

Original

COURT OF APPEALS
DIVISION 11

No. 33725-8
No. 34805-5/11
CONSOLIATED

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STATE OF WASHINGTON
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COURT OF APPEALS, DIVISION 11
OF THE STATE OF WASHINGTON

APPEAL FROM THE SUPERIOR COURT
FOR KITSAP COUNTY
HONORABLE JAY B. ROOF

APPEAL FROM THE SUPERIOR COURT
FOR KITSAP COUNTY
HONORABLE CRADDOCK VERSER

APPEAL FROM THE SUPERIOR COURT
FOR KITSAP County
HONORABLE KARLYNN HABERLY

COLLEEN MULVIHILL EDWARDS, Appellant

v.

DENNIS MICHAEL EDWARDS Respondant
JOHN DOUGLAS MORGAN, Respondant
GUARDIANSHIP SERVICES OF SEATTLE, Respondant
TOM O'BRIEN, Respdant
EDWARD GARNDER, Respondant
VEDAH HALBERG, Respondant

BRIEF OF APPELLANT

Colleen Mulvihill Edwards
Pro Se for Colleen Mulvihill Edwards as
Appellant

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NOTICE

This brief addresses the issues in appellate case number 34805-5/11 that is consolidated with case number 33725-8/11. The order at appeal is dated April 21, 2006 in case 05 2 02226-6.

The appellant opening and reply brief in case 33725-8 addressing the issues of Respondents Dennis Edwards & John Morgan was filed on August 18, 2006 with a reply... following. The orders in that appellant brief are dated July 15, 2005, October 7, 2005 in case number 99-3-0075-8, as well as the orders of November 18, 2005 and January 20, 2006 in case number 05-2-02226-6.

This appellant's brief addresses the issues of respondents Guardianship Services of Seattle, respondents Tom O'Brien, Edward Gardner and Vedah Halberg in case 34805-5/11 which is consolidated with 33725-8/11..

TABLE OF AUTHORITIES

TABLE OF CASES

Blomquist v. Pacific Investors' Co. (1925) 132 Wash. 388, 232 P. 315.
Boyer v. Robison (1906) 43 Wash. 97, 86 P. 385.”
Eugster v. City of Spokane (2002) 110 Wash.App. 212, 39 P.3d 380,
Goupille v. Chaput (1906) 43 Wash. 702, 86 P. 1058.
In re Cooke (1999) 93 Wash.App. 526, 969 P.2d 127
Karnes v. Flint (1929) 153 Wash. 225, 279 P. 728.
Roeber v. Dowty Aerospace Yakima (2003) 116 Wash.App. 127, 64 P.3d 691

CONSTITUTIONAL PROVISIONS AND STATUES

RCW 9.91.170

REGULATIONS AND RULES

Court Rules 11
Court Rules 12

OTHER AUTHORITIES

Combs v Carey's Trustee (Ky) 287 SW2d 443
Re Ferrall's Estate, 92 Cal App 2d 712, 207 P2d 1077
Re Tone's Estate, 240 Iowa 1315, 39 NW2d 401

1. ASSIGNMENT OF ERROR

Assignment of Error: Case No 99 3 00758 7

1. Did the trial court error in allowing the former trustee fail to protect the interests of the Colleen M. Edwards Special Needs Trust and its sole Beneficiary Colleen Edwards in regards to the July 15, 2005 and October 7, 2005 orders?
2. Did the trial court error in allowing the former trustee Guardianship Services of Seattle to withdraw while litigation at the appellate court was still pending in May of 2005?
3. Did the trial court error in holding a hearing at which Colleen Edwards could not attend and the trial court knew she was hospitalized. Did the trial court error in failing to protect Colleen Edwards rights under her motion for Accommodation for Physical Disabilities? Did the trial court error in allowing counsel for Guardianship Services to proceed when counsel for Colleen Edwards was unavailable and requested accommodation for such medical situations prior to the hearing?

Assignment of Error: Case No 05 2 02226 6

4. Did the trial court error in the orders of November 18, 2005, January 20, 2006 and April 21, 2006 in regards to the harm that occurred to Colleen Edwards and the Colleen M. Edwards Special Needs Trust because of the actions and lack of actions by all parties in this case in regards to above items 1 to 3 in case 99 3 00758 7?
5. Did the trial court error in the order of April 21, 2006 by allowing pleadings, which were over 20 days after service. Did the trial court error in the fact that during the

time of dismissal by the previous two defendants, the trustee and employees of Guardianship Services had been served and thus were bound to respond in a timely manner with a notice of appearance, answer or pleadings and did not do so.

6. Did the trial court error in the order of April 21, 2006 in failing to determine the financial and personal extent and loss of a valuable real and personal property that by court order of June 13, 2006 was to go directly into the Colleen M. Edwards Special Needs Trust and that the former trustee failed to take possession, control or claim to such property or assist in any way to protect it from illegal sale, harm or destruction or loss? Did the trial court error in failing to recognize the value of such property to Colleen Edwards and the Colleen M. Edwards Special Needs Trust. Did the trial court error in failing to recognize the value of such property as a damage, which could be proven?
7. Did the trial court error in the order of April 21, 2006 in failing to examine the documents produced into the court files regarding the Department of Social and Health Services claims in the Edwards vs. Le Duc case and the former trustee's refusal to pay for transcripts and costs which would have resulted in the accession of a \$100,000 jury verdict? Did the trial court error by failing to allow the plaintiff to proceed with discovery and further documentation?
8. Did the trial court error in the order of April 21, 2006 in failing to examine the documents of Colleen Edwards professional qualifications, educational needs and activities in regards to the stated purposes of the Colleen M. Edwards Special Needs Trust and the negligence of the former trustee in regard to Colleen Edwards, her

