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

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**IN RE THE GUARDIANSHIP OF:**

**ANDREA FAYE WILKINS**

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**BRIEF OF RESPONDENT**

**JODY (STACK) WILKINS**

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## I. INTRODUCTION

In this appeal, Appellant Judy Vrabel challenges the Order of a Pierce County Superior Court Commissioner appointing one of her daughters, Respondent Jody (Stack) Wilkins,<sup>1</sup> as full Guardian of the Person and Estate of another of her daughters, Andrea Faye Wilkins. Andrea Wilkins, 47 years of age, is developmentally disabled as a result of Moderate Autism and Pervasive Developmental Disorder. Ms. Vrabel does not dispute the Commissioner's determination that Andrea Wilkins is incapacitated and in need of a Guardian. Instead, she takes issue with the Commissioner's decision to appoint Jody Stack – rather than herself – as Andrea's Guardian.

This case was initiated by “dueling” petitions, the first filed by Judy Vrabel and the other filed by Jody Stack, each asking the Court to appoint the Petitioner as Guardian for Andrea Wilkins. Judy Vrabel now claims, in an argument not presented to the Court below, that the Commissioner improperly terminated her parental rights and denied her due process of law when he determined that Jody Stack should be appointed as Guardian. Notwithstanding this claim, the Commissioner's decision, which was confirmed by Judge Jack Nevin when he declined to revise the

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<sup>1</sup> Respondent Jody Wilkins was divorced from her husband in June, 2018, and has changed her name from Jody Stack to her maiden name, Jody Wilkins. For clarity, Jody Wilkins will be referred to herein as Jody Stack or Jody (Stack) Wilkins.

Commissioner's Order, was a proper exercise of the Commissioner's discretion and should be affirmed by this Court.

## **II. RESTATEMENT OF ISSUES PRESENTED FOR REVIEW**

1. Does Appellant Judy Vrabel lack standing to challenge the trial court's Order appointing Jody Stack as Full Guardian of the Person and Estate of Andrea Faye Wilkins?

2. Should this Appeal be dismissed because the Appellant has only raised issues that were not presented or argued before the trial court?

3. Did the trial court properly exercise its discretion when it appointed Jody Stack as Full Guardian of the Person and Estate of Andrea Faye Wilkins on December 21, 2017?

4. Should this Court enter an award of attorney fees and expenses to Respondent Jody Stack?

## **III. STATEMENT OF THE CASE**

Respondent Jody Stack and her sister, Andrea Wilkins, are two of Appellant Judy Vrabel's daughters. CP 158. Andrea Wilkins, now 47 years old, is developmentally disabled, having been diagnosed with Moderate Autism and Pervasive Developmental Disorder. CP 124, 125, 127. Andrea

lived in Arizona for most of her life, but often spent summers and a couple of weeks during the holidays with Jody Stack here in Washington State. CP 135.

In April, 2016, Judy Vrabel called Jody Stack from her home in Arizona and told Jody that she could no longer deal with Andrea's behavior. CP 158. Jody later learned that Andrea may have been sexually abused by Judy Vrabel's then husband, and that Andrea had been traumatized by that abuse and was taking it out on Judy Vrabel. *Id.* Jody flew down to Arizona the following day and brought Andrea back to live with her in her Fife, Washington, residence. *Id.* Andrea has lived in Jody's home since that time. *Id.*

When Andrea arrived in Washington State, Jody saw that she was distraught, so she arranged for Andrea to see a therapist. CP 158. Andrea told her therapist that she had been sexually abused by her stepfather in Phoenix. CP 136. When interviewed by Dolores Sarandos, the GAL appointed by the Court below, Andrea told Ms. Sarandos that she had told her mother about the abuse, but Ms. Vrabel had done nothing about it. *Id.* Similarly, Judy Vrabel told Ms. Sarandos that Andrea's stepfather had been verbally abusive to her and to Andrea, and that he may have sexually abused Andrea. CP 139.

In September, 2016, Judy Vrabel decided to leave her then husband and move to Washington State. CP 158-159. Jody Stack paid for her mother to move from Arizona, and allowed her to move in with Jody and Andrea in

Jody's house in Fife. CP 159. During that time, Judy Vrabel was Andrea's Representative Payee – the person responsible for receiving and managing Andrea's Social Security Disability Income payments. CP 139. Judy Vrabel also was the recipient of Andrea's food stamp allowance. *Id.*

Judy Vrabel lived in Jody Stack's house until July, 2017, when she became employed and moved into her own apartment. CP 139. Ms. Vrabel's move was prompted by rising tension between Jody and her mother. CP 139-140. Andrea has continued to live with Jody Stack, who has worked to increase Andrea's independence and has helped her become involved in sports and other activities through TACID (Tacoma Area Coalition of Individuals with Disabilities) and other organizations. CP 135-136.

In May, 2017, Judy Vrabel filed her initial Petition seeking to be appointed Guardian for Andrea. CP 31-39. Attorney Dolores Sarandos was appointed to serve as GAL in the matter as a result of Judy Vrabel's filing. CP 41. After filing her Petition, Ms. Vrabel failed to timely serve Andrea Wilkins with a copy of the Petition and with a Notice that a guardianship proceeding had been commenced, as required by RCW 11.88.030(5). CP 125.

