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No. 38301-2-II

COURT OF APPEALS, DIV. II
OF THE STATE OF WASHINGTON

In re the Guardianship of BERNADYNE E. JACOBY,
an Incapacitated Person

RANDAL JACOBY, Petitioner,

and

INGRID CAMERON, Respondent.

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APPELLANT'S OPENING BRIEF

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ASSIGNMENTS OF ERROR & ISSUES

Assignment of Error #1: The trial court erred in appointing Cameron as trustee of the Jacoby Trust.

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Issue #2: Did the trial court have personal jurisdiction over Randal to empower the court to remove him a trustee of the Jacoby Trust?

Issue #3: Did the trial court have grounds to remove Randal as trustee of the Jacoby Trust?

Issue #4: May a guardian, or its supervising court, exercise an incapacitated person's reserved power to replace, at will, the trustee of a trust created by the incapacitated person?

Assignment of Error #2: The trial court erred by executing an order on August 8, 2008, stating that the orders previously entered in the guardianship proceeding "regarding Ingrid Cameron's actions and authority as de facto trustee of the Bernadyne E. Jacoby Trust are hereby confirmed."

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Issue #6: Does the de facto trustee doctrine apply to a person whose misconduct renders void their appointment as trustee?

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Assignment of Error #4: The trial court erred by entering an order on August 15, 2008, approving the guardian and trustee's First Annual Report for the period from November 20, 2006, through October 31, 2007, and approving the activities of the guardian and trustee for that period.

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STATEMENT OF THE CASE

In 2006, Bernadyne E. Jacoby (Ms. Jacoby), at age 79, resided alone at her home in Auburn, Washington. CP 2. She had two adult sons: Randal Jacoby (Randal), residing in Nevada, and Gary Jacoby (Gary), residing in southern California. CP 93-93. Years earlier Ms. Jacoby had established a private express trust, named Bernadyne E. Jacoby Trust (Jacoby Trust), and she had transferred substantially all her assets into that trust and had maintained them in that trust. CP 3, 17, 142, 148.

In early 2006, it appeared to Ms. Jacoby's friends and to her sons that she was declining cognitively. CP 93. On March 14, 2006, Ms. Jacoby met with an attorney and signed a financial power of attorney (Appendix A) and a health care power of attorney (Appendix B)¹ appointing Gary as her attorney-in-fact and naming Randal as her alternate attorney-in-fact. That same day, she signed before the same attorney-notary (Matthew W.

Wesley, WSBA 33997) both an Amendment #4 to the Jacoby Trust

¹ These two powers of attorney are in the appendix rather than the clerk's papers because they appear in the trial court record only within a 243-page report filed November 16, 2006, by KCSO Detective Ostrum. In preparing clerk's papers, the clerk will not extract pages from a pleading or report filed as a single document.

declaring her resignation as trustee and appointment of Gary as trustee (CP 55-56) and, inconsistently, an affidavit that declared herself then to be the sole acting trustee. CP 57. In mid-March, Randal began residing with her temporarily to provide companionship and assistance, and to assess her needs for assistance. CP 94. The next month, Gary began paying her monthly bills. CP 94.

In early September of 2006, Gary and one of Ms. Jacoby's friends from her church, Carol Teodoro (Teodoro), began urging her to move from her home into an assisted living institution. CP 95, 349. Ms. Jacoby strongly wished to live out her life in her own home (CP 349-54), which wish Randal supported, and she feared that Gary might use his authority to move her from her home against her will. CP 95, 350-54, 369. So she refused further contact with Gary and Teodoro (CP 95), and on September 16, 2006, Ms. Jacoby signed new powers of attorney for financial matters (CP 357-63) and for health care (CP 364-67) that named Randal as her attorney-in-fact with long-time friend Marie Jurlin (Jurlin) as his alternate. CP 96. And she signed an Amendment #5 to the Jacoby Trust appointing Randal as the sole trustee, with Jurlin as the first alternate and her daughter, Camille Hutchison (Hutchison) as the second alternate. CP 58-59, 96.

On September 29, 2006, a social worker from Adult Protective Service (APS) of the Department of Social and Health Services (DSHS)

requested that the King County Sheriff's Office (KCSO) make a welfare check on Ms. Jacoby. CP 99, 173. When Randal sought a warrant or some explanation supporting the deputy sheriff's demand to enter Ms. Jacoby's home, Randal was arrested and jailed for obstructing the deputy. CP 99, 173. Within hours thereafter, Teodoro and Gary arranged for Ms. Jacoby to be taken from her home to "safe houses" of friends from her church and made to believe that Randal was a criminal who had stolen her savings and was a threat to her safety. CP 99, 330-31. Gary reported to KCSO that Randal had stolen Ms. Jacoby's U.S. savings bonds worth \$118,000, and KCSD Detective Robin Ostrum was assigned the case. CP 169-72.

In early October, 2006, Gary filed in King County Superior Court a petition for the appointment of a guardian for the person and estate of Ms. Jacoby, which was granted by that court's order entered November 20, 2006, (Guardianship Order) appointing professional guardian Ingrid Cameron (Cameron) in such roles. CP 1-9. The Guardianship Order, at page 3 ¶6, found that "Some or all of Ms. Jacoby's assets are held by the trustee of the Bernadyne Jacoby Living Trust." CP 3. And on page 6 ¶12, the Court Commissioner struck out the sentence reading "Ingrid Cameron is now and hereby is appointed acting trustee of the [Jacoby Trust]" and instead handwrote in "Ingrid Cameron through her attorney will petition to substitute as acting trustee." CP 6.

On December 19, 2006, Cameron, represented by her attorney, David

Petrich (Petrich), filed a petition to replace the trustee of the Jacoby Trust, requesting the appointment of herself as trustee. CP 10-59. In her petition, she noted that in Ms. Jacoby fifth and last amendment to the trust she appointed Randal as the acting trustee. CP 11, 58-59. She asserted an inability to locate Randal, requested “that the court waive the necessity of service of the Summons upon Randal,” and asserted “it is unlikely that publication of a Summons would provide any meaningful notice to Randal.” CP 13. In that petition, Cameron reported that Ms. Jacoby’s home, her U.S. savings bonds, and her accounts at Columbia Bank and Washington Mutual Bank were all titled in the Jacoby Trust. CP 11. On January 3, 2007, the Court held a hearing on Cameron’s petition at which it entered an order (Trusteeship Order) that removed the acting trustee of the Jacoby Trust and appointed Cameron as the substitute trustee of it. CP 60-62. Randal was not present or represented by counsel at that hearing. CP 60-62.

On January 5, 2007, one of Randal’s lawyers, Michael Goldfarb, delivered to Petrich the U.S. savings bonds of the Jacoby Trust that Randal had entrusted with Goldfarb for safekeeping. CP 116.

On March 21, 2007, Randal filed a declaration with exhibits “to refute the untrue, utterly unfounded, and hysterical allegations made against me in this proceeding and in related protection proceedings,” (CP 92-120) and he filed a collection of eleven statements by persons vouching for his good

character and his good relationship with his mother, Ms. Jacoby. CP 68-91. In that declaration at pages 9 and 10, Randal documented the extent to which Cameron, Petrich, and others had misled the court and denied Randal his right to participate in the proceedings affecting his mother and himself. CP 100-01. At that time he also filed objections (CP 121-27) to Cameron's initial inventory and personal care plan, citing specific deficiencies, and noting again the extent to which Cameron and Petrich had acted improperly to mislead the court and to exclude him from participating in the proceedings, concluding the pleading with the statement, "Randal is considering with his undersigned counsel what strategies to pursue to challenge some of the outrageous and irregular proceedings that have occurred" CP 126.

The trial court, at a hearing March 26, 2007, orally approved Cameron's care plan and entered a conforming order May 29, 2007. CP 145-47. Following a hearing May 7, 2007, it entered another order May 29, 2007, (CP 138-38) approving a revised initial inventory that Cameron had filed April 20, 2007. CP 139-44. That revised initial inventory noted that all the listed assets were titled in the Jacoby Trust except for a Columbia Bank checking account that Cameron had opened with proceeds of a Columbia Bank certificate of deposit (CD) that had been titled in the Jacoby Trust. CP 141-42, 11, 240.

At the hearing on March 26, 2007, the judge ordered Cameron to

reimburse the Jacoby Trust for a penalty fee that a bank had charged due to Cameron's early withdrawal of a CD immediately upon her appointment as guardian. CP 146. In successfully arguing for reconsideration, Cameron asserted, "At the time the guardian was appointed, there were no available funds within the guardianship to pay for Bernadyne Jacoby's reasonable and necessary care because all of the funds were titled under the name of the Trust." CP 148, 146, 152, 396-97.