- education, vocational and activities as well as support needs not covered by the Department of Social and Health Services and or Supplemental Security Income?
9. Did the trial court error in the order of April 21, 2006 in failing to examine the needs for Colleen Edwards service animals in regards to care, boarding, grooming, veterinary care? Did the trial court error in not recognizing the harm to Colleen Edwards and her service animals and its physical and financial impact upon her and her service animals. Did the trial court error in recognizing the potential and actual neglect or abuse to a service animal and its disabled owner?
 10. Did the trial court error in failing to examine the long term health needs as defined by the long term care register nurse for the Department of Social and Health Services as related to the fiduciary duty of the Colleen Edwards Special Needs Trust and the lack of actions by its former trustee. .
 11. Did the trial court error in the order of April 21, 2006 by rushing Colleen Edwards during proceedings and failing to accommodate her physical disabilities under American with Disabilities Act in regard to court pacing during the hearing of April 21, 2006?

11 ISSUES RELATED TO ASSIGNMENTS OF ERROR

ISSUE ONE: ACTIONS OF THE TRIAL COURT AND TRUSTEE IN CASE NUMBER 99 3 00758 7.

Fact 1: The trustee Guardianship Services of Seattle was established as trustee of the Colleen M. Edwards Special Needs Trust in February 2003. There was activity in both the trial and appellate court regarding properties and funds belonging to the Colleen M. Edwards Special Needs Trust. RP 2/24/2003

Fact 2: The trustee Guardianship Services of Seattle had communication with Mr. John Morgan in the years 2003 to 2004. CP

Fact 3: The trustee, Guardianship Services of Seattle took possession of the spousal support funds in \$9,141.55 in March of 2003. CP

Fact 4: The court order of June 13, 2003 directed the real property on Anatevka Lane, Olalla WA to be transferred directly into the Colleen M. Edwards Special Needs Trust. The former trustee did not follow that court order. CP

Fact 5 : The former trustee did not allow the use of the funds for the benefit of acquiring necessary transcripts in the Edwards vs. Le Duc case. The jury verdict in the case is \$100,000. CP 19, see also CP 1084, CP 925 RP 11/18/2005, 1/20/2006, 4/21/2006

Fact 6: The former trustee allowed for only one time payment of veterinary bills and other costs associated with the care of beneficiary's support and service dogs in August 2004. After that time period they denied the use of any funds.

Fact:7 The trustee of the Colleen M. Edwards Special Needs Trust withdraw on January 27, 2005 without notice to any trial or appellate court. RP 5/4/2005

Fact:8: The former trustee did not pay for medical bills not covered by the Department of Social and Health Services for Colleen Edwards in May 2005. The court took possession of the remaining funds in May of 2005. RP 5/13/2005

Fact 9: The former trustee spent the approximately \$8,000 in Colleen Edwards spousal support money. The former trustee paid a significant amount of that funding to its officers, agents and employees. CP

Fact 10: The former trustee did not pay any educational or support expenses beyond what they paid in August 2004 for beneficiary Colleen Edwards. RP 5/13/2005

Fact 11: The former trustee failed to attend any hearings in this case with the exception of the hearing on May 13, 2005. RP 5/13/2005

Fact 11: The former trustee knew of Colleen Edwards medical needs and knew of her need for emergency care at the May 13, 2005 hearing. RP 5/13/2005.

Fact 12: The former trustee turned over the court approximately \$1,400 in funds and their legal counsel admitted they knew the property in dispute was worth \$50,000 CP 387, 388, 390, 397, 399, 400, 401, RP 5/13/2005

Fact 13: The former trustee appeared with legal counsel at a show cause hearing on May 13, 2005 in case no 99 3 00758 7.. RP 5/13/2005

**ISSUE TWO: ACTIONS OF THE TRIAL COURT AND TRUSTEE IN CASE
NUMBER 05 2 02226 6.**

Fact 1: The former trustee and the trial court error by failing to acquire property and funds belonging to the Colleen M. Edwards Special Needs Trust.. The lis pendens and liens on the property were removed by the trial court. CP RP 11/18/2005, 1/20/2006, 4/21/06.

Fact 2: The former first officer and employees, Mr. Tom O Brien and Ms. Vedah Halberg were served on October 2005. The last party of the former trustee Edward Gardner was served on Deceember 5, 2005. Counsel for the former trustee appeared in RP 4/21/2006

Fact 3: The Anatevka property was sold in December 19, 2005. RP 12/19/05

Fact: 4: The personal injury case Edwards vs. Le Duc was known to the trial court. RP 11/18/2005, 1/20/2006, 4/21/2006

Fact 5: The medical costs of Colleen Edwards due to the Department of Social and Health Services. The trial court did have these documents.. RP 11/18/2005, 1/20/2006, 4/21/2006

Fact 6. The long term care needs and cost for Colleen Edwards were documented in the court file. RP 11/18/2005, 1/20/2006, 4/21/2006

Fact 7. The need's of Colleen Edwards service animals were documented in the court file. RP 4/21/2006

Fact 8. The educational and vocational goals of Colleen Edwards were documented in the court file. CP

Fact 9: The need for care, maintenance, veterinary, boarding for Colleen Edwards service dogs were documented in the court file. RP 4/21/2006

Fact 10. The businesses and occupation of Colleen Edwards were documented in the court file.

Fact 11: The need for Colleen Edwards's accommodation of physical disabilities was documented in the court file. CP

111 STATEMENT AND ARGUMENT OF THE CASE

In regards to Guardianship Services of Seattle, its officers, agents and employees

Transcript of the April 21, 2006 hearing RP 4/21/2006

THE COURT: Colleen Edwards versus Dennis
2 Edwards.

