COURT OF APPEALS NO. 41537-2-II
COURT OF APPEALS NO. 41547-0-II

FILED
COURT OF APPEALS
DIVISION II
11 JUL 15 AM 9:20
STATE OF WASHINGTON
BY
DEPUTY

COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

In Re: the Matter of CAROLYN K. PLOTKE
YVONNE POLKOW, Guardian

Respondent

LEO K. PLOTKE

Appellant

In re: the Guardianship of CAROLYN K. PLOTKE
YVONNE POLKOW, Guardian

Respondent

LEO K. PLOTKE

Appellant

APPEAL FROM SUPERIOR COURT OF CLARK COUNTY
HONORABLE JUDGE DIANE WOOLARD
CLARK COUNTY CAUSE NO. 08-2-04996-9
CLARK COUNTY CAUSE NO. 08-4-00624-8

BRIEF OF RESPONDENT

JEFFREY C. SIMPSON, WSB#34933
Attorney for Respondent

GREENEN & GREENEN, PLLC
1104 Main Street, Suite 400
Vancouver, WA 98660
Telephone: (360) 694-1571

TABLE OF CONTENTS

BRIEF OF RESPONDENT

I. ASSIGNMENT OF ERRORS..... 1

II. ISSUES PERTAINING TO ASSIGMENT OF ERRORS. 1

A. Issues Relating to Assignments of Error 1 and 2... 1

B. Issues Relating to Assignments of Error 3..... 1

C. Issues Relating to Assignments of Error 4..... 1

III. STATEMENT OF FACTS..... 2

A. Vulnerable Adult Protection Order 2

B. Guardianship Matter..... 2

IV. ARGUMENT 3

A. STANDARD OF REVIEW..... 3

B. RESPONDENT IS NOT ENTITLED TO ANOTHER HEARING UNDER THE VULNERABLE ADULT PROTECTION..... 4

C. MR. PLOTKE HAD THE HEARING REQUIRED BY THE ABUSE OF VULNERABLE ADULT PROTECTION ACT. 8

D. THE TRIAL COURT'S ORDER DENYING MR. PLOTKE A HEARING DOES NOT VIOLATE RCW 74.34.110, et. Seq. 9

E. THE TRIAL COURT PROVIDED MR. PLOTKE WITH DUE PROCESS IN A FAIR AND IMPARTIAL EVIDENTIARY HEARING 10

F. MR. PLOTKE HAD THE REQUIRED HEARING UNDER RCW 7.21.030 AND IS NOT ENTITLED TO A SECOND HEARING..... 15

G. A TRIAL COURT'S DENIAL OF A MOTION UNDER RCW 11.88.120 WITHOUT A HEARING DOES NOT REQUIRE FINDINGS THAT THE MOTION IS FRIVOLOUS.....19

V. REQUEST FOR ATTORNEY'S FEES..... 21

VI. CONCLUSION 20

TABLE OF AUTHORITIES
TABLE OF CASES

REPLY BRIEF OF RESPONDENT

Bellevue School Distr. v. E.S., 148 Wn.App.205, 214, 199 P.3d 1010 (2009), petition for review granted, 166 Wn.2d 1011 (2009)..... 12

Burnside v. Simpson Paper Co. 123 Wn.2d 93, 108, 864 P.2d 937 (1994).....10

Hegwine v. Longview Fibre Co., 132 Wash.App. 546, 555, 132 P.3d 789 (2006) 3

In re Dependency of A.K., 162 Wn.2d 632, 645, 652, 174 P.3d. 11 (2007).....16, 19

J.E. Dunn Nw. Inc. v. Dep't of Labor & Indus., 139 Wash.App. 35, 43, 156 P.3d 250 (2007) (quoting Holland v. Boeing Co., 90 Wash.2d 384, 390-91, 583 P.2d 621 (1978)).....3

State v. Bencivenga, 137 Wn.2d 703, 709, 974 P.2d 832 (1999).....11, 14

State v. Berty, 136 Wn.App. 74, 83-84, 147 P.3d 1004 (2006).....16, 19

State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990) 4, 12, 15

State v. Dugan, 96 Wn.App. 346, 351, 979 P.2d 885 (1999).....16, 19

State v. Post, 118 Wn.2d 596, 618, 826 P.2d 172 (1992).....11

State v. Walton, 64 Wn.App. 410, 415-16, 824 P.2d 533, review denied, 119 Wn.2d 101(1992).....4, 12, 15

Sunnyside Valley Irrigation Dist. v. Dickie, 149 Wash.2d 873, 880, 73 P.3d 369 (2003).....3

Revised Code of Washington

RCW 7.21.010 16

RCW 7.21.030 .....15, 16, 17, 18, 19

RCW 7.21.040 16

RCW 11.88.120 .....1, 19, 20, 21, 22

RCW 11.88.130 20

RCW 74.34 .....6, 7

RCW 74.34.110 9

RCW 74.34.135 .....6, 7

Washington Civil Rules

CR 60 (b) (3) 9

Rules of Appellate Procedure

RAP 5.2 (a)..... 8
RAP 18.1.....21, 22

I. ASSIGNMENT OF ERRORS

Respondent, Leo K. Plotke, assigns error to orders issued by the trial court in regards to the entry of a permanent Vulnerable Adult Protection Order (VAPO) and the Guardianship of Carolyn Plotke.

II. ISSUES PERTAINING TO ASSIGNMENT OF ERRORS

A. Issues Relating to Assignments of Error 1 and 2.

Does the Abuse of Vulnerable Adult Act, require that an individual be afforded multiple opportunities to have an evidentiary hearing? [Assignments (1) and (2)]

B. Issues Relating to Assignment of Error 3.

Did the trial court err by holding Mr. Plotke in contempt for failing to comply with the trial court's order when it afforded him multiple opportunities and hearings to present evidence against the allegations he failed to comply with the court's order?

C. Issue relating to Assignment of Error 4.

Did the trial court err by denying Mr. Plotke's Motion for Show Cause to Appoint a Guardian ad Litem, pursuant to RCW 11.88.120, when it complied with the sections of the statute that apply to individuals represented by counsel?

III. STATEMENT OF FACTS

Appellate, Leo Plotke, is the respondent in the VAPO, filed to seek protection for Carolyn Plotke, and appellant. Yvonne Polkow is the Guardian for the person and estate of Mrs. Plotke.

A. Vulnerable Adult Protection Order

On August 6, 2008, Clark County Sheriff's Detective Kevin Harper filed a petition in Clark County Superior Court for a Vulnerable Adult Protection Order. (CP 1, 3, RP 5) On that same date, the court entered a Temporary Order against Mr. Plotke prohibiting him from having contact with Mrs. Plotke. (CP 3) Mr. Plotke was personally served with the Notice of Appearance for August 15, 2008 for a hearing to make the temporary VAPO permanent on August 7, 2008. (CP 1, 6) On August 15, 2008, the court held a hearing regarding whether to make the temporary VAPO permanent. (RP 1) At the hearing the court sided with petitioner and entered an order making the VAPO and effective until August 15th, 2013. (RP 41, CP 11)

B. Guardianship Matter

On August 6, 2008, a petition for appointment of guardian for Mrs. Plotke was filed in Clark County Superior Court. (CP 2) An order appointing Ms. Polkow as guardian of the person of Mrs. Plotke was entered on October 24, 2008 and an order appointing Ms. Polkow as

guardian of the estate of Mrs. Plotke was entered on April 22, 2009. (CP 21 and CP 75) On October 13, 2010, Mr. Plotke filed a Motion/Declaration for Order to Show Cause and Order Appointing Guardian ad Litem. (CP 140) On November 17, 2010, the trial court denied this motion. (CP 164)

IV. ARGUMENT

A. STANDARD OF REVIEW

This matter was tried to the court thus making the court the trier of fact. On appeal from a bench trial, conclusions of law are reviewed de novo. *Sunnyside Valley Irrigation Dist. v. Dickie,* 149 Wash.2d 873, 880, 73 P.3d 369 (2003). Findings of fact are reviewed to determine whether they are supported by substantial evidence and, if so, whether the findings support the conclusions of law. *Hegwine v. Longview Fibre Co.,* 132 Wash.App. 546, 555, 132 P.3d 789 (2006). "Substantial evidence is evidence 'in sufficient quantum to persuade a fair-minded person of the truth of the declared premise.'" *J.E. Dunn Nw. Inc. v. Dep't of Labor & Indus.,* 139 Wash.App. 35, 43, 156 P.3d 250 (2007) (quoting *Holland v. Boeing Co.,* 90 Wash.2d 384, 390-91, 583 P.2d 621 (1978)). If the evidence satisfies this standard, the appellate court will not substitute its judgment for that of the trial court, even though it might have resolved the

factual dispute differently. *Sunnyside Valley Irrigation Dist. v. Dickie,* 149 Wash.2d 873, 879-80, 73 P.3d 369 (2003).

An appellate court defers to the trier of fact's resolution of conflicting testimony, evaluation of witness credibility, and decisions regarding the persuasiveness of evidence. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990); *State v. Walton*, 64 Wn.App. 410, 415-16, 824 P.2d 533, *review denied*, 119 Wn.2d 1011 (1992).

B. RESPONDENT IS NOT ENTITLED TO ANOTHER HEARING UNDER THE VULNERABLE ADULT PROTECTION.

Respondent is not entitled to an additional hearing under RCW 74.43 because he already had a full evidentiary hearing on August 15, 2008. As noted in Respondent's brief, a petition for and a temporary VAPO against Mr. Plotke was filed and ordered on August 6, 2008. The hearing to determine whether or not the temporary VAPO should become permanent was scheduled for August 15, 2008. (CP 1) On August 15, 2008, the trial court conducted a full evidentiary hearing. (RP 1 – 44)

At the evidentiary hearing the attorney for Detective Kevin Harper, the VAPO petitioner, Jim Senescu, presented evidence in favor of a permanent VAPO via direct examination of Detective Harper. (RP 2 – 20) At the conclusion of Mr. Senescu's direct examination of Detective

Harper, the trial court provided Mr. Plotke with an opportunity to cross-examine Detective Harper. (RP 20) Mr. Plotke informed the court at that time that he had "no question to ask him." (RP 20) When asked again if he had any questions for Detective Harper, he replied "he's (Detective Harper) got the medical records stating what I was supposed to do and what I was told, etc." The trial court again asked Mr. Plotke if he had any questions for Detective Harper. (RP 24) Mr. Plotke once again replied "[n]o, I have no questions for him." (RP 24)

Next, Mr. Senescu then called Samantha Petshow to the witness stand. (RP 26) Mr. Senescu presented evidence for a permanent VAPO via Ms. Petshow. (RP 26 – 33) After Mr. Senescu had completed his direct examination of Ms. Petshow, the trial court asked Mr. Plotke if he had any question to ask Ms. Petshow. (RP 33) Mr. Plotke replied "[n]one whatsoever." (RP 33) After this exchange, Mr. Senescu informed the court that he had no further witnesses. (RP 33)

The trial court then asked Mr. Plotke if he wanted to testify to which he replied "[y]es I would like to please." (RP 33) The trial court then swore Mr. Plotke in as a witness and advised him, via Detective Harper's *Miranda* rights card, of his Constitutional rights due to Detective Harper believing probable cause existed for criminal charges to be filed against Mr. Plotke. (RP 34) After he was advised of his rights, Mr. Plotke

requested a lawyer. (RP 34-35) The trial court then appointed Mr. Plotke a public defender based upon "allegations of criminal activity and my (the trial court's) concern is if Mrs. Plotke doesn't make it, we might have a manslaughter or homicide on our hands." (RP 36) It is evident from the report of proceedings that the appointment of counsel for Mr. Plotke was solely for advice on whether or not Mr. Plotke should testify in a civil proceeding thus opening him up to potential criminal charges. (RP 37 - 38) After Mr. Plotke spoke to his appointed counsel, Mr. Anderson, he elected to exercise his Fifth Amendment right to remain silent. After this choice, the trial court ruled in favor of the petitioner and granted a permanent VAPO against Mr. Plotke set to expire August 15, 2013. (RP 40 – 41) Based upon the above, it is more than evident that Mr. Plotke had a full opportunity at a hearing under RCW 74.34 to present evidence, call witnesses, and testify on his own behalf but elected not to do so.

In his appellate brief, Mr. Plotke cites RCW 74.34.135 (3) for the proposition that Mr. Plotke is entitled to present evidence as the respondent at a hearing. (Appellant's brief, pg. 18-19) Despite the fact that Mr. Plotke already had the opportunity to present evidence at the hearing on August 15, 2008, RCW 74.34.135(3) does not address whether or not a respondent is entitled to present evidence in a hearing regarding whether a temporary VAPO is to be made permanent. Rather, it provides

that a respondent is entitled to testify and submit evidence in a hearing to determine whether the alleged vulnerable adult is competent to make a decision as to whether or not they want the VAPO when someone other than the vulnerable adult files the petition. Therefore, Mr. Plotke's argument that he is entitled to another hearing under RCW 74.34.135(3) is invalid.

In his brief, Mr. Plotke spends a great deal of time arguing statutory construction and due process to make the point that he is entitled to a hearing with an opportunity to be heard and present evidence. Ms. Polkow agrees that Mr. Plotke was entitled to an opportunity to present evidence at a hearing before a permanent order was entered against him (although not under RCW 74.34.135). Mr. Plotke had this opportunity on August 15, 2008. Mr. Plotke chose to appear at that hearing without representation, not to cross-examine witnesses, to remain silent and not testify, not to present any evidence on his behalf, and not to call any witnesses. Mr. Plotke had his opportunity under RCW 74.34 and elected to proceed as he did. As the court is aware, an individual is not entitled to an attorney in a civil matter. Therefore, the court should find that the trial court afforded Mr. Plotke his right to a hearing and to present evidence on his behalf and deny Mr. Plotke's appeal.

C. MR. PLOTKE HAD THE HEARING REQUIRED BY THE ABUSE OF VULNERABLE ADULT PROTECTION ACT.

Mr. Plotke is not entitled to another hearing regarding whether the temporary VAPO entered on August 6, 2008 because he already had the required hearing on August 15, 2008. Mr. Plotke states in his brief that after the petitioner's attorney presented evidence in favor of the temporary VAPO becoming permanent, Mr. Plotke was advised by the trial court of his Constitutional rights and did not testify at the August 15, 2008 hearing. (Appellant's brief, pg 24) He also states that at this hearing, he "was not represented by counsel; did not challenge any of the Petitioner's evidence; and did not present any evidence or witnesses on his own behalf." (Appellant's brief, pg. 24) As noted above, the decision to remain silent, not to call witnesses and not to present evidence on his own behalf were decisions made by Mr. Plotke and no one else. Therefore, Mr. Plotke elected not to present a defense at the hearing required under the Abuse of Vulnerable Adult Protection Act and is not entitled to another hearing. Therefore, Ms. Polkow requests that the court deny Mr. Plotke's request for another hearing and affirm the trial court's ruling.

Mr. Plotke states that the trial court denied Mr. Plotke's Motion for Evidentiary Hearing that was scheduled for June 19, 2009 and July 1,

2009. Under RAP 5.2(a), the order entered on July 1, 2009 is outside the 30 day time limit set forth to file an appeal of the a trial court's order and therefore any requests to overturn this order of the court should be denied as untimely.

Mr. Plotke argues that the trial court's denial of the motion to terminate the VAPO or for another evidentiary hearing or to vacate the trial court's July 1, 2009 order, pursuant to CR 60(b)(3), based upon the Department of Social and Human Services dismissing their allegations against Mr. Plotke was in error. This is incorrect. First, DSHS did not dismiss the allegations against Mr. Plotke, rather they elected not to go forward with the case against him. As noted, above, Mr. Plotke had ample opportunity at the evidentiary hearing conducted before the trial court on August 15, 2008. Mr. Plotke fails to cite any authority for which an individual is entitled to more than one evidentiary hearing. As noted above, Mr. Plotke elected, of his own freewill, to remain silent, not present evidence and not to call any witnesses on his own behalf at the evidentiary hearing on August 15, 2008. Therefore, the court should deny Mr. Plotke's request for a second evidentiary hearing and uphold the trial court's ruling.

D. THE TRIAL COURT'S ORDER DENYING MR. PLOTKE A HEARING DOES NOT VIOLATE RCW 74.34.110, *et. seq.*

The trial court's order denying Mr. Plotke a second evidentiary hearing entered on November 17, 2010 is not contrary to the Abuse of Vulnerable Adults Protection Act because Mr. Plotke already had an evidentiary hearing on August 15, 2008. As noted above, Mr. Plotke fails to cite any authority that an individual in his position is entitled to more than one evidentiary hearing under the Abuse of Vulnerable Adults Protection Act. As noted by Mr. Plotke in his brief, a reviewing court must defer to the trial court in evaluating evidence and the credibility of witnesses. *Burnside v. Simpson Paper Co.* 123 Wn.2d 93, 108, 864 P.2d 937 (1994); Appellant's Brief, pg. 27. On August 15, 2008, the trial court listened to all the evidence provided by the petitioner's attorney, Mr. Senescu and allowed Mr. Plotke the opportunity to present his own evidence, which he elected not to do. The court then found the evidence presented by the petitioner to be credible and ruled in his favor. There is substantial evidence to support the trial court's findings and the findings are supported by the conclusions of law. Therefore, the trial courts entry of the permanent VAPO and denial of Mr. Plotke's motion for a second evidentiary hearing should be affirmed.

E. THE TRIAL COURT PROVIDED MR. PLOTKE WITH DUE PROCESS IN A FAIR AND IMPARTIAL EVIDENTIARY HEARING.

Mr. Plotke is not entitled to have his matters reassigned to a different trial court judge because there is not a valid basis for reversing any of the trial court's orders and he has failed to prove any evidence of actual or potential bias on part of the trial court. The law requires an impartial judge and a judge who appears to be impartial. *State v. Post*, 118 Wn.2d 596, 618, 826 P.2d 172 (1992). However, "[w]ithout evidence of actual or potential bias, an appearance of fairness claim cannot succeed and is without merit." *Id.* at 619.

In our case, Mr. Plotke's claim that he is entitled to have these matters heard by a different judge other than the Honorable Judge Diane Woolard is without merit. Mr. Plotke has failed to produce any evidence of actual or potential bias. It appears the crux of Mr. Plotke's claim for his matter to be reassigned to a different judge at the trial court level is based upon trial court judge ruling against him. This is not evidence of actual or potential bias, and therefore his claim of impartiality must be denied.

