. She warned Alan that, if the agency found him, it would take him into custody. According to Alan, Ezenwa told him that, if married, Virginia authorities could not assume custody of him. She also suggested that the couple travel to Washington State where, according to Ezenwa, a higher threshold existed for granting a guardianship. Ezenwa informed Alan that, once married, she could become his guardian, which would prevent Peter Carlin from obtaining the position. Ezenwa also told Alan that she possessed a $5 million net worth. Alan later learned that she lacked money for an attorney for the current proceeding and that she sought money from his friends to obtain the attorney's $3,500 retainer.

In Mary Ezenwa's first declaration, she denied telling Alan that, if he married her, Virginia's adult protective services could not restrict his behavior. She could not recall telling Alan that she wanted to be his guardian, however, she possibly told him that the courts appoint wives as guardians for their husbands. Finally, Ezenwa denied disclosing a net worth of $5 million.

In her second declaration, Mary Ezenwa acknowledged that she found Alan Carlin on a website for women seeking wealthy men. She explained that she was asexual and encountered difficulty in gaining a male companion who did not expect sexual relations. She did not explain why wealthy men were less likely to desire sexual contact than poor men. In the declaration, Ezenwa asserted that she did not pursue Alan, rather he pursued

her as shown by email. She maintained that the two shared interests in common and she never sought to control his money. She declared that she had subpoenaed Spokane physician Debra Brown, who evaluated Alan and found him competent.

On February 27, 2020, the superior court commissioner conducted a hearing on the petition for a vulnerable adult protection order. During the hearing, Peter Carlin's counsel notified the court commissioner that counsel subpoenaed three witnesses, including Mary Ezenwa, and these witnesses were present in the courtroom if the court desired testimony beyond the declarations. Mary Ezenwa's counsel contended that he received late notice of the witnesses, and he argued that the witnesses could have all submitted affidavits. The court commissioner commented that courts generally resolved proceedings involving vulnerable adults by affidavits, and, after counsel's presentations, she would decide if she required additional information. Ezenwa presented no lay witnesses, expert testimony, or third-party affidavits to support her position. She did not ask for live testimony. After argument by counsel, the court commissioner decided the petition based on the declarations.

In an oral ruling, the court commissioner observed that Alan Carlin supported the petition. She noted that two medical professionals submitted declarations in support of the petition. Dr. Argye Hillis opined that Alan could be at risk for personal and financial exploitation due to damage of his frontal lobe. Alan's daughter Danielle Roselin, a

psychologist, averred that Alan lacked insight into how his behavior led to the present situation. Roselin described Alan's poor condition when transported to the hospital.

The court commissioner rejected Mary Ezenwa's contention that she had not exploited Alan Carlin. The commissioner commented on the telling communications between Alan and Ezenwa.

> [S]he [Mary Ezenwa] states she loves him. The next day they talk about her traveling to DC to stay with him in his home that has four bedrooms close to DC. He will buy her food. She provides him of a very detailed list of what she needs at Costco for her nutrition supplements. This court finds that to be laying that foundation as far as how far will Mr. Carlin go? She also talks about wanting to be his silent partner to write the books, that she can do a lot of things for him. "One, build a fancy website for you. One book per month. One newsletter weekly. Two blog posts weekly. Marketing by social media platforms. Weekly webmaster role for the email, et cetera. Love Mary." And again, this is the first day they're talking.

Report of Proceedings (RP) at 27.

During the court commissioner's oral ruing, she observed that, less than 24 hours after meeting Alan Carlin on the Internet, Ezenwa broached the possibility of children, although she later professed to be asexual. The court commissioner highlighted that Alan informed Ezenwa that he could not travel, yet the pair flew to Spokane. Alan's family located the couple only as the result of pings on cell phone towers. The commissioner, after referencing e-mail and texts between Alan and Ezenwa, remarked:

> This is isolation. This is removing him from the home of 50 years. Removing him from family. This is exploitation, emotionally, financially, even after the service of this order for protection she's asked for money.

> Washington State Law clearly says if you're a married couple that the wife/husband will have 50 percent.

RP at 29-30.

