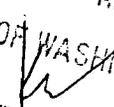


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DIVISION II
2012 OCT -4 AM 11:59
STATE OF WASHINGTON
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Court of Appeals No 42984-5-II

COURT OF APPEALS DIVISION II
OF THE STATE OF WASHINGTON

In re: The Guardianship of: Carolyn K. Plotke An Incapacitated Person
YVONNE POLKOW, Guardian
Respondent

LEO K. PLOTKE
Appellant

Appeal from
Clark County Superior Court
Case No. 08-4-00624-8

APPELLANT'S REPLY BRIEF

Dee Ellen Grubbs
Attorney and Counselor at Law
5502 NE 44th Street
Vancouver, WA 98661
Attorney for Appellant

pm 10/2/12

TABLE OF AUTHORITIES

Washington Cases Court of Appeals Rules

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I. ASSIGNMENT OF ERROR and ISSUES PERTAINING TO

ASSIGNMENT OF ERROR

A. The Respondent has restated and thereby misstated the assignment of error alleged by the Appellant. The Respondent attempts to direct the court to the use of the funds requested from the IOLTA account as a basis for upholding the court's order.

The Appellant made no such assignment of error. What the Appellant did assign as error was the failure of the court to enforce the parties' memorandum agreement as to the amount that was required to be maintained in the IOLTA account as an ongoing balance and the failure to assign control of the IOLTA account to Mr. Plotke. The Appellant maintains that the memorandum agreement requires him to maintain a balance of \$13,925.73 and that all funds over that amount should be disbursed to him. His request is delineated specifically in his Renewed/Amended Motion and Declaration RE: IOLTA Account Exhibits A, B & C Sealed, at p 3 paragraph 9(b), as follows:

b. The court should remove the restraint ordered on December 3, 2010 requiring Mr. Plotke to access the GenWorth reverse mortgage loan only for the purpose of deposit into the IOLTA account # XXXXX545, thereby allowing Mr. Plotke access to the home equity loan and also to order Ms. Greenen to distribute to Mr. Plotke all amount in excess of \$13,925.73 in IOLTA account # XXXXX545 to Leo Plotke.

The Appellant concedes that the IOLTA account was set up to meet the special needs of Carolyn Plotke but contends that per the agreement he is required to maintain a balance of only \$13,925.73. The use of funds in excess of that amount is not addressed in the memorandum of agreement. Therefore Respondent's argument is irrelevant as the balance in the IOLTA account at the time of Mr. Plotke's motion exceeded \$13,925.73. See CP 217, p 3, paragraph 8 which states, "As of September 30, 2011 the IOLTA account had a balance of \$75,638.86.

The Respondent has misstated the assignment of error and has not filed a separate and/or individual assignment of error. Respondent's assignment of error does not comply with RAP 1.3 and should be disregarded.

"the brief of respondent should conform to section (a) and answer the brief of appellant or petitioner..."RAP 1.3, Appendix A

II. ARGUMENT

A. STANDARD OF REVIEW.

The Respondent argues and the Appellant agrees that the standard of review is de novo. The Appellant has specifically requested that the court review the memorandum of agreement and find that Appellant is required to maintain a balance of only \$13,925.73 and that the court erred by failing to order the

Respondent to distribute to him any amounts in excess of \$13,925.73 and failed by failing to order transfer of control of the account from the guardian to Mr. Plotke.

B. RESPONDENT LEO PLOTKE IS NOT ENTITLED TO ACCESS FUNDS TO PAY FOR HIS PERSONAL EXPENSES FROM THE BLOCKED IOLTA ACCOUNT THAT WAS ESTABLISHED PURSUANT TO THE MEMORANDUM OF AGREEMENT FOR THE EXCLUSIVE PURPOSE OF PROVIDING FOR THE SPECIAL NEEDS OF CAROLYN PLOTKE.

As stated above the Appellant does not dispute the stated purpose of the IOLTA account, to wit to provide for the special needs of Carolyn Plotke. All arguments in support of the Respondent's position that funds were to be used for Mr. Plotke's personal expenditures are irrelevant, because there was never a balance of less than \$13,925.73 in the IOLTA account in Mr. Plotke's name. Further the control of the account, per the memorandum agreement should have been transferred to Mr. Plotke as soon as it was established. CP 202B, sealed exhibit C

Again, the Appellant does not dispute that the IOLTA account was set up for the purpose of the special needs of Carolyn Plotke. The issues are:

1. Are the amounts over \$13,925.73 are available to Mr. Plotke for use at his discretion?; and

2. Should control of the IOLTA account been transferred to Mr. Plotke

as soon as it was established?

Respondent's argument is a distraction from the issues on appeal and should be disregarded.