First, Mr. Plotke cites the trial court for stating that Mr. Plotke has a "credibility problem." (Appellant's brief, pg 31, RP 316). The trier of fact is the sole and exclusive judge of the evidence. *State v. Bencivenga*, 137 Wn.2d 703, 709, 974 P.2d 832 (1999). An appellate court defers to the trier of fact's resolution of conflicting testimony, evaluation of witness credibility, and decisions regarding the persuasiveness of evidence. *State*

v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990); *State v. Walton*, 64 Wn.App. 410, 415-16, 824 P.2d 533, *review denied*, 119 Wn.2d 1011 (1992). In our case, the trial court heard the evidence presented to it by the parties throughout numerous hearings. Based upon this evidence, the trial court has determined, within its authority, that Mr. Plotke has credibility issues. The trial court acting within its authority to make a determination based upon the evidence before it that Mr. Plotke is not credible is not evidence of actual or potential bias. Therefore, Mr. Plotke's request that these matters be reassigned to a different trial court must be denied.

Second, Mr. Plotke states that the trial court is biased against him because it failed to clarify the nature of the VAPO hearing; it provided no instruction to him in regards to his pro se status in a civil case; and informed him that he would be held to the standard of an attorney. (Appellant's brief, pg. 31). These instances are also not evidence of actual or potential bias on part of the trial court. "Adults have the right to retain counsel, and should they decide not to do so, they are presumed to represent their own interest. Indeed, adults representing themselves are held to the standard of an attorney." *Bellevue School Distr. v. E.S.*, 148 Wn.App.205, 214, 199 P.3d 1010 (2009), *petition for review granted*, 166 Wn.2d 1011 (2009). "To prepare, adults can take advantage of multiple

resources for learning about the court system, its procedures, and the applicable law." *Id.*

In our case, for whatever reason, Mr. Plotke elected not to retain counsel before coming to the VAPO evidentiary hearing on August 15, 2008. In fact, at the evidentiary hearing, Mr. Plotke acknowledged he had talked to "a couple" of attorneys regarding this matter. (RP 35). It is not the trial court's job, nor is it within the trial court's authority, to advise any party, represented or not, how to proceed in any court hearing. It is Mr. Plotke's duty to make sure he understands how to proceed in an evidentiary hearing or else have counsel present. Further, Mr. Plotke's statement in his appellate brief that he believed he was in a trial to bring criminal charges against him is unsubstantiated and completely unsupported by anything in the report of proceedings or clerk's papers and should be stricken. Mr. Plotke has failed to demonstrate any evidence of actual or potential bias on behalf of the trial court. Therefore, Mr. Plotke's request that these matters be reassigned to a different trial court judge should be denied.

Next, Mr. Plotke claims that the court did not properly respond to his complaint that he had not heard the testimony of Detective Harper. (Appellant's brief, pg. 31). However, Mr. Plotke fails to point out that prior to Mr. Plotke's statement that he could not hear the testimony of

Detective Harper he was responding to the trial court's questions without any mention of his inability to hear the proceedings. (RP 1). Further, Mr. Plotke still had the opportunity to question Detective Harper with ear phones provided to him by the court but elected not to do so. Mr. Plotke has failed to demonstrate any evidence of actual or potential bias on behalf of the trial court. Therefore, Mr. Plotke's request that these matters be reassigned to a different trial court judge should be denied.

Next, Mr. Plotke argues that the trial court's requirement that he deposit funds into Ms. Greenen's trust account (attorney for Guardian Ms. Polkow) before a review of the permanent VAPO would be scheduled is evidence of bias. Once again, Mr. Plotke has not cited any authority showing he is entitled to a second evidentiary hearing regarding the VAPO. Regardless of what the trial court stated was a prerequisite; Mr. Plotke is not entitled to a review of the VAPO. Mr. Plotke has failed to demonstrate any evidence of actual or potential bias on behalf of the trial court. Therefore, Mr. Plotke's request that these matters be reassigned to a different trial court judge should be denied.

As noted above, the trier of fact is the sole and exclusive judge of the evidence. *State v. Bencivenga*, 137 Wn.2d 703, 709, 974 P.2d 832 (1999). An appellate court defers to the trier of fact's resolution of conflicting testimony, evaluation of witness credibility, and decisions

regarding the persuasiveness of evidence. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990); *State v. Walton*, 64 Wn.App. 410, 415-16, 824 P.2d 533, *review denied*, 119 Wn.2d 1011 (1992). In our case, the trial court heard the evidence presented to it by the parties throughout numerous hearings. Based upon this evidence, the trial court has determined, within its authority, that Mr. Plotke has credibility issues. The trial court acting within its authority to make a determination based upon the evidence before it that Mr. Plotke is not credible is not evidence of actual or potential bias. Further, "[w]ithout evidence of actual or potential bias, an appearance of fairness claim cannot succeed and is without merit." *Id.* at 619. Mr. Plotke has failed to demonstrate any evidence of actual or potential bias on behalf of the trial court. The mere fact that the trial court has ruled against Mr. Plotke is not evidence of bias. On August 15, 2008, Mr. Plotke had the evidentiary hearing he was entitled to. For whatever reason Mr. Plotke elected not to present evidence on his own behalf or to question witnesses, this choice cannot be contributed to the trial court. Therefore, Mr. Plotke's request that these matters be reassigned to a different trial court judge should be denied.

F. MR. PLOTKE HAD THE REQUIRED HEARING UNDER RCW 7.21.030 AND IS NOT ENTITLED TO A SECOND HEARING.

Mr. Plotke is not entitled to a second hearing under RCW 7.21.030 and therefore the order of contempt entered against him on November 5, 2010 should be upheld. A trial court may impose contempt sanctions using its inherent constitutional authority or under statutory provisions found in Title 7 RCW. *In re Dependency of A.K.*, 162 Wn.2d 632, 645, 652, 174 P.3d. 11 (2007). A finding of contempt and punishment, including sanctions, lies within the sound discretion of the trial court. *State v. Dugan*, 96 Wn.App. 346, 351, 979 P.2d 885 (1999). An appellate court will not disturb a trial court's contempt ruling absent an abuse of discretion. *Id.* at 351. A trial court only abuses its discretion when it exercises is discretion in a manifestly unreasonable manner or bases its decision on untenable grounds or reasons. *State v. Berty*, 136 Wn.App. 74, 83-84, 147 P.3d 1004 (2006).

The statutory provisions of Title 7 RCW distinguish between punitive and remedial sanctions for contempt. RCW 7.21.010, .030, .040. A "punitive sanction" is a "sanction imposed to punish a past contempt of court for the purpose of upholding the authority of the court." RCW 7.21.010(2). A "remedial sanction" is "a sanction imposed for the purpose of coercing performance when the contempt consists of the omission or refusal to perform an act that is yet in the person's power to perform."

RCW 7.21.030(3). Our case involves a remedial sanction by the court against Mr. Plotke for failure to comply with the court's previous orders.

RCW 7.21.030 states, in part, that "[t]he court may initiate a proceeding to impose a remedial sanction on its own motion or on the motion of a person aggrieved by contempt of court in the proceeding to which the contempt is related. . . the court, after notice and hearing, may impose remedial sanction authorized by this chapter." In our case, this is exactly what occurred.

On September 30, 2010, Ms. Greenen filed a Motion to Show Cause as to why the trial court should not issues an Order compelling Mr. Plotke to comply with the terms and provisions of the Memorandum of Agreement entered previously in cause number 08-4-00624-8. (CP 131) The hearing was set for October 6, 2010. (CP 131) On October 6, 2010, the trial court held a hearing regarding the Motion to Show Cause. (CP 138, RP 261 – 268) At this hearing Ms. Greenen presented evidence that Mr. Plotke had failed to comply with the trial court's previous order ordering Mr. Plotke to deposit a certain amount of funds, for the benefit of Mrs. Plotke on a monthly basis for one year into an IOLTA account established at a local FDIC bank by Ms. Greenen specifically for this purpose. (RP 261-262) After Ms. Greenen presented her evidence at the hearing, the attorney for Mr. Plotke, Ms. Grubbs, stated she had a filed a

motion to continue the show cause hearing and stated she had no response because she had not met with her client. (RP 265) For unknown reasons, Mr. Plotke was not present. (RP 265) The trial court granted Ms. Grubbs' request and set the motion over to October 15th, 2010. (RP 266, CP 138)

On October 15, 2010, Ms. Grubbs filed a written response and declaration on behalf of Mr. Plotke. (RP 270) Once again, Mr. Plotke failed to attend the hearing. The court entered another Order to Show Cause ordering that Mr. Plotke appear in court on November 5, 2010 and produce all bank records since July 2009 and pay all monies owed per the memorandum of agreement. (CP 145) At the November 5, 2010, hearing, Ms. Greenen once again produced evidence that Mr. Plotke had failed to comply with the court's previous orders. (RP 276 - 287) On behalf of Mr. Plotke, with Mr. Plotke present, Ms. Grubbs then summarily presented evidence on his behalf. (RP 287- 289) The court then afforded Mr. Plotke the opportunity to testify and present evidence on his own behalf. (RP 289) At the end of the proceedings, when it became apparent Mr. Plotke had refused to follow the court's orders, the trial court held him in contempt. (RP 290)

In his appellate brief, Mr. Plotke spends a large amount of time arguing that Mr. Plotke is entitled to notice and hearing under RCW 7.21.030. While this is correct, Mr. Plotke was given notice and had not

one, but three opportunities to present evidence at three separate hearings. Mr. Plotke's assertions that he was not given the opportunity to present evidence are disingenuous. The trial court never refused Mr. Plotke a hearing on the contempt matter. The trial court completely complied with the requirements of RCW 7.21.030. As noted above, a trial court may impose contempt sanctions using its inherent constitutional authority or under statutory provisions found in Title 7 RCW. *In re Dependency of A.K.*, 162 Wn.2d 632, 645, 652, 174 P.3d. 11 (2007). A finding of contempt and punishment, including sanctions, lies within the sound discretion of the trial court. *State v. Dugan*, 96 Wn.App. 346, 351, 979 P.2d 885 (1999). An appellate court will not disturb a trial court's contempt ruling absent an abuse of discretion. *Id.* at 351. A trial court only abuses its discretion when it exercises is discretion in a manifestly unreasonable manner or bases its decision on untenable grounds or reasons. *State v. Berty*, 136 Wn.App. 74, 83-84, 147 P.3d 1004 (2006). It is evident in our case that the trial did not abuse its discretion in finding Mr. Plotke in contempt. Therefore, the order on show cause, judgment and sanctions should be upheld.

G. A TRIAL COURT'S DENIAL OF A MOTION UNDER RCW 11.88.120 WITHOUT A HEARING DOES NOT REQUIRE WRITTEN FINDINGS THAT THE MOTION IS FRIVOLOUS.

The trial court's order entered on November 17, 2010 complies with RCW 11.88.120 and therefore should not be reversed. RCW 11.88.120 addresses the procedure for modification or termination of a guardianship. RCW 11.88.120(2) allows any person to:

> apply to the court for an order to modify or terminate a guardianship or to replace a guardian or limited guardian. If applicants are ***represented by counsel***, counsel may move for an order to show cause why the relief requested should not be granted. If applicants are ***not represented by counsel***, they may move for an order to show cause, or they may deliver a written request to the clerk of the court (emphasis added).

RCW 11.88.120(3) states that:

> By the next judicial day after receipt of an ***unrepresented person's*** request to modify or terminate a guardianship order, or to replace a guardian or limited guardian, the clerk shall deliver the request to the court. The court may (a) direct the clerk to schedule a hearing, (b) appoint a guardian ad litem to investigate the issues raised by the application or to take any emergency action the court deems necessary to protect the incapacitated person until a hearing can be held, or (c) deny the application without a scheduled hearing, if it appears based on documents in the court file that the application is frivolous. Any denial of an application without a hearing shall be in writing with the reasons for the denial explained. . .

It is evident from a plain reading of RCW 11.88.130 that section (3) only applies to individuals unrepresented by counsel.

In our case, Mr. Plotke's trial court level attorney, Ms. Grubbs, filed a motion to appoint a guardian ad litem and to order a psychological exam of Mrs. Plotke. (CP 140) A hearing was held on November 17,

2010, with Mr. Plotke and his attorney, Ms. Grubbs present. Ms. Grubbs represented Mr. Plotke in this matter, therefore RCW 11.88.120(3) does not apply to Mr. Plotke. In his brief, Mr. Plotke cites RCW 11.88.120(3) but fails to include in his brief the portion of the statute that specifically states "[b]y the next judicial day after receipt of an ***unrepresented person's*** request to modify or terminate. . ." (emphasis added). When the entire statute is read as a whole, it is evident section (3) only applies to unrepresented individuals. Since section (3) does not apply to Mr. Plotke, the trial court was not required to find the motion frivolous or set the reasons for denial in writing. Therefore, the trial court's order was properly entered and Mr. Plotke's request to have it vacated should be denied.

V. REQUEST FOR ATTORNEY'S FEES

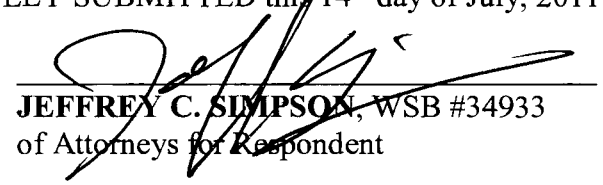
Lastly, Ms. Polkow, as guardian for Mrs. Plotke, asks the appellate court to award Mrs. Plotke's estate attorney fees and costs incurred while defending against this appeal RAP 18.1.

VI. CONCLUSION

In conclusion, the trial court afforded Mr. Plotke the opportunity to present evidence, question witnesses, and call witnesses on his behalf at the VAPO evidentiary hearing on August 15, 2008. Further, the trial court's afforded Mr. Plotke the opportunity to present a defense at an

evidentiary hearing regarding the court's order holding Mr. Plotke in contempt of court. The trial court's denial of Mr. Plotke's Motion for Show Cause to Appoint a Guardian ad Litem complied with RCW 11.88.120. Lastly, the Court should award Ms. Polkow, as guardian for Mrs. Plotke, attorney fees and costs pursuant to RAP 18.1.

RESPECTFULLY SUBMITTED this 14th day of July, 2011.



JEFFREY C. SIMPSON, WSB #34933
of Attorneys for Respondent

CERTIFICATE OF SERVICE

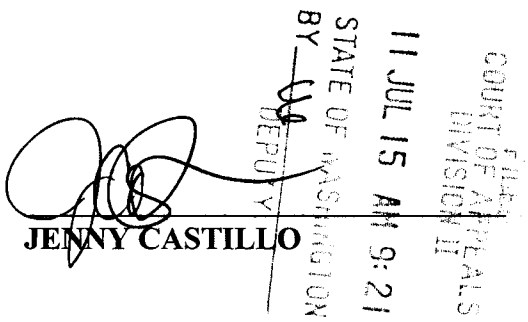
I declare under penalty of perjury under the laws of the State of Washington that on the 14th day of July, 2011, I served a copy of Respondent Brief to the following person(s):

Christopher R. Hardman
Attorney at Law
909 SW St. Clair
Portland, OR 97205

by courier hand delivery

Dee Ellen Grubbs
Attorney at Law
1409 Franklin Street, Suite 216
Vancouver, WA 98666

by courier hand delivery



JENNY CASTILLO

APPENDIX

BRIEF OF RESPONDENT

1. Petition for Vulnerable Adult Protection Order, August 6, 2008

2. Temporary Order for Protection and Notice of Hearing- Vulnerable Adult, August 6, 2008

3. Return of Service, August 8, 2008

4. Permanent Order for Protection of a Vulnerable Adult, August 15, 2008

5. Petition for Guardianship of Person and/or Estate, August 6, 2008

6. Stipulated Order Appointing Full Guardian over Person and Reaffirming Power of Attorney for Estate of Carolyn K. Plotke, October 24, 2008

7. Order Appointing Guardian of the Estate, April 22, 2009

8. Motion/Declaration for Order to Show Cause and Order Appointing Guardian ad Litem RCW 11.88.120, October 13, 2010

9. Order Denying Motion for Show Cause per 11.88.120, November 17, 2010

10. Order to Show Cause, September 30, 2010

11. Order on Show Cause, October 6, 2010

12. Order on Show Cause Re Contempt, October 15, 2010

13. RCW 7.21.010- Definitions

14. RCW 7.21.030- Remedial sanctions- Payment for losses.

15. RCW 7.21.040- Punitive sanctions- Fines.

16. RCW 11.88.120- Modification or termination of guardianship- procedure.

17. RCW 11.88.130 – Transfer of jurisdiction and venue.

18. RCW 74.34- Protection of Vulnerable Adult

19. RCW 74.34.110- Protection of vulnerable adults- Petition for protective order.

20. RCW 74.34.135- Protection of vulnerable adults — Filings by others — Dismissal of petition or order — Testimony or evidence — Additional evidentiary hearings — Temporary order

21. CR 60 (b) (3)- Relief from Judgment or Order

6

FILED

AUG 06 2008

Sherry W. Parker, Clerk, Clark Co.

Superior Court of Washington
For Clark County

In re the Matter of:

CAROLYN K. PLOTKE (dob 6-17-33)
a Vulnerable Adult (Person to be Protected)
LEO A. PLOTKE (dob 1-3-30)
[redacted] KATHLEEN LAURA VANDERPOOL
Respondent (Person to be Restrained) 4-19-59 DOB

No. 08-2-04996-9

Petition for Vulnerable Adult Order for Protection (PTORVA)

1. Identification of Petitioner:
My name is (please print)
DETECTIVE KEVIN HARPER.

☐ I am a vulnerable adult filing on my own behalf.
☒ I am filing on behalf of a vulnerable adult, and (select one of the options below):
  ☐ I am the vulnerable adult's guardian or legal fiduciary.
  ☒ I am an interested person.
☐ DSHS petitions on behalf of the vulnerable adult who:
  ☐ Has consented to this petition.
  ☐ Lacks the capacity or ability to consent to this petition.

2. Respondent's relationship to the vulnerable adult is (check all that apply):
☒ Spouse or former spouse.
☒ Parent of a common child.
☒ Current or former cohabitant as intimate partner.
☒ Other Family Member (describe): HUSBAND [redacted].
☒ Care Provider. DAUGHTER
☐ Guardian.
☐ Trustee.
☐ Payee.
☐ Power of Attorney.
☐ Other: _____.

3. The vulnerable adult (check all that apply):
☒ Is over 60 years old and does not have the functional, mental, or physical ability to care for himself or herself.
☐ Was found incapacitated under chapter 11.88 RCW.
☐ Has a developmental disability as defined in RCW 71A.10.020.
☐ Is receiving services from a compensated personal aide who provides at-home care for the vulnerable adult at his or her direction.
☐ Is receiving services from a home health, hospice, or home care agency licensed or required to be licensed.
☐ Is receiving in-home services from an individual provider under contract with DSHS
☐ Has been admitted to a boarding home, nursing home, adult family home, soldiers' home, residential habilitation center or any other facility licensed by DSHS.

4. ☒ The vulnerable adult lives in this county. *Or* ☐ This is the county of the vulnerable adult's new or former residence and he or she left or was removed from his or her previous residence as a result of, or to prevent, abandonment, abuse, financial exploitation or neglect.

5. My address for receiving legal documents is: DIMITROV + SENESCU, PLLC - 1409 FRANKLIN ST. #207 - VANCOUVER, WA 98660. (If you wish to keep your residential address **confidential**, you may list an alternate address.)