The court commissioner found Alan Carlin to be a vulnerable adult. The court also found Mary Ezenwa to pose a threat to the physical safety of Alan. The commissioner granted the vulnerable adult protection order.

LAW AND ANALYSIS

On appeal, Mary Ezenwa assigns six errors to the trial court proceedings. First, law enforcement conducted an unlawful search and seizure of her temporary Cheney residence in violation of the Fourth Amendment of the United States. Second, petitioner Peter Carlin failed to serve the petition for a vulnerable adult protection proceeding and notice of hearing on Alan Carlin. Third, the superior court denied Ezenwa a fair hearing and due process. Fourth, Peter Carlin was not an "interested person" within the meaning of the vulnerable adult protection act. Fifth, insufficient evidence supported the superior court's finding that Alan Carlin was a vulnerable adult. Sixth, insufficient evidence supported the superior court's finding that Alan Carlin was the victim of isolation, emotional abuse, and personal and financial exploitation under RCW 74.34. We address the assignments of error in such order. Ezenwa's numerous assignments of error and her contention that substantial evidence did not support the court commissioner's ruling prolongs our opinion.

Law Enforcement Entry

Mary Ezenwa contends that law enforcement entered and remained in her residence in violation of the United States Constitution's Fourth Amendment. We assume Ezenwa references the entry on January 31, 2020, by Cheney Police Officers Timothy Ewen, Chris English, and Zebulon E. Campbell. The facts show that Officer Rocky Hanni did not enter the home on January 30.

Mary Ezenwa does not inform the court what relief she deems she should receive as a result of an alleged unlawful entry. We question, but do not decide, whether the court may exclude, during a vulnerable adult protection proceeding, evidence based on an unlawful entry into a home. We also assume, but do not decide, that the officers could enter the home under their community caretaking function. *Cady v. Dombrowski*, 413 U.S. 433, 441, 93 S. Ct. 2523, 37 L. Ed. 2d 706 (1973); *State v. O'Neill*, 148 Wn.2d 564, 574, 62 P.3d 489 (2003); *State v. Mennegar*, 114 Wn.2d 304, 309, 787 P.2d 1347 (1990).

We reject Mary Ezenwa's Fourth Amendment to the United States Constitution assignment of error based on consent. The evidence shows that Ezenwa invited the three officers inside her premises on January 31. She never revoked the consent, and the officers never exceeded any consent. The officers did not engage in any search or seizure of property. One exception to the Fourth Amendment warrant requirement is consent. *State v. Walker*, 136 Wn.2d 678, 682, 965 P.2d 1079 (1998).

Service of Process

Mary Ezenwa assigns error to Peter Carlin's alleged failure to serve the petition for vulnerable adult protection order and the notice of hearing on his father, Alan Carlin. In her brief, she cites RCW 74.34.120(3) for the rule that the pleadings must be served on the vulnerable adult. She also cites RCW 74.34.115 for the rule that the petitioner must furnish a written notice to the vulnerable adult using the standard notice form described in the statute. But then Ezenwa provides no argument that Peter Carlin failed to follow either statute. The facts show that Alan Carlin received proper notice. During the hearing before the court commissioner, Ezenwa never argued to the contrary.

Fair Hearing and Due Process

Mary Ezenwa contends the trial court denied her due process by refusing Ezenwa the opportunity to call witnesses and by allowing Peter Carlin to introduce as evidence old medical records. We deny the factual underpinning to Ezenwa's arguments and so reject her assignment of error.

The due process clause of the Fourteenth Amendment provides that no state shall "deprive any person of life, liberty, or property, without due process of law." U.S. CONST. amend. XIV, § 1. The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *Matthew v. Eldridge*, 427 U.S. 319, 333, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976).

Under the vulnerable adult protection act, Chapter 74.34 RCW, due process protections include, among other safeguards, the requirement that one file a petition along with an affidavit setting forth the facts and circumstances supporting it, a hearing before a judicial officer, notice to the respondent at least six days before the hearing, an opportunity to appeal, and a five-year limitation on the protection order. RCW 74.34.110(1)-(3), .120(2)(3), .130(7). In addition, pursuant to RCW 74.34.135(3):

> At the hearing scheduled by the court, the court shall give the vulnerable adult, the respondent, the petitioner, and in the court's discretion other interested persons, the opportunity to testify and submit relevant evidence.