Randal's counsel, the undersigned, met briefly in early December 2007 with KCSO Detective Ostrum attempting to learn if she had found any actual evidence of wrongdoing by Randal, and it appeared to him that she had not. Report of Proceedings on April 25, 2008 (RP) 19. On December 13, 2007, Randal filed a motion and supporting declaration challenging the validity of the Trusteeship Order entered January 3, 2007, based upon the court's lack of personal jurisdiction over him as the then acting trustee and upon Cameron's failure to give him any notice of her petition and hearing for the Trusteeship Order. CP 153-57. Cameron filed a response to that motion (CP 159-62) to which Randal filed a reply. CP 163-75. At a hearing on January 10, 2008, the court entered an order (Vacating Order) vacating the Trusteeship Order of a year earlier as a void order based upon its conclusions that the court then "lacked personal jurisdiction over Randal Jacoby in his capacity as Trustee of the Bernadyne Jacoby Trust" and Cameron's failure to notify Randal of her

petition and hearing on it that resulted in the Trusteeship Order. CP 176-77. Cameron did not seek reconsideration or revision of the Vacating Order, nor seek appellate court review of it. CP 427.

On February 1, 2008, the King County Superior Court entered a stipulated order transferring venue of the case to the Pierce County Superior Court. CP 178-79.

On March 3, 2008, Cameron filed a Guardian and Trustee's First Annual Report, covering the guardianship from November 20, 2006, through October 31, 2007, and covering the Jacoby Trust from January 3, 2007, through October 31, 2007. CP 181-258. Cameron also then filed an attorney fees declaration by Petrich. CP 259-75.

On March 5, 2008, Cameron filed a petition requesting her appointment as successor trustee of the Jacoby Trust, asserting "there is a dispute as to whether there is an acting trustee." CP 276-82. At the same time she filed a declaration of KCSO Detective Ostrum in which she claimed to believe probable cause existed to charge Randal with forgery and obtaining signature by deception or duress in connection with the documents Ms. Jacoby signed on September 16, 2006. CP 283-88.

On March 12, 2008, Randal filed objections to Cameron's annual report and objections to Cameron's petition for appointment as trustee, including her failure to provide requisite notice of it. CP 289-315. The court on March 14, 2008, continued those matters until late April to permit

Cameron to provide the requisite notice to interested parties. CP 316.

On March 31, 2008, Cameron filed a supplemental petition recommending that the court appoint Capital Guardianship Services as trustee of the Jacoby Trust. CP 317-21.

On April 16, 2008, Randal filed a response to Cameron's petition for appointment of a trustee. CP 326-74. In his initial point, he asserted his tenure as the duly appointed and acting trustee of the Jacoby Trust and that the court continued to lack personal jurisdiction over him in that capacity so it lacked power to remove him as such. CP 327-27. He filed several declarations of witnesses indicating that Ms. Jacoby, for rational reasons and of her own free will, appointed Randal as trustee and attorney-in-fact by signing papers on September 16, 2006, and indicating that she had a trusting mother-son relationship with Randal. CP 349-56, 369-73. He included a letter of March 28, 2007, from a DSHS/APS official reporting that it had been unable to determine, on a more probable than not basis, that he had mistreated his mother. CP 374.

On April 17, 2008, Randal filed a motion requesting that the court vacate all orders in the proceeding that had flowed from the Trusteeship Order that been vacated as void three months earlier by the Voiding Order. CP 375-89. On June 20, 2008, Cameron filed a motion requesting that the court confirm all those prior orders. CP 421-25. The court later granted Cameron's motion, implicitly denying Randal's. CP 463-64.

On April 21, 2008, Randal filed additional objections to Cameron's annual report as trustee and guardian, vigorously asserting that the court lacked jurisdiction over the Jacoby Trust and that substantially all of Ms. Jacoby's assets were in that trust. CP 390-98. That pleading also detailed specific objections to Cameron's failure to segregate and account for trust assets separately from guardianship assets, to the excessive fees being charged by Cameron and Petrich, and to Cameron's continuing failure to report Ms. Jacoby's residential location. CP 391-95

After a lengthy hearing on April 25, 2008 (RP 1-42), the court entered an order appointing Cameron as trustee of the Jacoby Trust effective as of that date. CP 470-74. Since Randal's counsel later disputed the propriety of that order's presentation after that hearing, the court vacated and re-entered that order on August 15, 2008. CP 443-45, 469. (That appointing order will be referred to here by its initial entry date, April 25, 2008.)

At the April 25, 2008, hearing the court indicated unwillingness to approve fees of Petrich and Cameron that resulted from their procedural errors. RP 37. But they petitioned again on June 20, 2008, for approval of all their requested fees. CP 426-30. Randal again objected. CP 440-41.

On July 18, 2008, Judge van Doorninck sent a letter to counsel for Cameron and Randal inviting responses before August 8, 2008, to Cameron's proposed orders approving all her and Petrich's requested fees, and approving all actions of Cameron as "de facto trustee" and confirming

all prior orders of the court. Appendix C ². On August 7, 2008, Randal replied to the Judge's letter, reasserting prior objections and asserting that the de facto trust doctrine should be inapplicable to Cameron/Petrich because they should have known that the Trusteeship Order was void. CP 445-54. Though Judge van Doorninck signed those two orders on August 8, 2008, counsel were unaware of that until after the orders were entered on August 15, 2008. CP 463-66, 476. On August 13, 2008, Cameron filed a reply arguing that the de facto trustee doctrine should apply to her and filed a declaration asserting her belief that she had been duly appointed trustee of the Jacoby Trust by the Trusteeship Order. CP 455-60.

At a hearing on August 15, 2008, the court entered an order vacating and re-entering its order April 25, 2008, and entered a fee-approval order identical to the one signed a week earlier but for the addition of a paragraph granting approval to the Guardian and Trustee's First Annual Report and the activities of the guardian and trustee during that period. CP 467-69.

Randal filed a notice of appeal on September 10, 2008. CP 461-76. ³

To date, no charges have resulted from KCSO Det. Ostrum's investigation, and Randal's only arrest was for the alleged obstruction on

² Randal had listed Judge van Doorninck's letter in his Designation of Clerk's Papers, but the clerk apparently overlooked including it. CP 478.

³ Strangely, in the clerk's papers, the Notice of Appeal was substantively altered. In its exhibits 1 - 5 the clerk whited-out or digitally redacted the dates and codes affixed to the face of pleadings by the clerk's docketing staff. An unaltered copy of the Notice of Appeal was filed in this appellate court on September 10, 2008.

September 29, 2006, for which charges were dismissed. CP 117-20.

ARGUMENT

1. Randal was the duly appointed trustee of the Jacoby Trust.

For months prior to September 16, 2008, Randal was assisting Ms. Jacoby with her financial affairs and her activities of daily living. The testimony of long-time friends and neighbors indicates that she was trusting of Randal and she had rational reasons for wishing to replace Gary with Randal as trustee of her trust and as her attorney-in-fact. No admissible evidence was presented to the trial court that Ms. Jacoby lacked requisite mental capacity on September 16, 2006, to understand the nature and effect of her actions in appointing Randal as trustee. The fact that on November 20, 2006, the court found her to need a guardian—after she had been uprooted from her familiar home, shuttled between “safe houses”, and programmed into believing that her trusted son had stolen her savings and presented a threat of harm to her—does not indicate that she lacked requisite capacity to appoint Randal as trustee on September 16, 2006. Estate of Head, 94 N.M. 656, 615 P.2d 271 (App. 1980). It is debatable whether the capacity needed to replace a trustee or attorney-in-fact is testamentary capacity or contractual capacity, Queen v. Belcher, 888 So.2d 472, 477 (Ala. 2004) (contractual capacity required to execute a power of attorney and a trust agreement); Golleher v. Horton, 148 Ariz.

537, 540, 715 P.2d 1225 (App. 1985) (“the better test [of capacity to execute a power of attorney] is whether the person is capable of understanding in a reasonable manner, the nature and effect of his act.”—Washington’s contractual capacity test in Page, *infra* at 108). But in any case, Washington law presumes that a person has testamentary capacity and contractual capacity unless proven otherwise by clear, cogent, and convincing evidence. Page v. Prudential Life Ins. Co. of America, 12 Wn.2d 101, 120 P.2d 527 (1942) (contractual capacity); In re Estate of Bottger, 14 Wn.2d 676, 685, 129 P.2d 518 (1942) (testamentary capacity).

The trial court never received evidence, much less clear, cogent, and convincing evidence, that Ms. Jacoby lacked requisite capacity on September 16, 2006, to execute the amendment appointing Randal as trustee of the Jacoby Trust. The court was fully aware of her appointment of Randal, and it had on basis to ignore that fact.

2. The trial court did not have personal jurisdiction over Randal to empower the court to remove him as trustee of the Jacoby Trust.

