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Supreme Court No. 99707-1

Court of Appeals No. 37496-3

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re the Matter of:

MARY CHINENYE EZENWA

Petitioner,

v.

PETER CARLIN

Respondent.

REPLY TO ANSWER TO PETITIONER'S MOTION TO AMEND

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REPLY TO ANSWER TO PETITIONER’S MOTION TO AMEND

ARGUMENT

This case illustrates why people of color fear trusting the police to treat them equally. The power that four Police Officers have to manipulate the facts through exercise of discretion in the delivery of services are significant. (CP at 12).

The Court of Appeals concluded that substantial evidence supports the trial court’s finding with respect to Alan Carlin being a vulnerable adult, and also affirmed trial court's finding by preponderance of evidence that Alan was subjected to Ms. Ezenwa's abuse, neglect, and financial exploitation. Court of Appeals, Division III Opinion 22-23 and RP 26-33.

Notably, the record indicates that there is some omission of evidence, as evidenced by Respondent’s omission of the most recent medical records from Alan Carlin's Primary Care Providers: Dr. Debra Brown from Brown and Associates and Alan Carlin's Physician from Sacred Heart Hospital. (CP 10, 12, 19, 21).

Specifically, Petitioner Mary C. Ezenwa contends the Court of Appeals opinion contains some errors of law when viewed in the light of Respondent's omission of Alan's medical records from his current Primary Care Providers (Dr. Debra Brown from Brown and Associates and Alan's

Physician at Sacred Heart Hospital). Here, Respondent failed to prove that Alan Carlin was a vulnerable adult as the record indicates there is conflicting evidence not addressed by the trial court. (CP 10, 12, 19, 21).

Petitioner contends that there needs to be a review of the whole record to examine whether Respondent Peter Carlin provided sufficient evidence to support a VAPO because substantial evidence does not support that Alan Carlin met the statutory definition of a vulnerable adult when viewed in the light of Respondent's omission of evidence and statement from Gary Stenzel about subpoenaing Dr. Debra Brown which indicates there is conflicting evidence not addressed by the trial court. "Evidence is substantial if it is enough to convince a fair-minded person of the truth of the asserted fact." *Mowat Constr. Co. v. Dep't of Labor & Indus.*, 148 Wn. App. 920, 925, 201 P.3d 407 (2009).

In doing so, this Court should ask whether, after viewing the statute in the light of Legislature's clear mandate for a vulnerable adult in chapter 74.34 RCW and Respondent's omission of evidence, any rational trier of fact could have found the essential elements of the VAPO highly probable. Here, a review of the statutory interpretation is de novo. *State v. Engel*, 166 Wn.2d 572, 576, 210 P.3d 1007 (2009).

Whereas, the Court of Appeals disregarded Respondent's omission of evidence and statement from Gary Stenzel about subpoenaing Dr. Debra

Brown which indicates there is conflicting evidence not addressed by the trial court, the Court's findings and conclusions are contrary to Washington law (RCW 74.34). Here, the Court of Appeals affirmed the trial court's findings and conclusions, and it did so on the basis of the erroneous presumption that Appellant had the burden of proof.

Despite the ambiguities in this case, the Court of Appeals opinion contends that substantial evidence supports the trial court's finding that Alan Carlin is a vulnerable adult, and therefore a preponderance of evidence is all that is needed to affirm Ms. Ezenwa committed acts of abuse, neglect, and financial abuse. Although Respondent must prove vulnerable adult abuse under chapter 74.34 RCW by a preponderance of the evidence, the whole record should be considered. *Kraft v. Dep't of Soc. & Health Servs.*, 145 Wn. App. 708, 716, 187 P.3d 798 (2008). This standard means it is more likely than not the alleged conduct occurred. WAC 388-02-0485.

Here, Petitioner further holds that a preponderance of evidence does not support the conclusion that her alleged conduct otherwise met the statutory definition of abuse, neglect, and financial exploitation.

Whereas, the Court of Appeals opinion contends that a preponderance of evidence supports trial court's finding that Appellant perpetuated abuse. RCW 74.34.020(2) defines "abuse" as "the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a

vulnerable adult” and includes mental abuse. “Willful” is defined as “the non-accidental action or inaction by an alleged perpetrator that he/she knew or reasonably should have known could cause harm, injury or a negative outcome.” WAC 388-71-0105. “Mental abuse” encompasses “harassment . . . and verbal assault that includes ridiculing, intimidating, yelling, or swearing.” RCW 74.34.020(2)(c).

Here, the Court of Appeals contends that based on a preponderance of evidence, the trial court’s findings and conclusions are correct because Alan was not only subjected to Appellant’s abuse, but Appellant also neglected and financially exploited Mr. Carlin.

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. Here, the Court of Appeals justified the trial court's order of a VAPO against Ms. Ezenwa based on a preponderance of evidence, but Mr. Carlin does not meet the statutory definition of a vulnerable adult pursuant to RCW 74.34, and so this argument fails.