6. My relationship to the vulnerable adult and authority to act:

(If you are filing on your own behalf, or if you are filing as DSHS, go to paragraph 7.)

☐ I am the vulnerable adult's guardian. I was appointed in _____ County, State of _____, Cause No: _____ on or about _____ (date). (Attach a copy of your letters or order appointing guardian, if available.)

☐ I am the vulnerable adult's legal fiduciary. I was appointed ☐ trustee ☐ power of attorney on or about _____ (date). (Attach a copy of your relevant documents, if available.)

☒ I am interested in the welfare of the vulnerable adult. I have a good faith belief that the court's intervention is necessary and that the vulnerable adult is unable at this time to protect his or her own interests, due to incapacity, undue influence, or duress.

Describe the length and nature of your relationship to the vulnerable adult: _____

* SEE FILED DECLARATION OF DETECTIVE KEVIN HARPER IN SUPPORT OF PETITION FOR GUARDIANSHIP AND VULNERABLE ADULT PROTECTION ORDER ("DECLARATION")

Describe the incapacity, undue influence, or duress that makes the vulnerable adult unable to protect his or her own interests: _____

* SEE "DECLARATION"

7. Do you know of any person who is or claims to be the guardian or legal fiduciary (such as, trustee, payee, power of attorney) of the vulnerable adult? ☒ no ☐ yes. Provide name and address: _____

8. Other court cases or other restraining, protection or no-contact orders involving the petitioner, the vulnerable adult or the respondent:

Case Name/Date	Case Number/Type	Court/County
AUGUST 2008	GUARDIANSHIP OF	CLARK / SUPERIOR
	PETITIONER	

I Request a Vulnerable Adult Protection Order that will grant the relief requested below:

☒ 1 ***Restrain*** the respondent from committing or threatening to commit physical harm, bodily injury, assault, including sexual assault, against the vulnerable adult and from molesting, harassing, or stalking the vulnerable adult.

(If the court orders this relief after a hearing, and the respondent is the vulnerable adult's spouse or former spouse, the parent of a common child, a current or former cohabitant as intimate partner, the respondent will be prohibited from possessing a firearm or ammunition under federal law for the duration of this order. An exception exists for law enforcement officers and military personnel when carrying department/government-issued firearms. 18 U.S.C. § 925(a)(1).)

☒ 2 ***Restrain*** the respondent from committing or threatening to commit acts of abandonment, abuse, exploitation, neglect, or financial exploitation against the vulnerable adult.

☒ 3 ***Exclude*** the respondent from the vulnerable adult's residence. IF VA IS THERE

☒ 4 ***Restrain*** the respondent from coming near and from having any contact with the vulnerable adult, in person or through others, by phone, mail, or any means, directly or indirectly, except through an attorney, or mailing or delivery by a third party of court documents.

☒ 5 ***Prohibit*** the respondent from knowingly coming within, or knowingly remaining within 1000' (distance) of the vulnerable adult's ☒ residence ☐ workplace ☒ adult day program; ☒ the premises of the long-term care facility where the vulnerable adult resides.

☐ other:

☐ 6 ***Require*** the respondent to provide an accounting of the disposition of the vulnerable adult's income or other resources.

☐ 7 ***Restrain*** the respondent from transferring the vulnerable adult's property for up to 90 Days.

☐ 8 ***Restrain*** the respondent from transferring respondent's property for up to 90 Days.

☒ 9 ***Require*** the respondent to pay a filing fee, the court costs, including service fees, and costs incurred in bringing this action, including attorney's fees.

☐ 10 ***Other:***

Request for a Temporary Vulnerable Adult Protection Order: ***An Emergency Exists*** as described in the statement below. The vulnerable adult needs a temporary protection order issued immediately, without prior notice to the respondent, that grants the relief requested above.

Request for Special Assistance From Law Enforcement Agencies:
I request the court order the appropriate law enforcement agency to assist the vulnerable adult in obtaining:

SERVICE OF PLEADINGS

A **Vulnerable Adult protection order** is available to protect a vulnerable adult from abandonment, abuse, financial exploitation or neglect.

"Abandonment" means action or inaction by a person or entity with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

"Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult. In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult, which have the following meanings:

(a) **"Sexual abuse"** means any form of nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse includes any sexual contact between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not it is consensual.

(b) **"Physical abuse"** means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or the use of chemical restraints or physical restraints unless the restraints are consistent with licensing requirements, and includes restraints that are otherwise being used inappropriately.

(c) **"Mental abuse"** means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a vulnerable adult from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing.

(d) **"Exploitation"** means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.

"Financial exploitation" means the illegal or improper use of the property, income, resources, or trust funds of the vulnerable adult by any person for any person's profit or advantage.

"Neglect" means (a) a pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or (b) an act or omission that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

Statement: The respondent has committed or threatened to commit acts of abandonment, sexual abuse, mental abuse, physical abuse, exploitation, neglect, and/or financial exploitation as follows.

Describe the most recent incidents or threats of abandonment, sexual abuse, mental abuse, physical abuse, exploitation, neglect, and/or financial exploitation and date (***describe specific incidents or threats and the approximate dates***):

SEE "DECLARATION"

Describe past threats or incidents of abandonment, sexual abuse, mental abuse, physical abuse, exploitation, neglect, and/or financial exploitation (***describe specific incidents or threats and their approximate dates***):

SEE "DECLARATION"

Does the respondent use firearms, weapons or objects to threaten or harm the vulnerable adult? Please describe:

UNKNOWN

Explain any additional reasons why this order should be issued immediately. List any immediate and irreparable injury, loss, or damage that would result to the vulnerable adult before the respondent or vulnerable adult can be served and heard:

SEE "DECLARATION"

Efforts to give notice: Did you make efforts to give notice of your request for temporary relief to ☐ respondent ☐ vulnerable adult? If so, describe how and when notice was given. If no notice was given, explain why not:

NO, EMERGENT SITUATION W/ FLIGHT RISK. SEE "DECLARATION."

Other:

(Continue on separate page if necessary)

☐ Personal service cannot be made upon Respondent within the state of Washington.

You could be required to post a bond or provide alternate security as a condition for obtaining a temporary order. The court may waive the bond in situations in which the vulnerable adult's health or life would be jeopardized. RCW 7.40.080, 74.34.120(5)(a).

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Dated AUGUST 6, 2008 at CLARK COUNTY, Washington.

Signature of Petitioner

KEVIN HARPER
Print Name

3

FILED

AUG 06 2008

Sherry W. Parker, Clerk, Clark Co.

1

Superior Court of Washington For Clark County

No. 08-2-04996-9

In re the Matter of:

CAROLYN K. PLOTKE 6-17-33

A Vulnerable Adult (Protected Person) DOB

LEO A. PLOTKE 1-3-30

KATHLEEN LAURA VANDERPOOL

Respondent (Restrained Person) 4-19-59 DOB

Temporary Order for Protection and Notice of Hearing – Vulnerable Adult (TMORVA)

(Clerk's Action Required) **Next Hearing Date/Time:** 8/15/08 11:00AM Dept #5 Swaolard

1200 Franklin St. Vancouver, WA 98660

Violation of Restraint Provisions 1, 3, 4 or 5 With Actual Notice of its Terms is a Criminal Offense Under Chapter 26.50 RCW and Will Subject a Violator to Arrest. RCW 74.34.145

The Petitioner is:

☐ the vulnerable adult.

☒ DETECTIVE KEVIN HARPER [name], who filed on behalf of the vulnerable adult and is:

☐ the vulnerable adult's guardian or legal fiduciary.

☒ an interested person as defined in RCW 74.34.020(9).

☐ WA Dep't of Social and Health Services.

Respondent Identification:

Sex	Race	Hair
M	W	GRY
Height	Weight	Eyes
5-10	175	BRO

Respondent's Distinguishing Features:

Kathleen Laura Vanderpool

Sex F Race W Hair Brn Ht 5'4" Wt 115

Access to weapons: ☐ yes ☐ no ☒ unknown

The Court Finds Based Upon the Court Record That:

The court has jurisdiction over the parties and the subject matter. The respondent and the vulnerable adult, if not the petitioner, were notified in writing of the ex parte hearing and their opportunity to be heard, or will be served notice of his or her opportunity to be heard at the scheduled hearing noted above. RCW 74.34.110. For good cause shown, the court finds that an emergency exists and that a Temporary Protection Order should be issued without notice to the respondent to avoid irreparable harm.

The Court Orders:

☒ 1. The respondent is ***Restrained*** from committing or threatening to commit physical harm, bodily injury, assault, including sexual assault against the vulnerable adult and from molesting, harassing, or stalking the vulnerable adult.

Additional no contact provisions are on the next page.

The terms of this order shall be effective until **the end of the hearing, noted above**

B

☒ 2. The respondent ~~is~~ are ***Restrained*** from committing or threatening to commit acts of abandonment, abuse, exploitation, neglect, or financial exploitation against the vulnerable adult.

☒ 3. The respondent is ***Excluded*** from the vulnerable adult's residence. ☐ The vulnerable adult's address is confidential. ☐ The vulnerable adult waives confidentiality of the address which is:
IF VA IS PRESENT

☒ 4. The respondent ~~is~~ are ***Restrained*** from coming near and from having any contact with the vulnerable adult, in person or through others, by phone, mail, or any means, directly or indirectly, except through an attorney, or mailing or delivery by a third party of court documents.

☒ 5. Respondent ~~is~~ are ***Prohibited*** from knowingly coming within, or knowingly remaining within 1000' (distance) of the vulnerable adult's ☒ residence ☐ workplace ☒ adult day program; ☒ the premises of the long-term care facility where the vulnerable adult resides.

☐ other:

☐ 6. The respondent ~~is~~ are ***Required*** to provide an accounting of the disposition of the vulnerable adult's income or other resources.

☐ 7. The respondent ~~is~~ are ***Restrained*** from transferring the vulnerable adult's property until the hearing scheduled on page one.

☐ 8. The respondent ~~is~~ are ***Restrained*** from transferring respondent's property until the hearing scheduled on page one.

9. ***Bond:***

☐ Bond in the amount of $ _____ as required by the court under RCW 7.40.080 has been posted.

☒ Bond is waived because:

☐ State of Washington is petitioner.

☒ Life or health of vulnerable adult is in jeopardy under RCW 7.40.080.

Alternative security has been posted as described:

_____

_____

☐ 10. ***Other:***

The respondent ~~is~~ are directed to appear and show cause why this temporary order should not be made effective for up to five years and why the court should not order the relief requested in the petition. ***Failure to Appear at the Hearing May Result in the Court Granting Such Relief. The Next Hearing Date is Shown on Page One.***

Warnings to Respondent: Violation of restraint provisions 1, 3, 4 or 5 of this order with actual notice of its terms is a criminal offense under chapter 26.50 RCW and will subject you to arrest. If the violation of the protection order involves travel across a state line or the boundary of a tribal jurisdiction, or involves conduct within the special maritime and territorial jurisdiction of the United States, which includes tribal lands, you may be subject to criminal prosecution in federal court under 18 U.S.C. § 2261, 2261A, or 2262.

Violation of restraint provisions 1, 3, 4, or 5 of this order is a gross misdemeanor unless one of the following conditions apply: Any assault that is a violation of this order and that does not amount to assault in the first degree or second degree under RCW 9A.36.011 or 9A.36.021 is a class C felony. Any conduct in violation of this order that is reckless and creates a substantial risk of death or serious physical injury to another person is a class C felony. Also, a violation of this order is a class C felony if you have at least two previous convictions for violating a protection order issued under Titles 7, 10, 26, or 74 RCW.

If the court issues a final protection order, and your relationship to the vulnerable adult is that of spouse or former spouse, parent of a common child, or former or current cohabitant as intimate partner, you may not possess a firearm or ammunition for as long as that final protection order is in effect.
18 U.S.C. § 922(g)(8). A violation of this federal firearms law carries a maximum possible penalty of 10 years in prison and a $250,000 fine. An exception exists for law enforcement officers and military personnel when carrying department/government-issued firearms. 18 U.S.C. § 925(a)(1). If you are convicted of an offense of domestic violence, you will be forbidden for life from possessing a firearm or ammunition.
18 U.S.C. § 922(g)(9); RCW 9.41.040.

You Can Be Arrested Even If the Person or Persons Who Obtained the Order Invite or Allow You to Violate the Order's Prohibitions. You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order upon written application.

Pursuant to 18 U.S.C. § 2265, a court in any of the 50 states, the District of Columbia, Puerto Rico, any United States territory, and any tribal land within the United States shall accord full faith and credit to the order.

It is further ordered that the clerk of the court shall forward a copy of this order on or before the next judicial day to CLARK ☒ County Sheriff's Office ☐ Police Department ***Where Protected Person Lives*** which shall enter it in a computer based criminal intelligence system available in this state used by law enforcement to list outstanding warrants.

Service

Petitioner shall arrange for service of the petition and this order on:
☒ Respondent
☒ Vulnerable Adult.
☐ Vulnerable Adult's guardian.

The following persons appeared, further service is not required:
☐ Respondent.
☐ Vulnerable adult.
☐ Vulnerable adult's guardian.

Law Enforcement Assistance

☐ Pursuant to RCW 74.34.140, law enforcement shall assist petitioner as follows:
TO SERVE PLEADINGS

Dated: AUGUST 6, 2008 at 0326 a.m./p.m.

Judge/~~Commissioner~~

Presented by:

3/6/08

Petitioner Date

I acknowledge receipt of a copy of this Order:

Respondent Date

A Law Enforcement Information Sheet (LEIS) must be completed.

DIMITROV & SENESCU, PLLC
Attorneys at Law
1409 Franklin St., Suite 207
Vancouver, WA 98660

FILED
AUG 08 2008
Sherry W. Parker, Clerk, Clark Co.

SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

Carolyn K. Plotke, Petitioner,
vs.
Leo A. Plotke, Respondent.

NO. 08-2-04996-9

RETURN OF SERVICE (RTS)

1. My name is Det. K. Schmidt. I am ☒ a peace officer ☐ 18 years of age or older and not the petitioner.
2. ☐ I was unable to make personal service on the respondent. ☐ I have notified the petitioner that respondent was not served.
   ☐ Personal service was attempted on the following date(s) _____
   ☐ No service was attempted because _____
3. ☒ I served the Above-Named Respondent with the following documents:
   - ☐ Temporary Order for Protection and Notice of Hearing
   - ☐ Petition for Order for Protection
   - ☐ Reissuance of Temporary Order for Protection and Notice of Hearing
   - ☐ Order for Protection
   - ☐ Order Realigning Parties and Notice of Hearing
   - ☐ Motion to Modify/Terminate Order for Protection
   - ☐ Order Modifying/Terminating Order for Protection
   - ☐ Order Transferring Domestic Violence Case and Setting Hearing
   - ☒ Other: Vacate Ex Parte Protection Order
4. I served these documents on 8-7-08 (date) at 1044 (time) at this address: 20810 NE 38th St.

I certify under penalty of perjury under the laws of the state of Washington the foregoing is true and correct.

Dated 8/7/08 at Vancouver, Washington.

Fees: Service _____
Mileage _____
Total _____

Det K. Schmidt
Signature of Server Title/ LEA CCSO/PSN 3546

RETURN OF SERVICE (RTS) – One Page
WPF DV-4.020 (6/2002) - RCW 26.50.090

K9/4267

Lespt

FILED

AUG 15 2008

Sherry W. Parker, Clerk, Clark Co.

ORIGINAL

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

In re the Matter of: CAROLYN K. PLOTKE (dob 6-17-33), A Vulnerable Adult, and LEO A. PLOTKE (dob 1-3-30), KATHLEEN LAURA VANDERPOOL (dob 4-19-59), Respondents.	No. 08 2 04996 9 PERMANENT / ~~CONTINUED~~ ORDER FOR PROTECTION OF A VULNERABLE ADULT ORDER TO SHOW CAUSE AND NOTICE OF HEARING RCW 74.34 **(CLERK'S ACTION REQUIRED)** **This Order is Effective Until:** **Date:** AUGUST 15, 2013 **Time:** 5:00PM **Location: Clark County Courthouse – Judge Diane M. Woolard - 1200 Franklin Street, Vancouver, WA 98660.**

WARNINGS TO THE RESPONDENTS

VIOLATION OF ANY PROVISION OF THIS ORDER WITH ACTUAL NOTICE OF ITS TERMS IS A CRIMINAL OFFENSE AND WILL SUBJECT A VIOLATOR TO ARREST. RCW 26.50

If violation of this Order involves travel across a state line or the boundary of a tribal jurisdiction or conduct within the special maritime and territorial jurisdiction of the U.S., including tribal lands, the Defendants may be subject to criminal prosecution in federal court. 18 U.S.C. 2261,

Dimitrov & Senescu, PLLC
Attorneys at law
1409 Franklin Street, Suite #207
Vancouver, Washington 98660
(360) 696-7494 tel.

2261A, 2262

Violation of this Order is a gross misdemeanor unless any of the following apply:

- Any assault that is a violation of this Order and that does not amount to assault in the first or second degree under RCW 9A.36.011 or 9A.36.021 is a class C felony.
- Any conduct in violation of this Order that is reckless and creates a substantial risk of death or serious physical injury to another person is a class C felony.
- Any violation of this Order if the Respondent has at least two previous convictions for violating a protection Order issued under RCW 10, 26, or 74 is a class C felony.

If the Court issues a final Order for Protection, the Respondents may not possess a firearm or ammunition for as long as that Order is in effect. 18 U.S.C. 922(g)(8) A violation of this federal firearms law carries a maximum possible penalty of ten years in prison and a $250,000 fine except if the Respondents are members of a law enforcement department or the military and carrying a government-issued firearm. 18 U.S.C. 9215(a)(1) If convicted of an offense of domestic violence, the Respondents will be forbidden for life from possessing a firearm or ammunition. 18 U.S.C. 922(g)(9); RCW 9.41.040

YOU CAN BE ARRESTED EVEN IF THE PERSON(S) WHO OBTAINED THIS ORDER (OR THE VULNERABLE ADULT) INVITE OR ALLOW YOU TO VIOLATE THE ORDER'S PROHIBITIONS.

You have the sole responsibility to avoid or refrain from violating the provisions of this Order, which can be changed only by the Court.

Any Court in any of the fifty states, the District of Columbia, Puerto Rico, any U.S. territory, and any tribal land within the U.S. shall accord full faith and credit to this Order. 18 U.S.C. 2265

FAILURE TO APPEAR AT ANY HEARINGS MAY RESULT IN THE COURT GRANTING THE RELIEF REQUESTED BY THE PETITIONER.