3 MS. PETERSON: Good morning, Your Honor. I am
4 Paulette Peterson. I represent Guardianship Services of
5 Seattle and several of their named employees. This is
6 Tom O'Brien, who is one of the named defendants with
7 Guardianship Services of Seattle. We're here on our
8 motion for summary judgment in this matter.
9 I would like the court to know I received paperwork
10 from Ms. Edwards yesterday afternoon. That was the only
11 reply that I received to our motion for summary
12 judgment.

13 THE COURT: Well, let's deal with the
14 appellate issue. This case has gone to the Court of
15 Appeals, so let's deal with that issue. That was
16 Ms. Edwards' basic response.

The court failed to read the other than the jurisdictional issues below is the reply
submitted.

17 MS. PETERSON: That's correct, Your Honor, and
18 there are two matters on appeal. Two of the other
19 defendants, Dennis Edwards, and the law firm, John
20 Morgan and his law firm, have sought motions to dismiss
21 prior to actually Mr. O'Brien and Guardianship Services
22 being served with the lawsuit. One of the defendants
23 was already dismissed. Those matters are on appeal. I
24 don't think that affects our ability to bring a motion
25 for summary judgment, as we are still a defendant in

2 _ 1 this lawsuit at the trial court level.

The defendants were not dismissed until January 20, 2006 and the defendnat her
Had not filed a notice of appearance until after the 20 days had lapsed.

RULE 12. DEFENSES AND OBJECTIONS

(a) When Presented. A defendant shall serve his answer within the following
periods:

(1) Within 20 days, exclusive of the day of service, after the service of the summons and complaint upon him pursuant to rule 4;

2 THE COURT: When was your client served,
3 approximately?

4 MS. PETERSON: I believe November or December
5 of '05.

6 THE COURT: So the court's order was
7 January 20.

8 MS. PETERSON: That was with respect to Dennis
9 Edwards. The first one was prior to our involvement, so
10 I don't have that in front of me, but I can look at the
11 docket here.

12 MS. EDWARDS: Correct.

13 MS. PETERSON: November 18th was when
14 Mr. Morgan was dismissed.

15 THE COURT: All right. So, your position is
16 that your client is not bound by the appeal, that
17 there's still matters pending in superior court?

18 MS. PETERSON: That's correct, Your Honor, and
19 the claims that were -- There were no cross claims
20 between any of the defendants or among any of the
21 defendants. They were dismissed on a motion to dismiss.
22 We are remaining in this lawsuit, and I presume that the
23 lawsuit is going forward at the trial court level
24 against Guardianship Services of Seattle and its
25 employees.

3 _ 1 THE COURT: You are not affected by the notice
2 of appeal of --

3 MS. PETERSON: Not at all, Your Honor.

4 THE COURT: Ms. Edwards, response?

5 MS. EDWARDS: Yes. I would respond that they
6 are party to the Court of Appeals. Court of Appeals has
7 named them on the response, and Court of Appeals has
8 consolidated two cases, that's Edwards v. Edwards, the
9 marriage dissolution case, the whole thing, and
10 also, this whole case, so I would say under RAP 7.2, and
11 8.1, and 8.2, and 8.3, that they are bound by the Court
12 of Appeals jurisdiction, that the Court of Appeals has
13 perfected the appeal, and that they are -- we are at
14 Court of Appeals, and that they are bound, and to split
15 the case between the Court of Appeals and trial court
16 would be highly unusual, and that the legal grounds for
17 that are very -- would be very, very unique, and only
18 done in an emergency-party-type basis, and that this
19 court lacks jurisdiction, and that Your Honor has signed
20 motions for indigency and motions for appeal already.
21 All parties have been served. All parties of
22 Guardianship Services were served. The first service
23 occurred in October, with two parties. That's Valda
24 Holberg and Tom O'Brien. The last party served was
25 Edward Gardener, and that service occurred on

4 _ 1 December 6, 2004 -- 5, excuse me. My apologies. So I
2 would say that all parties are served in that matter.
3 They are bound by the court's jurisdiction, and to split
4 it up would be highly unusual to do in a matter. That
5 if any action were taken by this trial court, it would
6 be to wait until the Court of Appeals has done their
7 rulings, and then go forward with the trial matter,
8 unless there was some kind of emergency situation. In
9 this case -- this is a civil tort case for damages --
10 there is no pending emergency situation.
11 THE COURT: All right. I have reviewed both
12 volumes of the files in this case, and it's clear from
13 the court files that an order was entered January 20,
14 '06, dismissing Dennis Edwards and the Liebert Morgan
15 Fleischbein law firm, and Ms. Edwards immediately took
16 an appeal of the order of January 20 to the Court of
17 Appeals. The order on January 20, '06, did not
18 determine the case on the merits as to Guardianship
19 Services and their employees, and that that matter is
20 still pending before the superior court. Issues as to
21 the other two parties that were part of the January 20,
22 '06, order are before the Court of Appeals, but it does
23 not affect this court's jurisdiction as to this party,
24 as there was no determination on the merits one way or
25 the other in superior court as to Guardianship Services

They lost their ability to response by failing to file any response pleadings or
any notice of appearance. So they are bound by the court of appeals ruling.

5 _ 1 and their employees. So, the court would find that this
2 court does have jurisdiction to hear the motion for
3 summary judgment brought by Guardianship Services and
4 their employees, so we will proceed with the motion for
5 summary judgment.