The Vacating Order concluded that the trial court lacked personal jurisdiction over Randal in his capacity as trustee of the Jacoby Trust. It is undisputed that Cameron never served, or even attempted to serve, Randal with legal process sufficient to vest in the court personal jurisdiction over

Randal as trustee of the Jacoby Trust. Personal service of process is required to obtain in personam jurisdiction over an individual defendant, absent compliance with applicable statutes providing for substituted service of process. Kennedy v. Korth, 35 Wn. App. 622, 668 P.2d 614 (1983). Randal's appearance by counsel in the guardianship proceeding (CP 67) affords no basis for the court's personal jurisdiction over him in his capacity as trustee of the Jacoby Trust. DiBernardo-Wallace v. Gullo, 34 Wn. App. 362, 364, 661 P.2d 991 (1983). For a court properly to remove an individual trustee of a private express trust, it must have personal jurisdiction over the individual in their representative capacity as trustee of the trust. Marriage of McKean, 110 Wn. App. 191, 195, 38 P.3d 1053 (2002). The trial court did not have personal jurisdiction over Randal in his representative capacity as trustee of the Jacoby Trust.

3. The trial court did not have grounds to remove Randal as trustee of the Jacoby Trust.

While trial courts, if they have requisite jurisdiction, have broad discretion to remove trustees and personal representatives, a removal without valid grounds constitutes an abuse of discretion. Estate of Jones, 152 Wn.2d 1, 10 n.2, 100 P.3d 805 (2004). The trial court received no admissible evidence of misconduct by Randal in his capacity as trustee of the Jacoby Trust or in any other capacity. Hearsay evidence in

declarations is inadmissible and may not be considered by a court.

Marriage of Morrison, 26 Wn. App. 571, 575 n.2, 613 P.2d 557 (1980).

The declaration by KCSO Det. Ostrum (CP 283-88) alleging misconduct by Randal was inadmissible hearsay (and was directly contradicted by admissible declarations by the Jurlins, Hutchison, and Murphy. CP 350-54, 368-69.)

What's more, the trial judge at the hearing on April 25, 2008, stated, "I have no comment or assessment about the allegations ... against Randal. I don't know anything about that" RP 12. And when explaining her decision to replace Randal with Cameron as the trustee, the judge stated, "I think it is better in this particular case, under these circumstances — again, not talking about misconduct on his part." RP 14-15.

The trial court did not have grounds to remove Randal as trustee.

4. Neither a guardian nor its supervising court may exercise an incapacitated person's reserved power to replace, at will, the trustee of a trust created by the incapacitated person.

Ms. Jacoby prior to her incapacity, held a reserved power under the Jacoby Trust document to revoke or modify the trust at will—without any grounds—which implicitly includes power to change a trustee. CP 329-30. The first sentence of paragraph 2.1 of the trust document reserved to Ms. Jacoby the right "To revoke or modify this Trust or withdraw any part of the Trust assets at any time." CP 18.

But upon the commencement of the guardianship proceeding for an individual, it would contravene clear legislative policy and law for a guardian or its supervising court—without grounds—to revoke or modify, or change the trustee of, a trust that the individual had created for their benefit as an alternative to their possible guardianship. In 1996 legislation (in which Randal’s undersigned counsel was a leading proponent) the legislature inserted several provisions in the guardianship laws (RCW Ch. 11.88) to recognize citizens’ right to have their trusts and other alternatives to a judicially supervised guardianship respected and left in place by the judiciary. RCW 11.88.030(1)(i), .045(5), .090(5)(e), .090(5)(f)(iv), and .090(9). The trial court’s assumption of authority to supervise the Jacoby Trust—“Because of the guardianship, I have jurisdiction over both.” (RP 23)—reflects the pre-1996 prevailing judicial disregard of alternatives to judicially supervised guardianships that the legislature sought to change through its 1996 legislation.

The Jacoby Trust is an adequate alternative to a guardianship estate for substantially all the assets that Ms. Jacoby owned. That trust can be administered by her chosen trustee—Randal—at much, much less cost than the professional guardian-trustee chosen and supervised by the Court—Cameron. It defies legislative policy and law for the trial court to functionally convert the Jacoby Trust into a supervised guardianship estate.

The court's action of bestowing on Ms. Jacoby's guardian, Cameron, the title of "trustee" and converting Ms. Jacoby's family-managed private express trust of into a public, court-supervised trust is the functional equivalent of replacing the Jacoby Trust with a guardianship estate.

An early Washington case established that courts ought not appoint an estate guardian for assets that are actually in a trust for the benefit of an incapacitated person. In Studebaker v. Hogen, 104 Wash. 265, 176 P. 339 (1918), the supreme court reversed a trial court's appointment of a guardian for a decedent's minor children's estates because the children, who were the beneficiaries of the decedent's testamentary trust, had no estate to administer. Studebaker, 104 Wash. at 267. It explained:

The court erred, however, in making the appointment of a guardian of their estates, for the reason that the record discloses no estates in the minors which permits the appointment of a guardian; the law being that a guardian of an estate is not to be appointed until it is shown that the prospective ward 'has property in the county needing the care and attention of a guardian.' By his will, Hogen left his property, not to his children, but to the appellants, as trustees, and what remains of the trust property after the terms of the trust have been fulfilled will not come into the possession of the children, by the terms of the will, until after they have become of age.

Studebaker, 104 Wash. at 267.

Similarly here, the assets that are in the Jacoby Trust do not need a court-supervised professional guardian—Cameron (wearing a "trustee" hat)—administering them. Randal, Ms. Jacoby's chosen trustee, can

administer them without court supervision, just as Ms. Jacoby intended.

5. The trial court effectively disregarded the law and the order of January 10, 2008, by nullifying the effect of that order.

The Voiding Order was a direct result of the misconduct by Cameron and Petrich in deliberately failing to notify Randal of the hearing they set seeking the Trusteeship Order, and misrepresenting to the court that they were unable to locate him. Cameron wanted to replace Randal as the trustee. She wrote in her timesheet record on November 8, 2006, "Found that Randall (sic) has the POA as well as Trustee of the trust. ... I have decided to not take this case if the trust is with Randal and he stays in place." CP 199. But their scheming resulted in the Trusteeship Order being declared void by the Vacating Order.

Under Washington law it is clear that if a court's order is determined to have been void then all the court's subsequent rulings that were premised upon the validity of the earlier order are also void. Esmieu v. Schrag, 88 Wn.2d 490, 497, 563 P.2d 203 (1977) (briefed to the trial court at CP 376). At the hearing on April 25, 2008, Randal's counsel asserted that point and the trial judge readily agreed, saying "I think it's clear that the order was vacated, so technically, absolutely, you're right." RP 5. And the judge later stated to Petrich, "I want to hear from you, Mr. Petrich, about the idea of vacating all the previous orders and, clearly, with the

order of January 2008 invalidating the January 2007 order, everything after that is technically also void.” RP 15.

Notwithstanding the trial court’s clear understanding of the law, its subsequent rulings approving and confirming all of Cameron’s actions and all the orders that were predicated on the void Trusteeship Order patently disregarded that law. Judges take an oath to respect the rule of law.

6. The de facto trustee doctrine does not apply to a person whose misconduct renders void their appointment as trustee.

The concept of de facto trustee was recently recognized in In re McKean, 144 Wn. App. 333, 183 P.3d 317 (2008) (McKean II), which basically adopted the reasoning in Allen Trust Co. v. Cowlitz Bank, 210 Or. App. 648, 152 P.3d 974 (2006). In the Oregon case, Allen Trust Company had been appointed, and functioned as, successor trustee of a trust by a predecessor trustee, Valerie. A court later ruled that Valerie had not validly been a trustee, so her appointment of Allen Trust had been void. Allen Trust sought compensation for the services it had rendered, claiming that it was a de facto trustee. The appellate court, at page 653, framed the question as, “the question is whether Allen Trust had a *reasonable basis for believing that Valerie’s appointment of it was valid* and whether it relied on that appointment in good faith and acted as a trustee de facto.” [Emphasis added.] To emphasize, *to be a de facto*

trustee a party must reasonably believe their appointment to be valid.

Similarly, in McKean II, Commencement Bay Guardianship Services had been appointed successor of a trust by a trial court incident to a marital dissolution of the trust's trustor. The appellate court later ruled that the trial court in the dissolution proceeding had lacked jurisdiction over that trust property and its trustees, so it vacated the order that had appointed Commencement Bay as successor trustee. Marriage of McKean, 110 Wn. App. 191, 38 P.3d 1053 (2002). In McKean II, the appellate court addressed the trustor's challenge to Commencement Bay's standing to petition the trial court for an order concerning the trust after the appellate court had vacated Commencement Bay's trusteeship appointment. The appellate court ruled that Commencement Bay had standing as a de facto trustee, because, citing Allen Trust, "Commencement Bay *reasonably believed it was the trustee and acted in good faith.*" (Emphasis added.) McKean II at 342.