THIS MATTER HAVING come before the Court on a Petition for Order For Protection of a Vulnerable Adult, pursuant to RCW 74.34, and the Court having reviewed the verified Petition of DETECTIVE KEVIN HARPER, and all other documents filed to date in this cause, arguments of counsel and all pleadings before the Court and having held a hearing on this matter on August 15, 2008 with the Respondent LEO A. PLOTKE being **present / ~~not present and/or by~~ and ~~through counsel for Respondent~~**, _____, and Respondent

Dimitrov & Senescu, PLLC
Attorneys at law
1409 Franklin Street, Suite #207
Vancouver, Washington 98660
(360) 696-7494 tel.

KATHLEEN LAURA VANDERPOOL being **present / ~~not present and/or by and through~~ ~~counsel for Respondent~~**, _____, and the Court finding good cause to issue a Vulnerable Adult Order of Protection, the Court finds that CAROLYN K. PLOTKE is a Vulnerable Adult as defined under RCW Chapter 74.34, that a permanent 5 year order should be entered. The Court finds that proper service and notices have been made and are on file herein. The Court further finds that Respondents have neglected CAROLYN K. PLOTKE causing her injury and great bodily harm, and are a future threat to the health and safety of Ms. Plotke. Further, Ms. Plotke, after an eighth lengthy hospital stay for her injuries, is now safely in a rehabilitation care facility so as to recover from her longstanding injuries.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The Respondents are RESTRAINED from causing any physical harm, bodily injury, assault, sexual assault, and/or from molesting, harassing, threatening, or stalking CAROLYN K. PLOTKE; and

2. The Respondents are RESTRAINED from coming near and from having any contact whatsoever with CAROLYN K. PLOTKE; in person or through others, by phone, mail, or any means, directly or indirectly; and

3. The Respondents are RESTRAINED from committing acts of abandonment; abuse, neglect or financial exploitation against CAROLYN K. PLOTKE; and

4. The Respondents are EXCLUDED from going onto the grounds of, entering, knowingly coming within, or knowingly remaining within 1000 feet of CAROLYN K. PLOTKE, her

Dimitrov & Senescu, PLLC
Attorneys at law
1409 Franklin Street, Suite #207
Vancouver, Washington 98660
(360) 696-7494 tel.

current residence, or any **future** residence of CAROLYN K. PLOTKE, during the life of this order; and

5. The Respondents are REQUIRED to pay filing fees, court costs, service fees, and to reimburse CAROLYN K. PLOTKE and/or Petitioner Detective Kevin Harper for costs incurred in bringing this action and the guardianship action, including reasonable attorney fees and costs to be determined at a later date; and

6. Bond is hereby waived because the life or health of the vulnerable adult is in jeopardy under RCW 7.40.080.

7. The Respondents are directed to appear at any subsequent hearings as required by citation or Court Order. **FAILURE TO APPEAR AT ANY HEARINGS MAY RESULT IN THE COURT GRANTING SUCH RELIEF AS REQUESTED BY THE PETITIONER. THE NEXT HEARING DATE (IF ANY) IS SHOWN ON PAGE ONE BELOW THE CAPTION.**

8. It is further ordered that the Clerk of the Court shall forward a copy of this Order on or before the next judicial day to Clark County Sheriff's Office or the Police Department which shall enter it in a computer-based criminal intelligence system available in this state used by law enforcement to list outstanding warrants.

9. Service of this Order shall be made / was made by: Det Harper — MS Robertson, Respondents present.

10. Other Orders of the Court: a copy by the respondents through an atty. The respondents do not have the right to an atty in this proceeding only to consult prior to ~~testifying~~

Dimitrov & Senescu, PLLC
Attorneys at law
1409 Franklin Street, Suite #207
Vancouver, Washington 98660
(360) 696-7494 tel.

WARNINGS TO RESPONDENTS: VIOLATIONS OF THE PROVISIONS OF THIS PROTECTION ORDER WITH ACTUAL KNOWLEDGE OF ITS TERMS MAY RESULT IN A FINDING OF CONTEMPT OF COURT AND IMPOSITION OF SANCTIONS, WHICH MAY INCLUDE A CIVIL PENALTY AND/OR INCARCERATION. VIOLATIONS OF THE TERMS OF THIS ORDER MAY ALSO SUBJECT YOU TO CRIMINAL PENALTY AND/OR PROSECUTION. RCW 74.34.

This Order for Protection is effective until the next hearing date shown below the caption on Page One of this Order.

DATED this 15th day of August, 2008.

Superior Court Judge Diane M. Woolard

Presented by:

JAMES D. SENESCU, WSBA #27137
DIMITROV & SENESCU, PLLC
Of Attorneys for Petitioner, Detective Kevin Harper

Copy Received:

Respondent, Leo A. Plotke

Respondent, Kathleen Laura Vanderpool

Dimitrov & Senescu, PLLC
Attorneys at law
1409 Franklin Street, Suite #207
Vancouver, Washington 98660
(360) 696-7494 tel.

FILED
AUG 06 2008
Sherry W. Parker, Clerk, Clark Co.

IN THE SUPERIOR COURT OF WASHINGTON
FOR THE COUNTY OF CLARK

In the Guardianship of:	) Case No.: 08 4 00624 8
CAROLYN K. PLOTKE	) PETITION FOR GUARDIANSHIP OF PERSON AND/OR ESTATE
An Alleged Incapacitated Person.	) RCW 11.88.030

I. ALLEGED INCAPACITATED PERSON INFORMATION

The name, age, address of present residence and length of time at residence of the Alleged Incapacitated Person are:

A. Name: CAROLYN K. PLOTKE

B. Age: 75 years old

C. Present Residence: 20810 NE 384th Street ~~Avenue~~, Amboy, WA 98601

II. NATURE AND DEGREE OF ALLEGED INCAPACITY

The nature and degree of the alleged incapacity are as follows:

A. Nature of Alleged Incapacity: CAROLYN K. PLOTKE is 75 years old and has significant medical and mental health issues, and is believed to meet the criteria for a guardianship under Washington law as is described in the Sealed Declaration of Kevin Harper and as will be further detailed in information provided to the guardian ad litem. The Petitioner is a Clark County Major Crimes Detective who is investigating criminal allegations concerning Mrs. Plotke's injuries under CCSO08-11408.

B. Degree of Alleged Incapacity: Mrs. Plotke requires help and support with most, if not all of her activities of daily living. She is largely paralyzed and bed ridden and likely requires 24-hour care. She has had an extensive history of recurring decubitus

DIMITROV & SENESCU PLLC
Attorneys at Law
1409 Franklin Street, Suite 207
Vancouver, WA 98660
Telephone (360) 696-7494

ulcers, urinary tract infections, insulin-dependent diabetes, paralysis, multiple sclerosis and other serious health conditions. Based on medical reports and other information obtained by the Petitioner, Petitioner believes that Mrs. Plotke has demonstrated an inability to adequately provide for her health and physical safety, leaving her at risk of additional significant physical harm if left unassisted.

C. Petitioner does not know whether Mrs. Plotke has executed a power of attorney or other estate planning document that would obviate the need for a full guardianship over her estate. Although she is married, it is possible that her husband has not exercised medical and financial decisions in Mrs. Plotke's best interests, which decisions have left her without adequate medical and physical care. Mrs. Plotke may be at further significant risk of financial harm if she is not assisted with the proper management of her personal, medical and financial affairs.

III. DESCRIPTION/VALUES OF PROPERTY

The approximate value and the description of the property owned by the Alleged Incapacitated Person is:

A. Real Property: $unknown
B. Stock, Mutual Funds and Bonds: $Unknown
C. Mortgages and Notes: $Unknown
D. Bank Accounts $Unknown
E. Furniture: $unknown
F. Other Personal Property: $unknown .

Total Approximate Value of Assets is: $Unknown

There are periodic compensation, pension, insurance, and allowances as follows:

A. Social Security Benefits: $Unknown /month
B. Veterans Benefits None known of
C. Other: None known of
D. Approximate Total Monthly Income: $Unknown

IV. EXISTING OR PENDING GUARDIANSHIPS

A. There is not an existing or pending Guardianship action for the person and/or the estate of the Alleged Incapacitated Person.

DIMITROV & SENESCU, PLLC
Attorneys at Law
1409 Franklin Street, Suite 207
Vancouver, WA 98660
Telephone (360) 696-7494

V. NOMINEE

A. GUARDIAN OF THE ESTATE: The name and address of the proposed Guardian of the Estate: A Certified Professional Guardian that the Guardian ad Litem and Court believes is appropriate.

B. GUARDIAN OF THE PERSON: The name and address of the proposed Guardian of the Person: A Certified Professional Guardian that the Guardian ad Litem and Court believes is appropriate.

VI. RELATIVES

The name and addresses, and the nature of the relationship of the persons most closely related by blood or marriage to the Alleged Incapacitated Person are as follows:

A. Name: Leo A. Plotke
Address: 20810 NE 384th Street ~~Avenue~~, Amboy, WA 98601
Relationship: Husband

B. Name: Kathleen Banderpol (or Kathleen Vanderpool)
Address: Currently unknown (Believed to live next to the Alleged Incapacitated Person.
Relationship: Daughter

C. Name: James Plotke
Address: California
Relationship: Son

VII. CUSTODIAN OF PERSON TO BE ASSISTED

The name, address of the person or facility having the care and custody of the Alleged Incapacitated Person and the length of time of said care and custody is:

A. Name: Leo Plotke
Address: 20810 NE 384th Street ~~Avenue~~, Amboy, WA 98601

B. Length of Time at Facility: Mrs. Plotke lives in her personal residence where she is under the care of her husband, Leo Plotke. Mrs. Plotke is currently at Legacy Emanuel Hospital Burn Treatment Center in Portland, where she was transferred on August 3, 2008 from Legacy Salmon Creek Hospital for treatment of several Stage IV decubitus ulcers.

VIII. .REASON FOR GUARDIANSHIP:

DIMITROV & SENESCU, PLLC
Attorneys at Law
1409 Franklin Street, Suite 207
Vancouver, WA 98660
Telephone (360) 696-7494

A. The reason for petitioning for Guardianship is as follows: In addition to the myriad of medical conditions from which she suffers, which is being investigated for possible criminal charges of mistreatment and assault, Mrs. Plotke has demonstrated increasing cognitive decline and memory loss to the hospital staff. Mrs. Plotke is not capable of caring for herself without assistance. Mrs. Plotke needs a guardian over her person in order to ensure that she receives adequate medical care, takes her medications properly, and can be safe in her home or in a care facility. Mrs. Plotke may also need a guardian over her estate in order to provide properly for her finances and to protect her from financial exploitation.

B. The interest of the Petitioner in the appointment is as follows: The petitioner seeks to protect Mrs. Plotke from hazard and harm and to ensure that she receives adequate care and supervision, that her finances are protected and that she receives the services and benefits to which she is entitled. Mrs. Plotke is a vulnerable adult and is in need of protection of both her person and estate.

C. Designate whether the appointment is sought as Guardian or Limited Guardian of the Person, the Estate, or both: Both to the extent deemed necessary by the Guardian ad Litem and the Court

D. Describe any alternative arrangements previously made by the Alleged Incapacitated Person, such as trusts, powers of attorney including any Guardianship nominations contained in a power of attorney, and why a Guardianship is nevertheless necessary. Unknown. In the event that Mr. Plotke is the only person with the legal right to make decisions on her behalf, the Petitioner believes, based on her grave medical condition which appears to be the result of neglect that could be criminal in nature, that a professional neutral third person should appointed to represent and protect Mrs. Plotke's person and estate.

IX. AREAS OF ASSISTANCE

A. The nature and degree of the alleged incapacity: See Section II above and Sealed Declaration of Kevin Harper.

B. The following are specific areas of protection and assistance required: Petitioner believes that Mrs. Plotke requires assistance and protection with all aspects of her person and possibly with her estate. In addition, it may be necessary for the Court, during the pendency of this guardianship action, to enter orders regarding who shall

DIMITROV & SENESCU, PLLC
Attorneys at Law
1409 Franklin Street, Suite 207
Vancouver, WA 98660
Telephone (360) 696-7494

provide her care and where she should live. The Petitioner is filing a Petition for Protection of a Vulnerable Adult in conjunction with this Guardianship.

C. The duration of Guardianship should be as follows: Indefinite or upon further order of the Court.

X. GUARDIAN AD LITEM

The Petitioner requests that THOMAS B. DEUTSCH be appointed Guardian ad Litem. Mr. Deutsch is on the Court's Registry and otherwise qualified to serve. Under RCW 11.88.090(4)(a), the Superior Court should appoint Thomas B. Deutsch based on the extraordinary circumstances in this case and his particular expertise in matters concerning breaches of fiduciary duty, care, placement and vulnerable adult abuse. Mr. Deutsch has a great deal of experience in evaluating and making placement decisions in the most appropriate and least restrictive setting and in handling financial matters such as the ones implicated here. He has over 30 years of education, training and experience working with the long-term care and health care needs of the elderly and disabled. He has over 700 continuing education hours in elder and disability issues and a vast knowledge of care facilities available in all venues of care. He is well versed in Medicaid, Medicare, health insurance and long-term care insurance. He has special skills in evaluating seniors and identifying and resolving problems concerning family conflict, finances, disabilities, housing and other similar considerations. He has participated in numerous Vulnerable Adult Protection Order Proceedings and has worked with law enforcement on other cases. A criminal investigation is currently pending as a result of the injuries that Mrs. Plotke has suffered. He is available immediately to take all steps necessary to act on Ms. Plotke's behalf. Petitioner does not believe that it is safe for Mrs. Plotke to continue to live in the current setting wherein her husband appears to have committed criminal acts against her and a criminal investigation of mistreatment and assault is pending.

Thomas B. Deutsch is one of two guardian ad litems on the Clark County Court Registry that has completed the **mandated** Annual Guardian Ad Litem training in Seattle, Washington on May 4, 2007 as required by the Model Guardian Ad Litem Program.

To date he has participated in more than 350 guardian ad litem actions, many of which involved allegations of financial exploitation and abuse of vulnerable adults, including in making care and placement recommendations.

He holds a Master Degree from Columbia University School of Public Health and Administrative Medicine in Health Care Administration. He has recently been asked to serve by

DIMITROV & SENESCU, PLLC
Attorneys at Law
1409 Franklin Street, Suite 207
Vancouver, WA 98660
Telephone (360) 696-7494

Attorney General Rob McKenna on the newly formed Vulnerable Adult Summit Workgroup. In October of 2007 he spoke at the Regional Workshop for Adult Protective Service workers in Olympia, Washington and was recently invited to speak to the Cowlitz Wahkiakum Bar Association on Vulnerable Adults. He has further been recognized in Clark and Wahkiakum Counties as an expert witness. He has been asked by APS to serve as an expert witness on their behalf. He is uniquely qualified to serve in the current proceeding, which necessitates his participation to ensure protection of the alleged incapacitated person.

Petitioner is gravely concerned that Mrs. Plotke is in an unsafe environment if she is allowed to return home to live under the care of her husband due to her grave and critical wounds that occurred under the care of her husband. It is not known whether or not it is safe for Mrs. Plotke to continue to live in her residence in the current setting, and whether or not she would be capable of avoiding exploitation of her assets. He has special skills in evaluating seniors and identifying and resolving problems concerning family conflict, finances, disabilities, housing and other similar considerations. He is available immediately to take all steps necessary to act on Mrs. Plotke's behalf.

Petitioner further requests that the Order appointing Guardian ad Litem provide him with the authority to access records from Adult Protective Services and any and all police reports, including but not limited to CCSO08-11408.

The name, address, and telephone number of the proposed Guardian ad Litem is:

Name: THOMAS B. DEUTSCH

Address: 100 Inglewood Park - Longview, WA 98632

Telephone: (360) 560-6496

The knowledge of a relationship of the proposed Guardian ad Litem to the parties is as follows: **None**

XI. BONDS AND FEES

A. A bond in the amount necessary to protect the estate and income of Mrs. Plotke should be established as recommended by the Guardian ad Litem in light of the extent and nature of her assets.

B. The payment of Guardian ad Litem's fees should be provided as follows: The Guardian ad litem fees should be paid out of the estate of Mrs. Plotke or by any party who is deemed to have breached fiduciary duties owed to Mrs. Plotke. In the event that the Court determines that Mrs. Plotke is indigent and determines that her estate

DIMITROV & SENESCU, PLLC
Attorneys at Law
1409 Franklin Street, Suite 207
Vancouver, WA 98660
Telephone (360) 696-7494

should otherwise be responsible for payment of the guardian ad litem fees (as opposed to some other party, person or entity), the Petitioner asks that the County pay Mr. Deutsch's fees. In the event that Court determines that Mrs. Plotke is not indigent or otherwise determines that some other party, person or entity should be responsible for payment of her fees, the Petitioner asks that her estate or such other responsible party should be responsible for payment of the guardian ad litem fees at his normal hourly rate, as approved by the Court.

XII. SUMMARY

The Petitioner(s) request(s) the following relief:

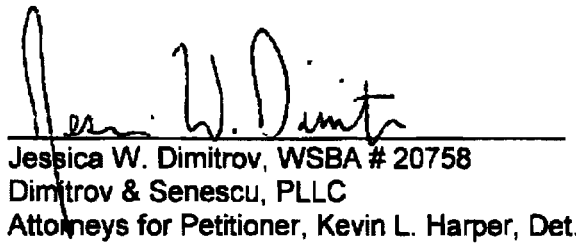
1. An Order appointing THOMAS B. DEUTSCH Guardian ad Litem for the Alleged Incapacitated Person and authorizing access to APS records and police reports, allowing him to participate in a Vulnerable Adult Protection Order proceeding and to take other steps necessary to protect Mrs. Plotke from further harm;
2. An Order directing that the Guardian ad Litem's fees in this matter be paid as follows: In the event that the Court determines that Mrs. Plotke is indigent and determines that her estate should otherwise be responsible for payment of the guardian ad litem fees (as opposed to some other party, person or entity), the Petitioner asks that the County pay Mr. Deutsch's fees. In the event that Court determines that Mrs. Plotke is not indigent or otherwise determines that some other party, person or entity should be responsible for payment of her fees, the Petitioner asks that her estate or such other responsible party should be responsible for payment of the guardian ad litem fees at his normal hourly rate, as approved by the Court.
3. An Order approving payment of Petitioner's reasonable attorney's fees and costs incurred in preparation and presentation of this Guardianship Petition by the estate of Mrs. Plotke or by any party who is deemed to have breached fiduciary duties owed to Mrs. Plotke;
4. An Order appointing a certified professional guardian as Full Guardian of the Person and Estate of CAROLYN K. PLOTKE with the bond set in the amount necessary to

///

DIMITROV & SENESCU, PLLC
Attorneys at Law
1409 Franklin Street, Suite 207
Vancouver, WA 98660
Telephone (360) 696-7494

protect her assets and income. Such other and further relief as the Court deems equitable in the premises.

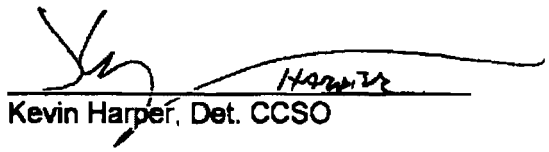
Dated this 6th day of August, 2008.



