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Court of Appeals
Division II
State of Washington
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No. 50708-1-II

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

ESTATE OF SANDRA WESTALL, Deceased

BRIEF OF LITIGATION GUARDIAN AD LITEM

Robin H. Balsam, WSBA #14001
Litigation Guardian ad Litem

Robin H. Balsam P.S.
911 South I Street
Tacoma, WA 98405

Phone: 253-627-7800
Email: rob@balsamlaw.com

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RCW 11.96A.1505

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I. INTRODUCTION

In the interests of conserving resources, the Litigation Guardian ad Litem (“LGAL”), Robin Balsam, joins in Bill R. Peacher’s Brief of the Respondent and additionally responds as follows.

Sandra Westall passed away on March 19, 2015. Her Last Will & Testament, dated July 15, 2014, appointed her brother, Bill Peacher, as her personal representative. At the time of her death she was married to Claude Paul Westall. Due to Paul’s¹ spouse status, he was appointed personal representative of the community property estate and Sandra’s brother, Bill Peacher, was appointed personal representative of the separate property estate and as Trustee of the Destiny Westall Special Needs Trust. The majority of Sandra’s separate property and Sandra’s one-half interest in the community property were designated to a Special Needs Trust for the benefit of Destiny Westall, the daughter of Paul and Sandra. There is a parcel of commercial real property (the “Commercial Real Property”) owned by Sandra and Paul that is the subject of this appeal by Paul.

The LGAL was appointed by the court on July 15, 2015. Since that time, the LGAL has reported to the court and participated in the proceedings as necessary to protect Destiny’s interest in the community

¹ The Brief refers to the various parties by their first names for clarity and intends no disrespect.

and separate property, as well as communicate to the court Destiny's desires.

After investigation, the LGAL determined that it is in Destiny's best interest to sell the Commercial Real Property because her father's business is not making enough money to support it and make all necessary repairs and maintain the Commercial Real Property properly. Supplemental Clerk's Papers² ("SCP"): Sealed Guardian ad Litem Report filed 02/08/17, p. 9; Declaration of Jennifer Dow re: Corporate Tax Returns filed 02/08/17. CP 75-78, 118-151. Paul has failed to pay rent on the commercial portion of the Commercial Real Property or pay rent for living on the Commercial Real Property. CP 245, 263-265. Additionally, Destiny decided she does not want to live in the apartment on the property with her father. SCP: Sealed Guardian ad Litem Report filed 11/23/15, pp. 7, 9-10. This has been acknowledged by her father, as his counsel stated at a July 28, 2017 hearing that "Destiny does not want to live there. It sounds like she has some independence despite her disabilities...." Verbatim Transcript of Proceedings ("VTP") from July 28, 2017, p. 5. The court has before it a variety of values of the Commercial Real

² "Supplemental Clerk's Papers" or "SCP" denotes documents designated as clerk's papers by the Respondent which have not yet been issued page numbers by the appellate court clerk.

Property ranging from Paul's initial value of \$385,000.00 after Sandra's death (CP 251), to a listing price of \$1.995 million in 2014 (CP 490-495).

II. RESTATEMENT OF THE CASE

The LGAL joins in the restatement of the case in the Brief of Respondent.

The LGAL adds that she has filed two reports. SCP: Sealed Guardian ad Litem Report, Sealed Personal Health Care Records, Sealed Confidential Reports, Sealed Confidential Reports filed 11/23/15; Sealed Guardian ad Litem Report filed 02/08/17. During the course of the investigation the LGAL learned that Paul believes Sandy was not entitled to the a share of the Commercial Real Property. SCP: Sealed Guardian ad Litem Report filed 02/08/17, page 9. This may be his motivating factor as he insists that he should be able to buy the trust's share of the property.

Additionally the LGAL has filed a motion to sell the subject Commercial Real Property. CP 242-286. The result was an agreed order on a variety of issues; one was to appraise the Commercial Real Property. CP 367-372. In response to the LGAL's petition, Paul offered to purchase the Commercial Real Property subject to financing. CP 365. "This offer is subject to Paul obtaining financing for the agreed upon purchase price.... Paul is presently working with a lender to obtain financing." CP 365. No proof of financing has been provided by Paul.

The LGAL requested a market analysis and filed with the court Ms. Runyan's analysis dated October 30, 2016, valuing the Commercial Real Property between \$700,000 to \$720,000. CP 75-117. An updated analysis was provided by Ms. Runyan several months later with a value of \$820,000 to \$900,000. CP 263-265. This change in value reflects the current real estate market conditions supporting the argument to test the market by listing the Commercial Real Property for sale.