A person whose own misconduct in obtaining their appointment as trustee causes that appointment to be ruled void cannot have reasonably believed it to have been valid. He or she cannot take shelter under the de facto trustee doctrine.

7. Cameron's conduct did not warrant application of the de facto trustee doctrine.

As noted above, Cameron wrote in her timesheet record on November 8, 2006, “Found that Randall (sic) has the POA as well as Trustee of the trust. ... I have decided to not take this case if the trust is with Randal and he stays in place.” CP 199. That explains why she and her counsel chose not to inform Randal of, much less serve him with papers for, the hearing on their petition requesting his removal as trustee of the Jacoby Trust. Cameron knew Randal was no longer residing in Ms. Jacoby’s home, an asset of the Jacoby Trust, for she had the locks re-keyed several days after her appointment as guardian (weeks before her appointment as purported trustee). Timesheet entry for November 25, 2006. CP 201.

Randal’s reply to Cameron’s response to his motion to vacate the Trusteeship Order details some of the information, including Randal’s permanent Nevada address and the name of his Seattle attorney, that Cameron possessed that would have enabled Cameron and Petrich to properly notify Randal of their actions to remove him, had they wished to do so.

In Randal’s declaration filed March 21, 2007, at pages 9 and 10 (CP 100-101) he exposed the systematic manner by which Cameron and Petrich deliberately attempted to exclude him from participating in any judicial proceedings, stating:

Though at the first guardianship hearing on November 6, I provided to the lawyers appearing it contact information for me and for my lawyer, Robert Flenbaugh II (but Marilyn Smith

departed before getting Mr. Flennaugh's contact information), but none of them attempted to notify me or Mr. Flennaugh of their court appearance on November 9 to obtain a temporary restraining order against me. They never served me with, or even mailed me, that temporary restraining order. Though I continued to receive mail addressed to my mother's Auburn home, I had returned to the Tahoe area, but my Verdi, NV, home address was in the sheriff's report on the obstruction incident that they had appended to their Petition for Vulnerable Adult Protection Order filed November 9. I understand that the temporary order expired by its terms on November 20, 2006.

A report filed November 16, 2006, in the guardianship proceeding (first as Sub# 16 and again as Sub# 43) by sheriff deputy Robin Ostrum and provided to Ms. Cameron and all lawyers involved in that proceeding identified my lawyer, Robert Flennaugh II, but neither Ms. Cameron or any lawyer in the guardianship proceeding contacted him or provided him any information about the proceeding. [correction: the GAL mailed some guardianship papers to Flennaugh on October 13, 2006. CP 174.]

Neither Ms. Cameron nor her attorney, Mr. Petrich, provided me a copy of the court order entered November 20 that appointed her as my mother's guardian and directed her to notify me and other of our right to request special notice of further proceedings in the guardianship case.

Neither Ms. Cameron or Mr. Petrich notified me of their motion to remove me and appoint her as trustee of my mother's living trust, nor provided me with their court papers, nor notified me of the hearing they set for January 3, 2007, on their motion. They falsely claimed they could not locate me, I had spoken to Ms. Cameron on multiple occasions and she knew full well how to contact me and provide me documents, either directly or through my lawyer Robert Flennaugh II.

Neither Ms. Cameron or Mr. Petrich notified me or their presentation to this Court on February 15, 2007, or a Petition for Protective Order Pursuant to RCW 74.34.110, supported only by Detective Ostrum's undated report that she filed November 16 to describe her "witch hunt" investigation of my activities in and before September 2006. They readily could have given me notice and an opportunity to be heard, for Ms. Cameron had corresponded by e-mail with me, and Mr. Petrich on January 5,

2007, had received the 207 U.S. savings bonds with a cover letter (attached as Exhibit C) [CP 116] from lawyer Michael Goldfarb, indicating I was his client.

Similarly disregarding well-established judicial procedures, neither Ms. Cameron or Mr. Petrich notified me of their motion for the court to approve their inventory and personal care plan, and the hearing they scheduled for February 26, 2007, on that matter.

This Court on February 26, 2007, expressly ordered Ms. Cameron to permit my mother's long-time good friend, Marie Jurlin, to visit my her, and immediately following that hearing Mr. Petrich assured us that he would arrange it in a couple of days. Notwithstanding that Court order and direct assurance, Ms. Cameron has refused to permit Ms. Jurlin to speak with or to visit my mother.

And in Randal's objections to Cameron's initial inventory and care plan, his undersigned counsel pointed out (CP 125-26) to the court Cameron's and Petrich's outrageous misconduct and indicated Randal's intention to pursue his judicial remedies, stating:

4. Guardian Cameron's Behavior. Randal urges the Court to recognize the extent to which Cameron and her attorney, Petrich, have sought to completely deny Randal an opportunity to participate in the proceedings relating to his mother, as detailed on pages 9 and 10 of the Declaration of Randal Jacoby. In addition, they have misled and defied this Court. The Court's Order Appointing Guardian (Sub# 29) directed Cameron to notify Randal and others of their right to request to receive copies of all pleadings filed in the case, but she chose not to do that. At the hearing to remove Randal as trustee of Bernadyne's trust on January 3, 2007, at which Cameron and Petrich falsely claimed their inability to notify Randal, Commissioner Watness penned at paragraphs 5 and 6 on page 2 of the Order (Sub# 53A) that Cameron was to report to the Court on February 26, 2006 on her attempts to inform Randal of the court proceedings, and was to continue attempting to notify him of the proceedings. But Cameron and Petrich chose to ignore that directive, as well, even

though Petrich received a letter and the U.S. Savings Bonds on January 5 from Seattle lawyer Michael Goldfarb on behalf of Randal, who Goldfarb identified as his client.

Randal is considering with his undersigned counsel what strategies to pursue to challenge some of the outrageous and irregular proceedings that have occurred in this Court, whether due to sloppiness or maliciousness by the professionals and nonprofessionals involved. To the extent this Court can cure some of those wrongs of its own initiative, Randall urges it to do so.

Because Cameron's and her attorney's own misconduct in obtaining her appointment in January 2007 as trustee caused her appointment to be ruled void—which misconduct was publicly exposed in March 2007—Cameron cannot have reasonably believed it to have been valid. Cameron cannot take shelter under the de facto trustee doctrine.

8. Cameron's and her attorney's conduct did not warrant approval of payment from the guardianship or trust estates all fees they claimed for services in the guardianship/trust proceeding.

It is an abuse of discretion for the trial court to reward misconduct of the nature and degree committed by Cameron and Petrich by approving their requested high professional fees for all the time that they spent on the case. The trial court's oral ruling at the hearing on April 25, 2008, was to deny them payment for their time attributable to their errors. RP 37. The judge stated:

My request to you, Mr. Petrich, is that it is clear to me there have been some procedural errors, for whatever reason, and those have led to several hearings, at least in front of me so far, and

clearly there was one in January of 2008 in front of a King County judicial officer that vacated a previous order.

All those fees need to be backed out. I'm not going to authorize those your fees or the guardian's fees. That's a mistake that I don't think Mrs. Jacoby needs to pay for, essentially. So I'm going to ask that you prepare, sort of, a revised declaration of your fees, taking that out, because I think those are unnecessary hearings that shouldn't have happened if everything had been done right in January of '07.

But after Cameron and Petrich submitted what was barely more than a reiterated request for full payment (CP 426-30), the court approved all their requested fees. CP 465-66.

Long-established case law in Washington holds that a guardian who fails to properly perform his or her duties is denied compensation. In re Carlson's Guardianship, 162 Wash. 20, 29, 297 P. 764 (1931) ("Where a guardian has been unfaithful in his trust, whether by willful act or indifference, it has been well established in this state that he is not entitled to compensation.")

9. Accountings for a guardianship estate of a trustor and for a private express trust for the benefit of that trustor should identify separately and accurately the assets, receipts, and expenditures of the guardianship estate and those of the trust estate.

It is settled common law that a fiduciary must accurately account for the assets and transactions of a guardianship or trust estate, and if a fiduciary administers two or more estates he or she must segregate their assets and separately accounting for each estate. Wash. St. Bar Assoc.,

Washington Probate Deskbook, 10-17; In re Carlson's Guardianship,
supra at 29; 2A Scott on Trusts § 179.

At the hearing on April 25, 2008, the Court stated, "Let me clarify. I
want separate accounting for the trust and for the guardianship." RP 29.