“Neglect” is (a) a pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain

physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or (b) an act or omission that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100. Here, the Court of Appeals justified trial Court's order for a VAPO to protect Mr. Carlin against Ms. Ezenwa, but Mr. Carlin does not qualify as a vulnerable adult.

Because Alan Carlin does not qualify as a vulnerable adult, Mr. Carlin has not been abused, financially exploited, or neglected by the Appellant or threatened with such conduct by the Appellant.

**MOTION TO AMEND PETITION FOR REVIEW SHOULD
BE GRANTED**

The Motion for Leave to file an amended petition for review and amended petition for review attached with the motion filed on June 17, 2021 should be granted (without consideration for all other Petitioner's past filings with this Court) as this Court considers issues of great concern, and importance to the public. RAP 13.4(b)(4).

The Respondent's omission of evidence impact on this case is significant because the withheld conflicting evidence is in contrast with the statutory requirement for a vulnerable adult in chapter 74.34 RCW. If the statute's

meaning is plain on its face, this give effect to that plain meaning. *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002).

This court reviews a challenge to the sufficiency of evidence de novo. *State v. Rich*, 184 Wn.2d 897, 903, 365 P.3d 746 (2016). This issue requires the court to construe the statute and then apply the facts and the construction of the statute, and thus should be reviewed de novo. *State v. Pratt*, 196 Wn.2d 849, 852, 479 P.3d 680 (2021).

The Court of Appeals opinion is at odds with the following Supreme Court of Washington Case; *Scott v. Trans-Sys., Inc.*, 148 Wn.2d 701, 707–08, 64 P.3d 1 (2003). This court may also review the appeal courts' findings for substantial evidence. *Id* 707.

Additionally, this Court reviews questions of law de novo. *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 880, 73 P.3d 369 (2003).

In the context of the substantial evidence standard of this statute (chapter 74.34 RCW), the Petitioner who files a VAPO has the burden of proof by substantial evidence that Alan met the statutory requirement for a vulnerable adult.

Ordinarily, the Abuse of Vulnerable Adults Act (AVA), chapter 74.34 RCW was enacted to protect vulnerable adults from abuse, financial exploitation, and neglect. RCW 74.34.110. “‘Abuse’ means the willful

action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult.” RCW 74.34.020(2). Abuse includes “physical abuse,” which is defined as “the willful action of inflicting bodily injury or physical mistreatment.” RCW 74.34.020(2)(b).

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.

"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;

(b) The breach of a fiduciary duty, including, but not limited to, the misuse of a power of attorney, trust, or a guardianship appointment, that results in the unauthorized appropriation, sale, or transfer of the property, income, resources, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult; or

(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.

The term “advantage” is not defined in the Act. Undefined words in a statute are accorded their ordinary meanings. *State v. Standifer*, 110 Wn.2d

90,92,750 P.2d 258 (1988) (“Words are given the meaning provided by the statute or, in the absence of specific definition, their ordinary meaning.”). The dictionary defines “advantage” as “a more favorable or improved position or condition [;] . . . benefit, profit, or gain of any kind.” See Webster’s Third New International Dictionary 30 (2002).

In that context, a person can only engage in the unauthorized use of a vulnerable adult’s property by receiving an advantage that benefits or facilitates the goals of the person using the property, whether or not that goal is wise or healthy.

The opinion of the Court of Appeals interpretation leads to absurd results. Specifically, under the support of trial court's finding that Alan Carlin is a vulnerable adult. See (Appeal Opinion at 11). Here, this interpretation is inconsistent with the purpose of the statute.

Further, going by the interpretation of the Court of Appeals opinion, the opinion of the Court is absurd, as its claims Ms. Ezenwa isolated Alan from Virginia authorities and from Alan’s children simply because Alan visited his wife Ms. Ezenwa in her place of residence. (Appeal Opinion at 25).

Here, review is paramount because, the actions of Ms Ezenwa did not constitute financial exploitation. By the ordinary meaning, financial exploitation is the improper use of an adult’s funds, property, or resources by another individual, including, but not limited to, fraud, false pretenses,

embezzlement, conspiracy, forgery, falsifying records, coerced property transfers, or denial of access to assets. RCW 74.34.020.

The opinion of the Court of Appeals is in direct conflict with RCW 74.34.020, (a), (b), and (c); the above elements of financial exploitation are subject to proof and must be proved by a preponderance of the evidence. The Court misdirected RCW 74.34.020, failed to direct their opinion to the fact that Respondent must prove Appellant is using fraud, coercion, or undue influence to get Alan Carlin to hand the property over to her. Proving any of the above by a preponderance of the evidence means that the evidence should show that it was “more likely than not” that the financial exploitation really or actually occurred. Vulnerable Adult Protection Act RCW 74.34.020.

There is no preponderance of evidence that shows Ms. Ezenwa injured Mr. Carlin or confined him. No Washington case is directly on point, here, and no improper action is shown. Ms. Ezenwa’s actions were protective, not injurious or ill-intended, thus they were warranted and not abusive. Based on the plain language of RCW 74.34.020, Ms. Ezenwa did not abuse, neglect, or financially exploit Alan Carlin.