Because Andrea Wilkins was not personally served with notice of the guardianship proceeding within five days of the filing of Ms. Vrabel's initial

Petition, Ms. Sarandos took no further action until August 4, 2017, when Jody Stack filed a Petition for Guardianship asking that Jody be appointed as Guardian for her sister, Andrea. *Id.* That same day, Andrea Wilkins was personally served with copies of the Notice of Guardianship, the Guardianship Petition filed by Jody Stack, the Order Appointing Guardian ad Litem, and the Order Assigning Case to Department and Setting Hearing Date. CP 147. Dolores Sarandos was served with the same pleadings by email. *Id.*

On September 13, 2018, Ms. Sarandos, acting as Guardian ad Litem in response to the two Guardianship Petitions, filed an Interim Report, stating that although she had been appointed as GAL in May, she had not pursued her investigation until after Jody Stack filed her Petition. CP 123-125. In her Interim Report, Ms. Sarandos noted that she had met with and interviewed Judy Vrabel and that she was scheduling appointments to meet and interview both Andrea Wilkins and Jody Stack. CP 125. Ms. Sarandos also mentioned that she had received and reviewed a Medical/Psychological Report for Andrea Wilkins. *Id.*

On September 14, 2017, Judy Vrabel, through attorney Robin Balsam, filed an Amended Petition for Guardianship, again seeking to be appointed Guardian of the Estate and Person of her daughter, Andrea

Wilkins. CP 150-155. Andrea Wilkins was served with a copy of the Amended Petition that same day. CP 156-157.

Shortly after the filing of Ms. Vrabel's Amended Petition, Jody Stack filed a Declaration in which she recited the story of how Andrea had come to live with her in 2016. CP 158-162. In that Declaration, Jody Stack noted that, although Judy Vrabel had been receiving Andrea's SSI and SSDI income, she seldom used those funds for Andrea's needs, and that Jody Stack had covered Andrea's costs of care since April, 2016, when Andrea had come to live with Jody. CP 159.

On November 20, 2017, Judy Vrabel filed a Guardianship Complaint against GAL Dolores Sarandos. CP 51-60 and 61-71 (duplicate filings except for the Guardianship Complaint Cover Sheet filed with the second filing). In her Complaint, Judy Vrabel claimed that the GAL, Dolores Sarandos, had failed to perform her duties as a GAL, had not met with the Alleged Incapacitated Person, had not contacted Ms. Vrabel since her initial meeting, and had not filed any reports. *Id.* Ms. Vrabel requested that Ms. Sarandos be removed from serving as GAL in this case. CP 62. Ms. Vrabel did not schedule a hearing when she filed her GAL Complaint. CP 51.

In response to that filing, Judge Nevin's Judicial Assistant sent a letter to Dolores Sarandos and requested a written response. CP 72. Ms.

Sarandos responded by filing a Response to the Guardianship Complaint on December 5, 2017. CP 73-76. Although the November 21, 2017, letter from Judge Nevin's Judicial Assistant to Dolores Sarandos (CP 72) noted that a mandatory review hearing was set for December 29, 2017, and that Ms. Sarandos should appear on that date prepared to discuss the issues associated with the GAL complaint, the record below reflects that the hearing scheduled for December 29, 2017 was "Cancelled/Stricken" and apparently no further action was taken on the Guardianship Complaint.

On December 4, 2017, Dolores Sarandos filed her GAL Report. CP 132-142. In that Report, Ms. Sarandos states that she had requested, reviewed, and filed the Medical-Psychological Report from a physician who had recently examined Andrea Wilkins. CP 135. Ms. Sarandos also reported that she had met privately with Andrea Wilkins at the home where she resides with Jody Stack in Fife. *Id.* During that meeting, Andrea informed Ms. Sarandos that Jody Stack had helped Andrea become involved in a variety of activities, including sports, arts and crafts activities, and social outings. *Id.* Andrea also told Ms. Sarandos that she had been sexually abused by her step-father when she lived in Arizona. CP 136. Andrea informed Ms. Sarandos that, while she wanted to maintain a relationship with Judy Vrabel, she did

not want to live with her but instead wanted to live with her sister, Jody, and stay involved in her various programs and activities. CP 137.

In that same GAL Report, Ms. Sarandos noted that she had also met with Jody Stack and learned that Jody had enrolled Andrea in Special Olympics, involved her in programs at TACID and the Asia Pacific Cultural Center, and arranged for shuttle service to take Andrea to the various programs and activities in which she was engaged. CP 139. At the conclusion of her GAL Report, Ms. Sarandos recommended to the Court that Jody Stack be appointed as Guardian of the Person and Estate of Andrea Faye Wilkins. CP 140.