**10. Cameron's accountings for the guardianship estate and for the
Jacoby Trust did not identify separately and accurately the assets,
receipts, and expenditures of the guardianship estate and those of
the trust estate.**

Randal filed objections pointing out to the trial court that Cameron's
accountings did not accurately segregate and report the assets and
transactions of the Jacoby Trust separate from Ms. Jacoby's non-trust
assets. In objections he filed March 21, 2008, Randal wrote:

On Exhibit A-1, page 1, Cameron reports as a guardianship asset
the \$64,347.41 proceeds from Columbia Bank CD #5882. That
was, in fact, an asset of the Jacoby Trust that Cameron, on
November 21, 2006, wrongfully re-titled under her name as
guardian, according to her timesheet entry for that date in Exhibit
A-2. In Exhibit B, page 1, she correctly reports that Columbia
Bank CD #5882 was an asset of the Jacoby Trust.

And in supplemental objections Randal filed a more detailed description
of Cameron's treating the trust assets as the guardianship estate
immediately upon her appointment as guardian on November 20, 2006,
and in many ways failing to segregate trust assets from guardianship estate
assets. Randal stated (CP 392-91):

Attached as Exhibit A is a copy of Cameron's declaration

filed June 12, 2007, in which she declared under oath:

“At the time of my appointment, there were no funds titled in the name of Bernadyne E. Jacoby, but rather all of the assets which she had an interest in were titled in the name of the trustee of her Revocable Living Trust. At the time of my appointment as guardian, Randal Jacoby had orchestrated his appointment as trustee of the Trust.”

Cameron’s declaration describes how Washington Mutual Bank (“WAMU”)—because she was only guardian and not trustee—refused to let her take control of the trust funds, but that Columbia Bank acquiesced. Columbia Bank allowed her to withdraw a certificate of deposit, incurring an early withdrawal penalty of \$501.50, and Cameron proceeded to expend approximately \$30,000 of it from the period of November 20, 2006, through December 20, 2006.

Cameron knew as early as November 8, 2006, that Randal was trustee of the Jacoby Trust. Her timeslip entry for that date (Annual Report, Exhibit A-2), stated:

“Found that Randall (sic) has the POA as well as Trustee of the trust. ... I have decided not to take this case if the trust is with Randal and he stays in place.”

In addition, though Cameron knew (or should have known) that Ms. Jacoby’s residence was an asset of the Jacoby Trust, Cameron’s timeslip for November 25, 2006, shows that she then took control of it and changed the locks to it—nearly six weeks before her purported appointment as trustee of the Jacoby Trust.

Notwithstanding Cameron and her counsel’s recognition that all of Ms. Jacoby’s funds and her residence were assets of the Jacoby Trust, Cameron’s accountings consistently fail to properly separate the assets of the trust from Ms. Jacoby’s non-trust income (namely, her Social Security and retirement income, and her long term care insurance benefits). The recently filed “Guardianship Accounting” (Annual Report, Exhibit A-1) shows a “Starting Balance” of \$64,437, but that was the Jacoby Trust’s \$64,938 CD at Columbia Bank that Cameron withdrew on November 22, 2006, incurring an early withdrawal penalty of \$501. The “Guardianship Accounting” lists funds from WAMU of \$108,788, but as the receipt on page 4 of that exhibit shows, the WAMU accounts were all in the Jacoby Trust. The “Guardianship Accounting” shows that from those funds of the

Jacoby Trust, plus nearly \$40,000 in non-trust income, Cameron disbursed \$183,438, and held at the end of the accounting period a Columbia checking account with a balance of \$31,447 and a CD of \$50,000. Pages 5-8 of Exhibit A-1 show that neither the checking account nor the CD are titled in the name of the Jacoby Trust, though both resulted from Cameron's misappropriation of funds of the Jacoby Trust. Both should be titled in the name of the Jacoby Trust. The guardianship estate resources of Ms. Jacoby are her income from social security and retirement plans and benefits from her long term care insurance, and that income is spent on her care each month. To the extent her non-trust resources are insufficient for Ms. Jacoby's care, the trustee of the Jacoby Trust should distribute so much income or principal of that trust as is needed for her care—not \$81,447 more than is needed!

Notwithstanding Randal's detailed objections showing Cameron's failure to segregate and separately account for the Jacoby Trust assets, the trial court approved Cameron's Guardian and Trustee's First Annual Report just as it was filed on March 3, 2008, by the court's approval order of August 15, 2008. CP 467. That was an abuse of discretion.

11. The trial court did not comply with GR 15 and 22 and RCW 11.92.043(2)(a) and (3) when ordering that the current residential address of Ms. Jacoby be filed under seal.

In Randal's objections filed March 12, 2008, to Cameron's personal care plan/status report (CP 226-29), he pointed out that Cameron's continued nonreporting of Ms. Jacoby's residential address violated the law, stating (CP 293):

RCW 11.92.043(2)(a) and (3) require that a guardian of a person state in the periodic status report the address of the incapacitated

person and report to the court within 30 days of any change in that address. Cameron has failed to do so. Cameron has also refused to permit lifelong friends of Ms. Jacoby, namely Marie Jurlin and Camille Hutchinson, to visit with her, contrary to the superior court's order of May 29, 2007.

And in Randal's additional objections filed April 21, 2008, he stated (CP 395):

6. Continued Concealment of Ms. Jacoby's Whereabouts. Cameron continues to defy RCW 11.92.043 that requires, at subsection (2)(a), a guardian's annual report to include "The address and name of the incapacitated person and all residential changes during the period." Cameron had hidden Ms. Jacoby from the Court and from her long-time good friends—and has hidden the truth from Ms. Jacoby about why she was being hidden—for about 19 months, now. It is time for the truth to come out. Randal has never been a threat to Ms. Jacoby, and he never mishandled any of her funds. Cameron has simply conspired with Gary, the Teodoros, and others to perpetuate that cruel and malicious tale.

At the April 25, 2008, hearing, the trial judge stated, "I have no comment or assessment about the allegations ... against Randal. I don't know anything about that" RP 12. And when explaining her decision to replace Randal with Cameron as the trustee, the judge stated, "I think it is better in this particular case, under these circumstances — again, not talking about misconduct on his part." RP 14-15. Nonetheless, that trial judge at that hearing, upon hearing that Cameron wished to continue concealing Ms. Jacoby's location from Randal, directed Cameron to file her current residential location under seal. RP 35-36. And the court's order of that date so directs. CP 473.

Reports by guardians to their supervising court of the residential location of an incapacitated person, as required by RCW 11.92.043(2)(a) and (3), are not among the records ruled inaccessible to the public under GR 22. Accordingly, the trial judge properly may seal such a record from public access only by complying with GR 15, which requires conducting a hearing at which admissible evidence supporting the sealing is present. That rule, at subsection (c)(2), permits a record to be sealed only if, after the hearing, the court enters written findings that the specific sealing is justified by identified compelling privacy or safety concerns that outweigh the public interest in access to the court record.

If the trial court were to comply with that rule, it would recognize that no admissible evidence supports the ridiculous fears of Randal that Cameron and others apparently have programmed into Ms. Jacoby.

Cameron to this day has never reported to her supervising court the residential location of Ms. Jacoby, under seal or otherwise.

12. Randal should be awarded costs and attorney's fees against Cameron for raising and asserting the foregoing issues in the trial and appellate courts.

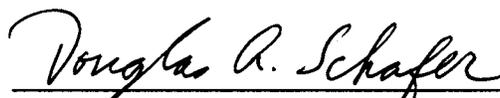
RCW 11.96A.150 grants broad authorization to courts in cases involving trusts, guardianship estates, and probate estates to award costs and reasonable attorney fees equitably to any party and against any party, or against the assets of any involved trust or estate. Randal asserts that

because the misconduct and mistakes of Cameron and her attorney necessitated this proceeding, it is equitable to award to Randal and against Cameron his costs and reasonable attorney fees incurred in this guardianship proceeding at the trial court and appellate court level.

CONCLUSION

At the commencement of her involvement in Ms. Jacoby's case, Cameron became an agent of the son, Gary, who sought her appointment, and she implemented Gary's malicious strategy to exile from his mother's life his brother, Randal. Cameron abused her authority and ignored applicable law to take control, even before her purported appointment as trustee, of the Jacoby Trust. And she failed to properly administer and account for that trust. The alternative to guardianship and probate that Ms. Jacoby had established—the Jacoby Trust—should be honored, including her appointment of Randal as its trustee. The court should correct and restore, as much as is possible, the arrangements and relationships that Ms. Jacoby had thoughtfully established before the commencement of this guardianship proceeding.

Respectfully submitted this 26th day of February, 2009.



Douglas A. Schafer, Attorney for Appellant
WSBA No. 8652

APPENDIX

- A. General Durable Power of Attorney, dated March 14, 2006.
- B. Durable Power of Attorney for Health Care, dated March 14, 2006.
- C. Letter to counsel from Judge van Doorninck, dated July 18, 2008.