Jessica W. Dimitrov, WSBA # 20758
Dimitrov & Senescu, PLLC
Attorneys for Petitioner, Kevin L. Harper, Det.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that to the best of my knowledge the statements contained in the Petition for Guardianship, consisting of 8 pages, including this one are true and correct.

Dated this 6 day of August, 2008 in Vancouver, Washington.



Kevin Harper, Det. CCSO

DIMITROV & SENESCU, PLLC
Attorneys at Law
1409 Franklin Street, Suite 207
Vancouver, WA 98660
Telephone (360) 696-7494

FILED

OCT 24 2008

Sherry W. Parker, Clerk, Clark Co.

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

In the Matter of the Guardianship of:	No. 08 4 00624 8
CAROLYN K. PLOTKE,	STIPULATED ORDER APPOINTING FULL GUARDIAN OVER PERSON AND REAFFIRMING POWER OF ATTORNEY FOR ESTATE OF CAROLYN K. PLOTKE
An Incapacitated Person.	**CLERK'S ACTION REQUIRED**

CLERK'S INFORMATION SUMMARY

Due Date for Initial Personal Care Plan: January 24, 2009

Due Date for Inventory/Budget: N/A—Guardianship over the Person Only

Due Date for Report and Accounting: January 24, 2012 (for the reporting period of October 24, 2008 to October 23, 2011) and every three years thereafter

Name, Address and Telephone for Guardian of Person: Yvonne Polkow (CPG #10012) Elfin Services, Inc., 8509 NE 69th Street, Vancouver, WA 98662: (360) 883-3569 (bus.); (360) 606-9770 (cell)

Name, Address and Telephone for Guardian's Attorney: Terry Greenen, Greenen & Greenen, PLLC, 1104 Main Street, Ste. 400, Vancouver, WA 98660; (360) 694-1571; (360) 694-1572 (fax)

THIS MATTER came on for presentation of the entry of this Stipulated Order on the Petition for Appointment of Guardian over the person and estate of CAROLYN K. PLOTKE, Carolyn Plotke filed by Det. Kevin Harper of the Clark County Sheriff's Office. CAROLYN K. PLOTKE did not appear in person due to the Guardian Ad Litem's concern for her severe cognitive deficits and her inability to understand or participate in the proceedings. THOMAS B. DEUTSCH, the Guardian ad Litem stipulated to the entry of this Order. Det. KEVIN HARPER, CCSO, Petitioner herein appeared by and through his attorney, JESSICA W. DIMITROV of Dimitrov & Senescu, PLLC, LEO PLOTKE,

DIMITROV & SENESCU, PLLC
Attorneys at Law
1409 Franklin Street, Suite 207
Vancouver, WA 98660
Telephone (360) 696-7494

Carolyn K. Plotke's spouse appeared by and through his attorney DEE ELLEN GRUBBS and stipulated to the entry of this order.

The Court considered the records and files herein and the following pleadings:

1. The verified Petition for Guardianship of Person and/or Estate;
2. Declaration of Detective Kevin Harper in Support of Petition for Guardianship and Vulnerable Adult Protection Order (Sealed);
3. Motion and Declaration for Order of Indigency and Waiver of Filing Fee and Guardian ad Litem Fees and Order of Indigency;
4. Order Appointing Guardian ad Litem;
5. Petition for Order of Protection of a Vulnerable Adult;
6. Temporary Order of Protection of a Vulnerable Adult;
7. Permanent/Continued Order for Protection of a Vulnerable Adult;
8. Sealed Guardian ad Litem report filed August 27, 2008;
9. Sealed Medical/Psychological Report of Daniel Beavers, D. O.
10. Stipulation and Order Modifying Permanent Order for Protection of a Vulnerable Adult.

The Court has been advised that the interested parties to this matter have reached a settlement and compromise as reflected by the signatures of their counsel and based on the above, the Court therefore makes the following:

I. FINDINGS OF FACT

1. **Notices:** All notices required by law have been given and proof of service as required by statute is on file.
2. **Jurisdiction:** The jurisdictional facts set forth in the petition are true and correct, and the Court has jurisdiction over the person and estate of Carolyn Plotke.
3. **Guardian ad Litem:** The Guardian ad Litem appointed by the Court has filed a report with the Court. The report is complete and complies with all requirements of RCW 11.88.090.
4. **Alternative Arrangements Made By Carolyn Plotke:**

   A. <u>Power of Attorney over Health Care should be Revoked</u>. Mrs. PLOTKE executed a Health Care Durable Power of Attorney for on July 26, 1995, nominating her husband LEO PLOTKE as her attorney in fact for health care. <u>See</u> Exhibit "A". The Court has been provided with the medical opinion of Dr. Beavers that Mrs. PLOTKE lacks the capacity to handle any aspect of her person and estate. The Court has also received evidence that Mr. Plotke is

DIMITROV & SENESCU, PLLC
Attorneys at Law
1409 Franklin Street, Suite 207
Vancouver, WA 98660
Telephone (360) 696-7494

unable to adequately perform the duties of an attorney in fact for health care and that the services of a professional guardian is necessary to adequately protect and provide for Mrs. Plotke's health, welfare and safety. The Court finds that Mrs. Plotke lacks the capacity to execute new estate planning documents that would obviate the need for a guardianship over Mrs. Plotke's person. Mr. Plotke agrees and stipulates to resign as attorney in fact for health care and to have a full guardian appointed over Mrs. Plotke's person. The Court therefore finds good cause to **revoke** the Health Care Durable Power of Attorney dated July 26, 1995, attached hereto as Exhibit "A".

B. Power of Attorney over Finances should remain in Force. Mr. and Mrs. PLOTKE executed a Spouse's General Durable Power of Attorney for finances on July 26, 1995, in which each spouse nominated the other as their attorney in fact for finances. The Court has been presented with no evidence that Leo Plotke has financially exploited, wasted or otherwise improperly spent Mrs. Plotke's estate. Mr. Plotke provided financial information to the Guardian ad Litem and to the Petitioner and they are satisfied that he has been a good steward of Mr. and Mrs. Plotke's finances, although there is a difference of opinion on whether Mr. Plotke could have or should have expended more of their funds to pay for Mrs. Plotke's care and needs. Mr. and Mrs. Plotke have been married 55 years and their estate consists of jointly owned or held property. Mr. Plotke should be allowed to continue to handle their community or joint estate, provided that he be required to pay for all reasonable care and comfort requested by the Guardian of the Person of Mrs. Plotke. The Court finds that the Spouse's General Durable Power of Attorney for finances on July 26, 1995, a copy of which is attached hereto as Exhibit "B" should **remain in full force and effect**.

5. **Capacity:** Carolyn Plotke is not capable of managing her personal and financial affairs and is in need of a Full Guardianship over her person and assistance with all aspects of her estate. Dr. Beavers has diagnosed Mrs. PLOTKE with Delirium with Global Confusion; Decubitous Ulcers; Paraplegia; MS; Generalized Weakness; Neorgenic Bladder; Previous Nutritional Deficit; Osteoarthritis; history of Urinary Tract Infections; Previous Sacral Cellulitis and Bed Bound Status. She has significant cognitive deficits and short- and long-term memory loss. She is unable to manage her finances and is at risk of serious financial harm. Mrs. PLOTKE requires full-time care and supervision and requires the assistance of a guardian in order to obtain adequate medical and custodial care; to safely complete all of her activities of daily living, including the taking of medications and meal preparation; to provide informed medical consent.

DIMITROV & SENESCU, PLLC
Attorneys at Law
1409 Franklin Street, Suite 207
Vancouver, WA 98660
Telephone (360) 696-7494

She also requires full assistance to administer her estate and to provide for payment of her expenses, and to secure such services and objects which are reasonably necessary to provide for her general well being.

6. **Proposed Guardian of Person:** The parties agree that Yvonne Polkow (CPG #10012), a professional guardian, should be appointed full guardian over the person of Mrs. PLOTKE. Although the Guardian ad Litem initially recommended that a different professional guardian be appointed, he supports the appointment of Yvonne Polkow. Yvonne Polkow, the proposed Guardian of Mrs. PLOTKE's Person is qualified and willing to serve.
7. **Guardian ad Litem Fees and Costs:** The Guardian ad Litem was initially appointed at county expense due to the uncertainty as to whether Mrs. Plotke had assets to pay the guardian ad litem's fees. The order appointing guardian ad litem provided that if Mrs. Plotke was not indigent, Thomas B. Deutsch could seek his hourly rate of $95.00 per hour up to a maximum of $1425.00 without further order of the Court. The parties agree that Mrs. Plotke's estate has sufficient funds to pay for his fees at his normal hourly rate of $95.00. Thomas B. Deutsch has submitted a motion for payment of fees and costs in the amount of $2210.91. This case has required the Guardian Ad Litem to expend significantly more time than the typical guardianship case because of the severity of Mrs. Plotke's wounds and the need to make immediate steps to protect her, including participating in a VAPO proceeding, reviewing medical and financial records and interviewing numerous individuals regarding Mrs. Plotke's health and care. Fees in the amount of $2210.91are reasonable and should be paid by Mr. Plotke out of Mr. and Mrs. Plotke's estate.
8. **Bond/Issuance of Letters of Guardianship over the Person**: The Court is not requiring a bond because the guardianship is over the person only. The Clerk of the Court shall issue letters of Guardianship over the Person to the Guardian upon the filing of her oath.
9. **Right to Vote**: Carolyn Plotke is not capable of exercising the right to vote and shall **lose** the right to vote.
10. **Rights to be retained by CAROLYN K. PLOTKE:** The guardian ad litem makes a recommendation that CAROLYN K. PLOTKE should **retain** the following rights: **NONE**
11. **Rights to be revoked BY CAROLYN K. PLOTKE:** The guardian ad litem makes a recommendation that CAROLYN K. PLOTKE should **lose** the following rights:
    1. The right to marry or divorce; **Guardian of Person**
    2. The right to hold public office; **n/a**
    3. The right to appoint someone to act on her behalf; **Guardian of Person**

DIMITROV & SENESCU, PLLC
Attorneys at Law
1409 Franklin Street, Suite 207
Vancouver, WA 98660
Telephone (360) 696-7494

4. The right to enter into a contract; **Guardian of Person**
5. The right to sue or be sued other than through her guardian; **Guardian of Person**
6. The right to drive or possess a driver's license; **n/a**
7. The right to own or possess a firearm; **n/a**
8. The right to buy, sell, own, mortgage or lease property; **Financial POA**
9. The right to manage her own finances; **Financial POA**
10. The right to consent to or refuse medical treatment; **Guardian of Person**
11. The right to decide who shall provide for her care and assistance and where she should live; **Guardian of Person**
12. The right to make decisions regarding the social aspects of her life; **Guardian of Person**
13. The right to make or revoke a will or other estate-planning document. **Guardian of Person.**

Except for the rights to vote, make a will and possess a license to drive, the individual identified after each specified right is authorized to make such decisions on behalf of Carolyn Plotke.

12. **Petitioner's Attorney fees and costs:** The Petitioner incurred attorney fees and costs associated with this matter and the Court has been presented with a request for payment of fees and costs in the amount of $ reserved by Jessica W. Dimitrov and James D. Senescu, and the fees are reasonable and should be paid by Leo Plotke from the estate of Mr. and Mrs. Plotke.
13. **Reimbursement of Filing fee:** Mrs. Plotke is not indigent and Leo Plotke should pay Clark County the $200.00 filing fee previously waived in the Order of Indigency.
14. **Medicaid Planning:** The parties acknowledge that it will likely be necessary for Mr. Plotke to immediately make an application for Medicaid benefits on behalf of Mrs. Plotke and to transfer certain jointly held or owned assets to himself in order to allow her to qualify for such benefits. In the event that such Medicaid planning is undertaken, Mr. Plotke has agreed to pay for such reasonable and necessary expenses for Mrs. Plotke's care and comfort and any guardian fees not otherwise approved by DSHS out of his estate.

II. CONCLUSIONS OF LAW

1. CAROLYN K. PLOTKE is a fully Incapacitated Person within the meaning of RCW Chapter 11.88, and a Full Guardian of the Person and should be appointed. Yvonne Polkow (CPG #10012) is a professional guardian and is a fit and proper Guardian as required by RCW 11.88.020 to be appointed Guardian of the Person of CAROLYN K. PLOTKE. A Guardian of the Estate is not required due to the pre-existing Durable Power of Attorney for Finances in favor of Leo Plotke.

DIMITROV & SENESCU, PLLC
Attorneys at Law
1409 Franklin Street, Suite 207
Vancouver, WA 98660
Telephone (360) 696-7494

2. The powers of the Guardian and the limitations and restrictions placed on Carolyn Plotke should be as set forth in Findings of Fact 9, 10 and 11.

3. The Guardian is granted those powers set forth in RCW 11.92 including authority over the person CAROLYN K. PLOTKE as is provided under Washington law, now or as it may be amended, except solely as such authority is limited by this Order or by Washington law.

4. Nothing contained in this Order shall be construed to authorize the Guardian or the standby guardian to involuntarily commit CAROLYN K. PLOTKE for mental health treatment, observation, or evaluation, if she is unwilling or unable to give informed consent for same. Furthermore, the Guardian is not authorized by this section to consent for CAROLYN K. PLOTKE to receive:

   4.1 Therapy or other procedure which induces convulsion;

   4.2 Surgery solely for the purpose of psychosurgery; or

   4.3 Other psychiatric or mental health procedures that restrict physical freedom of movement, or the rights set forth in RCW 71.05.370, now or as they may be amended.

III. ORDER

It is hereby ordered:

1. **Powers of Attorney:** The Health Care Durable Power of Attorney dated July 26, 1995, attached hereto as Exhibit "A" is revoked in its entirety. The General Durable Power of Attorney for finances dated July 26, 1995, a copy of which is attached hereto as Exhibit "B shall remain in full force and effect, subject to the Order of this Court that Mr. Plotke comply with all reasonable requests from the Guardian of the Person to make financial provisions for Carolyn Plotke.

2. **Appointment of Guardian of Person**: Yvonne Polkow (CPG #10012) is appointed Full Guardian of the Person of CAROLYN K. PLOTKE. The powers of the Guardian and the attorney in fact over Mrs. Plotke's estate and the limitation and restrictions placed on CAROLYN PLOTKE shall be as set forth in Conclusions of Law 2, 3 and 4.

3. **Letters of Guardianship to Guardian of Person:** The Clerk of the Court shall issue Letters of Guardianship of the Person to Yvonne Polkow (CPG #10012), upon the filing of an oath. No Guardianship bond is required because the guardianship is over the person only.

4. **Personal Care Plan:** The Guardian of the Person shall complete and file within three (3) months after appointment a Personal Care Plan that will comply with the requirements of RCW 11.92.043(1).

DIMITROV & SENESCU, PLLC
Attorneys at Law
1409 Franklin Street, Suite 207
Vancouver, WA 98660
Telephone (360) 696-7494

5. **Status of Incapacitated Person/Report of Guardian:** The Guardian shall file a report on the status of CAROLYN PLOTKE that shall comply with the requirements of RCW 11.92.043(2) every three years, commencing on January 24, 2012 for the reporting period of October 24, 2008 to October 23, 2011, and every three years thereafter.
6. **Substantial Change in Condition or Residence:** The Guardian shall report to the Court within thirty (30) days any substantial change in Carolyn Plotke's condition, or any change in her residence.
7. **Designation of Standby Guardian:** The Guardian shall file a written designation of a standby Guardian that complies with the requirements of RCW 11.88.125.
8. **Duration of Guardianship:** This Guardianship shall continue in effect until terminated pursuant to RCW 11.88.140;
9. **Discharge/Retention of Guardian ad Litem:** The Guardian ad Litem is discharged.
10. **Notice of Right to Receive Pleadings:** The following persons are described in RCW 11.88.090(5)(d), and the Guardian shall notify them of their right to file with the Court and serve upon the Guardian, or the Guardian's attorney, a request to receive copies of pleadings filed by the Guardian with respect to the Guardianship:

Leo A. Plotke
20810 NE 384th Street Avenue
Amboy, WA 98601

James A. Plotke
P. O. Box 255
Wrightwood, CA 92397

11. **Guardian Fees:** YVONNE POLKOW is entitled to be paid for services as Guardian in this matter. In the event that Leo Plotke applies for Medicaid benefits, he shall pay the Guardian her fees to the extent that DSHS does not authorize payment of her fees.
12. **Guardian ad Litem Fee:** The Guardian ad Litem fees and costs incurred by Thomas B. Deutsch in the amount of $2210.91are approved as reasonable and shall be paid by Leo Plotke from the estate of CAROLYN K. PLOTKE and/or Leo Plotke.
13. **Legal Fees of Petitioner:** The legal fees and costs of Jessica W. Dimitrov and James D. Senescu of Dimitrov & Senescu, PLLC are approved as reasonable in the amount of $ reserved and shall be be paid by Leo Plotke from the estate of CAROLYN K. PLOTKE and/or Leo Plotke.
14. **Payment of Filing Fee:** Leo Plotke shall pay the filing fee of $200.00 previously waived by the County pursuant to the Order of Indigency.

DIMITROV & SENESCU, PLLC
Attorneys at Law
1409 Franklin Street, Suite 207
Vancouver, WA 98660
Telephone (360) 696-7494

15. **Residential Arrangements**: The Guardian shall make all placement and care decisions on behalf of Carolyn Plotke and is authorized to keep Mrs. PLOTKE residing at the nursing home where she is currently residing in Vancouver, WA and to make other living arrangements as the Guardian believes are in her best interests, subject to the restrictions under Washington law regarding involuntary placement. Leo Plotke shall pay for such care from her estate and shall pay for such other and further bills as reasonable and proper in the circumstances for the care of Mrs. PLOTKE requested by the Guardian.

16. **Informed Consent/Release of Medical Information**: The Guardian of the Person shall have the power and authority to serve as Mrs. PLOTKE's personal representative for all purposes of the Health Insurance Portability and Accountability Act of 1996, (Pub. L. 104-191), 45 C.F.R. Section 160-164, and as amended.

DATED this 24 day of October, 2008.

Judge of the Superior Court

Presented by:

Jessica W. Dimitrov, WSBA #20758
Dimitrov & Senescu, PLLC
Attorneys for Petitioner, Det. Kevin Harper

Approved as to form and content, consent
To Entry granted and notice of presentation
Waived this __ day of October, 2008.

See attached

Thomas B. Deutsch
Guardian ad Litem for CAROLYN K. PLOTKE

Approved as to form and content, consent
To Entry granted and notice of presentation
Waived this __ day of October, 2008.

