



I. TABLE OF AUTHORITIES

Table of Cases

WASHINGTON

Binder v. Binder, 50 Wn. 2d 142, 309 P. 2<sup>nd</sup> 1050 (1957). ..... 8

Endicott v. Saul, 142 Wn. App. 899, 911; 176 P. 2<sup>nd</sup> 560 (2008) ..... 8

Esmieu v. Schrag, 88 Wn. 2<sup>nd</sup> 490, 497, 563 P. 2<sup>nd</sup> 203 (1977)..... 9

Shoemaker v. Bremerton, 109 Wn. 2d 504, 745 P. 2<sup>nd</sup> 858 (1987) ..... 10

Vo. v. Pham, 81 Wn. App 781, 916 P. 2<sup>nd</sup> 462 (1996) ..... 8

STATUTES

RCW 74.35.135(3). ..... 3, 7, 8

## I. TABLE OF CONTENTS

I. Assignments of Error	2
Issues Pertaining to Assignments of error	2
II. Statement of the Case	3
III. Argument	7
IV. Conclusion	10

## I. ASSIGNMENTS OF ERROR

1. Did the Court err by not following the statutory requirements for vulnerability?
2. Did the Court err in not entering findings to support the exploitation claims?
3. Did the Court err in not requiring evidence of when and what the allegations were?
4. Did the Court err in not allowing time to prepare when provided with new materials?
5. Should the Court send the issue back to the trial Court now that the basis for the order has been reversed?

## II. ISSUES PERTAINING TO ASSIGNMENTS OF ERRORS

1. The statute of vulnerable adults is specific and clear. Without meeting the criteria, the Court should not have entered the Order.
2. There should be some mention in findings of exploitation. It cannot be possible to meet the statutory requirements without some incident at some time.
3. The law mandates that the exploitation have

occurred at a time when the adult was vulnerable. There is no mention of any date or time when anything occurred. The only time mentioned related to legal papers being filed.

4. Due process requires people in litigation to serve materials on the opposing side to allow for a proper response. Here, the only time the evidence was provided was the morning of the hearing.

5. If the decision of the Court was based on an open investigation by DSHS, the matter should be remanded back to the Court because the investigation is closed and determined in favor of Sorrels.

### III. STATEMENT OF THE CASE

James Nickless petitioned the Court on behalf of his mother Marguerite Nickless to obtain an Order of protection against Richard Sorrels under RCW 74.35.135(3). The parties were pro se until Attorney Luce appeared at the Revision Motion.

Marguerite Nickless provided her nephew Richard Sorrels a Limited Power of Attorney to assist her with some of

her affairs. (CP 2 and RP 9/11/09, p 27-28.)

The allegations against were:

1. Recent appearances at vulnerable adult's residence in the month of June, 09 by respondent.
2. Unknown accounting of the disposition of vulnerable adult's resources by respondent.
3. Exploitation of ongoing case 09-2-08167-6 for personal gain by respondent.
4. Abuse of suspected power of attorney privileges by respondent for his personal gain
5. Numerous property transfers for the last 15 years involving vulnerable adult without full knowledge of reasons.
6. Court involvement with foreclosures (05) eviction (05) loans, trust accounts, trustee to trust accounts, court cases-civil without vulnerable adult's knowledge, resulting in respondent's financial gain and vulnerable adult's losses.
7. Respondent has access to bank, mortgage trust

accounts known and unknown by vulnerable adult.

8. Respondent due to recent court cases may train/change her accounts and buy/sell/transfer properties.
  9. Respondent has been at her home address numerous times in a harassing and manipulative environment.
  10. Respondent abuses privileges and/or responsibilities to vulnerable adult for personal gains.
- (CP 1)

Upon being served, Sorrels filed a response (CP 14) Motion to Strike, (CP 16) and Motion to Set Hearing Re: Vulnerable adult's competency. (CP 15).

The Court denied all of the Motions, to include the request to continue the hearing because the materials provided had not been provided before the hearing. (RP 7/27/09 p 6-9.). All the materials were hearsay and were considered over objection (RP 7/27/09, p 7.) Mrs. Nickless testified "I worry about the future now because it all come up so sudden on me,

and I had no idea this was happening until just when I was finding a place to live. I want my credit back.” (RP 7/27/09 p. 11).

It is not clear from the record what she meant, but the inference would be she noticed some action on a credit report. There was no discussion that she lost any money, she had any funds mingled with Sorrels or any transaction she felt questionable or otherwise.

The Commissioner entered the Order of Protection without any findings of vulnerability and with no factual basis of any transaction at anytime that caused any financial harm to Marguerite Nickless or any other harm of any nature. (CP 11) Sorrels filed a Motion for Revision (CP 18).