Filed for Record at the Request of

Name _____

Address _____

DURABLE GENERAL POWER OF ATTORNEY

A. Designation: I, BERNADYNE ELEANOR JACOBY, of Auburn, State of Washington, County of King, do hereby constitute and appoint my son, GARY ALAN JACOBY, of Oceanside, California, to be my true and lawful attorney with full power in my name and stead and on my behalf, and with full power to substitute at any time or times, for any of the purposes described below, one or more attorneys, and to revoke the appointment of any attorney so substituted.

B. Purpose: The primary purpose in granting this Durable General Power of Attorney is to provide for my needs now and should I become incompetent. As such, my attorney-in-fact shall have all powers as are necessary or desirable to provide for my support, maintenance, health, emergencies and urgent necessities.

C. Powers: My attorney-in-fact, as fiduciary, shall have the following powers:

1. To manage my affairs, handle my investments, and take any actions necessary or desirable in connection with any financial institution in which I have an account or an interest in an account, including, without limitation, the power to continue, modify, or terminate existing accounts; open new accounts; draw, endorse, and deposit checks, drafts, and other negotiable instruments; prepare, receive, and deliver financial statements; establish, maintain, or close safe deposit boxes; borrow money; apply for and receive travelers checks and letters of credit; extend payment periods with respect to commercial paper; and perform any other acts authorized in RCW Chapter 11.94, except those acts that conflict with or are limited by a more specific provision in this Power. For the purposes of this paragraph, the term "financial institution" includes, but is not limited to, banks, trust companies, savings banks, commercial banks, building and loan associations, savings and loan companies or associations, credit unions, industrial loan companies, thrift companies, and brokerage firms;

2. To take any action necessary or desirable with respect to any securities that I own including, without limitation, the power to purchase and sell securities; exercise voting rights with respect to securities; collect dividends, interest, and any other proceeds generated by securities; transfer title to securities; and perform any other acts authorized in RCW Chapter 11.94, except those acts that

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conflict with or are limited by a more specific provision in this Power. For the purposes of this paragraph, the term "securities" includes stocks, bonds, mutual funds, and all other types of securities and financial instruments, except commodity futures contracts and call and put options on stocks and stock indexes, except with respect to the exercise of employee stock options;

3. To endorse and deliver certificates for transfer of bonds or other securities to be sold for my account and receive the proceeds of such sale;

4. To take any actions necessary or desirable for the management or maintenance of any real or personal property in which I own an interest when this Power is executed, or in which I later acquire an interest, including the power to acquire, sell, and convey ownership of property; control the manner in which property is managed, maintained, and used; change the form of title in which property is held; satisfy and grant security interests and other encumbrances on property; obtain and make claims on insurance policies covering risks of loss or damage to property; accept or remove tenants; collect proceeds generated by property; ensure that any needed repairs are made to property; exercise rights of participation in real estate syndicates or other real estate ventures; make improvements to property; and perform any other acts authorized in RCW Chapter 11.94, except those acts that conflict with or are limited by a more specific provision in this Power;

5. To sign, execute, acknowledge and deliver on my behalf any deed of transfer or conveyance covering personal property or real estate wherever situated (including transfer or conveyances to any trust established by me or for my benefit), any discharge or release of mortgage held by me on real estate or any other instrument in writing;

6. To negotiate and execute leases of any property, real or personal, which I may own, for terms that may extend beyond the duration of this power and to provide for the proper care and maintenance of such property and pay expenses incurred in connection therewith;

7. To subdivide, partition, improve, alter, repair, adjust boundaries of, manage, maintain and otherwise deal with any real estate, whether held as trust property or not, including power to demolish any building in whole or in part and to erect buildings;

8. To enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

9. To hold securities in bearer form or in the name of a nominee or nominees and to hold real estate in the name of a nominee or nominees;

10. To take any actions necessary or participate in the operation of any business venture, including, without limitation, the power to execute and enforce my obligations and rights as a partner in any general or limited partnership to the extent permitted by law and any applicable partnership agreement; enforce my rights as the holder of a bond or similar instrument issued by

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any business in which I have an interest; discharge my duties and enforce my rights in any sole proprietorship; expand, recapitalize, or reorganize any business to the extent my interest in that business allows; collect proceeds generated by any business in which I have an interest and to which I am entitled; sell or liquidate my interest in a business; and perform any other enterprise acts authorized in RCW Chapter 11.94, except those acts that conflict with or are limited by a more specific provision in this Power;

11. To borrow money from time to time in my name, and to give promissory notes or other obligations therefore, and to deposit as collateral, pledge as security for the payment thereof or mortgage any or all my securities or other property of whatever nature;

12. To have access to any and all safe deposit boxes of which I am now or may become possessed, and to remove therefrom any securities, papers or other articles;

13. To make and sign all tax returns, and pay all taxes required by law, including federal and state returns, and to file all claims for abatement, refund or other papers relating thereto;

14. To demand, collect, receive and receipt for any money, debts, or property of any kind, now or hereafter payable, due or deliverable to me, to pay or contest claims against me, to settle claims by compromise, arbitration or otherwise and to release claims;

15. To take any actions necessary or desirable with respect to any claim that I may have or that has been asserted against me and with respect to any legal proceeding, including, without limitation, the power to institute, prosecute, and defend legal proceedings and claims on my behalf; file actions to determine adverse claims, intervene in litigation, and act as amicus curiae in any proceedings affecting my interests; seek preliminary, provisional, or intermediate relief on my behalf; apply for the enforcement or satisfaction of judgments that have been rendered in my favor; participate fully in the development of claims and proceedings; submit any dispute in which I have an interest to arbitration; submit and accept settlement offers and participate in settlement negotiations; handle all procedural aspects, such as service of process, filing of appeals, stipulations, verifications, waivers, and all other matters in any way affecting the process of any claim or litigation; fully participate in any voluntary or involuntary bankruptcy proceeding involving me or in which I am a claimant; satisfy judgments that have been rendered against me; and perform any other acts authorized in RCW Chapter 11.94, except those acts that conflict with or are limited by a more specific provision in this Power;

16. To employ as investment counsel, custodians, brokers, accountants, appraisers, attorneys-at-law or other agents such persons, firms or organizations, including any of my said attorneys and any firm of which my said attorney may be a member or employee, as deemed necessary or desirable, and to pay such persons, firms or organizations such compensation as is deemed reasonable and to determine whether or not to act upon the advice of any such agent without liability for acting or failing to act thereon;

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- 17. To expend or distribute income or principal of my estate for the support, education, care or benefit of me and my dependents;
- 18. To renounce and disclaim any interest otherwise passing to me by testate or intestate succession or by inter vivos transfer;
- 19. To transfer any interest in any property I may have to the trustees of the most recent revocable living trust I have executed;
- 20. To surrender life insurance and annuity policies for their cash value;
- 21. To take any actions with respect to any insurance or annuity contracts, including, without limitation, the power to acquire additional insurance coverage of any type or additional annuities; continue existing insurance or annuity contracts; agree to modifications in the terms of insurance or annuity contracts in which I have an interest; borrow against insurance or annuity contracts in which I have an interest, to the extent allowed under the contract terms; change beneficiaries under existing contracts and name beneficiaries under new contracts to name my spouse or children as the beneficiaries; receive dividends, proceeds, and other benefits generated by the contracts; transfer interests in insurance or annuity contracts to the extent permitted under the terms of those contracts; and perform any other acts authorized in RCW Chapter 11.94, except those acts that conflict with or are limited by a more specific provision in this Power;
- 22. To take any actions necessary or desirable in order to effectively conduct my personal affairs and to discharge any and all obligations I may owe to myself and to family members and other third persons who are customarily or legally entitled to my support when this Power is executed, or that are undertaken thereafter, including, without limitation, the power to take steps to ensure that our customary standard of living is maintained; arrange for medical and dental care; continue existing charge accounts, open new charge accounts, and make payments thereon; provide for transportation; maintain correspondence; prepare, maintain, and preserve personal records and documents; maintain membership in any social, religious, or professional organization and make contributions thereto; and perform any other acts authorized in RCW Chapter 11.94, except those acts that conflict with or are limited by a more specific provision in this Power;
- 23. I hereby designate that my son, GARY ALAN JACOBY, shall be named as guardian of my person and of my estate in the event such necessity should arise; and
- 24. To make any gifts of property owned by the principal.

D. Transfer of Assets: My attorney-in-fact shall have the authority to transfer all of my property to my spouse or child(ren) (even if my spouse or child(ren) are acting as my attorney-in-fact) or to revoke any existing community property agreement, for the purpose of qualifying me for medical assistance or the limited casualty program for the medically needy as permitted by law, or to better utilize estate tax planning strategies.