On December 4, 2017, attorney Arlene Joe, representing Jody Stack, filed a Note for Commissioner's Calendar setting a hearing on the Guardianship Petition before a Commissioner on the Guardianship/Probate docket at 1:30 p.m. on December 21, 2017. *Note for Commissioner's Calendar*, filed December 4, 2017. That same day, Ms. Joe also filed a Notice of Hearing and Declaration of Mailing by which she notified Andrea Wilkins, Judy Vrabel, and GAL Dolores Sarandos of that hearing. *Notice of Hearing and Declaration of Mailing*, filed December 4, 2017. In that Notice, Ms. Joe attests that she mailed a copy of that Notice of Hearing and

Declaration of Mailing to Andrea Wilkins, Judy Vrabel, and the GAL that same day. *Id.*

On December 19, 2017, Judge Nevin's Judicial Assistant, Iva Rockett, sent a letter to Judy Vrabel in response to a letter and several other documents that Judy Vrabel had mailed to Judge Nevin on December 15, 2017. *Letter from Department 6 with Confidential Attachments*, filed December 19, 2017. Ms. Vrabel's December 15, 2017, letter to Judge Nevin was accompanied by several pleadings and related documents, including:

- a copy of a Petition for a Vulnerable Adult Protection Order filed by Judy Vrabel against Jody Stack on December 8, 2017, in Pierce County Cause Number 17-2-03759-7;
- a copy of the Denial Order in which a Court Commissioner had found that Judy Vrabel had failed to demonstrate that there was sufficient basis to enter a temporary Vulnerable Adult Protection Order without notice to the vulnerable adult (Andrea Wilkins) and the opposing party (Jody Stack);
- a copy of the Notice to the Vulnerable Adult that a Petition seeking a Vulnerable Adult Protection Order had been filed;
- copies of medical records for Andrea Wilkins;
- copies of Fife Police Department "Event Report" records – one from May 31, 2017, when Judy Vrabel filed a report that Andrea

Wilkins was being abused in Jody Stack's home, and the other from November 15, 2017, when Judy Vrabel asked the Fife Police to conduct a "welfare check" on Andrea Wilkins;

- a copy of a Request for DSHS Records in which Judy Vrabel asked for copies of the APS ("Adult Protective Services") report that Judy Vrabel had made on May 31, 2017; and
- a copy of a letter from Adult Protective Services denying Judy Vrabel's request for the APS records.

*Id.*

In her December 19, 2017, letter, Judge Nevin's Judicial Assistant informed Judy Vrabel that the Court had received her December 15<sup>th</sup> letter and the enclosed documents, that copies of Ms. Vrabel's letter and enclosures were being forwarded to the attorneys of record in the matter, and that Ms. Vrabel's letter and the accompanying documents had been filed in the Court file. *Id.* In that letter, Ms. Rockett also notified Ms. Vrabel that "the Court does not act on ex parte letters or improperly filed pleadings" and that "[i]f matters are to be considered by the Court, they must be properly filed and placed on the docket with due notice to all parties and in accordance with court rules." *Id.* Ms. Vrabel apparently took no further action with regard to her December 15<sup>th</sup> letter or the accompanying documents.

On December 21, 2017, Commissioner Pro Tem David Johnson presided at the hearing on the Guardianship Petitions. CP 164-175. Judy Vrabel was present at that hearing, as were GAL Dolores Sarandos, Andrea Wilkins, Jody Stack, and Arlene Joe, Jody Stack's attorney. *Id.*, p. 2. Ms. Sarandos informed Commissioner Johnson that there were "dueling" Petitions and that both Judy Vrabel and Jody Stack were seeking appointment as Guardian for Andrea Wilkins. *Id.*, p. 2. Ms. Sarandos reported her findings to the Commissioner, including her recommendation that Jody Stack be appointed Guardian of the Person and Estate of Andrea Wilkins. CP 165-168.

At that hearing, Judy Vrabel presented argument as to why she should be appointed Guardian rather than Jody Stack. CP 168-172. At the end of the hearing, however, Commissioner Johnson accepted the recommendation of the GAL and entered an Order finding that Andrea Wilkins was incapacitated and in need of a guardian of her person and estate and appointing Jody Stack as Full Guardian of the Person and Estate of Andrea Wilkins. CP 172; CP 84-94.

On January 2, 2018, Judy Vrabel filed a Motion for Revision of Commissioner Johnson's December 21<sup>st</sup> Order appointing Jody Stack as Guardian. CP 98-101. In that Motion, Ms. Vrabel asked the Court to

determine whether the case should be remanded for a new hearing. CP 99. In support of her Motion for Revision, Ms. Vrabel claimed that the GAL and attorney Arlene Joe had mislead Commissioner Johnson by telling him that “an investigation was taking place with regard to Andrea and/or Judy Vrabel’s ex-husband.” *Id.* Ms. Vrabel also questioned “whether the Court had erred in consolidating Cause Number 17-2-03749-7” and by not allowing her to “submit exhibits from Social Security and documents supporting her daughter’s condition.” *Id.* In support of her Motion for Revision, Ms. Vrabel submitted a letter from the Clerk of the Superior Court for Maricopa County, Arizona, which stated that a thorough search of that Court’s adult records from January 1, 1969 through December 15, 2017, “did not disclose any criminal case initiation record” for Andrea Faye Wilkins. CP 101.

On January 8, 2018, Jody Stack filed a *pro se* Memorandum in Opposition to Motion for Revision arguing that Judy Vrabel’s Motion for Revision did not state specifically what Judy Vrabel was seeking to be revised and that Ms. Vrabel’s claim that the Court had erred in consolidating the Vulnerable Adult Protection case (Cause No. 17-2-03759-7) was irrelevant. CP 102. On February 14, 2018, Judy Vrabel filed an Amended Motion to Revise Commissioner’s Ruling claiming (1) that she was denied a

fair hearing because she was unprepared for a full hearing on the guardianship, (2) that the Commissioner failed to allow her to submit evidence or exhibits to defend herself against accusations that she had misappropriated Andrea Wilkins' social security funds, (3) that the Commissioner failed to have a separate hearing on the issue of Ms. Vrabel's alleged misappropriation of Andrea Wilkins' social security funds, (4) that the hearing should have been continued to the hearing set before Judge Nevin on December 29, 2017, and (5) that the Commissioner should have ordered that Ms. Vrabel be allowed visitation with Andrea Wilkins. CP 104.