Mary Ezenwa correctly asserts that no witnesses testified at the February 27 hearing. Nevertheless, Ezenwa and Peter Carlin agreed that the court commissioner could decide the petition based on the declarations filed. In her declaration, Mary Ezenwa averred that she attempted to subpoena Dr. Debra Brown to testify. Nevertheless, in her declaration and during the hearing, she never explained her inability to subpoena the physician. She did not ask for a continuance in order to serve the subpoena. The court commissioner never declined a request by Mary Ezenwa to call live witnesses. Assuming a decision based solely on declarations violated due process principles, her direction to the court commissioner to base her decision on the declarations constitutes invited error.

The invited error doctrine prohibits appellate review of an error that the party creates before the trial court. *State v. Momah*, 167 Wn.2d 140, 153, 217 P.3d 321 (2009). The doctrine prevents parties from misleading trial courts and receiving a windfall by doing so. *State v. Momah*, 167 Wn.2d at 153.

Mary Ezenwa next contends that more recent medical reports from two medical professionals in Spokane show that Alan Carlin is competent and not in danger of financial exploitation. Peter Carlin replies, in part, that Ezenwa references medical reports not presented to the trial court and that this court does not generally review evidence presented for the first time on appeal.

RAP 9.11(a) provides:

> The appellate court may direct that additional evidence on the merits of the case be taken before the decision of a case on review if: (1) additional proof of facts is needed to fairly resolve the issues on review, (2) the additional evidence would probably change the decision being reviewed, (3) it is equitable to excuse a party's failure to present the evidence to the trial court, (4) the remedy available to a party through postjudgment motions in the trial court is inadequate or unnecessarily expensive, (5) the appellate court remedy of granting a new trial is inadequate or unnecessarily expensive, and (6) it would be inequitable to decide the case solely on the evidence already taken in the trial court.

All six factors must be met in order to permit supplementation of the record. *Schreiner v. City of Spokane*, 74 Wn. App. 617, 620-21, 874 P.2d 883 (1994). Mary Ezenwa does not ask this court to entertain additional evidence under RAP 9.11. Nor does she provide any analysis as to the application of the rule's factors. Therefore, we deny her contention.

This court will not entertain an assignment of error not supported by argument and citation to legal authority. *BC Tire Corp. v. GTE Directories Corp.*, 46 Wn. App. 351, 355, 730 P.2d 726 (1986).

Mary Ezenwa contends that the declarations of neurologist Argye E. Hillis and primary care physician Ellen Jenkins were false, were known by Peter to be false, and contained outdated opinions. Nevertheless, the trial court, not this reviewing court, determines what evidence is false. An appeals court does not reweigh the evidence or determine credibility. *Young v. Toyota Motor Sales U.S.A.*, 9 Wn. App. 2d 26, 39, 442 P.3d 5 (2019), *aff'd*, 196 Wn.2d 310, 472 P.3d 990 (2020). Ezenwa provides no analysis as to when the medical opinions purportedly become outdated. Because of Alan Carlin's age, the validity of medical opinions concerning his inability to care for his wellbeing and his susceptibility to manipulation would increase as time passed after the signing of the declarations by the two physicians.

Interested Person

Mary Ezenwa contends that Peter Carlin is not an interested person under the vulnerable adult protection act. We disagree.

The vulnerable adult protection act defines an "interested person" as one:

> who demonstrates to the court's satisfaction that the person is interested in the welfare of the vulnerable adult, that the person has a good faith belief that the court's intervention is necessary, and that the vulnerable adult is unable, due to incapacity, undue influence, or duress at the time the petition is filed to protect his own interests.

RCW 74.34.020(12).

In his petition for a vulnerable adult protection order, Peter Carlin affirmed that he worried about the welfare of his father. Peter also declared that he had a good faith belief that his father needed protection. According to Peter, his father suffered from from cerebral amyloid angiopathy. The impairment affected his ability to manage his own personal affairs, finances, and health needs. Alan Carlin, during a one year window of time, had wired $110,000 to random individuals. Few, if any persons, held more interest in the welfare of Alan, then Alan's son, Peter.