Dee Ellen Grubbs, WSBA #26381
Attorney for Leo Plotke

DIMITROV & SENESCU, PLLC
Attorneys at Law
1409 Franklin Street, Suite 207
Vancouver, WA 98660
Telephone (360) 696-7494

15. **Residential Arrangements**: The Guardian shall make all placement and care decisions on behalf of Carolyn Plotke and is authorized to keep Mrs. PLOTKE residing at the nursing home where she is currently residing in Vancouver, WA and to make other living arrangements as the Guardian believes are in her best interests, subject to the restrictions under Washington law regarding involuntary placement. Leo Plotke shall pay for such care from her estate and shall pay for such other and further bills as reasonable and proper in the circumstances for the care of Mrs. PLOTKE requested by the Guardian.

16. **Informed Consent/Release of Medical Information**: The Guardian of the Person shall have the power and authority to serve as Mrs. PLOTKE's personal representative for all purposes of the Health Insurance Portability and Accountability Act of 1996, (Pub. L. 104-191), 45 C.F.R. Section 160-164, and as amended.

DATED this _____ day of October, 2008.

See attached
Judge of the Superior Court

Presented by:

Jessica W. Dimitrov, WSBA #20758
Dimitrov & Senescu, PLLC
Attorneys for Petitioner, Det. Kevin Harper

Approved as to form and content, consent
To Entry granted and notice of presentation
Waived this __ day of October, 2008.

Thomas B. Deutsch
Guardian ad Litem for CAROLYN K. PLOTKE

Approved as to form and content, consent
To Entry granted and notice of presentation
Waived this __ day of October, 2008.

See attached
Dee Ellen Grubbs, WSBA #26331
Attorney for Leo Plotke

DIMITROV & SENESCU, PLLC
Attorneys at Law
1409 Franklin Street, Suite 207
Vancouver, WA 98660
Telephone (360) 696-7494

HEALTH CARE

DURABLE POWER OF ATTORNEY

for

CAROLYN K. PLOTKE

I, CAROLYN K. PLOTKE, a resident of the State of Washington, hereby grant a Durable Power of Attorney to LEO A. PLOTKE (referred to below as the "attorney-in-fact") to take effect under the conditions described below, with the intention that this designation of Durable Power of Attorney shall remain in effect and not be limited should I become disabled or incompetent. If for any reason LEO A. PLOTKE is unable or unwilling to act as attorney-in-fact, I hereby designate JAMES ANTONE PLOTKE as alternate attorney-in-fact for me.

1. **Effectiveness.** The powers granted to my attorney-in-fact shall become effective upon my disability. Disability shall include the inability to manage my property and affairs for reasons such as mental illness, mental deficiency, physical illness, advanced age, chronic use of drugs or alcohol, or other mental incapacity. Disability shall be conclusively established by a written statement of a qualified physician, delivered to my attorney-in-fact, stating that I am unable to manage my property and affairs effectively for one of the reasons stated above.

2. **Powers.** My attorney-in-fact shall act as a fiduciary for me and shall have full power and authority to take actions and to make decisions relating to the health and personal care to be provided to me, and the withholding or withdrawal of life-sustaining treatment from me. Provided, the authority granted to my attorney-in-fact will be subject to the same limitations as those that apply to a guardian under RCW 11.92.043(5), as amended.

(a) **Health and Personal Care.** My attorney-in-fact shall have the authority to make health and personal care decisions for me, which authority shall include, but shall not be limited to:

(1) arranging for my hospitalization, convalescent care, hospice, home care, and for the provision of other health care services;

(2) employing and discharging medical personnel as my attorney-in-fact shall deem necessary for my physical, mental and emotional well-being, and paying such personnel (or causing to be paid to them) reasonable compensation;

(3) consenting, refusing consent, or withdrawing or withholding consent for diagnostic or medical treatment for a physical or mental condition, including, but not limited to, surgical procedures;

(4) obtaining access to medical records and other personal information, including, but not limited to, medical and hospital records; executing any releases or other

EXHIBIT A

LAW OFFICES OF
Landerholm, Memovich,
Lansverk & Whitesides, P.S.
Broadway at Evergreen, Suite 300
P.O. Box 1086
Vancouver, Washington 98666

documents that may be required in order to obtain such information; and disclosing such information as my attorney-in-fact deems appropriate;

(5) signing, executing and delivering any contract or other document that may be necessary, desirable, convenient or proper in order to exercise any power created under this durable power of attorney, and incurring reasonable expenses in the exercise of such powers.

(b) **Life-Sustaining Treatment.** The power and authority granted to my attorney-in-fact shall specifically include, but shall not be limited to, taking action and making decisions regarding the withholding or withdrawal of life-sustaining treatment as may be appropriate given my then medical condition, and to give the necessary consent thereto to the fullest extent permitted by law.

(1) Without limiting the generality of the foregoing, such medical condition shall include, but shall not be limited to: (i) an incurable and irreversible condition caused by injury, disease, or illness certified in writing to be a terminal condition by my attending physician, where the application of life-sustaining treatment would serve only to artificially prolong the moment of my death and where my physician determines that my death will occur within a reasonable period of time in accordance with accepted medical standards; and (ii) a condition which has been certified in writing by two physicians to be a permanent unconscious condition and where the application of life-sustaining treatment would serve only to artificially prolong the moment of my death.

(2) Life-sustaining treatment shall include, but shall not be limited to, a respirator, antibiotics, cardiopulmonary resuscitation and dialysis. In addition, life-sustaining treatment shall also include artificially provided hydration or nutrition, or both, if I authorize my attorney-in-fact to withhold or withdraw artificially provided hydration or nutrition, or both, in subparagraph (c) below.

(c) **Hydration and Nutrition.** If I am diagnosed to be in a terminal condition or in a permanent unconscious condition:

initial	check	
		I **DO** want to have artificially provided nutrition.
initial	check	I **DO NOT** want to have artificially provided nutrition.

initial	check	
		I **DO** want to have artificially provided hydration.
initial	check	I **DO NOT** want to have artificially provided hydration.

If I direct that I do not wish to have artificially provided hydration or nutrition, or both, my attorney-in-fact shall have the authority to direct my health care provider to withhold or withdraw artificially provided hydration or nutrition. I understand that if I authorize my attorney-in-fact to direct the withholding or withdrawal of artificially provided hydration or nutrition, or both, and my attorney-in-fact exercises this power, dehydration, malnutrition and death will result.

3. **Duration.** The authority of my attorney-in-fact to act on my behalf shall become effective as provided in Paragraph 1 above and shall remain in effect until revoked or until my death.

4. **Revocation.** I may revoke this Power of Attorney by giving written notice to my attorney-in-fact.

5. **Termination.**

(a) **By Appointment of Guardian.** If a guardian is appointed for me, such guardian shall, with court approval, have the power to revoke, suspend or terminate this Power of Attorney.

(b) **By Death.** My death shall be deemed to revoke this Power of Attorney upon actual knowledge or actual notice being received by the attorney-in-fact.

6. **Reliance.** My attorney-in-fact and all persons dealing with the attorney-in-fact shall be entitled to rely upon this Power of Attorney so long as it is effective, and has not been revoked. Any action taken in reliance on this document, unless otherwise invalid or unenforceable, shall be binding on my heirs, devisees, legatees, or personal representative. Further, any physician, health care provider acting under the direction of a physician, or health facility and its personnel who participate in good faith in the withholding or withdrawal of life-sustaining treatment shall be immune from legal liability, including civil, criminal or professional conduct sanctions, unless otherwise negligent.

7. **Reimbursement.** My attorney-in-fact shall be entitled to reimbursement for all reasonable costs and expenses incurred on my behalf in exercising the power granted herein.

8. **Severability.** If any provision of this Power of Attorney is invalid or unenforceable under applicable law, this Power of Attorney shall be ineffective to the extent of such invalidity only, without affecting the remaining parts hereof.

9. **Indemnity.** My estate shall hold harmless and indemnify my attorney-in-fact from all liability for acts done in good faith and not in fraud.

10. **Applicable Law.** The laws of the State of Washington, as amended, shall govern this Power of Attorney.

DATED this 24 day of July, 1995, to become effective as provided in paragraph 1.

Carolyn K. Plotke

CAROLYN K. PLOTKE

EXHIBIT A

3 OF 4

LAW OFFICES OF
Landerholm, Memovich,
Lansverk & Whitesides, P.S.
Broadway at Evergreen, Suite 300
P.O. Box 1086
Vancouver, Washington 98666

STATE OF WASHINGTON)
) ss.
County of Clark)

I certify that I know or have satisfactory evidence that CAROLYN K. PLOTKE is the person who appeared before me, and said person acknowledged that she signed this instrument, and acknowledged it to be her free and voluntary act for the uses and purposes mentioned in the instrument.

DATED: July 26, 1995

Jacqueline Chambers
Notary Public in and for the
State of Washington, residing
at Clark County.
My appointment expires: 1-4-97

JACQUELINE CHAMBERS
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
JANUARY 4, 1997

REVOKED

EXHIBIT A
4 OF 4

LAW OFFICES OF
Landerholm, Memovich,
Lansverk & Whitesides, P.S.
Broadway at Evergreen, Suite 300
P.O. Box 1066
Vancouver, Washington 98666

LEO A. PLOTKE

and

CAROLYN K. PLOTKE

SPOUSES' GENERAL DURABLE POWER OF ATTORNEY

THE UNDERSIGNED SPOUSES, each as principals, domiciled and residing in the State of Washington, reciprocally and individually designate the following-named person(s) in the alternative as attorney-in-fact to act for either spouse who may hereafter become disabled or incompetent.

1. **Designations.** The other spouse, if living, able and willing to serve, is designated as attorney-in-fact for the disabled or incompetent spouse as principal. If the other spouse is deceased or is unable or unwilling to act, JAMES ANTONE PLOTKE and JAMES VURA, JR. are designated as alternate co-attorneys-in-fact for the principal.

(a) If JAMES ANTONE PLOTKE is unable or unwilling to serve, JAMES VURA, JR. may serve as sole attorney-in-fact for the principal.

(b) If JAMES VURA, JR. is unable or unwilling to serve, FIRST INTERSTATE BANK OF WASHINGTON, N.A., may serve as either co-attorney-in-fact or sole attorney-in-fact for the principal.

2. **Nomination of Guardian.** Said attorney-in-fact is hereby nominated guardian of the estate and/or person if protective proceedings for the principal are hereafter commenced.

3. **Powers.** The attorney-in-fact, as fiduciary, shall have all powers of an absolute owner over the assets and liabilities of the principal, whether located within or without the State of Washington and power to contract for the principal. With court approval the attorney-in-fact shall have the power to revoke or change any estate plan or testamentary document executed by the principal. In addition to the powers listed above, the attorney-in-fact shall have the power:

(a) **Management.** To take possession of, manage, administer, operate, maintain, improve and control all property, real and personal; to insure and keep the same insured; and to pay any and all taxes, charges and assessments that may be levied or imposed upon any thereof;

(b) **Collections.** To collect and receive any money, property, debts or claims whatsoever, now or hereafter due, owing and payable or belonging to the principal; and to forgive debts; and to give receipts, acquittance or other sufficient discharges for any of the same;

(c) **Checks and Notes.** To sign, endorse, sell, discount, deliver and/or deposit checks, drafts, notes and negotiable or nonnegotiable instruments, including any payments to the

EXHIBIT B
1 OF 5

LAW OFFICES OF
Landerholm, Memovich,
Lansverk & Whitesides, P.S.
Broadway at Evergreen, Suite 300
P.O. Box 1086
Vancouver, Washington 98666
(360) 696-3312

principal drawn on the Treasury of the United States or the State of Washington or any other state or governmental entity, and to accept drafts;

(d) **Investments.** To retain any property in the hands of the attorney-in-fact in the form in which it was received; and to make investments and changes of investments in such securities, including common and preferred stocks of corporations or other property, real or personal, as the principal's attorney-in-fact may deem prudent;

(e) **Debts.** To pay debts and other obligations;

(f) **Litigation.** To sue upon, defend, compromise, submit to arbitration or adjust any controversies in which the principal may be interested; and to act in the principal's name in any complaints, proceedings or suits with all the powers principal would possess if personally present and under no legal disability;

(g) **Acquisition.** To bargain for, buy and deal in real and personal property and goods of every description;

(h) **Specific Real Property Rights.** To exercise the principal's rights with respect to all real property, including, but not limited to, the right to hold, manage, lease, develop, subdivide, sell and encumber real property owned by the principal;

(i) **Disposition.** To sell, convey, grant, exchange, transfer, option, convert, mortgage, pledge, consign, lease and otherwise dispose of any of the principal's property, whether real or personal, including, but not limited to, personal guarantees and unsecured borrowing on the principal's behalf;

(j) **Borrowing.** To advance or loan the attorney-in-fact's own funds on the principal's behalf; and to borrow any sums of money on such terms and at such rate of interest as the principal's attorney-in-fact may deem proper and to give security for the repayment of the same;

(k) **Agreements.** To make and deliver any deeds, conveyances, contracts, covenants and other instruments, undertakings or agreements, either orally or in writing, which the attorney-in-fact may deem proper;

(l) **Voting.** To appear and vote in person or by proxy at any corporate or other meeting;

(m) **Safety Deposit Box.** To have access to any safety deposit box which has been rented in the name of the principal or in the names of the principal and any other person or persons;

(n) **Withdrawal of Funds.** To withdraw any monies deposited with any bank, mutual savings bank, credit union, savings and loan association, mutual fund, money market account, investment advisor or broker in the name of the principal or in the names of the principal and any

LAW OFFICES OF
Landerholm Memovich,
Lansverk & Whitesides P.S.
Broadway at Evergreen, Suite 300
P.O. Box 1086
Vancouver, Washington 98666
(360) 696-3312

other person or persons and generally to do any business with any such financial institution or agency on behalf of the principal;

(o) **Tax Returns.** To sign and file all city, county, state, federal and other governmental or quasi-governmental tax returns or reports, including income, gift, sales, business, and property tax returns or reports of every kind whatsoever; to execute waivers, extension agreements, settlement agreements and closing agreements with respect to those returns and to appear for the principal, in person or by attorney, and represent principal before the United States Treasury Department or the Washington Department of Revenue or the taxing authority of any other state or governmental entity;

(p) **Government Benefits.** To do and perform every act necessary or desirable and to serve as representative payee with respect to rights and entitlements from Social Security, Medicare and military service;

(q) **Treasury Bonds.** To purchase U.S. Treasury bonds or other instruments redeemable at par in payment of federal estate taxes;

(r) **Business Interests.** To continue as a going concern any business interest owned by the principal, either individually or as a co-partner;

(s) **Substitution and Delegation.** To appoint and substitute for said attorney-in-fact any attorneys-in-fact, nominees or attorneys to exercise any or all of the powers herein and to revoke their authority.

(t) **General Authority.** To do and perform all and every act and thing necessary or desirable to conduct, manage and control all of principal's business and property, wheresoever situate, and whether now owned or hereafter acquired, as the principal's attorney-in-fact may deem for the principal's best interests and to execute and acknowledge any and all instruments necessary or proper to carry out the foregoing powers, hereby releasing all third persons from responsibility for the attorney-in-fact's acts and omissions and we empower the attorney-in-fact to indemnify all such persons against loss, expense and liability.

4. **Purposes.** The attorney-in-fact shall have full powers to provide for the support, maintenance, financial/gift tax planning, emergencies and necessities for the disabled or incompetent spouse.

5. **Duration.** The durable power of attorney becomes effective as provided in paragraph 6 and shall remain in effect until revoked or terminated under paragraph 7 or 8, notwithstanding any uncertainty as to whether the principal is dead or alive.

6. **Effectiveness.** This power of attorney shall become effective upon the disability or incompetence of a spouse. Disability shall include the inability of the principal to manage property and affairs effectively for reasons such as mental illness, mental deficiency, illness, chronic use of drugs, chronic intoxication, confinement by governmental authority, detention by a foreign power

LAW OFFICES OF
Landerholm, Memovich,
Lansverk & Whitesides P.S.
Broadway at Evergreen, Suite 300
P.O. Box 1086
Vancouver, Washington 98666
(360) 696-3312

or disappearance. Disability may be evidenced by a written statement of a qualified physician regularly attending the spouse and/or by other qualified persons with knowledge of any such confinement, detention or disappearance. Incompetence may be established by a finding of a court having jurisdiction over the incompetent spouse.

7. **Revocation.** This power of attorney may be revoked, suspended or terminated in writing by the principal with written notice to the designated attorney-in-fact. In addition, if this power of attorney has been recorded, the written instrument of revocation shall be recorded in the office of the recorder or auditor of any county in which the power of attorney is recorded.

8. **Termination.**

(a) **By Appointment of Guardian.** 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.

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

9. **Accounting.** The attorney-in-fact shall be required to account to any subsequently appointed personal representative.

10. **Reliance.** Any person dealing with the attorney-in-fact shall be entitled to rely upon this power of attorney so long as such person has received no actual knowledge or actual notice of any revocation, suspension or termination of the power of attorney by death or otherwise at the time of any act taken pursuant to this power of attorney. Any action so taken, unless otherwise invalid or unenforceable, shall be binding on the heirs, devisees, legatees or personal representatives of the principal.

11. **Indemnity.** The estate of the principal shall hold harmless and indemnify the attorneys-in-fact from all liability for acts done in good faith and not in fraud of the principal.

12. **Applicable Law.** The laws of the State of Washington, as amended, shall govern this power of attorney.

13. **Definition.** The term "attorney-in-fact" as used herein shall be deemed to mean "co-attorneys-in-fact" or "successor attorney-in-fact" when such are functioning as the attorney-in-fact appointed by this document.

14. **Interpretation of Terms.** The term "principal" as set forth herein shall be deemed to include either spouse or both spouses who have become disabled or incompetent according to the provisions of paragraph 6 herein.

EXHIBIT B
4 OF 5

LAW OFFICES OF
Landerholm, Memovich,
Lansverk & Whitesides P.S.
Broadway at Evergreen, Suite 300
P.O. Box 1086
Vancouver, Washington 98666
(360) 696-3312

15. **Reimbursement.** The attorney-in-fact shall be entitled to reimbursement for all reasonable costs and expenses incurred on the principal's behalf in exercising the powers granted herein.

This power of attorney is signed this 26 day of July, 1995, to become effective as provided in paragraph 6.

Leo A. Plotke
LEO A. PLOTKE

Carolyn K. Plotke
CAROLYN K. PLOTKE
Residing at: 20810 N.E. 384th Street
Amboy, Washington

STATE OF WASHINGTON)
)ss.
County of Clark)

I certify that I know or have satisfactory evidence that LEO A. PLOTKE and CAROLYN K. PLOTKE, husband and wife, are the persons who appeared before me, and said persons acknowledged that they signed this instrument, and acknowledged it to be their free and voluntary act for the uses and purposes mentioned in the instrument.

DATED: July 26, 1995

Jacqueline Chambers
Notary Public in and for the
State of Washington, residing
at Clark County.
My appointment expires: 1-4-97

JACQUELINE CHAMBERS
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
JANUARY 4, 1997

EXHIBIT B
5 OF 5

LAW OFFICES OF
Landerholm, Memovich,
Lansverk & Whitesides P.S.
Broadway at Evergreen, Suite 300
P.O. Box 1086
Vancouver, Washington 98666
(360) 696-3312

FILED

APR 22 2009

Sherry W. Parker, Clerk, Clark Co.