The aforementioned motion additionally requested a verified accounting because no formal inventory had been filed. CP 242, 249. The motion also requested that proceeds from the sale of the family home be transferred to Destiny's Special Needs Trust (CP 243), that cars be transferred out the estate (CP 244), that Paul pay rent (CP 244-247), and that information on the character of the J.P. Morgan IRA be determined (CP 247). In the prayer, the LGAL asked for an order "Requiring Paul Westall to respond to all inquiries regarding the community assets without the necessity of requesting formal discovery." CP 249. The motion chronicles the difficulties of collecting information from Paul to properly settle the estate "as rapidly and as quickly as possible..." RCW 11.48.010.

III. ARGUMENT

The LGAL joins in the argument in the Brief of Respondent.

The LGAL adds that based on RCW 11.76.050, the Court has the authority to appoint an independent attorney to list the Commercial Real Property and ultimately order it sold when there is disagreement over the value. Paul placed the Commercial Real Property on the market for \$1.995 million in 2014. CP 490-495. Paul's realtor had offers at \$1.3 million in 2014. CP 490-495. Now the LGAL is asking the Court to test the market, as it is in Destiny's best interest to maximize her inheritance.

In addition, the LGAL requests that Paul be responsible for all costs incurred by the LGAL in responding to this appeal as allowed by Rule 14 of the Rules of Appellate Procedure. The LGAL requests that the appellate court award costs in its opinion or order as allowed by RAP 14.2(c). The LGAL will file a cost bill within ten (10) days of the filing of the appellate court's decision. RAP 14.4(a)

Further, RAP 18.1(a) authorizes an award of attorney's fees and costs on appeal if applicable law grants to the party the right to recover reasonable attorney fees. Here, RCW 11.96A.150 supports an award of attorney fees and costs from Paul to reimburse the Estate of Sandra Westall for attorney's fees and costs incurred in defending this appeal. Based on this authority, the LGAL requests an order requiring Paul to

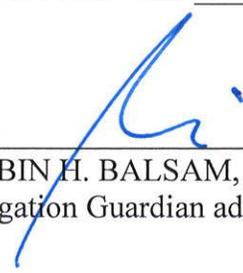
reimburse the Estate of Sandra Westall for all attorney fees and costs related to this appeal.

IV. CONCLUSION

The LGAL joins in the conclusion in the Brief of Respondent.

In his Brief, Paul asks the court to ignore an order of the court relating to the listing and possible sale of the Commercial Real Property held by the Estate. In estate matters it is not uncommon that if beneficiaries cannot agree to the distribution of assets, the court can order a sale of the assets. In order for Destiny to see the greatest proceeds from the sale of the Commercial Real Property, it is in her best interest that the Commercial Real Property be sold to an outside buyer. Additionally, it appears Paul cannot afford to purchase Destiny's share of the Commercial Real Property, pay rent, or repair/maintain the Commercial Real Property. Paul will also benefit from the sale of Commercial Real Property to an outside buyer, as he will receive half the sale proceeds. The listing and possible sale of the Commercial Real Property in this manner will not be detrimental to Paul or impact his portion of the community property estate.

RESPECTFULLY SUBMITTED this 27 day of November, 2017.



ROBIN H. BALSAM, WSBA #14001
Litigation Guardian ad Litem

DECLARATION OF SERVICE

I certify that on the date indicated below, I served a true and correct copy of the foregoing document on all parties or their counsel of record as follows:

Scott David Winship Vandeberg Johnson & Gandara 1201 Pacific Ave. Ste 1900 Tacoma WA 98402 swinship@vjglaw.com	<input checked="" type="checkbox"/> Emailed <input checked="" type="checkbox"/> Legal Messenger (sending 11/28/17) <input type="checkbox"/> US Mail Postage Prepaid <input type="checkbox"/> Hand delivered by: _____
Stuart C. Morgan Ledger Square Law, P.S. 710 Market St Tacoma WA 98402 stu@ledgersquarelaw.com	<input checked="" type="checkbox"/> Emailed <input checked="" type="checkbox"/> Legal Messenger (sending 11/28/17) <input type="checkbox"/> US Mail Postage Prepaid <input type="checkbox"/> Hand delivered by: _____
Brianne M. Kampbell Kampbell & Johnson PLLC 4041 Ruston Way, Ste 200 Tacoma WA 98402 5300 brianne@kampbell-johnson.com	<input checked="" type="checkbox"/> Emailed <input checked="" type="checkbox"/> Legal Messenger (sending 11/28/17) <input type="checkbox"/> US Mail Postage Prepaid <input type="checkbox"/> Hand delivered by: _____

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

DATED at Tacoma, Washington, this 27th day of November, 2017.



Christine M. Buoy, Declarant

ROBIN H. BALSAM P.S.

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Transmittal Information

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- Robin H. Balsam (Undisclosed Email Address)

Comments:

Brief of Litigation Guardian ad Litem

Sender Name: Christine Buoy - Email: cmb@balsamlaw.com

Filing on Behalf of: Robin H. Balsam - Email: rob@balsamlaw.com (Alternate Email: cmb@balsamlaw.com)

Address:
911 South I Street
Tacoma, WA, 98405
Phone: (253) 627-7800

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