Vulnerable Adult

Mary Ezenwa contends that Peter Carlin's petition did not sufficiently allege the status of Alan Carlin as a vulnerable adult and that the declarations in support of the petition did not supply sufficient evidence for the court commissioner's finding of Alan being a vulnerable adult. As to her first contention, Ezenwa did not argue, before the court commissioner, of an insufficiency of the petition. Reviewing courts normally will not review an issue for the first time on appeal. RAP 2.5(a). Ezenwa also does not provide any argument that this court should review the insufficiency of a petition when the court commissioner found, after a hearing, the facts to support the petition. Thus, we move to the question of whether substantial evidence supports the court commissioner's finding of Alan Carlin being a vulnerable adult.

The legislature enacted the Abuse of Vulnerable Adults Act in order to protect adults who "may be subjected to abuse, neglect, financial exploitation, or abandonment." *See* RCW 74.34.005(1). In its legislative findings, the legislature declared that a vulnerable adult may be subject to such abuse or exploitation "by a family member, care provider, or other person who has a relationship with the vulnerable adult." RCW 74.34.005(1). The legislature recognized that "[a] vulnerable adult may have health problems that place him or her in a dependent position." RCW 74.34.005(4).

To protect vulnerable adults, the legislature permits an interested person to submit a petition for an order for protection of a vulnerable adult. RCW 74.34.110(1) impliedly defines a "vulnerable adult" as one facing abandonment, abuse, financial exploitation, neglect, of the threat of any of the four phenomenon. The statute reads:

> A vulnerable adult, or interested person on behalf of the vulnerable adult, may seek relief from abandonment, abuse, financial exploitation, or neglect, or the threat thereof, by filing a petition for an order for protection in superior court.

RCW 74.34.110(1). Elsewhere the vulnerable adult protection act defines a "vulnerable adult" as:

> Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself.

RCW 74.34.020(22)(a).

Overwhelming evidence supported the trial court's finding that Alan Carlin had the functional, mental, or physical inability to care for himself. Alan was 82 years old.

According to Dr. Ellen Jenkins, Alan's primary care physician, Alan suffers from cerebral amyloid angiopathy. The disease causes deficits in the brain's frontal lobe and leads to impaired functioning. Jenkins opined that Alan requires supervision and remained at risk for financial scams. The record showed Alan already lost tens of thousands of dollars to scammers. Jenkins declared support for the vulnerable adult petition.

Neurologist Argye Hillis also declared that Alan suffers from cerebral amyloid angiopathy. She opined that the condition causes miniature strokes, resulting from damage to the blood vessels. She stated that the resulting impairment impacts his decision making capacity, judgment, reasoning and insight. His impairment placed him at risk for personal and financial exploitation and abuse of others.

The declaration of Danielle Roselin described Alan Carlin's condition at the time he arrived at the Spokane hospital. As a result of the care, or lack thereof, from Mary Ezenwa, Alan Carlin suffered from dehydration, anemia, and at risk for sepsis. Alan had fallen while with Mary Ezenwa. He slept on a low airbed in a room cluttered with trash. According to psychologist Roselin, her father lacked insight into how his behavior had placed him in a dangerous situation.

This court reviews the superior court's decision to enter a permanent order of protection for an abuse of discretion. *Hecker v. Cortinas*, 110 Wn. App. 865, 869, 43 P.3d 50 (2002). The superior court abuses its discretion in entering the order if it is

"manifestly unreasonable or exercised on untenable grounds or for untenable reasons." *In re Matter of Knight*, 178 Wn. App. 929, 936, 317 P.3d 1068 (2014). This court reviews the superior court's findings to determine if they are supported by substantial evidence. *In re Matter of Knight*, 178 Wn. App. at 936. This court does not reevaluate "the persuasiveness of the evidence, witness credibility, and conflicting testimony," leaving such determinations solely to the trier of fact. *In re Matter of Knight*, 178 Wn. App. at 936.