6 Ms. Peterson?

7 MS. PETERSON: Thank you, Your Honor. As I
8 mentioned earlier, this motion was properly noted on the
9 calendar with more than the 28 days' notice. I mailed
10 copies of the motion for summary judgment to Ms. Edwards
11 on March 9 and noted it for April 21st, and gave her
12 sufficient notice. Any response or objection to our
13 motion should have been brought 11 days prior to this
14 hearing, and although Ms. Edwards is pro se, she has
15 been before this court on numerous occasions and I
16 believe should be bound by the court rules just as
17 anyone else.

18 I received responsive paperwork from her yesterday
19 afternoon, which even if you review the responsive
20 paperwork, I still think that our motion for summary
21 judgment should be granted. This motion could have
22 easily been brought as a 12(b)(6) motion, but because I
23 included a copy of the trust agreement and copies of
24 Guardianship Services of Seattle's accounting, I brought

25 it as a motion for summary judgment in order to give

6 _ 1 Ms. Edwards sufficient time to reply to those additional
2 documents if she wanted to.
3 On a motion for summary judgment or a motion to
4 dismiss, the plaintiff has to come forward with some
5 facts that warrant her claims made out in her complaint.
6 She has made no -- added no additional information, and
7 the claims in her complaint quite frankly are very
8 difficult to follow as to what actual facts she is
9 alleging that Guardianship Services and any of its
10 employees did to cause her these tortious damages that
11 she is claiming.

Here they admit there are claims that Colleen Edwards has made even if difficult to follow.

CR 12 states: "It is not error to deny motion to make more definite and certain, where facts were well known, no one was misled, and appellant did not seek information by way of interrogatories. Karnes v. Flint (1929) 153 Wash. 225, 279 P. 728.

Motion to dismiss complaint because it is not sufficiently definite and certain is properly denied where, though lengthy, it sets forth facts and circumstances constituting alleged cause of action. Blomquist v. Pacific Investors' Co. (1925) 132 Wash. 388, 232 P. 315.

Complaint upon open account, containing itemized statement, need not be made more definite and certain where further information is obtainable by interrogatories. Connecticut Invest. Co. v. Yokom (1919) 106 Wash. 693, 180 P. 926.

It is not error to refuse to require complaint on building contract to be made more definite and certain by setting out plans and specifications. Evans v. Goist (1916) 90 Wash. 100, 155 P. 780.

Where complaint alleges that defendant agreed to keep as trustee money earned by plaintiff, complaint need not be made more definite and certain by stating nature of plaintiff's employment, since she did not obligate herself to engage in any business. Goupille v. Chaput (1906) 43 Wash. 702, 86 P. 1058.

It is not error to deny motion to make complaint alleging title more definite and certain, where claims of parties are evidenced by written instruments and records, and defendant is not surprised or misled. Boyer v. Robison (1906) 43 Wash. 97, 86 P. 385."

My reply and document give many pages of information about what damages I am claiming. Actual facts do not have to be proven in the early stages for a trial court to

hypothetically see that the plaintiff may have a cause of action.

This was a special needs trust over
12 which Guardianship Services of Seattle was the trustee
13 at Ms. Edwards' request following the conclusion of her
14 dissolution. She requested that funds that were to be
15 paid to her by her former spouse, Mr. Edwards, be put
16 into a special needs trust, and that trust was drafted
17 by an attorney named Sean Black at her request.
18 Guardianship Services of Seattle was named as trustee at
19 her request. The trust was an irrevocable special needs
20 trust, giving the trustees sole discretion to make
21 determination as to distributions to Ms. Edwards which
22 would be above and beyond the support that she would be
23 receiving under governmental benefits.

And they failed to provide such funding for support above and beyond what was
given by Social Security (Supplemental Security Income).

24 In a trust such as this, Ms. Edwards needs to
25 show -- in order to show a breach, she needs to

7 _ 1 demonstrate an abuse of that discretion, be it bad
2 faith, fraud, arbitrary conduct, or malice. She has not
3 shown any of that information. There has been no
4 factual statements in any affidavits submitted in
5 response to my motion as to what facts it is that she is
6 alleging that Guardianship Services has done to breach
7 its duty to her.

The breach of duty occurred in May of 2005 and perhaps before that, when
Guardianship Services refused to follow court orders, pay for medical expenses and
Veterinary expenses during hospitalization and they failed to acquire real and personal
Property, which could have been put into, the Special Needs Trust.

Guardianship Services did withdraw as
8 trustee in this matter back in January I believe of
9 2005, and the funds remaining in the trust were put into
10 the registry of the court because no successor trustee
11 was named,

No the funds were removed because The Honorable Judge Laura Annie felt that
they should be held accountable for their actions.

and that was done by court order.
12 Since there has been no statement of what facts she
13 is alleging, no meritorious claim brought here, we are

My reply is a merits claim and the documentation provided supports what I have stated.

Where bad faith or abuse of discretion by the trustee is shown as a ground for intervention, the court may decree the action to be taken or amount or amounts to be paid. *Manning v. Sheehan* (1912) 75 Misc 374, 133 NYS 1006, following *Collister v. Fassitt* (1896) 7 App Div 20, 39 NYS 800, 23 App Div 466, 48 NYS 792 (affd (1900) 163 NY 281, 57 NE 490, which has motion for reh den (1900) 163 NY 610, 57 NE 1107); *Re Emmons* (1937) 165 Misc 192, 300 NYS 580; *Re Brettell* (1941) 176 Misc 872, 29 NYS2d 219; *Re Reinstein* (1942) 35 NYS2d 628; *Re De Windt* (1943) 180 Misc 646, 42 NYS2d 842.