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E. Taxes: My attorney-in-fact shall have the authority to represent the Principal in all tax matters; to prepare, amend, sign, and file federal, state, and local income, gift and other tax returns of all kinds, including, where appropriate, joint returns, FICA returns, payroll tax returns, claims for refunds, abatements, requests for extensions of time to file returns and/or pay taxes, extensions and waivers of applicable periods of limitation, protests and petitions to administrative agencies of courts, including the tax court, regarding tax matters, and any and all other tax-related documents, including but not limited to consents and agreements under Section 2032A of the Internal Revenue code of 1986, as amended ("Code"), and consents to split gifts, closing agreements, and any Power of Attorney form required by the Internal Revenue Service and any state and local taxing authority with respect to any tax year between the years 1983 and 2025; to pay taxes due, collect and make such disposition of refunds as the attorney-in-fact shall deem appropriate, post bonds, receive confidential information and contest deficiencies determined by the Internal Revenue Service and any state and local taxing authority; to exercise any elections the Principal may have under federal, state or local tax law; to allocate any generation-skipping tax exemption to which the Principal is entitled; and generally to represent the Principal or obtain professional representation for the Principal in all tax matters and proceedings of all kinds and for all periods between the years 1983 and 2025 before all officers of the Internal Revenue Service and state and local authorities and in any and all courts; to engage, compensate and discharge attorneys, accountants and other tax and financial advisers and consultants to represent and assist the Principal in connection with any and all tax matters involving or in any way related to the principal or any property in which the Principal has or may have an interest or responsibility.

F. Reliance Upon This Document: My attorney-in-fact and any person dealing with the attorney-in-fact shall be entitled to rely upon this Power of Attorney so long as such party has not received actual or constructive knowledge or notice of revocation, suspension or termination of the Power of Attorney by death or otherwise. Any action so taken in good faith unless otherwise invalid or unenforceable shall be binding on my heirs, legatees, devisees and personal representatives. I, and my estate, shall hold harmless and indemnify my attorney-in-fact from any and all liability for acts done by my attorney-in-fact in good faith.

1. The length of time which has elapsed from the date of execution of this Power of Attorney shall not prevent a party from reasonably relying on this Power of Attorney.
2. Any person may place reasonable reliance on this Power of Attorney regardless of whether it has been filed for record.
3. I hereby release and agree to indemnify and hold harmless from liability or damages of any kind, including attorney fees and litigation expenses incurred, suffered by any party, including, without limitation, a title insurance or other insurance company, a financial institution, or securities brokerage, which acts in reliance upon this Durable General Power of Attorney (unless revoked as specified herein) with respect to any transaction authorized by me in this Durable General Power of Attorney.

BET
Initials

G. Power to Sue Third Parties Who Fail to Act Pursuant to Power of Attorney: If any third party (including stock transfer agents, title insurance companies, banks, credit unions, and savings and loan associations) with whom my attorney-in-fact seeks to transact refuses to recognize my attorney-in-fact's authority to act on my behalf pursuant to this Power of Attorney, I authorize my attorney-in-fact to sue and recover from such third party all resulting damages, costs, expenses, and attorney's fees incurred because of such failure to act. The costs, expenses, and attorney's fees incurred in bringing such action shall be charged against my general assets, to the extent that they are not recovered from said third party.

H. General: In general I give to my said attorney full power to act in the management and disposition of all my estate, affairs and property of every kind and wherever situated in such manner and with such authority as I myself might exercise if personally present, including transfer of any or all of my assets into my said attorney's name.

I. Binding Authority: This Power of Attorney shall be binding on me and my heirs, executors and administrators and shall remain in force up to the time of my signing a revocation of this Power of Attorney or upon my death.

J. Revocation: This Power of Attorney shall be subject to revocation by the principal by written instrument at any time. Any such revocation shall be effective only upon recording of the written instrument of revocation in the records of the County Recorders office for the principal's county of residence. Until revoked in accordance with the above-mentioned procedure, this Durable General Power of Attorney shall continue to be in effect.

K. Termination.

1. By Guardian of Estate. The appointment of a guardian of the estate of the principal vests in the guardian, with court approval, the power to revoke, suspend or terminate this power of attorney. The appointment of a guardian of the person only does not empower the guardian to revoke, suspend or terminate this power of attorney.

2. By Death of Principal. The death of the principal shall be deemed to revoke this power of attorney upon actual knowledge or actual notice being received by the attorney-in-fact.

L. Governing Law: The laws of the State of Washington shall govern this Power of Attorney.

M. Alternate Attorney. In the event my son, GARY ALAN JACOBY, is unable or unwilling to serve as my attorney-in-fact, I appoint my son, RANDAL LEE JACOBY, of Verdi, Nevada, as my alternate attorney-in-fact.

BEJ
Initials

This Power of Attorney shall not be affected by my subsequent disability or incapacity.

IN WITNESS WHEREOF, I have hereunto set my hand on March 14, 2006.

Bernadyne Jacoby
BERNADYNE ELEANOR JACOBY

STATE OF WASHINGTON,)
) ss.
County of King,)

On this day personally appeared before me BERNADYNE ELEANOR JACOBY, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged the foregoing instrument was signed as a free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal March 14, 2006.



Matthew Wesley
NOTARY PUBLIC: Matthew Wesley
In and for the State of Washington
My appointment expires 06-19-2008

5118 2/17/2000

DURABLE POWER OF ATTORNEY FOR HEALTH CARE

1. DESIGNATION OF HEALTH CARE AGENT.

I, BERNADYNE ELEANOR JACOBY, (or "Principal") of Auburn, Washington, hereby revoke any prior powers of attorney for health care and I hereby appoint my son, GARY ALAN JACOBY, whose current city and state are Oceanside, California, as my attorney-in-fact (or "Agent" or "Personal Representative") to make health and personal care decisions for me as authorized in this document.

2. EFFECTIVE DATE AND DURABILITY.

By this document I intend to create a durable power of attorney effective upon, and only during, any period of incapacity in which, in the opinion of my Agent and attending physician, I am unable to make or communicate a choice regarding a particular health care decision.

Notwithstanding the foregoing, this power of attorney shall be immediately effective for the sole purpose of authorizing my Agent to direct my Attending Physician to conduct an examination to determine my capacity. My Attending Physician shall be released from any and all liability that might attach under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 USC 1320d and 45 CFR 160-164 for conducting such examination and communicating its results to my Agent.

This power of attorney may be revoked, suspended or terminated by the principal at any time the principal is not disabled or incapacitated, if the principal sends written notice to the designated attorney-in-fact. Unless otherwise revoked, suspended or terminated, the death of the principal shall be deemed to terminate this power of attorney upon actual knowledge or actual notice being received by the attorney-in-fact.

3. AGENT'S POWERS.

I grant to my Agent full authority to make decisions for me regarding my health care. In exercising this authority, my Agent shall follow my desires as stated in this document or otherwise known to my Agent. In making any decisions, my Agent shall attempt to discuss the proposed decision with me to determine my desires if I am able to communicate in any way. If my Agent cannot determine the choice I would want made, then my Agent shall make a choice for me based upon what my Agent believes to be in my best interests. My Agent's authority to interpret my desires is intended to be as broad as possible, except for any limitations I may state below. Accordingly, unless specifically limited by Section 4, below, my Agent is authorized as follows:

A. To provide informed consent for health care decisions on my behalf;

B. To consent, refuse, or withdraw consent to any and all types of medical care, treatment, surgical procedures, diagnostic procedures, medication, and the use of mechanical or other procedures that affect any bodily function, including (but not limited to) artificial respiration,

Power of Attorney for Health Care
Page 2 of 4

nutritional support and hydration, and cardiopulmonary resuscitation, and other life-sustaining treatment;

C. To have access to medical records and information to the same extent that I am entitled to, including the right to disclose the contents to others. This release authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 USC 1320d and 45 CFR 160-164;

D. To authorize my admission to or discharge (even against medical advice) from any hospital, nursing home, residential care, assisted living or similar facility or service;

E. To contract on my behalf for any health care related service or facility for my benefit, without my Agent incurring personal financial liability for such contracts;

F. To hire and fire medical, social service, and other support personnel responsible for my care;

G. To authorize, or refuse to authorize, any medication or procedure intended to relieve pain, even though such use may lead to physical damage, addiction, or hasten the moment of (but not intentionally cause) my death;

H. To authorize an autopsy, and direct the disposition of my remains, to the extent permitted by law, or to make anatomical gifts of part or all of my body for medical purposes;

I. To take any other action necessary to do what I authorize here, including (but not limited to) granting any waiver or release from liability required by any hospital, physician, or other health care provider; signing any documents relating to refusals of treatment or the leaving of a facility against medical advice; and pursuing any legal action in my name and at the expense of my estate to force compliance with my wishes as determined by my Agent, or to seek actual or punitive damages for the failure to comply.