Victimhood

Mary Ezenwa next contends that the superior court commissioner failed to make specific findings to support her determination that Ezenwa committed actions amounting to financial exploitation. According to Ezenwa, the court commissioner needed to and failed to enter a specific finding that Ezenwa acted with deception, intimidation, or unlawful influence to gain control over Alan Carlin's resources. She also argues that the evidence did not support any conclusion that she harmed Alan. Ezenwa further contends that the court commissioner failed to make findings that Ezenwa's actions amounted to neglect, but we ignore this contention because of alternate grounds on which to affirm the superior court.

RCW 74.34.110(1) declares:

> A vulnerable adult, or interested person on behalf of the vulnerable adult, may seek relief from *abandonment, abuse, financial exploitation, or*

> *neglect, or the threat thereof*, by filing a petition for an order for protection in superior court.

(Emphasis added.) We note that the petitioner need not prove financial exploitation, abuse, and neglect, only one of the conditions. Any of the conduct by the respondent suffices for entry of a protection order. We also observe that the petitioner need not show actual abuse or financial exploitation, as long as the petitioner shows a threat of either.

RCW 74.34.020(2) defines some of the operative terms found in RCW 74.34.110(1):

> (1) "Abandonment" means action or inaction by a person or entity with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.
>
> (2) "Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult. In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and personal exploitation of a vulnerable adult, and improper use of restraint against a vulnerable adult which have the following meanings:
>
> . . . .
>
> (c) "Mental abuse" means a willful verbal or nonverbal action that threatens, humiliates, harasses, coerces, intimidates, *isolates, unreasonably confines*, or punishes a vulnerable adult. Mental abuse may include ridiculing, yelling, or swearing.
>
> (d) "Personal exploitation" means an act of forcing, compelling, or *exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior*, or causing the vulnerable adult to perform services for the benefit of another.
>
> . . . .
>
> (7) "Financial exploitation" means the illegal or *improper use, control over, or withholding of the property, income, resources*, or trust

> funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. "Financial exploitation" includes, but is not limited to:
>
> (a) The use of deception, intimidation, or *undue influence by a person or entity in a position of trust and confidence with a vulnerable adult to obtain or use the property, income, resources,* or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult;
>
> . . . .
>
> (c) *Obtaining or using a vulnerable adult's property, income, resources,* or trust funds without lawful authority, by a person or entity who knows or clearly should know that the vulnerable adult lacks the capacity to consent to the release or use of his or her property, income, resources, or trust funds.
>
> . . . .
>
> (13)(a) "*Isolate*" or "isolation" *means to restrict a vulnerable adult's ability to communicate, visit, interact, or otherwise associate with persons of his or her choosing.* Isolation may be evidenced by acts including but not limited to:
>
> (i) Acts that prevent a vulnerable adult from sending, making, or receiving his or her personal mail, electronic communications, or telephone calls; or
>
> (ii) Acts that prevent or obstruct the vulnerable adult from meeting with others, such as telling a prospective visitor or caller that a vulnerable adult is not present, or does not wish contact, where the statement is contrary to the express wishes of the vulnerable adult.

RCW 74.34.115 (emphasis added).

Unfortunately, the law demands that the trial court sign a standard form order prepared by the administrative office of the courts, which form leaves little, if any, room for the trial court to enter detailed findings of fact that support entry of a protection order. RCW 74.34.115. But we can determine the court's specific findings by reviewing the oral ruling.

At the conclusion of the February 27, 2020 hearing, the court, in oral comments, found that Mary Ezenwa began manipulating Alan Carlin on the first day of their e-mail conversation. Ezenwa claimed she loved Alan, even though she had never met him. Although Ezenwa claimed, during the vulnerable adult proceeding, that she was asexual, Ezenwa stated they could raise a family. Alan was 82 years old, and Ezenwa was 35 years of age. Ezenwa wrote of a lifetime of love, when Alan only had a few years of life remaining.