On February 16, 2018, both Judy Vrabel and Jody Stack appeared *pro se* before the Honorable Judge Jack Nevin for the hearing on Ms. Vrabel's Amended Motion to Revise Commissioner's Ruling. CP 105. After hearing argument and reviewing the records and files in the matter, Judge Nevin denied the Motion for Revision. *Id.* On February 21, 2018, Judy Vrabel filed a Notice of Appeal seeking review by this Court of the Order Appointing Full Guardianship of the Person and Estate of Andrea Faye Wilkins entered on December 21, 2017, by Court Commissioner David H. Johnson. CP 106.

#### **IV. SUMMARY OF THE ARGUMENT**

This appeal is without merit and should be dismissed on three grounds. First, Appellant Judy Vrabel does not have standing to bring the appeal; none of her proprietary, pecuniary, or personal rights have been substantially affected by the Commissioner's appointment of Jody (Stack) Wilkins as Guardian of the Person and Estate of Andrea Wilkins, and therefore she is not an "aggrieved" party with standing to seek review under RAP 3.1.

Second, this appeal should be dismissed because Ms. Vrabel failed to raise before the Court below any claim regarding the purported termination of her parental rights or a related denial of due process. Even if she had raised those issues in the court below, however, she would not have been entitled to any relief, because Washington courts do not recognize such parental rights with regard to a child who is over eighteen years of age.

Third, this appeal should be dismissed because Commissioner David Johnson properly exercised his discretion when he appointed Respondent Jody Stack as Full Guardian of the Person and Estate of Andrea Faye Wilkins. In doing so, the Commissioner reasonably relied on the Reports filed by GAL Dolores Sarandos and the recommendations she made therein. The Appellant was afforded due process, having been properly notified of all of the proceedings in the case and having had adequate opportunity to respond

to the GAL's Reports and recommendations and to present comments and argument to the Commissioner prior to his entry of the Order being appealed in this matter.

Finally, Respondent Jody Stack respectfully requests an award of attorney fees and expenses pursuant to RAP 18.1 and RCW 11.96A.150 because this appeal is without merit and presents a detriment rather than a benefit to the guardianship estate.

## V. ARGUMENT

### A. Standard of Review.

“The management of a guardianship by the superior court is reviewed for abuse of discretion.” *In re Guardianship of Cornelius*, 181 Wn. App. 513, 528, 326 P.3d 718 (2014) (citing *In re Guardianship of Johnson*, 112 Wn. App. 384, 387-88, 48 P.3d 1029 (2002)). A trial court’s decision will not be reversed for abuse of discretion unless it is “manifestly unreasonable, exercised on untenable grounds, or exercised for untenable reasons.” *In re Guardianship of Lamb*, 173 Wn.2d 173, 189, 265 P.3d 876 (2011) (quoting *Noble v. Safe Harbor Family Pres. Trust*, 167 Wn.2d 11, 17, 216 P.3d 1007 (2009)). “A decision is based on untenable grounds or made for untenable reasons if it rests on facts unsupported in the record or was reached by applying the wrong legal

standard.” *Lamb*, 173 Wn.2d at 189 (quoting *State v. Rohrich*, 149 Wn.2d 647, 654, 71 P.3d 638 (2003)).

**B. The Court Should Dismiss This Appeal Because Judy Vrael is Not an Aggrieved Party Under RAP 3.1 With Standing to Seek Review by This Court.**

RAP 3.1 provides that “[o]nly an aggrieved party may seek review by the appellate court.” An aggrieved party is one whose proprietary, pecuniary, or personal rights are substantially affected by the Court’s ruling. *In re Guardianship of Lasky*, 54 Wn. App. 841, 848, 776 P.2d 695, 698 (1989) (citing *Cooper v. Tacoma*, 47 Wn. App. 315, 316, 734 P.2d 541 (1987)). Here, Judy Vrael is not an “aggrieved party” because the Court’s Order Appointing Full Guardian of Person and Estate, entered on December 21, 2017, did not substantially affect any of Ms. Vrael’s rights, whether proprietary, pecuniary, or personal.

In *Guardianship of Lasky*, supra, Division One of the Court of Appeals dismissed those portions of an appeal that had challenged an attorney’s removal as guardian of a mentally disabled trust beneficiary. In reaching its holding, the *Lasky* Court quoted *State ex rel. Simeon v. Superior Court*, 20 Wn.2d 88, 145 P.2d 1017 (1944), in which the Washington Supreme Court considered the question of whether one who has been

removed as an administrator of an estate by court order can have the removal order reviewed by an appeal. In *Simeon*, the Supreme Court held:

The general rule . . . is that no one can appeal to an appellate court unless he has substantial interest in the subject matter of that which is before the court and is aggrieved or prejudiced by the judgment or order of the court. Some personal right or pecuniary interest must be affected. The mere fact that one may be hurt in his feelings, or be disappointed over a certain result, or feels that he has been imposed upon, or may feel that ulterior motives have prompted those who instituted proceedings that may have brought about the order of the court of which he complains, does not entitle him to appeal. He must be “aggrieved” in a legal sense.