In *Banning v. Gunn* (1886) 4 Dem (NY) 337, the executors were given discretion to apply to the support of the beneficiary "such part of the principal as they may think necessary." Upon the executors' accounting, the latter asked for instructions to the referee that their discretion as to payments of principal was in no wise subject to control or review. The court held that such an instruction would be improper. On the request of the beneficiary's guardian that the referee be instructed to take proof what portion of the estate, if any, was needed for the ward's support, the court observed that the guardian had not charged the executors with lack of good faith, but simply claimed that they had reached an erroneous conclusion as to the ward's necessities. The court therefore refused a reference of the question of amount, but left it open to the guardian to present the question in proper form whether the trustees had reached their conclusion in the exercise of their honest judgment. Following *Ireland v. Ireland* (1881) 84 NY 321.

Exceptional situations also will make it the duty of the court to exercise the discretion reposed in the named trustee, as where the trustee, being a beneficiary under the same power, is disqualified by statute (*Re Willcockson* (1947) 77 NYS2d 271); or where the discretion is reposed in the named person so long as the beneficiary remains in her household, the beneficiary having left that household and the intention of the testator being that the benefit of payments shall continue notwithstanding. *Re Sandgren* (1936) 160 Misc 784, 290 NYS 660.

Where bad faith or abuse of discretion by the trustee is shown, court may decree action to be taken or amount to be paid:

Cal -- *Re Ferrall's Estate*, 92 Cal App 2d 712, 207 P2d 1077

Iowa -- *Re Tone's Estate*, 240 Iowa 1315, 39 NW2d 401

Ky -- *Combs v Carey's Trustee* (Ky) 287 SW2d 443

14 asking that the court dismiss Guardianship Services and
15 its employees from this matter. We are also asking that
16 terms be awarded to Guardianship Services for having to
17 bring this motion for dismissal in this matter.

They did not provide a proper CR 11 Filing.

To avoid the 20/20 hindsight view in awarding Rule 11 sanctions for baseless claim, the trial court must conclude that the claim clearly has no chance of success. *In re Cooke* (1999) 93 Wash.App. 526, 969 P.2d 127

Sanctions may be imposed only if the complaint lacks a factual or legal basis and if the attorney failed to conduct a reasonable inquiry. *Roeber v. Dowty Aerospace Yakima* (2003) 116 Wash.App. 127, 64 P.3d 691, review denied 150 Wash.2d 1016, 79 P.3d 446. Costs 2

The attorney's reasonableness in making inquiry into the factual and legal bases of claims presented in a lawsuit is evaluated in determining whether to award sanctions by an objective standard, meaning the court should ask whether a reasonable attorney in similar circumstances could believe his or her actions were factually and legally justified. *Roeber v. Dowty Aerospace Yakima* (2003) 116 Wash.App. 127, 64 P.3d 691, review denied 150 Wash.2d 1016, 79 P.3d 446. Costs 2

The party seeking sanctions must show the motion was both baseless and signed without reasonable inquiry. *Eugster v. City of Spokane* (2002) 110 Wash.App. 212, 39 P.3d 380, reconsideration denied, review denied 147 Wash.2d 1021, 60 P.3d 92. Costs 2

To avoid the 20/20 hindsight view, the trial court must conclude that the claim clearly has no chance of success before it may impose sanctions under Rule 11 for filing of claim. *Wood v. Battle Ground School Dist.* (2001) 107 Wash.App. 550, 27 P.3d 1208

18 THE COURT: All right.

19 Ms. Edwards?

20 MS. EDWARDS: Yes.

21 THE COURT: For the record, I am going to
22 consider Ms. Edwards' filings of yesterday. I have read
23 them and they are in the record, so I will be
24 considering them.

25 Ms. Edwards, you may proceed.

8 _ 1 MS. EDWARDS: Yes, Your Honor. Thank you.
2 The problem occurs in these two cases, as you –
3 Well, I have no idea how familiar you are with the
4 dissolution, divorce case, the 99-3-00758-7 case, but
5 certainly some of those events -- the reason that the
6 Court of Appeals is consolidating those cases is because
7 some of those events regarding Guardianship Services of
8 Seattle and the contract, the trust agreement, the
9 durable limited power of attorney that was signed, all
10 of that, were -- and of course the Court of Appeals
11 order deferring 30034-5-II was certainly a factor in
12 this whole case, and this time period has gone on for
13 several years. The Guardianship Services came in to the
14 picture in January, February of 2003. The trust was
15 considered long before that for a personal injury case,

The emails and correspondence between Mr. Bleck and I and the post jury verdict

information from Edwards vs. Le Duc support the claim for the personal injury case.

16 and which is still pending in the trial court in Pierce
17 County, which I am handling. And, so, the whole picture
18 of what Guardianship Services didn't do, their legal
19 status started in 2003, and we have that in the divorce
20 case, which is separate from this case, because this is
21 a tort civil case, but the reason that the Court of
22 Appeals consolidated those two cases -- and Ms. Peterson
23 has informed me that Court of Appeals has agreed to
24 consolidate those two cases. Mr. Morgan did not have
25 objection, and Morgan Liebert and Fleischbein did not

9 _ 1 have objection. They moved for consolidation of those
2 two cases, as did I, because it would be much easier to
3 handle a case like this as a consolidated matter because
4 there are issues overlapping, so we have two cases that
5 are actually happening at one time.

So as of this hearing date the consolidation had occurred at this court.

6 THE COURT: I am going to give you five more
7 minutes.
8 MS. EDWARDS: Okay. So, as far as dismissal
9 goes, and breach of contract, it's an interesting matter
10 to come before a court when you haven't even done any
11 discovery yet, and have somebody allege you haven't
12 proved anything yet. We haven't reached discovery
13 because jurisdiction was still being disputed, so if
14 jurisdiction is still being disputed -- not jurisdiction
15 of the trial court, because everybody was served, but
16 then having to go to Court of Appeals, this is highly
17 unusual. I mean how can you prove that discovery? We
18 have documents from Guardianship Services, there are
19 different documents, different areas, so all of that
20 information needs to cross over between the two cases.