The trial court continued during her oral findings. When guardianship proceedings began in Virginia, Mary Ezenwa flew Alan Carlin from his home of fifty years to Spokane, even though he earlier stated his physician told him not to fly. She isolated Alan from Virginia authorities and from Alan's children. Alan would not communicate with his children, and the children only serendipitously discovered his location 2,500 miles away by cellphone pings. Law enforcement officers found Alan in Cheney, where he suffered from dehydration and lived amongst piles of trash. In the meantime, Alan gave Ezenwa access to his bank records. At the conclusion of her remarks, the court commissioner specifically found isolation, emotional exploitation, and financial exploitation. The evidence before the court commissioner overwhelmingly supported her findings.

The evidence presented by Peter Carlin illustrates the need for the Vulnerable Adult Protection Act, and entry of the restraining order against Mary Ezenwa fulfilled the

policy behind the act. Decades ago in an era without cellphones, Alan Carlin's children may have never located him, and Alan could have been subjected to months of financial and emotional exploitation from Ezenwa.

Attorney Fees and Costs

Both parties request an award of reasonable attorney fees and costs on appeal. Mary Ezenwa requests fees and costs under RCW 74.34.130(7). She also seeks an award of fees in the sum of $20,000 under RCW 4.84.080(2).

RCW 74.34.130(7) declares:

> The court may order relief as it deems necessary for the protection of the vulnerable adult, including, but not limited to the following:
> . . . .
> (7) Requiring the respondent to pay a filing fee and court costs, including service fees, and to reimburse the petitioner for costs incurred in bringing the action, including a reasonable attorney's fee.

Contrary to Mary Ezenwa's suggestion the statute does not authorize the court to award reasonable attorney fees to the respondent.

RCW 4.84.080(2) outlines the schedule of attorney's fees stating:

> When allowed to either party, costs to be called the attorney fee, shall be as follows:
> . . . .
> (2) In all actions where judgment is rendered in the [S]upreme [C]ourt or the court of appeals, after argument, two hundred dollars.

We assume that Mary Ezenwa misreads RCW 4.84.080 as $20,000 rather than $200. In any event, Ezenwa does not prevail on appeal and so is not entitled to fees under the

statute.

Peter Carlin requests an award of attorney fees under RAP 18.9(a) which permits this court, on the motion of a party, to require payment of compensatory damages to another party for filing of a frivolous appeal. These compensatory damages typically entail payment of attorney fees. *Boyles v. Department of Retirement* Systems, 105 Wn.2d 499, 506, 716 P.2d 869 (1986). "An appeal is frivolous if there are no debatable issues upon which reasonable minds might differ and it is so totally devoid of merit that there was no reasonable possibility of reversal." *Eugster v. City of Spokane*, 139 Wn. App. 21, 34, 156 P.3d 912 (2007). "An appeal is not frivolous, however, if the appellant can cite a case supporting its position." *Schreiner v. City of Spokane*, 74 Wn. App. 617, 625 (1994). Attorneys and pro se litigants are held to the same standard. *In re Marriage of Olson*, 69 Wn. App. 621, 626, 850 P.2d 527 (1993).

We question whether Peter Carlin must establish a frivolous appeal in order to gain an award of reasonable attorney fees and costs. RCW 74.34.130(7) authorizes the court, at its discretion, to impose reasonable attorney fees and costs on the respondent in favor of the petitioner. Nevertheless, we deem Mary Ezenwa's appeal frivolous and award Peter reasonable attorney fees and costs.

Mary Ezenwa premised her appeal largely on her contention that declarations within the record are false. Nevertheless, this court does not reweigh the evidence. The evidence overwhelmingly supported the trial court's findings and ruling. Ezenwa failed

to cite legal authorities to support her appeal.

CONCLUSIONS

We affirm the order of protection entered against Mary Ezenwa. We award Peter Carlin reasonable attorney fees and costs incurred on appeal.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Fearing, J.

WE CONCUR:

Siddoway, A.C.J.

Staab, J.

MARY CARLIN - FILING PRO SE

May 10, 2021 - 4:49 PM

Filing Petition for Review

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Appellate Court Case Number:	Case Initiation
Appellate Court Case Title:	Alan Carlin v. Mary C. Ezenwa (374963)

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Appendix 1 for Amended Petition for Review

Sender Name: Mary Carlin - Email: grow2better@gmail.com
Address:
711 Commerce Way #13
Libby, MT, 59923
Phone: (917) 993-1057

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