4. STATEMENT OF DESIRES, SPECIAL PROVISIONS, AND LIMITATIONS.

A. With respect to any life-sustaining treatment, I specifically direct my Agent to follow any Directive to Physicians Living Will or other health care declaration executed by me.

B. With respect to nutrition and hydration provided by means of a nasogastric tube, enteric tubes or tube into the stomach, intestines, or veins, I wish to make clear that if I should suffer from a terminal condition, I do not want to be provided with hydration and nutrition.

C. I intend the term "life-sustaining treatment" as used in this Durable Power of Attorney for Health Care to mean any medical or surgical procedure or intervention which utilizes mechanical or other artificial means to sustain, restore or supplant a vital function, which, when applied to me, would serve only to artificially prolong the moment of my death, regardless of

Power of Attorney for Health Care
Page 3 of 4

whether death is imminent when such procedure is utilized. Life sustaining procedures include, but are not limited to, cardiopulmonary resuscitation, defibrillation, the use of cardiac drugs, the use of a respirator and endotracheal intubation. Life sustaining procedures shall not include the administration of nutrition and hydration, or medication or the performance of any medical procedure deemed necessary to alleviate pain or provide comfort care.

5. SUCCESSORS.

In the event GARY ALAN JACOBY is unable or unwilling to serve as my Agent, I appoint my son, RANDAL LEE JACOBY, as my alternate Agent.

6. PROTECTION OF THIRD PARTIES WHO RELY ON MY AGENT.

No person who relies in good faith upon any representations by my Agent or Successor Agent shall be liable to me, my estate, my heirs or assigns, for recognizing the Agent's authority.

7. ADMINISTRATIVE PROVISIONS.

A. This power of attorney is intended to be valid in any jurisdiction in which it is presented.

B. My Agent shall not be entitled to compensation for services performed under this power of attorney, but he or she shall be entitled to reimbursement for all reasonable expenses incurred as a result of carrying out any provision of this power of attorney.

C. The powers delegated under this power of attorney are separable, so that the invalidity of one or more powers shall not affect any others.

BY SIGNING HERE I INDICATE THAT I UNDERSTAND THE CONTENTS OF THIS DOCUMENT AND THE EFFECT OF THIS GRANT OF POWERS TO MY AGENT.

I sign my name to this Durable Power of Attorney for Health Care on March 14, 2006.

Signature:

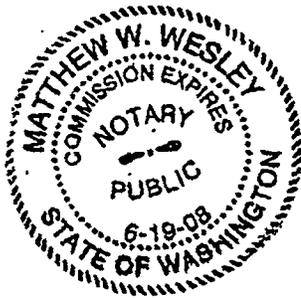
Bernadyn E. Jacoby
BERNADYNE ELEANOR JACOBY

Power of Attorney for Health Care
Page 4 of 4

STATE OF WASHINGTON,)
) ss.
County of King,)

On this day personally appeared before me BERNADYNE ELEANOR JACOBY, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged the foregoing instrument was signed as a free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal March 14, 2006.



Matthew Wesley

NOTARY PUBLIC: Matthew Wesley
In and for the State of Washington
My appointment expires 06-19-2008



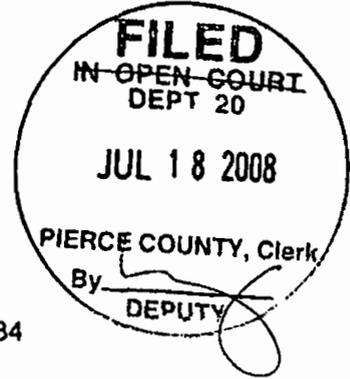
08-4-00227-9 30179795 LTR20 07-22-08

**SUPERIOR COURT
OF THE
STATE OF WASHINGTON
FOR PIERCE COUNTY**

K. A. van Doorninck, JUDGE
MICHELE JONES, Judicial Assistant
Department 20
(253) 798-6688

334 COUNTY-CITY BUILDING
930 TACOMA AVENUE SOUTH
TACOMA, WA 98402-2108

July 18, 2008



DAVID BENJAMIN PETRICH
ATTORNEY AT LAW
1201 Pacific Ave Ste 1200
TACOMA, WA 98402-4395

DOUGLAS SCHAFER
ATTORNEY AT LAW
950 Pacific Ave Ste 1050
POB 1134
TACOMA, WA 98401-1134

RE: GUARDIANSHIP OF BERNADYNE E JACOBY
Pierce County Cause No. 08-4-00227-9

Dear Counsel/Litigants:

I am setting a presentation date of the attached order for August 8, 2008 at 9:00 a.m. I mistakenly signed the order (it has not been filed) and I will allow written responses only, no oral argument.

Sincerely,

Judge Kitty-Ann van Doorninck

cc: Pierce County Clerks Office for filing

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

In Re the Guardianship:

BERNADYNE E. JACOBY,

An Incapacitated Person.

NO. 08-4-00227-9

ORDER CONFIRMING PREVIOUS
ORDERS REGARDING TRUSTEE'S
AUTHORITY AND ACTIONS

THIS MATTER having come before the court upon the guardian/trustee's Petition to Confirm Previous Orders concerning the Bernadyne E. Jacoby Trust and such Petition being filed on June 20, 2008, and the court having reviewed the Petition and the files and records herein, the court enters the following:

FINDINGS AND CONCLUSIONS

1. That this court entered an Order on April 25, 2008 appointing Ingrid Cameron as trustee of the Bernadyne E. Jacoby Trust under the broad discretionary provisions of RCW 11.96A.020 and RCW 11.96A.040(3).

2. That the activities of Ingrid Cameron as de facto trustee since January 3, 2007, are reasonable and proper.

3. That the previous Orders entered in this matter regarding the trustee's actions and authority should be confirmed with the exception of the Order Vacating Void Order Replacing Trustee of the Bernadyne E. Jacoby Trust entered on January 10, 2008.

ORDER CONFIRMING PREVIOUS ORDERS REGARDING
TRUSTEE'S AUTHORITY AND ACTIONS

Appendix C, Page 2 of 5

Based on these Findings of Fact and Conclusions of Law, it is hereby:

ORDERED

That the Orders entered in this matter regarding Ingrid Cameron's actions and authority as de facto trustee of the Bernadyne E. Jacoby Trust are hereby confirmed, other than the Order Vacating Void Order Replacing Trustee of the Bernadyne E. Jacoby Trust entered on January 10, 2008.

DONE IN OPEN COURT this 11th day of July, 2008.



HONORABLE KITTY-ANN VAN DOORNINCK

Presented by:

EISENHOWER & CARLSON, PLLC

By: David Petrich

David B. Petrich, WSBA #18711
Attorneys for Guardian/Trustee

Approved as to form:

SCHAFFER LAW FIRM

By: Douglas A. Schaffer
Douglas A. Schaffer, WSBA #8652
Attorney for Randal Jacoby

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

In Re the Guardianship:

BERNADYNE E. JACOBY,

An Incapacitated Person.

NO. 08-4-00227-9

ORDER ON PETITION REGARDING
FEES

THIS MATTER having come before the court upon the guardian/trustee's Petition regarding fees and the court having reviewed the Petition filed with the court on June 20, 2008, and finding the requests reasonable, the court hereby enters the following:

ORDERED that the balance of the guardianship fees incurred and unpaid through October 31, 2007, in the amount of \$7,258.50 are hereby deemed reasonable and approved for payment; and it is further

ORDERED that the balance of the guardian/trustee's attorney fees through the period of February 29, 2008 in the amount of \$10,748.05 are reasonable and hereby approved for payment; and it is further

ORDERED that the budget for the guardian's case management fees for the reporting period ending October 31, 2008 shall be increased from \$3,000 per year to \$5,000 per year; and it is further

ORDER ON PETITION REGARDING FEES - 1

Appendix C, Page 4 of 5

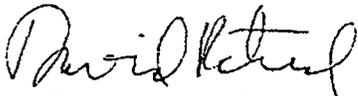
1 ORDERED that the guardian/trustee is authorized to unblock Columbia Bank certificate
2 of deposit account No. X-0850 in the amount of \$33,107.43 and to deposit such funds into the
3 guardian's unblocked account to be used for budgeted expenses authorized by the court.

4 DONE IN OPEN COURT this _____ day of _____, 2008.

5
6 HONORABLE KITTY-ANN VAN DOORNINCK
7

8 Presented by:

9 EISENHOWER & CARLSON, PLLC

10
11 By: 
12 David B. Petrich, WSBA #18711
Attorneys for Guardian/Trustee

13 Approved as to form:

14
15 SCHAFER LAW FIRM

16
17 By: Douglas A. Schafer, WSBA #8652
18 Attorney for Randal Jacoby
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