At the hearing before Judge Beverly Grant additional evidence was presented (RP 9/11/09 p. 4-5), objected to because it was never provided to Sorrels, and yet considered by the Court. (RP 9/11/09, p.25). The court’s ruling is confusing because the Court specifically held that the revision should be based on the original record (RP 9/11/09 p. 25-6), yet found the

adult vulnerable based on allegations from DSHS. (RP 9/11/09 p. 37-39.) After full investigation, DSHS later determined the allegations were unsubstantiated.

#### IV. ARGUMENT

##### A. **Findings are not supported by the evidence:**

RCW 74.34.020. defines a vulnerable adult.

1. Sixty years of age or older who has the functional, mental, or physical inability to care for herself; or
2. Found incapacitated under Chapter 11.88 RCW; or
3. Who has a developmental disability as defined under RCW 71A.10.020; or
4. Admitted to a facility; or
5. Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under RCW 70.127 RCW; or
6. Receiving services from an individual provider.

It is very hard to determine what factor was present in this case. The requirements are statutory and there appears not to exist a catch all for the Court. The law does not say that a

person is vulnerable when the Court decides; on the other hand at least one of the above factors must be present. In this case not a single one of those factors was established.

Mental capacity is presumed and in order to establish incapacity the evidence must be clear, cogent and convincing. Vo. v. Pham, 81 Wn. App 781, 916 P. 2<sup>nd</sup> 462 (1996), Binder v. Binder, 50 Wn. 2d 142, 309 P. 2<sup>nd</sup> 1050 (1957). Age and infirmity are not enough to warrant a finding of incapacity, Endicott v. Saul, 142 Wn. App. 899, 911; 176 P. 2<sup>nd</sup> 560 (2008)

To be more specific a Court must make findings that an individual was vulnerable at the time of the alleged exploitation. Endicott at 920. Unless the Court finds the adult vulnerable, the court shall dismiss the Order. RCW 74.34.135(4).

The Court must vacate the Order for 2 simple reasons:

First, not one of the factors required by statute is supported by the record.

Second, there is not a single allegation of what Sorrels did or did not do or when. Each statement is a conclusion that is unsupported by facts. It seems absurd that someone would say

that someone has been exploiting someone for 15 years with real estate transactions. What would be the motive not to have acted many years ago with some specific instance where impropriety was noticed? The reason is that it did not occur.

### **B. Due Process**

Each citizen has rights under the state and federal constitution to due process. The Court rules require that Materials used in hearings must be provided to the other side before the hearing. (CR 6d) Orders based on hearings without adequate notice and an opportunity to be heard are void.

Esmieu v. Schrag, 88 Wn. 2<sup>nd</sup> 490, 497, 563 P. 2<sup>nd</sup> 203 (1977).

None of the materials submitted to the Commissioner were provided to Sorrels. (RP 7/27/2009 p.6) The Court continued with the hearing and considered the materials over objection. The same thing happened at the Motion for revision. As a total surprise to Sorrels additional evidence was presented at the morning of the hearing (RP 9/11/09, p. 3-4).

### **C. Estoppel**

Again the record is hard to follow, but if the Court's decision

was based on DSHS testimony at the hearing, which was in the Court's concluding statement for denying the Motion for revision, then this would invite the argument of collateral estoppel.

The Court would need to consider the State of Washington (DSHS), after investigating the claims, found them unsubstantiated (with prejudice), the basis for the Court's decision is unsupported by any fact or opinion. Shoemaker v. Bremerton, 109 Wn. 2d 504, 745 P. 2<sup>nd</sup> 858 (1987)

#### V. CONCLUSION

The problem here is that the statutory and factual basis is not present. The harm caused by such Restraining Order effects a citizen's life in many ways. It precludes opportunities from employment with adult services, adult homes, and many other negative impacts. It is simply not fair based on hearsay allegations, without any supporting facts, to enter an Order of this type.

Dated: 6/1/10

  
RICHARD SORRELS

DECLARATION OF SERVICE: I declare under penalty of perjury under the laws of Washington State that I forwarded a copy of this Brief, this date to

Address:

JAMES NICKLESS, P.O. Box 427, Gig Harbor WA 98335.

CHRISTOPHER CONSTANTINE, P.O. Box 7125, Tacoma WA 98406.

Dated: 5/31/10 at Pierce Co., WA.

  
R. Sorrels

FILED  
COURT OF APPEALS  
10 JUN -1 PM 12:12  
STATE OF WASHINGTON  
BY   
DEPUTY