2:10 pm

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

FOR CLARK COUNTY

In Re the Guardianship of:	)	
	)	NO. 08-4-00624-8
CAROLYN PLOTKE,	)	
	)	ORDER APPOINTING GUARDIAN OF THE ESTATE
Incapacitated.	)	

GUARDIANSHIP SUMMARY

Guardian of the Estate: **Yvonne Polkow**
8509 NE 69th Street
Vancouver, WA 98682
(360) 883-3569

Standby Guardian: **Judi Burkdoll**
PO Box 5607
Vancouver, WA 98668
(360) 906-0243

REPORTING REQUIREMENTS:

Inventory Due: **90 days, July 22, 2009**

GREENEN & GREENEN, PLLC
ATTORNEYS AND COUNSELORS AT LAW
1104 MAIN STREET, SUITE 400
VANCOUVER, WASHINGTON, 98660
(360) 694-1571

ORIGINAL

Annual Accounting/Status Report Due:

April 22, 2009 through December 31, 2009

Due: January 24, 2010 and each year on January 24 thereafter

THIS MATTER having come before the above-entitled Court upon the Petition for the appointment of a guardian of the estate of the above-referenced person; and the Court having considered, the report of the guardian ad litem, the testimony and statements of counsel and pleadings and files herein, the Court makes the following:

FINDINGS OF FACT

1. All notices required by law have been given or waived.

2. The facts set forth in the Petition are true and correct and the Court has jurisdiction over the person and estate of CAROLYN PLOTKE.

3. Carolyn Plotke is incapable of managing her property and is in need of a guardian over her estate.

4. Leo Plotke has filed for dissolution of his marriage to Carolyn Plotke. The Guardian ad Litem recommended.

5. The Power of Attorney dated July 26, 1995 conflicts with the dissolution proceedings and must be revoked.

6. The guardian ad litem recommends that Carolyn Plotke who was previously determined to be incapacitated as to her person, now requires a guardian of her estate and that a professional guardian Yvonne Polkow be appointed in such capacity.

GREENEN & GREENEN, PLLC
ATTORNEYS AND COUNSELORS AT LAW
1104 MAIN STREET, SUITE 400
VANCOUVER, WASHINGTON, 98660
(360) 694-1571

7. Yvonne Polkow is currently the acting temporary guardian of the estate of Carolyn Plotke following her appointment as such on January 30, 2009.

8. YVONNE POLKOW is qualified to act as Guardian of the Estate of Carolyn Plotke and is entitled to the issuance of letters of guardianship.

9. The Guardian ad Litem, THOMAS DEUTSCH has filed his report with the court. The report is complete and complies with all requirements of RCW 11.88.090. The Guardian ad Litem has requested a fee for his services while acting as Guardian ad Litem through this date. This request should be approved by the court as reasonable. The Guardian ad Litem's fees incurred herein are in the amount of $950.00, representing 10 hours at $95.00 per hour, should be paid by the Guardianship estate.

10. Therése A. Greenen, attorney for YVONNE POLKOW, of the law firm of Greenen & Greenen, PLLC, has incurred fees and costs in this matter. Said fees and costs to date are $15,018.25 as outlined in the Affidavit Re: Fees and Costs filed herewith. These fees and costs should be paid by the guardianship estate, and the guardian should be authorized to pay said amount to Therése A. Greenen, of the law firm of Greenen & Greenen, PLLC.

11. Margaret Phelan, attorney for Thomas Deutsch, Guardian ad Litem, has incurred fees and costs in representing Mr. Deutsch in bringing this petition. Said fees and costs to date are $ 12,065.14 TO BE PD. as outlined in the Affidavit Re: Fees and Costs filed herewith. These fees and costs should be paid by the guardianship estate, and the guardian should be authorized to pay said amount to Ms. Phelan.

GREENEN & GREENEN, PLLC
ATTORNEYS AND COUNSELORS AT LAW
1104 MAIN STREET, SUITE 400
VANCOUVER, WASHINGTON, 98660
(360) 694-1571

Based on the foregoing Findings of Fact the Court now makes the following:

CONCLUSIONS OF LAW

CAROLYN PLOTKE is incapacitated pursuant to the laws of the State of Washington; that a guardian of the estate of CAROLYN PLOTKE should be appointed; that the proposed guardian is a fit and proper person to be appointed; and that the powers of guardian should be limited only as set forth in Washington State law.

Now, therefore, it is

ORDERED, ADJUDGED and DECREED as follows:

1. **Guardian of the Estate:** That letters of guardianship for the estate of CAROLYN PLOTKE be issued to YVONNE POLKOW.

2. **Authority of Guardian of Estate:** That YVONNE POLKOW, as guardian of the estate is authorized to convert to guardianship accounts any accounts currently in the name of CAROLYN PLOTKE, including but not limited to all checking accounts, savings accounts, and other investment accounts, as well as any securities, bonds and any other accounts whatsoever located at any bank, credit union, brokerage firm, and other financial institutions located in Clark County, Washington, or in any other county and state. The guardian is further authorized to be identified on such accounts as the sole signator as guardian of the estate of CAROLYN PLOTKE. Once said accounts have been re-designated as guardianship accounts, YVONNE POLKOW shall have full authority to manage all deposits and withdrawals and shall be further authorized to direct any investment accounts, and shall be authorized, if she determines it to be in the best interest of the

GREENEN & GREENEN, PLLC
ATTORNEYS AND COUNSELORS AT LAW
1104 MAIN STREET, SUITE 400
VANCOUVER, WASHINGTON, 98660
(360) 694-1571

guardianship, to transfer said accounts from one financial institution to another.

3. **Standby Guardian:** That the guardian of the person and the estate complete and file in writing with the Court her designation of stand-by guardian.

4. **Oath:** That the guardian of the person and the estate complete and file in writing with the Court her Oath to act as guardian.

5. **Inventory:** That the guardian complete and file within three (3) months a verified inventory of all the property of CAROLYN PLOTKE which shall come into her possession, including a statement of all encumbrances, liens or other secured charges on any item.

6. **Bond:** That the requirement for a bond for the Guardian of the estate is reserved until the inventory is filed in this matter.

7. **Annual Reports:** That at intervals of 12 months the guardian shall file a verified inventory of all the property of CAROLYN PLOTKE which shall come into said guardian's possession or knowledge, including a statement of all liens, encumbrances or other secured charges on any item, provided that any substantial increase in income or assets of CAROLYN PLOTKE, shall be reported to the court within thirty (30) days of such substantial change; and, in addition, the above-referenced report shall include an accounting of all receipts and disbursements on behalf of CAROLYN PLOTKE during the same period of time.

8. **Financial Authority:** That the guardian shall have the authority to handle and consent to and receive any and all assistance benefits available; pay monthly

GREENEN & GREENEN, PLLC
ATTORNEYS AND COUNSELORS AT LAW
1104 MAIN STREET, SUITE 400
VANCOUVER, WASHINGTON, 98660
(360) 694-1571

costs of room, board and allowances for CAROLYN PLOTKE, including any financial contracts; and pay for all fees incurred with professionals, including necessary attorneys fees and costs.

9. **Guardian ad Litem Fees for Thomas Deutsch:** That the fees of the Guardian ad Litem as set forth above in the amount of $950.00 are reasonable and shall be paid by the guardianship estate. The guardian ad litem is hereby discharged in this matter.

10. **Fees for Guardian:** That Yvonne Polkow as guardian of the estate is entitled to reimburse herself for fees at her hourly rate of $85.00 per hour for fees and also for payment of costs and payments made to her case manager that have been incurred since October 2008 while acting as guardian of the person and now also as guardian of the estate of Carolyn Plotke. Yvonne Plotke is further authorized to continue to reimburse herself from the guardianship estate for future fees and costs incurred on a monthly basis at her hourly rate of $85.00 per hour.

11. **Attorney Fees Therese A. Greenen:** That the fees and costs incurred by Therése A. Greenen and the Law Firm of Greenen & Greenen, PLLC as set forth above in this matter in the amount of $15,018.25 are reasonable and the guardian shall be authorized to pay said fees and costs from the guardianship estate.

//

//

//

GREENEN & GREENEN, PLLC
ATTORNEYS AND COUNSELORS AT LAW
1104 MAIN STREET, SUITE 400
VANCOUVER, WASHINGTON, 98660
(360) 694-1571

12. **Attorney Fees Margaret Phelan:** That the fees and costs incurred by Margaret Phelan as set forth above in representing the Guardian ad Litem in bringing this petition in the amount of $ Reserved 12,065.14 are reasonable and the guardian shall be authorized to pay said fees and costs from the guardianship estate.

DONE IN OPEN COURT this 2 day of April, 2009.

JUDGE

Presented by:

THERESE A. GREENEN, WSB#22243
Attorney for Yvonne Polkow

~~Approved for entry:~~ Copied received

DEE ELLEN GRUBBS, WSB# 26381
Attorney for Leo Plotke

Approved for entry:

MARGARET PHELAN, WSB#
Attorney for Thomas Deutsch

GREENEN & GREENEN, PLLC
ATTORNEYS AND COUNSELORS AT LAW
1104 MAIN STREET, SUITE 400
VANCOUVER, WASHINGTON, 98660
(360) 694-1571

5

FILED

2010 OCT 13 PM 4:54

Sherry W. Parker, Clerk
Clark County

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF CLARK

In re: the Guardianship of	)	**Case No. 08-4-00624-8**
	)	**MOTION/DECLARATION FOR**
CAROLYN PLOTKE	)	**ORDER TO SHOW CAUSE AND**
	)	**ORDER APPOINTING GUARDIAN**
	)	**AD LITEM RCW 11.88.120**
An Incapacitated Person	)	
	)	

I. MOTION

COMES NOW LEO PLOTKE, by and through his attorney of record, Dee Ellen Grubbs, Attorney & Counselor at Law, and pursuant to RCW 11.88.120 moves the court for an Order to Show Cause why the Guardianship herein should not be modified as follows:

1.1 Replacing the current Guardian of the Person and Estate to wit Yvonne M. Polkow with an alternate Certified Professional Guardian for the purpose of addressing the issues noted hereinafter wherein the Guardian has failed to act in the best interest of the Incapacitated Person and the Incapacitated Person's estate AND by restoring Carolyn Plotke's right to make social decisions and her right to decide who shall provide care and assistance.

1.2 Appointing an independent attorney Guardian Ad Litem to investigate the issues of concern outlined in DECLARATION OF LEO PLOTKE noted hereinafter.

ORIGINAL

Dee Ellen Grubbs, WSBA# 26381
Attorney & Counselor at Law
1409 Franklin, Suite 216
Vancouver, WA 98660
360-694-1472
E-mail: deeellengrubbs@Comcast.net

140

1.3 Ordering a psychological exam to determine if Carolyn Plotke has the capacity to make her own social decisions and to decide who shall provide care and assistance.

1.3 Setting a hearing wherein the declarant herein may present his case as to why the relief requested should be granted.

This Motion is based upon the following Declaration and the records and files herein.

II. DECLARATION

I LEO PLOTKE declare as follows:

1. I am the husband of CAROLYN PLOTKE, the Incapacitated Person. I am eighty (80) years old. I have several chronic illnesses which limits my ability to leave home for long periods of time as I tire quickly. I am also still recovering from cataract surgery and a lens implant. I have blurry vision and must now have all written documents read to me. I am of sound mind; my memory is intact. Please see NEURO/PSYCH portion of physical exam filed herein on October 5, 2010 under confidential seal. I am making this declaration from my own personal knowledge of the facts and circumstances noted herein.

2. I am asking the court to order the Guardian of the Person and the Estate Yvonne M. Polkow to show cause why she should not be replaced because:

a. Ms. Polkow has breached her fiduciary duty to my wife by forcing me to agree to pay guardian fees at the private pay rate even after my wife qualified for Medicaid.

b. Ms. Polkow created an artificial need for a guardian of the estate by failing to inform me or my attorney of a past due notice by the care facility and by having the care facility direct all information to her as guardian of the person.

c. Ms. Polkow has isolated my wife away from family and friends and has not allowed her to use the telephone against my wife's express wishes to the contrary.

d. Ms. Polkow has not properly applied substitute decision making because she has ignored the wishes of my wife's son and daughter, has not kept them informed has never

Dee Ellen Grubbs, WSBA# 26381
Attorney & Counselor at Law
1409 Franklin, Suite 216
Vancouver, WA 98660
360-694-1472
E-mail: deeellengrubbs@Comcast.net

communicated with me and has not followed the advanced directive that my wife executed years prior to the entry of the guardianship.

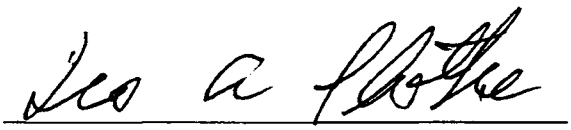
3. I am asking the court to appoint a guardian ad litem that has not previously been aware of the facts of this case and also a guardian ad litem that is an attorney because many of the issues that I am raising herein require a fresh perspective and experience in financial matters and Medicaid regulations and requirements.

4. I am asking the court to order a psychological exam because I believe that my wife's mental status has improved from the time the guardianship was first imposed. I am told by family members that have been allowed to visit her that her long term memory is intact and that her short term memory is only slightly impaired. She recognizes all of her family and she often asks about me. I have not been able to visit her because the guardian has placed a restraining order on me and insists that she will not allow any visitation unless it is supervised. Until about eight (8) months ago my wife regularly initiated telephone calls to me. When the guardian learned of this, and despite my wife's requests and desires, she put a stop to my wife making any outgoing phone calls. I believe there is a basis for a modification of the guardianship and I am asking the court to order an exam by a clinical psychologist so that I can show the court that my wife is capable of making her own social decisions and deciding who should provide her care.

5. I am asking the court to set a hearing for fifteen days after the report from the psychologist and guardian ad litem are filed.

Dee Ellen Grubbs, WSBA# 26381
Attorney & Counselor at Law
1409 Franklin, Suite 216
Vancouver, WA 98660
360-694-1472
E-mail: deeellengrubbs@Comcast.net

Dated: 10-11-10



LEO PLOTKE
Husband of Carolyn Plotke

MOTION ORDER TO SHOW CAUSE

Dee Ellen Grubbs, WSBA# 26381
Attorney & Counselor at Law
1409 Franklin, Suite 216
Vancouver, WA 98660
360-694-1472
E-mail: deeellengrubbs@Comcast.net

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of October 2010, a copy of the foregoing MOTION FOR ORDER TO SHOW CAUSE/MODIFICATION GUARDIANSHIP, was served by the method indicated below, and addressed to the following:

Therese A. Greenen, WSBA #22243
Greenen & Greenen, PLLC
Attorneys and Counselors at Law
1104 Main Street, Suite 400
Vancouver, WA 98660

_____FIRST-CLASS MAIL
_____HAND DELIVERED
_____OVERNIGHT MAIL
_____Y_____FAX TRANSMISSION 360-694-1572

Dee Ellen Grubbs

Dee Ellen Grubbs

Dee Ellen Grubbs, WSBA# 26381
Attorney & Counselor at Law
1409 Franklin, Suite 216
Vancouver, WA 98660
360-694-1472
E-mail: deeellengrubbs@Comcast.net

FILED

NOV 17 2010

3:40 pm

Sherry W. Parker, Clerk, Clark Co.

SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

In Re Guardianship of Carolyn Plotke

Plaintiff/Petitioner,

v.

Defendant/Respondent

No. 08-4-00624-8

ORDER Denying Motion for Show Cause per 11.88.120

THIS MATTER, having come before the court on the motion of ~~the~~ Leo Plotke ~~Petitioner/Respondent~~ on this 17th day of November, 2010, the Court having heard counsel, having read the pleadings and records filed herein, and being otherwise fully informed, NOW, THEREFORE, it is hereby:

ORDERED, ADJUDGE AND DECREED that: Leo Plotke's motion for order to show cause per RCW 11.88.120 is denied.

Dated this 17th day of Nov, 2010

Judge/Commissioner of the Superior Court

Lee Ellen Grubbs

Attorney for Leo Plotke

WSBA # 26381

ORDERED

Attorney for Guardian Carolyn Plotke

WSBA # 22243

164

4

FILED

2010 SEP 30 AM 10: 01

Sherry W. Parker, Clerk
Clark County

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

FOR CLARK COUNTY

In Re the Guardianship:	)	
	)	**NO. 08-4-00624-8**
	)	
CAROLYN K. PLOTKE,	)	**ORDER TO SHOW CAUSE**
	)	
An Incapacitated Person.	)	**Clerk's Action Required**
	)	
	)	

LEO PLOTKE IS HEREBY ORDERED to appear in Clark County Superior Court, before Honorable Judge Diane Woolard, at **3:00 p.m. on the 6th day of October, 2010**, and ordered to show cause why this Court should not issue an Order compelling LEO PLOTKE to comply with the terms and provisions of the Memorandum of Agreement entered in the above noted matter for the reason set forth in the Motion filed herewith.

//

//

//

//

GREENEN & GREENEN, PLLC
ATTORNEYS AND COUNSELORS AT LAW
1104 MAIN STREET, SUITE 400
VANCOUVER, WASHINGTON, 98660
(360) 694-1571

ORIGINAL

131

Upon the failure of LEO PLOTKE to appear and show cause at the date and time specified above, the Court will enter an order and may grant such other relief as requested in the Guardian's Motion.

DONE IN OPEN COURT this 30 day of Sept, 2010.

JUDGE

Presented by:

GREENEN & GREENEN, PLLC

THERESE A. GREENEN, WSB #22243
Attorney for Guardian

GREENEN & GREENEN, PLLC
ATTORNEYS AND COUNSELORS AT LAW
1104 MAIN STREET, SUITE 400
VANCOUVER, WASHINGTON, 98660
(360) 694-1571

FILED

2010 OCT -6 PM 4:04

Sherry W. Parker, Clerk
Clerk County

SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

IN Re: Guardianship of ~~Plaintiff/Petitioner~~, Carolyn Plotke v. ~~Defendant/Respondent~~	No. 08-4-00624-8 ORDER ON Show Cause

THIS MATTER, having come before the court on the motion of the Petitioner/Respondent on this 6 day of October, 2010, the Court having heard counsel, having read the pleadings and records filed herein, and being otherwise fully informed, NOW, THEREFORE, it is hereby:

ORDERED, ADJUDGE AND DECREED that: Leo Plotke shall appear before the honorable Judge Diane Woolard at 9:00 AM FRIDAY October 15, 2010 to show cause why he has failed to comply with the Memorandum of agreement filed 7/15/09 and the order approving accounting 11/29/10 Failure to comply may result in Incarceration for contempt of court

Dated this 6 day of Oct, 2010.