So I placed what information I could into this court's file.

21 The logical thing is, you know, the logical thing
22 would be to wait for Court of Appeals to make their
23 decision, hand their decision back to see if the
24 defendants are still going to be -- because otherwise
25 this case is going to split into two more cases, because

10 _ 1 what would happen, if John Morgan and Dennis Edwards now
2 become a second case, well, that's -- then we have two
3 cases that are split.
4 As far as proving any allegations, Guardianship
5 Services failed to provide the limited power of
6 attorney. They failed to inform your court that in the
7 divorce case, in 99-3-00758-7, that they were ordered
8 to show cause by Judge Anna Laurie, they were ordered

9 because they did not provide some medical care,

Statement Number One on the record. One of claim. No medical care.

and they

10 had not abided by two other orders from her court,

11 providing veterinary care for my service dogs,

Statement Number Two on the record: Not paying for veterinary care for a service

dog. RCW 9.91.170

not

12 providing any transcripts from my personal injury case.

Statement Number Three on the record. Not paying for transcripts for the personal

injury (Edwards vs. Le Duc case).

13 These are serious damages. And, you know, to go ahead
14 and dismiss a motion, the only good thing that would
15 happen there would be then this motion would be appealed
16 and consolidated with the next one. So, if that's the
17 best way to handle this, in this situation, that might
18 be the best thing for me, but I hate to advocate my own
19 behalf against dismissing a motion, because that would
20 be very contrary to what someone would advocate for
21 themselves.

22 There are damages against Guardianship Services.

23 They did not -- they broke their fiduciary duty.

Statement Number Four on the record. They broke their fiduciary duty.

They

24 withdrew from the case when there was a piece of
25 property at issue, a very valuable piece of property at

Statement Number Five on the record. They withdraw while the property was still

at issue.

11 _ 1 issue that they never -- and they were ordered by the
2 Court of Appeals, and upheld by -- the Kitsap County
3 Superior Court upheld this order, and the property has
4 been damaged.

Statement Number Six on the record. The property has been damaged.

The property has been illegally sold.

5 The property -- This is a valuable piece of property.

6 To me this means something I will not get in the future
7 because they did not do what they were contracted by me
8 through my durable power of attorney, my mom, because
9 they didn't take action.

Statement Number Seven on the record. The harm the loss of the property, its use
or income. And a Nexus between their lack of action and the property being sold,
illegally.

10 Things happened in the other case, injuries
11 occurred to the dogs, lack of medical care for myself.
12 This is why the court, the trial court took
13 jurisdiction, because it was an emergency matter, and
14 they asked Guardianship Services to come in to court,
15 and which they did through their legal counsel,
16 Mr. Tracy, and they pled withdrawal for 30 days. The
17 court granted that withdrawal, and then that case moved
18 forward.

Statement Number Eight on the record. What I failed to say was that I was
hospitalized and could not attend that hearing. And could not inform the court of any
issues.

That case was still at appeal, but he did
19 that. Judge Anna Laurie did the original order because
20 there were medical bills that DSHS was not paying for,
21 and that I was not receiving medical care, and there was
22 property and funds and trust that Guardianship Services
23 was holding. So, that's a harm and a damage.

Statement Number Nine on the record. The nexus between the loss of property
and funds and harm suffered, lack of medical care.

24 THE COURT: Okay.

25 MS. EDWARDS: There were also statements

12 _ 1 made -

2 THE COURT: Your time is up.

3 I have reviewed all the documentation Ms. Edwards
4 has provided to the court in response to the motion for
5 summary judgment, and I will find there are no material
6 disputed issues of fact, and that Guardianship Services
7 and Tom O'Brien, Edward Gardener, and Rita Holberg are
8 entitled to summary judgment dismissal as a matter of
9 law, and I will grant relief as requested by the moving
10 party.

11 MS. PETERSON: Your Honor, I have left a blank

12 here for –

13 MS. EDWARDS: Hold on a minute. I am writing.

Statement Number Ten. Asking for a moment to write. Falling behind and needing to catch up.

14 I would like to object formally on the record.

15 THE COURT: Okay. Your objection is noted for
16 the record.

17 MS. EDWARDS: Thank you.

Statement Number Eleven. The legal counsel does not know that the trust funds were used to pay for expenses for Colleen Edwards. They do not know there is not \$1500 in the trust fund.

18 MS. PETERSON: I have left a blank for award
19 of sanctions in this matter. I do know that there --
20 well, I believe that there are still approximately
21 \$1,500 submitted to the registry of the court, and we
22 would ask that the court award sanctions in that amount
23 with authority for Guardianship Services to be given
24 those funds for –
25 THE COURT: I am going to deny sanctions in

Counsel does not object to denial of sanctions.

13 _ 1 this matter.

2 MS. PETERSON: You can X out that last.

3 MS. EDWARDS: May I reply and object?

4 THE COURT: Object to me not granting
5 sanctions?

6 MS. EDWARDS: No. I would just like to reply
7 that there is not \$1,500 in that trust account, for the
8 record.

9 THE COURT: I have signed the order as
10 proposed.

11 Do you have a copy for Ms. Edwards?

12 MS. PETERSON: I do.

13 THE COURT: I just crossed out that one on
14 page 2.

15 MS. EDWARDS: Thank you, Your Honor.

16 THE COURT: Thank you.

17 (The hearing was concluded.)