*State ex rel. Simeon v. Superior Court*, 20 Wn.2d 88, 90, 145 P.2d 1017 (1944) (citations omitted.) The *Lasky* Court concluded that the appellant in that case had no interest in the guardianship other than for compensation due to him. *In re Guardianship of Lasky*, 54 Wn. App. 841, 850, 776 P.2d 695, 698 (1989). Accordingly, the *Lasky* Court held that the appellant could appeal the order denying fees and imposing sanctions, but not the order dismissing the trust action and removing him as guardian. *Id.*

Here, Judy Vrabel has no interest in the guardianship that would give her standing to bring this appeal; she is not “aggrieved” in a legal sense. Washington’s Guardianship Act does not treat parents or other family members as having a *right* to serve as guardian or as receiving special

consideration for appointment as guardian. *In re Guardianship of Cornelius*, 181 Wn. App. 513, 523, 326 P.3d 718 (2014) (citing RCW 11.88.020).

In her opening Brief, however, Ms. Vrabel does not base her appeal on any of the provisions of the Guardianship Act, but instead appears to rely solely on RCW 13.34, the Juvenile Court Act in Cases Relating to Dependency of a Child and the Termination of a Parent and Child Relationship Act, arguing that “[t]he Court erred in entering the Order of December 21, 2017, by terminating Mrs. Vrabel’s parental rights.” *Appellant’s Opening Brief*, Assignment of Error No. 1, p. 3. Ms. Vrabel also claims that “the Court violated due process by terminating Mrs. Vrabel’s Parental Rights when she is currently fit to parent.” *Appellant’s Opening Brief*, p. 3. Further, Ms. Vrabel claims that “The Court presented insufficient evidence to terminate Mrs. Vrabel’s Parental Rights.” Despite these claims, the decision of the Court below did not substantially affect any of Ms. Vrabel’s proprietary, pecuniary, or personal rights because Ms. Vrabel did not have any right to be appointed as guardian for Andrea Wilkins, and she does not have any parental rights with regard to Andrea Wilkins.

Andrea Wilkins was born on October 7, 1971; she is currently 47 years of age. CP 135. As stated in RCW 11.92.010, “For the purposes of chapters 11.88 and 11.92 RCW, all persons shall be of full and legal age

when they shall be eighteen years old.” Thus, for purposes of Washington’s guardianship laws, Andrea Wilkins is an adult of full and legal age. “Washington decisions are explicit that a parent’s constitutional interest is limited to minor children.” *In re Guardianship of Cornelius*, 181 Wn. App. 513, 531, 326 P.3d 718 (2014) (citing *In re Dependency of Schermer*, 161 Wn.2d 927, 941, 169 P.3d 452 (2007) (“Parents have a fundamental liberty interest in the care and welfare of their *minor* children.”) (emphasis added).

In *Guardianship of Cornelius*, Division Three of the Court of Appeals noted that those “few courts that have recognized a parental liberty interest when it comes to adult children have found it to be an interest in companionship, not a right to raise or engage in decision-making for the child. *Guardianship of Cornelius*, 181 Wn. App. at 531-32. As a result, the *Cornelius* Court concluded that “even those few cases would not support a parent’s claim that she was entitled to serve as her child’s guardian or to special consideration in that connection.” *Id.* at 532.

Under the holding in *Cornelius*, Judy Vrabel has no parental liberty interest when it comes to her adult daughter, Andrea Wilkins, and therefore she has no rights that are substantially affected by the Commissioner’s December 21, 2017, Order. Accordingly, Ms. Vrabel is not an “aggrieved

party” who has standing to seek review of that Order with this Court. Under RAP 3.1, Ms. Vrabel’s appeal must be dismissed.

**C. This Court Should Refuse to Review the Appellant’s Claims That the Commissioner Erred by Terminating Her Parental Rights and Denying Her Due Process Because Those Claims Were Not Made in the Court Below.**

In her opening Brief, Appellant Judy Vrabel claims that the trial court’s entry of the December 21, 2107, Order was error because it terminated her parental rights. *Appellant’s Opening Brief*, Assignment of Error No. 1, p. 3. In what appears to be her second Assignment of Error, Ms. Vrabel seems to claim that there was insufficient evidence presented to the trial court to terminate her parental rights. As a supplemental argument, Ms. Vrabel claims that the “court violated due process by terminating Mrs. Vrabel’s parental rights when she is currently fit to parent.” None of these claims is accurate, and therefore none provide a basis to invalidate that Order.

In her Argument in support of those claims, Ms. Vrabel relies solely on the provisions of RCW 13.34, the Juvenile Court Act in Cases Relating to Dependency of a Child and the Termination of a Parent and Child Relationship. Nowhere in the record on appeal – or in the entire record below – does Ms. Vrabel make any of these arguments or cite to that Act. Consequently, under RAP 2.5, this Court should refuse to review these claims.