Diane M Woolard
Judge/Commissioner of the Superior Court

Attorney for Guardian
WSBA # 22243
ORDERED

Lee Ellen Grubes
Attorney for Leo Plotke
WSBA # 26381

Copied received

138

NM

3

FILED

2010 OCT 15 PM 4:29

Sherry W. Parker, Clerk
Clark County

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

In Re the Guardianship of Carolyn K. Plotke	)	NO. 08-4-00624-8 ORDER TO SHOW CAUSE RE CONTEMPT

TO:

THIS MATTER having come on regularly before the undersigned Judge of the above-entitled Court for review, and the Court having considered the records and files herein, and being fully advised, now, therefore,

IT IS HEREBY ORDERED as follows:

1. Mr. Plotke shall appear in person before this Court on Friday, Nov. 5, 2010, at 9:00 a.m., at the Clark County Courthouse, Department 8, courtroom Judge Woolard, 1200 Franklin, Vancouver, Washington, and show cause why ~~s~~/he should not be held in contempt of the Court's order to produce all bank records since July 2009 + pay all monies owed to Ms. Plotke ($67,651.49), filed _____, in the above-referenced proceeding, for failure to perform the following acts required by the order, or as

145

a result of his/her appointment as guardian of

_____, or as the result of his/her position

as the attorney of record for the guardian:

a. Failure to pay + produce records,

as required by paragraph 1 of the Court's order.

b.

2. **TO Leo Platke IF YOU FAIL TO APPEAR IN PERSON, AND DEFEND THESE PROCEEDINGS, ON THE DATE AND TIME SET FORTH ABOVE, THE COURT MAY GRANT SOME OR ALL OF THE RELIEF DESCRIBED BELOW, AND/OR MAY ISSUE A BENCH WARRANT FOR YOUR ARREST WITHOUT FURTHER NOTICE TO YOU.**

3. If the Court finds Leo Platke to be in contempt, the Court may order any or all of the following:

   a. The Court may establish a deadline by which the deficiencies described above are cured, or Leo Platke subjected to further sanctions;

   b. The Court may appoint a guardian ad litem or interim successor guardian, and authorize either to bring an action against _____, or for appointment of a successor guardian, or to take other action on behalf of _____;

   c. The Court may order that the cost of these proceedings, and any unexplained deficiencies in the estate of _____, may be assessed to _____, and a personal money judgment entered against him/her;

d. The Court may impose penalties upon Leo Platke for his/her contempt of court, including fines and imprisonment; and

e. The Court may order _____ immediately removed as guardian of _____; may order _____ to post bond in amounts sufficient to assume the performance of his/her obligations; and may order _____ to fully account for his/her actions in this proceeding.

4. If imprisonment is considered by the Court as a sanction, and Leo Platke cannot afford an attorney, he/she may request the Court to appoint an attorney to represent her at the time of the hearing.

DATED this 15 day of Oct, 2000

Dian M Walker
Judge

RCW 7.21.010
Definitions.

The definitions in this section apply throughout this chapter:

(1) "Contempt of court" means intentional:

(a) Disorderly, contemptuous, or insolent behavior toward the judge while holding the court, tending to impair its authority, or to interrupt the due course of a trial or other judicial proceedings;

(b) Disobedience of any lawful judgment, decree, order, or process of the court;

(c) Refusal as a witness to appear, be sworn, or, without lawful authority, to answer a question; or

(d) Refusal, without lawful authority, to produce a record, document, or other object.

(2) "Punitive sanction" means a sanction imposed to punish a past contempt of court for the purpose of upholding the authority of the court.

(3) "Remedial sanction" means a sanction imposed for the purpose of coercing performance when the contempt consists of the omission or refusal to perform an act that is yet in the person's power to perform.

[1989 c 373 § 1.]

RCW 7.21.030
Remedial sanctions — Payment for losses.

(1) The court may initiate a proceeding to impose a remedial sanction on its own motion or on the motion of a person aggrieved by a contempt of court in the proceeding to which the contempt is related. Except as provided in RCW 7.21.050, the court, after notice and hearing, may impose a remedial sanction authorized by this chapter.

(2) If the court finds that the person has failed or refused to perform an act that is yet within the person's power to perform, the court may find the person in contempt of court and impose one or more of the following remedial sanctions:

(a) Imprisonment if the contempt of court is of a type defined in RCW 7.21.010(1) (b) through (d). The imprisonment may extend only so long as it serves a coercive purpose.

(b) A forfeiture not to exceed two thousand dollars for each day the contempt of court continues.

(c) An order designed to ensure compliance with a prior order of the court.

(d) Any other remedial sanction other than the sanctions specified in (a) through (c) of this subsection if the court expressly finds that those sanctions would be ineffectual to terminate a continuing contempt of court.

(e) In cases under chapters 13.32A, 13.34, and 28A.225 RCW, commitment to juvenile detention for a period of time not to exceed seven days. This sanction may be imposed in addition to, or as an alternative to, any other remedial sanction authorized by this chapter. This remedy is specifically determined to be a remedial sanction.

(3) The court may, in addition to the remedial sanctions set forth in subsection (2) of this section, order a person found in contempt of court to pay a party for any losses suffered by the party as a result of the contempt and any costs incurred in connection with the contempt proceeding, including reasonable attorney's fees.

(4) If the court finds that a person under the age of eighteen years has willfully disobeyed the terms of an order issued under chapter 10.14 RCW, the court may find the person in contempt of court and may, as a sole sanction for such contempt, commit the person to juvenile detention for a period of time not to exceed seven days.

[2001 c 260 § 6; 1998 c 296 § 36; 1989 c 373 § 3.]

Notes:

Findings -- Intent -- 2001 c 260: See note following RCW 10.14.020.

Findings -- Intent -- 1998 c 296 §§ 36-39: "The legislature finds that an essential component of the children in need of services, dependency, and truancy laws is the use of juvenile detention. As chapter 7.21 RCW is currently written, courts may not order detention time without a criminal charge being filed. It is the intent of the legislature to avoid the bringing of criminal charges against youth who need the guidance of the court rather than its punishment. The legislature further finds that ordering a child placed in detention is a remedial action, not a punitive one. Since the legislature finds that the state is required to provide instruction to children in detention, use of the courts' contempt powers is an effective means for furthering the education and protection of these children. Thus, it is the intent of the legislature to authorize a limited sanction of time in juvenile detention independent of chapter 7.21 RCW for failure to comply with court orders in truancy, child in need of services, at-risk youth, and dependency cases for the sole purpose of providing the courts with the tools necessary to enforce orders in these limited types of cases because other statutory contempt remedies are inadequate." [1998 c 296 § 35.]

Findings -- Intent -- Part headings not law -- Short title -- 1998 c 296: See notes following RCW 74.13.025.

RCW 7.21.040
Punitive sanctions — Fines.

***** CHANGE IN 2011 *** (SEE 5168-S.SL) *****

(1) Except as otherwise provided in RCW 7.21.050, a punitive sanction for contempt of court may be imposed only pursuant to this section.

(2)(a) An action to impose a punitive sanction for contempt of court shall be commenced by a complaint or information filed by the prosecuting attorney or city attorney charging a person with contempt of court and reciting the punitive sanction sought to be imposed.

(b) If there is probable cause to believe that a contempt has been committed, the prosecuting attorney or city attorney may file the information or complaint on his or her own initiative or at the request of a person aggrieved by the contempt.

(c) A request that the prosecuting attorney or the city attorney commence an action under this section may be made by a judge presiding in an action or proceeding to which a contempt relates. If required for the administration of justice, the judge making the request may appoint a special counsel to prosecute an action to impose a punitive sanction for contempt of court.

A judge making a request pursuant to this subsection shall be disqualified from presiding at the trial.

(d) If the alleged contempt involves disrespect to or criticism of a judge, that judge is disqualified from presiding at the trial of the contempt unless the person charged consents to the judge presiding at the trial.

(3) The court may hold a hearing on a motion for a remedial sanction jointly with a trial on an information or complaint seeking a punitive sanction.

(4) A punitive sanction may be imposed for past conduct that was a contempt of court even though similar present conduct is a continuing contempt of court.

(5) If the defendant is found guilty of contempt of court under this section, the court may impose for each separate contempt of court a fine of not more than five thousand dollars or imprisonment for not more than one year, or both.

[2009 c 37 § 1; 1989 c 373 § 4.]

RCW 11.88.120
Modification or termination of guardianship — Procedure.

(1) At any time after establishment of a guardianship or appointment of a guardian, the court may, upon the death of the guardian or limited guardian, or, for other good reason, modify or terminate the guardianship or replace the guardian or limited guardian.

(2) Any person, including an incapacitated person, may apply to the court for an order to modify or terminate a guardianship or to replace a guardian or limited guardian. If applicants are represented by counsel, counsel shall move for an order to show cause why the relief requested should not be granted. If applicants are not represented by counsel, they may move for an order to show cause, or they may deliver a written request to the clerk of the court.

(3) By the next judicial day after receipt of an unrepresented person's request to modify or terminate a guardianship order, or to replace a guardian or limited guardian, the clerk shall deliver the request to the court. The court may (a) direct the clerk to schedule a hearing, (b) appoint a guardian ad litem to investigate the issues raised by the application or to take any emergency action the court deems necessary to protect the incapacitated person until a hearing can be held, or (c) deny the application without scheduling a hearing, if it appears based on documents in the court file that the application is frivolous. Any denial of an application without a hearing shall be in writing with the reasons for the denial explained. A copy of the order shall be mailed by the clerk to the applicant, to the guardian, and to any other person entitled to receive notice of proceedings in the matter. Unless within thirty days after receiving the request from the clerk the court directs otherwise, the clerk shall schedule a hearing on the request and mail notice to the guardian, the incapacitated person, the applicant, all counsel of record, and any other person entitled to receive notice of proceedings in the matter.

(4) In a hearing on an application to modify or terminate a guardianship, or to replace a guardian or limited guardian, the court may grant such relief as it deems just and in the best interest of the incapacitated person.

(5) The court may order persons who have been removed as guardians to deliver any property or records belonging to the incapacitated person in accordance with the court's order. Similarly, when guardians have died or been removed and property or records of an incapacitated person are being held by any other person, the court may order that person to deliver it in accordance with the court's order. Disobedience of an order to deliver shall be punishable as contempt of court.

[1991 c 289 § 7; 1990 c 122 § 14; 1977 ex.s. c 309 § 9; 1975 1st ex.s. c 95 § 14; 1965 c 145 § 11.88.120. Prior: 1917 c 156 § 209; RRS § 1579; prior: Code 1881 § 1616; 1860 p 227 § 333; 1855 p 17 § 11.]

Notes:

Effective date -- 1990 c 122: See note following RCW 11.88.005.

Severability -- 1977 ex.s. c 309: See note following RCW 11.88.005.

RCW 11.88.130
Transfer of jurisdiction and venue.

The court of any county having jurisdiction of any guardianship or limited guardianship proceeding is authorized to transfer jurisdiction and venue of the guardianship or limited guardianship proceeding to the court of any other county of the state upon application of the guardian, limited guardian, or incapacitated person and such notice to an alleged incapacitated person or other interested party as the court may require. Such transfers of guardianship or limited guardianship proceedings shall be made to the court of a county wherein either the guardian or limited guardian or alleged incapacitated person resides, as the court may deem appropriate, at the time of making application for such transfer. The original order providing for any such transfer shall be retained as a permanent record by the clerk of the court in which such order is entered, and a certified copy thereof together with the original file in such guardianship or limited guardianship proceeding and a certified transcript of all record entries up to and including the order for such change shall be transmitted to the clerk of the court to which such proceeding is transferred.

[1990 c 122 § 16; 1975 1st ex.s. c 95 § 15; 1965 c 145 § 11.88.130. Prior: 1955 c 45 § 1.]

Notes:

Effective date -- 1990 c 122: See note following RCW 11.88.005.

RCW 74.34.110
Protection of vulnerable adults — Petition for protective order.

An action known as a petition for an order for protection of a vulnerable adult in cases of abandonment, abuse, financial exploitation, or neglect is created.

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

(2) A petition shall allege that the petitioner, or person on whose behalf the petition is brought, is a vulnerable adult and that the petitioner, or person on whose behalf the petition is brought, has been abandoned, abused, financially exploited, or neglected, or is threatened with abandonment, abuse, financial exploitation, or neglect by respondent.

(3) A petition shall be accompanied by affidavit made under oath, or a declaration signed under penalty of perjury, stating the specific facts and circumstances which demonstrate the need for the relief sought. If the petition is filed by an interested person, the affidavit or declaration must also include a statement of why the petitioner qualifies as an interested person.

(4) A petition for an order may be made whether or not there is a pending lawsuit, complaint, petition, or other action pending that relates to the issues presented in the petition for an order for protection.

(5) Within ninety days of receipt of the master copy from the administrative office of the courts, all court clerk's offices shall make available the standardized forms and instructions required by RCW 74.34.115.

(6) Any assistance or information provided by any person, including, but not limited to, court clerks, employees of the department, and other court facilitators, to another to complete the forms provided by the court in subsection (5) of this section does not constitute the practice of law.

(7) A petitioner is not required to post bond to obtain relief in any proceeding under this section.

(8) An action under this section shall be filed in the county where the vulnerable adult resides; except that if the vulnerable adult has left or been removed from the residence as a result of abandonment, abuse, financial exploitation, or neglect, or in order to avoid abandonment, abuse, financial exploitation, or neglect, the petitioner may bring an action in the county of either the vulnerable adult's previous or new residence.

(9) No filing fee may be charged to the petitioner for proceedings under this section. Standard forms and written instructions shall be provided free of charge.

[2007 c 312 § 3; 1999 c 176 § 12; 1986 c 187 § 5.]

Notes:

Findings -- Purpose -- Severability -- Conflict with federal requirements -- 1999 c 176: See notes following RCW 74.34.005.

RCW 74.34.135
Protection of vulnerable adults — Filings by others — Dismissal of petition or order — Testimony or evidence — Additional evidentiary hearings — Temporary order.

(1) When a petition for protection under RCW 74.34.110 is filed by someone other than the vulnerable adult or the vulnerable adult's full guardian over either the person or the estate, or both, and the vulnerable adult for whom protection is sought advises the court at the hearing that he or she does not want all or part of the protection sought in the petition, then the court may dismiss the petition or the provisions that the vulnerable adult objects to and any protection order issued under RCW 74.34.120 or 74.34.130, or the court may take additional testimony or evidence, or order additional evidentiary hearings to determine whether the vulnerable adult is unable, due to incapacity, undue influence, or duress, to protect his or her person or estate in connection with the issues raised in the petition or order. If an additional evidentiary hearing is ordered and the court determines that there is reason to believe that there is a genuine issue about whether the vulnerable adult is unable to protect his or her person or estate in connection with the issues raised in the petition or order, the court may issue a temporary order for protection of the vulnerable adult pending a decision after the evidentiary hearing.

(2) An evidentiary hearing on the issue of whether the vulnerable adult is unable, due to incapacity, undue influence, or duress, to protect his or her person or estate in connection with the issues raised in the petition or order, shall be held within fourteen days of entry of the temporary order for protection under subsection (1) of this section. If the court did not enter a temporary order for protection, the evidentiary hearing shall be held within fourteen days of the prior hearing on the petition. Notice of the time and place of the evidentiary hearing shall be personally served upon the vulnerable adult and the respondent not less than six court days before the hearing. When good faith attempts to personally serve the vulnerable adult and the respondent have been unsuccessful, the court shall permit service by mail, or by publication if the court determines that personal service and service by mail cannot be obtained. If timely service cannot be made, the court may set a new hearing date. A hearing under this subsection is not necessary if the vulnerable adult has been determined to be fully incapacitated over either the person or the estate, or both, under the guardianship laws, chapter 11.88 RCW. If a hearing is scheduled under this subsection, the protection order shall remain in effect pending the court's decision at the subsequent hearing.

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

(4) If the court determines that the vulnerable adult is capable of protecting his or her person or estate in connection with the issues raised in the petition, and the individual continues to object to the protection order, the court shall dismiss the order or may modify the order if agreed to by the vulnerable adult. If the court determines that the vulnerable adult is not capable of protecting his or her person or estate in connection with the issues raised in the petition or order, and that the individual continues to need protection, the court shall order relief consistent with RCW 74.34.130 as it deems necessary for the protection of the vulnerable adult. In the entry of any order that is inconsistent with the expressed wishes of the vulnerable adult, the court's order shall be governed by the legislative findings contained in RCW 74.34.005.

[2007 c 312 § 9.]

RULE 60
RELIEF FROM JUDGMENT OR ORDER

(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. Such mistakes may be so corrected before review is accepted by an appellate court, and thereafter may be corrected pursuant to RAP 7.2(e).

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

(1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order;

(2) For erroneous proceedings against a minor or person of unsound mind, when the condition of such defendant does not appear in the record, nor the error in the proceedings;

(3) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 59(b);

(4) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(5) The judgment is void;

(6) The judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application;

(7) If the defendant was served by publication, relief may be granted as prescribed in RCW 4.28.200;

(8) Death of one of the parties before the judgment in the action;

(9) Unavoidable casualty or misfortune preventing the party from prosecuting or defending;

(10) Error in judgment shown by a minor, within 12 months after arriving at full age; or

(11) Any other reason justifying relief from the operation of the judgment.

The motion shall be made within a reasonable time and for reasons (1), (2) or (3) not more than 1 year after the judgment, order, or proceeding was entered or taken. If the party entitled to relief is a minor or a person of unsound mind, the motion shall be made within 1 year after the disability ceases. A motion under this section (b) does not affect the finality of the judgment or suspend its operation.

(c) Other Remedies. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding.

(d) Writs Abolished--Procedure. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review are abolished. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

(e) Procedure on Vacation of Judgment.

(1) Motion. Application shall be made by motion filed in the cause stating the grounds upon which relief is asked, and supported by the affidavit of the applicant or his attorney setting forth a concise statement of the facts or errors upon which the motion is based, and if the moving party be a defendant, the facts constituting a defense to the action or proceeding.

(2) Notice. Upon the filing of the motion and affidavit, the court shall enter an order fixing the time and place of the hearing thereof and directing all parties to the action or proceeding who may be affected thereby to appear and show cause why the relief asked for should not be granted.

(3) Service. The motion, affidavit, and the order to show cause shall be served upon all parties affected in the same manner as in the case of summons in a civil action at such time before the date fixed for the hearing as the order shall provide; but in case such service cannot be made, the order shall be published in the manner and for such time as may be ordered by the court, and in such case a copy of the motion, affidavit, and order shall be mailed to such parties at their last known post office address and a copy thereof served upon the attorneys of record of such parties in such action or proceeding such time prior to the hearing as the court may direct.

(4) Statutes. Except as modified by this rule, RCW 4.72.010-.090 shall remain in full force and effect.

Click here to view in a PDF.

Courts | Organizations | News | Opinions | Rules | Forms | Directory | Library

Back to Top | Privacy and Disclaimer Notices