Here, the opinion of the Court of Appeals failed to show a preponderance of evidence supporting trial court's findings and conclusions. Moreover, it should be noted that the evidence was insufficient for the omission of Alan's

medical records from his current Primary Care Providers (Dr. Debra Brown from Brown and Associates and Alan's Physician at Sacred Heart Hospital) and Statement from Gary Stenzel about subpoenaing Dr. Debra Brown from Brown and Associates which indicates there is conflicting evidence not addressed by the trial court. (CP 10, 12, 19, 21; RP at 7 line 14-19).

The petition must include specific facts and circumstances that demonstrated the need for the relief sought. RCW 74.34.110(3).

The doctrine that a court should make findings of fact and conclusions of law as the basis of a judgment in a case tried by a court without a jury originated with the so-called "Field" Procedure Code.

The Supreme Court of Washington has stated that the purpose of findings is to enable the Supreme Court to review the questions upon appeal. See *Kinnear v. Graham*, 133 Wash. 132, 233 Pac. 304 (1925). Cf. *Bard v. Kleeb*, 1 Wash. 370, 376, 25 Pac. 467, 469 (1890), findings are designed to protect the trial judge by enabling her to place upon the record her view of the facts and the law in clear and unmistakable form.

Here, de novo review is most appropriate for this case, as the Opinion of the Court of Appeal is in conflict with *Western Dry Goods Co. v. Hamilton*, 86 Wash. 478, 481, 150 Pac. 1171, 1172 (1915), findings are intended to facilitate review by offering to the parties a means of bringing up the case without the trouble and expense of a bill of exceptions. The

requirement for findings is to force the trial court to settle each principal fact issue which the parties have contested. See *A Modern Substitute for Findings of Fact and Conclusions of Law*, 32 A.B.A.J. 131 (1946).

De novo review is most appropriate for this case. In *Scott v. Trans-Sys, Inc.*, 148 Wn.2d 701, 707-08, 64 P.3d 1 (2003), the Supreme court stress that it reviews the Opinion of the lower court's findings for substantial evidence.

When the Court considers the statute's parameters, the primary duty is to ascertain and carry out the legislative intent. Pratt, 196 Wn.2d at 853. In this case, the Court's opinion is in conflict with chapter 74.34 RCW, because sufficient evidence does not support a finding that Mr. Carlin was a vulnerable adult and because Ms. Ezenwa did not engage in any wrongdoing. Here, the Court of Appeals opinion erred in a fundamental way that warrants this Court's review and correction.

Appellant urge this court to review this case de novo as the Respondent was required to prove the need for the protection order by substantial evidence. RCW 74.34.110 (1) authorizes a trial court to issue a VAPO if it finds that a vulnerable adult requires protection from "abandonment, abuse, financial exploitation, or neglect, or the threat thereof." Here, the Court of Appeals erred in its review of the trial court's findings and conclusions,

because Respondent does not offer substantial evidence to establish that Mr. Carlin is a vulnerable adult in need of protection.

Absent substantial evidence to support statutory definition of a vulnerable adult pursuant to RCW 74.34, the VAPO did not include specific allegations of wrongdoing.

This case at *subjudice* is a question of law regarding the sufficiency of evidence. This court has previously review questions of law de novo. *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wash.2d 873, 880, 73 P.3d 369 (2003).

This Court grants de novo review to consider issues of great concern, gravity, or importance to the public. Cases under RCW 74.34 are of great concern, gravity, or importance to the public. Here, the Court of Appeals opinion failed to follow proper review standards, failed to consider Appellant's response in Appellant's opening brief, and failed to consider Appellant's challenge to the trial court's findings and conclusions.

Given the Court of Appeals opinion contends overwhelming evidence and law supports the trial court's findings and conclusions, there is some errors of law here as evidenced by the fact that the trial court solely relied on declarations (Ellen Jenkins, Argye E Hillis, and Danielle Roselin) submitted by Respondent. Here, the Court of Appeals failed to look into the omission of evidence (most recent medical records

from Alan Carlin's Primary Care Providers: Dr. Debra Brown from Brown and Associates and Alan's Physician at Sacred Heart Hospital). (CP 10, 12, 19, 21); (appeal Opinion at 25).

CONCLUSION

For the foregoing reasons and those set forth in the Amended Petition for Review, and in the interest of justice, Petitioner respectfully requests that this Court should grant her Motion to Leave to File an Amended Petition for Review.

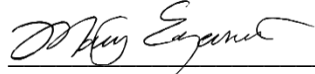
Respectfully submitted, this 2nd day of July 2021.



Mary Ezenwa
Mary Ezenwa, Petitioner Pro Se

CERTIFICATE OF SERVICE

I, hereby certify that on this day July 2, 2021, I filed the Reply to Answer to Petition for Review with this court's electronic filing system which served the Petition to Dianna J. Evans, Attorney for Respondent.



Mary Ezenwa, Petitioner Pro Se

MARY CARLIN - FILING PRO SE

July 02, 2021 - 10:03 AM

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