Generally, appellate courts will not entertain issues raised for the first time on appeal. In *re Guardianship of Cornelius*, 181 Wn. App. 513, 533, 326 P.3d 718 (2014) (citing RAP 2.5(a); *Brundridge v. Fluor Fed. Servs., Inc.*, 164 Wn.2d 432, 441, 191 P.3d 879 (2008)). This rule reflects a policy of encouraging the efficient use of judicial resources and refusing to sanction a party's failure to point out an error that the trial court, if given the opportunity, might have been able to correct to avoid an appeal. *Id.*, (citing *State v. Scott*, 110 Wn.2d 682, 685, 757 P.2d 492 (1988); *Smith v. Shannon*, 100 Wn.2d 26, 37, 666 P.2d 351 (1983)).

Even if Ms. Vrabel had raised these arguments in the court below, however, they would not have provided the basis for any relief. Both the Petition filed by Ms. Vrabel and the Petition filed by Jody Stack were filed under the authority of RCW 11.88 and 11.92, Washington's Guardianship Acts, and neither Petition sought to terminate Ms. Vrabel's parental rights. As noted above, Andrea Wilkins has been an adult for many years, and in terms of her relationship with Andrea Wilkins, Ms. Vrabel no longer has any parental rights, as such rights are limited to situations involving minor children. *In re Guardianship of Cornelius*, 181 Wn. App. at 531; *see also* RCW 13.34.030(2) (which defines "child" to mean "any individual under the age of eighteen years" or "[a]ny individual age eighteen to twenty-one

years who is eligible to receive and who elects to receive the extended foster care services authorized under RCW 74.13.031.”

As pertains to Andrea Wilkins, Judy Vrabel has no parental rights – at least no rights implicated in this case. Even if such rights had existed, however, Ms. Vrabel did not object to the termination of her parental rights when she appeared before Commissioner Johnson or Judge Nevin in the court below. Because Ms. Vrabel failed to present this argument as a basis to overturn the Order entered by Commissioner Johnson in the trial court, this Court should refuse to review any such claim of error.

**D. Judy Vrabel’s Appeal Should be Dismissed Because the Trial Court Properly Exercised Its Discretion When It Appointed Jody Stack as Full Guardian of the Person and Estate of Andrea Faye Wilkins.**

Superior courts are authorized to appoint guardians for the persons and estates of incapacitated persons upon determining that an individual is at a significant risk of personal and/or financial harm as a result of incapacities identified by statute. RCW 11.88.010(1). Chapter 11.88 of Washington’s Guardianship Act sets forth the procedure for establishing guardianships and limited guardianships for incapacitated persons. The Act does not treat parents or other family members as having a right to serve as guardian or as receiving special consideration for appointment as guardian. RCW 11.88.020.

In this case, Commissioner Johnson properly exercised his discretion when he decided to appoint Jody Stack as Full Guardian of the Person and Estate of Andrea Faye Wilkins. The Commissioner's decision was based in large part on the Confidential Report filed by GAL Dolores Sarandos on December 4, 2017, in which Ms. Sarandos concluded that Andrea Wilkins was incapacitated because she was "incapable of managing her own finances" and "unable to provide for her own housing, nutrition or safety." CP 138-140. The Commissioner's decision was further informed by the recommendation in Ms. Sarandos' GAL Report that the Court should appoint Jody Stack as guardian of the person and estate of Andrea Faye Wilkins. CP 132, 138-140. That decision was the culmination of a proper guardianship process.

First, Jody Stack, through her attorney, filed a Petition on August 4, 2017, in which she sought appointment as Guardian of the Person and Estate of her sister, Andrea Wilkins. CP 46-50. Copies of that Petition, a Notice (required by RCW 11.88.030(5)) that a Guardianship Proceeding has been commenced, the Order Appointing Guardian ad Litem, and the Order Assigning Case to Department and Setting Hearing Date were personally served on Andrea Wilkins that same day, and copies of those pleadings were emailed to Judy Vrabel's attorney. CP 147. That same day, Jody Stack filed a Declaration of Proposed Guardian setting forth her qualifications as Guardian

for Andrea Wilkins. CP 143-146. Shortly thereafter, Jody Stack filed a Declaration of Completion of Guardian Training certifying that she had successfully completed the court-approved training on the authority and responsibilities of guardians as required by RCW 11.92.040(8). CP 149.

In response to being served with the Petition filed by Jody Stack, Dolores Sarandos, who had been appointed Guardian ad Litem when Judy Vrabel first filed her Petition in this case, began her investigation. Ms. Sarandos interviewed the alleged incapacitated person, Andrea Wilkins, and the Petitioners, Judy Vrabel and Jody Wilkins, both of whom were seeking appointment as Guardian for Andrea Wilkins. CP 135, 137. Ms. Sarandos filed an Interim GAL Report on September 13, 2017, and a final GAL Report on December 4, 2017. CP 123-125; CP 132-142. In her final Report, Ms. Sarandos described the investigation she had undertaken, reporting that since Andrea had come to live with Jody Stack, Ms. Stack had enrolled Andrea in Special Olympics, involved her in programs at TACID and the Asia Pacific Cultural Center, arranged for shuttle service to transport Andrea to various activities, and provided for all of Andrea's financial needs. CP 139. Based on these findings, and on Andrea Wilkins' assertion to Ms. Sarandos that, while she wanted to maintain a relationship with her mother, she "was very, very clear" that she wanted to live with Jody Stack,

Ms. Sarandos recommended that Jody Stack be appointed Guardian of the Person and Estate of Andrea Faye Wilkins. CP 137-139.