RESPONSE PLEADINGS

Below is my response to dismissal of Guardianship Services of Seattle as a defendant. It is a response pleading and is signed by myself CP

ISSUES REGARDING GUARDIANSHIP SERVICES OF SEATTLE REQUEST FOR SUMMARY JUDGEMENT

Summary Judgment is allowed if there is lack of evidence of acclaim for damages and merit. Here are the supporting documents.

1. REAL AND PERSONAL PROPERTY OF COLLEEN EDWARDS

The trustee Guardianship Services of Seattle failed to take possession of the Anatekva property by their own admission.

- a. Letter from Guardianship Services of Seattle to John Morgan. Note the personal slander of Colleen Edwards being a "problem"
- b. Failed to take possession of a valuable property. Value of its sale may not be the most important factor in determining this property's value to the citizens of Washington State and to Colleen Edwards. Reflected in the documents of Guardianship Services of Seattle is the total failure of a professional trustee to take possession of real and personal property.
- c. The Annual Report submitted by Paulette Peterson and the Annual Report submitted by Colleen Edwards into the case file 99 3 00758 7 differs greatly. The two reports are not the same.
- d. The report of March 2005 is missing from Ms. Peterson's legal briefing. I submit it here as the court did take possession of the remaining funds held in trust by a show cause hearing.
- e. Copy of the Statutory Warranty Deed for the 14231 property (recorded)
- f. Copy of the Statutory Warranty Deed for the Nelson property (recorded)
- g. Copy of the Certificate of Title for the Hemet mobile home.(recorded)
- h. Copy of the Buy & Sell Agreement signed by Ken LeMay (Recorded)
- i. Copy of the Quit Claim Deed signed by Dennis Edwards
- j. Copy of the Quit Claim Deed signed by Colleen Edwards, Anatevak prperty
- k. Copy of the Quit Claim Deed signed by Colleen Edwards, Nelson property

Argument: The trustee failed to obtain the Anatevka property through its term as trustee from February 26, 2003 to March 13, 2005.

11. CONTRACT ISSUES AND INTENT OF COLLEEN EDWARDS AND HER TRUST ATTORNEY SEAN BLECK

a. Copy of the Limited Power of Attorney, note that the assess in the trust are zero and that the only funds or property moved into trust is the \$9, 141.55 check by John D. Morgan. Note that the jury verdict in the Edwards case was known, however it is the personal property of Colleen Edwards via decree. Note the exclusion of the Nelson property on the durable limited power of attorney. And the expiration (termination of the limited durable limited power of attorney, Marion Mulivhill is seven days.

b. Email correspondence between Mr. Sean Bleck Attorney at Law and Colleen Edwards with some correspondence going to Guardianship Services off Seattle. There is a severe lack of accounting for this correspondence and its contents.

Argument; The trustee failed to work with Colleen Edwards as pro se according to the diections of the court and court orders.

111 ARCHAEOLOGICAL ISSUES

- a. Emails from Colleen Edwards and the State of Washington Office of Archaeology and Historic Preservation and the Suqamanish Tribe.

- b. Archaeological Excavation Permit

Argument: Guardianship Services of Seattle failed to contact the Office of Archeology and to protect preserve the property from criminal damage according to RC@ 27.44 and 27.55

IV PROFESSIONAL AND PERSONAL CHARACTER

- a. Copy of Colleen Edwards Professional Certification and Education
- b. Photographs of Colleen Edwards service and working dogs

Argument: The trustee failed to respect and assist Colleen Edwards in her professional abilities and in her activities of education and support.

V KITSAP COUNTY BUILDING PERMITS

- a. Mobile home
- b. Garage
- c. Pump house
- d. Deck & Ramp
- e. Permit issued to PDH Contractors
- f. Letter from real estate Keller & William regarding Anatevka property

Argument: Guardianship Services of Seattle did not contract a real estate appraiser to assist them until January 2005 at which time they withdrew thereafter and in their legal brief of May 13, 2005 cited that the trust was not worth their efforts. Colleen Edwards assisted Guardianship Services to obtain the information needed by both parties. Please note these records are over twenty two years old and had to be ordered from the Kitsap County archives by Colleen Edwards.

V11 DSHS Evaluations, DVR Reports, Edwards vs Le Duc DSHS Claim In file

- a. Letter from Dr. Waltman regarding lifelong transportation need
- b. DSHS Long Term Care Evaluation
- c. DVR IEP Vocational Plan

Argument: The trustee failed to perform services in the areas of support, education and activities and medical care for Colleen Edwards. They failed to obtain transcripts for a jury verdict for Colleen Edwards so she could subrogate her medical claims.

V. VERBATIM TRANSCRIPTS

In file

- a. May 13, 2005 99 3 00758 7
- b. July 15, 2005 99 3 00758 7
- c. October 5, 2005 99 3 00759 7 05 2 02226 6
- d. October 7, 2005 99 3 00758 7
- e. October 10, 2005 99 3 00759 7 05 2 02226 6
- f. October 12, 2005 99 3 00759 7 05 2 02226 6
- g. November 18, 2005 05 2 02226 6
- h. December 19, 2005 05 2 02985 6
- i. January 20, 2006 05 2 02226 6
- j. February 24, 2006 05 2 02985 6

Argument: The verbatim transcripts accurately show what happened in the courts.

V11 SHOW CAUSE ISSUES AND CONTEMPT ISSUES

From case no 99 3 00758 7

In File

Argument: The issues of show cause against Guardianship Services of Seattle were known to GSS. The issue of contempt against Dennis Edwards was presented by Colleen Edwards.

V111 PROPOSED ORDER

Proposed order denying summary judgement

IX CONCLUSION

A reasonable mind would immediately see the problems that Colleen Edwards was facing. I ask the court to deny Guardianship Services of Seattle's motion and order for summary judgement.