**C. WASHINGTON PROCEDURAL RULES
PROHIBIT RESPONDENT, LEO PLOTKE FROM
BRINGING A SECOND MOTION BEFORE THE
COURT REGARDING MATTERS PREVIOUSLY
DENIED**

Arguments as to procedure are not on appeal. Respondent's arguments as to procedural deficiencies if any are moot. This concern should be raised in form of a motion before the court.

III. REQUEST FOR ATTORNEY FEES

The Appellant renews his request for attorney fees and costs to include the necessity of responding to Respondent's brief.

IV. CONCLUSION

The Respondent's reply brief does not address the issue on appeal and should be stricken as unresponsive. The court should find that the evidence of record shows that the guardian of the person is in breach of the parties' memorandum agreement and that the court erred in failing to enforce said agreement. This court should review and enforce the memorandum agreement by ordering the distribution of funds requested in his declaration of October 27, 2011

and by transferring control of the IOLTA account to the Appellant, Leo Plotke.

Respectfully Submitted this 2nd day of October 2012



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of October 2012, a copy of the foregoing APPELLANT'S REPLY BRIEF was served by the method indicated below, and addressed to the following:

Therese Greenen
Greenen & Greenen, PLLC
Attorneys and Counselors at Law
1104 Main Street, Suite 400
Vancouver, WA 98660

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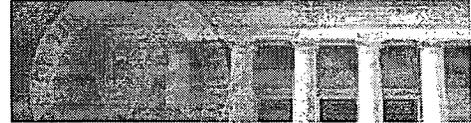
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APPENDIX A1

EXHIBIT A



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RULE 10.4

PREPARATION AND FILING OF BRIEF BY PARTY

(a) Typing or Printing Brief. Briefs shall conform to the following requirements:

(1) An original and one legible, clean, and reproducible copy of the brief must be filed with the appellate court. The original brief should be printed or typed in black on 20-pound substance 8-1/2- by 11-inch white paper. Margins should be at least 2 inches on the left side and 1-1/2 inches on the right side and on the top and bottom of each page. The brief shall not contain any tabs, colored pages, or binding and should be stapled in the left-hand upper corner.

(2) The text of any brief typed or printed must appear double spaced and in print as 12 point or larger type in the following fonts or their equivalent: Times New Roman, Courier, CG Times, Arial, or in typewriter fonts, pica or elite. The same typeface and print size should be standard throughout the brief, except that footnotes may appear in print as 10 point or larger type and be the equivalent of single spaced. Quotations may be the equivalent of single spaced. Except for material in an appendix, the typewritten or printed material in the brief shall not be reduced or condensed by photographic or other means.

(b) Length of Brief. A brief of appellant, petitioner, or respondent should not exceed 50 pages. Appellant's reply brief should not exceed 25 pages. An amicus curiae brief, or answer thereto, should not exceed 20 pages. In a cross-appeal, the brief of appellant, brief of respondent/cross appellant, and reply brief of appellant/cross appellant should not exceed 50 pages and the reply brief of the cross respondent should not exceed 25 pages. For the purpose of determining compliance with this rule appendices, the title sheet, table of contents, and table of authorities are not included. For compelling reasons the court may grant a motion to file an over-length brief.

(c) Text of Statute, Rule, Jury Instruction, or the Like. If a party presents an issue which requires study of a statute, rule, regulation, jury instruction, finding of fact, exhibit, or the like, the party should type the material portions of the text out verbatim or include them by copy in the text or in an appendix to the brief.

(d) Motion in Brief. A party may include in a brief only a motion which, if granted, would preclude hearing the case on the merits. The answer to a motion within a brief may be made within the brief of the answering party in the time allowed for filing the brief.

(e) Reference to Party. References to parties by such designations as "appellant" and "respondent" should be kept to a minimum. It promotes clarity to use the designations used in the lower court, the actual names of the parties, or descriptive terms such as "the employee," "the injured person," and "the taxpayer."

(f) Reference to Record. A reference to the record should designate the page

and part of the record. Exhibits should be referred to by number. The clerk's papers should be abbreviated as "CP"; exhibits should be abbreviated as "Ex"; and the report of proceedings should be abbreviated as "RP." Suitable abbreviations for other recurrent references may be used.

(g) Citation Format. Citations should conform with the format prescribed by the Reporter of Decisions pursuant to GR 14(d). The format requirements of GR 14(a) - (b) do not apply to briefs filed in an appellate court.

(h) Unpublished Opinions. [Reserved. See GR 14.1.]

[Amended December 23, 2002; September 1, 2003; September 1, 2006;
September 1, 2007; September 1, 2010]

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