In response to the GAL's final Report, counsel for Petitioner Jody Stack filed a Note for Commissioner's Calendar on December 4, 2017, setting a hearing on Jody Stack's Petition for Guardianship before the Superior Court Commissioner in Civil Division A (Room 100 of the Pierce County Courthouse) on December 21, 2017, in compliance with Pierce County Superior Court Special Proceedings Rule ("PCLSPR") 98.20(b). *Note for Commissioner's Calendar*, filed December 4, 2017. In addition, on December 4, 2017, counsel for Jody Stack filed a Notice of the hearing set for December 21, 2017, and mailed a copy of that Notice to Andrea Wilkins, Dolores Sarandos, and Judy Vrabel. *Notice of Hearing and Declaration of Mailing*, filed December 4, 2017.

On December 21, 2017, Commissioner Pro Tem David Johnson conducted a hearing on what GAL Dolores Sarandos described as the "dueling" Petitions for Guardianship. CP 165. At that hearing, Ms. Sarandos summarized for the Commissioner the findings she had published in her GAL Report, recommending that the Court establish a full guardianship of the person and estate of Andrea Wilkins and that Jody Stack be appointed Full Guardian of the Person and Estate of Andrea Faye Wilkins. CP 165-168. Judy

Vrabel appeared at that hearing and presented argument to the Commissioner as to why she should be appointed Guardian for Andrea instead of Jody Stack. CP 168-171. At the conclusion of the hearing, the Commissioner ruled that a guardianship was necessary, and that Jody Stack should be appointed as Guardian of the Person and Estate of Andrea Wilkins. CP 171-172. Commissioner Johnson then signed an Order appointing Jody Stack as Full Guardian of the Person and Estate of Andrea Fay Wilkins. CP 84-94.

On January 2, 2018, Judy Vrabel filed a Motion for Revision. CP 98-101. On January 8, 2017, Jody Stack, *pro se*, responded to that Motion by filing a Memorandum in Opposition to Motion for Revision. CP 102., Judy Vrabel then filed an Amended Motion to Revise Commissioner's Ruling. CP 103-104. In her Amended Motion, Ms. Vrabel stated that she was unprepared for the December 21, 2017, hearing on the Guardianship Petitions, and that she misunderstood the purpose of that hearing, incorrectly claiming that "Commissioner Johnson failed to acknowledge the 'hearing was set for the GAL Complaint'" that Ms. Vrabel had filed. CP 104. Ms. Vrabel also contended that she was denied a fair hearing, that she was not able to submit evidence or exhibits, that there should have been a separate hearing on the claim that she had misappropriated social security funds that should have been used to support Andrea Wilkins, that the hearing on December 21<sup>st</sup>

should have been moved to December 29, 2017, and that the Commissioner should have entered an order allowing Ms. Vrabel to have visitation with Andrea Wilkins. CP 104.

On February 16, 2018, Judge Jack Nevin held a hearing on Judy Vrabel's Amended Motion for Revision. After hearing argument from Ms. Vrabel and Ms. Stack and reviewing the records and files in the case, Judge Nevin denied the motion. CP 105.

In ruling that Jody Stack should be appointed Guardian for Andrea Wilkins, Commissioner Johnson relied in large part on the GAL Report from Dolores Sarandos, expressly stating that he had "a great deal of respect for Ms. Sarandos and she does a good job on these." CP 171-172. In doing so, Commissioner Johnson's decision was well-supported by Washington law.

the role of the GAL in a guardianship case is to investigate and supply information and recommendations to the court in circumstances where family dynamics make a neutral assessment particularly important. *In re Guardianship of Stamm*, 121 Wn. App. 830, 837, 91 P.3d 126, 130 (2004). In guardianship cases, the role of the GAL is:

[T]o provide a voice for the best interests of the subject of the proceedings [the alleged incapacitated person]. \* \* \* [T]he guardianship GAL is not a traditional expert, but becomes an expert on the status of the alleged incapacitated person and the dynamics of his circumstances in order to offer an independent and commonsense perspective to the court. \* \* \*

[A] guardianship GAL must qualify by training and experience before being appointed. The guardianship statute thus creates a category of nontraditional experts and provides for the court to receive their opinions and recommendations

*Id.* In performing his or her duties under the guardianship statute, a GAL is required to consult with those knowledgeable about the alleged incapacitated person. *Id.* The trial court has discretion under Evidence Rule 702 to permit a GAL to testify as to his or her opinions if the court is persuaded the testimony will be of assistance, and the court may permit the GAL to state the basis for those opinions, including hearsay. *Id.* Finally, the trial court has the discretion to decide whether the information provided by the GAL is of the type contemplated by the statute and whether it was reasonably relied upon by the GAL. *Id.* at 838.

Here, Commissioner Johnson properly exercised his discretion when, in reliance on the GAL Report and testimony from Dolores Sarandos, Andrea Wilkins, Jody Stack and Judy Vrabel, he appointed Jody Stack as Guardian for Andrea Faye Wilkins. Appellant Judy Vrabel was given proper notice of the hearing and had ample opportunity to respond, both in writing and with live testimony. The Commissioner's decision, which was supported by substantial evidence that Jody Stack was qualified to serve as Guardian, was a sound exercise of discretion and the December 21, 2017, Order entered by Commissioner Johnson should not be overturned by this Court.