Respectfully submitted

Colleen Edwards
3377 Bethel Road SE Suite 107 PMB 334
Port Orchard WA 98366
253 857 7943

1V CONCLUSION

Colleen Edwards has suffered from the repeated trial court errors. The court was directed to protect her interests via the Special Needs Trust and that was not accomplished as the trial court had originally planned and ordered. So a tort occurred.

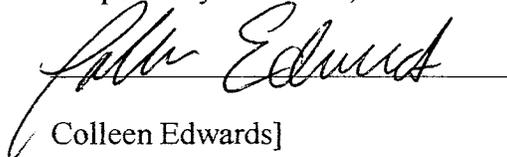
Colleen Edward's asks the appellate court to the review the six court orders due to their conflicts with prior court decrees, decisions and orders. I ask the court to reverse and remand the issues of the court orders being reviewed and remand back for trial.

Colleen Edwards ask the appellate court to find for costs and fees for the plaintiff should Colleen Edwards prevail on any issues. I ask the Court of Appeals to rule under 18.1 if prevailing party fees are appropriate should Colleen Edwards prevail on any some issue. I ask the court to note to the commission that any orders for cost and expenses go directly to the Colleen M. Edwards Special Needs Fund or to The Colleen M. Edwards Program for Self Sufficiency under Social Security Administration.

Thank you for your time and consideration.

February 18, 2007

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Colleen Edwards", is written over a horizontal line.

Colleen Edwards]
Pro Se for Appellant
Colleen Mulvihill Edwards

RECEIVED AND FILED
IN COURT

JUN 13 2003

VID W PETERSON
KITSAP COUNTY CLERK

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KITSAP COUNTY

In Re the Marriage of
COLEEN EDWARDS

and
DENNIS M EDWARDS

Petitioner

Respondent

No 99 3 00758 7

FINDINGS OF FACT
CONCLUSIONS OF LAW AND
ORDER ON VARIOUS MOTIONS
BY PETITIONER

THIS MATTER, having come before the Court on January 24 2003 on

Petitioner's motions for

- 1 payment of spousal support and transfer of real and personal property to
Petitioner and to a Special Needs Trust established by Petitioner
- 2 vacation of sanctions against Petitioner
- 3 Respondent to cease using residence addresses and e-mail of the
Petitioner
- 4 identification of and transfer of firearms owned by Respondent to person
or persons unknown (presumably the Petitioner)

POF&Order on Petitioner's Motion.sdw
Page 1 of 4
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N W

MacDERMID LIEBERT & MORGAN P S
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COURT OF APPEALS
DIVISION II

07 FEB 20 AM 11:27

STATE OF WASHINGTON

BY _____
DEPUTY

COURT OF APPEALS DIVISION 11

THE STATE OF WASHINGTON

Colleen Mulvihill Edwards
Appellant

33752-8/11
CONSOLIDATED APPEAL

Vs.

PROOF OF SERVICE
Appellant Brief

Dennis Edwards
John Morgan
Guardianship Services of Seattle
Tom O'Brien
Edward Gardner
Vedah Halberg
Respondents

I, Colleen Edwards have served all parties with the Appellants Brief to Case No 33752 8/11.

TO: The Clerk of the Court of Appeals Division 11 of the State of Washington

TO: The law firm of Paulette Peterson

AND: The law firm of Liebert, Morgan & Fleshbeim

Dated: February 19, 2007


Colleen Edwards
Pro Se for Colleen Edwards

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Port Orchard, WA 98366
253 857 7943
email: scenter@nwrain.com

FILED
COURT OF APPEALS
DIVISION II

07 FEB 20 AM 11: 27

STATE OF WASHINGTON
BY _____
DEPUTY

STATE OF WASHINGTON

COURT OF APPEALS, DIVISION 11

Colleen Edwards)
vs.) 337528
Dennis Edwards et al vir)
Verbatim Transcripts
April 21, 2006 hearing
Proof of Service

I, Colleen Edwards with the assistance of Court Reporter, Kathy Tood have provided the following transcripts to the following parties.

April 21 2006 Hearing Judge: Karlynn Haberly

Provided by Kathy Todd, Court Reporter
1/31/07 Disk to Court of Appeals, Division 11
1/19/07 To Colleen Edwards

Provided by Colleen Edwards via first class mail and electronic mail.
2/1/07 To: The Law Firm of Liebert, Morgan & Fleshbeim
2/1/07 To: The Law Firm of Paulette Peterson
2/8/07 Proof of Service

Date: February 8, 2007



Colleen Edwards
for Appellant, Colleen Edwards
3377 Bethel Road SE, Suite 107, PMB 334
Port Orchard, WA 98366
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COURT OF APPEALS DIVISION 11
THE STATE OF WASHINGTON

RECEIVED
FEB 22 2007

CLERK OF COURT OF APPEALS DIV II
STATE OF WASHINGTON

Colleen Mulvihill Edwards
Appellant

33725-8/11
CONSOLIDATED APPEAL

Vs.

PROOF OF SERVICE
Appellant Brief
Corrected page 1-3

Dennis Edwards
John Morgan
Guardianship Services of Seattle
Tom O'Brien
Edward Gardner
Vedah Halberg
Respondents

I, Colleen Edwards have served all parties with the Appellants Brief to Case No 33725 8/11, Corrected pages one & three.

TO: The Clerk of the Court of Appeals Division 11 of the State of Washington
TO: The law firm of Paulette Peterson
AND: The law firm of Liebert, Morgan & Fleshbeim

Dated: February 20, 2007



Colleen Edwards
Pro Se for Colleen Edwards

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