Finally, although Ms. Vrabel complains that she was unprepared for a full hearing on the Guardianship Petitions and implies that the Court's decision may have been influenced by the fact that she was not represented by counsel in these proceedings, a litigant appearing *pro se* is bound by the same rules of procedure and substantive law as his or her attorney would have been had the litigant chosen to be represented by counsel. *Patterson v. Pub. Instruction*, 76 Wn. App. 666, 671, 887 P.2d 411, 415 (1994).

**E. This Court Should Enter an Award of Attorneys' Fees and Costs against Judy Vrabel.**

Respondent Jody Stack requests that this Court enter an award from Appellant Judy Vrabel of the costs, including reasonable attorneys' fees and Litigation Guardian ad Litem fees that Ms. Stack has incurred in responding to this appeal. A party may recover attorney fees and costs on appeal when granted by applicable law. RAP 18.1(a). In addition, the Trust and Estate Dispute Resolution Act, RCW 11.96A ("TEDRA") permits an award of attorney fees on appeal, providing in pertinent part:

Either the superior court or any court on an appeal may, in its discretion, order costs, including reasonable attorneys' fees, to be awarded to any party: (a) From any party to the proceedings; . . . The court may order the costs, including reasonable attorneys' fees, to be paid in such amount and in such manner as the court determines to be equitable. In exercising its discretion under this section, the court may consider any and all factors that it deems to be relevant and

appropriate, which factors may but need not include whether the litigation benefits the estate or trust involved.

RCW 11.96A.150(1).

In determining whether to award fees under RCW 11.96A.150, this Court “may consider any and all factors ... deem[ed] to be relevant and appropriate, such as whether the litigation benefits the estate.” *In re Guardianship of Decker*, 188 Wn. App. 429, 451, 353 P.3d 669, *rev. denied* 184 Wn.2d 1015 (2015) (awarding guardian attorneys’ fees on appeal against ward’s former attorney who sought to “vindicate” her due process rights). As set forth above, Ms. Vrabel lacks standing to bring this appeal, has claimed errors not raised before the Commissioner or Judge Nevin, and needlessly challenges what was a proper exercise of the Commissioner’s discretion. In this case, the equities weigh in favor of Jody Stack and against Judy Vrabel, and this Court should enter an award accordingly.

## VI. CONCLUSION

This appeal is without merit and should be dismissed on three grounds. First, none of Appellant Judy Vrabel's proprietary, pecuniary, or personal rights have been substantially affected by the Commissioner's ruling below, and therefore Judy Vrabel does not have standing to seek review under RAP 3.1.

Second, Ms. Vrabel has asserted claims in this Court that were not raised in the court below. Therefore, under RAP 2.5, this Court should refuse to review these claims.

Third, even if she had raised those claims in the court below, Ms. Vrabel would not have been entitled to any relief, because Washington courts do not recognize parental rights with regard to a child who is over eighteen years of age. The Commissioner in the trial court properly exercised his discretion in reasonable reliance on the Reports filed by GAL Dolores Sarandos and the recommendations she made therein. Ms. Vrabel was afforded due process, having been properly notified of all of the proceedings in the case and having ample opportunity to respond and to present comments and argument to the Commissioner prior to his entry of the Order being appealed in this matter.

Finally, Respondent Jody Stack respectfully requests an award of attorney fees and expenses pursuant to RAP 18.1 and RCW 11.96A.150 because this appeal is without merit and presents no benefit to the guardianship estate.

Respectfully submitted,

VANDEBERG JOHNSON & GANDARA, LLP

By Scott D. Winship  
Scott D. Winship, WSBA 17047  
Attorneys for Respondent Jody (Stack) Wilkins

FILED  
Court of Appeals  
Division II  
State of Washington  
11/27/2018 11:36 AM

COURT OF APPEALS  
THE STATE OF WASHINGTON  
DIVISION II

IN RE THE GUARDIANSHIP OF: )  
ANDREA FAYE WILKINS ) No. 51523-7-II  
JUDY VRABEL, ) DECLARATION OF  
Appellant, ) MAILING  
v. )  
JODY (STACK) WILKINS, )  
Respondent. )  
\_\_\_\_\_ )

The undersigned hereby certifies under penalty of perjury under the laws of the state of Washington that on November 26, 2018, I caused to be mailed a true copy of:

1. The Brief of Respondent Jody (Stack) Wilkins (filed with the Court of Appeals, Division II, November 26, 2018);  
to the following individual:

DECLARATION OF MAILING - 1

Judy Vrabel  
P. O. Box 1112  
Milton, WA 98354

Further, on November 27, 2018, I caused to be mailed a true copy of this Declaration of Mailing to Ms. Vrabel at the above-referenced address.

SIGNED this 27<sup>th</sup> day of November, 2018, at Tacoma, Washington.

  
\_\_\_\_\_  
Scott D. Winship, WSBA #17047

**VANDEBERG JOHNSON & GANDARA**

**November 27, 2018 - 11:36 AM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 51523-7  
**Appellate Court Case Title:** In re the Guardianship of: Andrea Faye Wilkins  
**Superior Court Case Number:** 17-4-00943-4

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