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COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

In Re the Guardianship of

MARGARET BENNETTS

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF WASHINGTON,
FOR THURSTON COUNTY
NO. 17-4-00484-1

BRIEF OF APPELLANT

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INTRODUCTION

The purpose of this appeal is two-fold. First, it seeks to terminate a guardianship, but not *ab initio*, thereby restoring the rights and interests of a chosen fiduciary to serve (and thereby restoring important fundamental rights to a vulnerable adult). Second, it seeks to remedy the harm caused to a preferred fiduciary's character (as well as an important familial relationship) through the erroneous imposition of a guardianship.

As our aging population continues to increase¹ our laws and our approaches to identifying and understanding the challenges (legal and otherwise) must be adjusted.² As summarized below, Washington has been a leader in providing additional protections for our aging and elderly population under different statutory schemes, depending on the source of

¹ "Between 1990 and 2000, in the United States, the number of people over the age of 65 increased to 35 million. This represented a 3.7 million, or 12 percent, increase in the number of persons over the age of 65. That number is expected to double between 2000 and 2030. Approximately 70 million people will be over the age of 65, 4.7 million of whom are expected to be over 85 years old." Rob McKenna, Attorney General of Washington, *Vulnerable Adult Abuse Prosecution Manual* (2006), citing Sarah S. Sandusky, *The Lawyer's Role in Combating the Hidden Crime of Elder Abuse*, 11 *Elder L.J.* 459, 462-64 (available at <https://www.atg.wa.gov/vulnerable-adult-abuse>, last accessed July 30, 2018.)

² Nina A. Kohn and Catheryn Koss, *Lawyers for Legal Ghosts: The Legality and Ethics of Representing Persons Subject to Guardianship*, 91 *Wash Law Review*, 581 (2016) (discussing the challenges associated with the legal representation of individuals who have been determined to lack legal capacity.); Erica Wood, Pamela Teaster, Jenica Cassidy, *Restoration of Rights in Adult Guardianship-Research & Recommendations*, ABA Commission on Law and Aging with the Virginia Tech Center for Gerontology (2017) (discussing at pages 47-53 the legal and ethical challenges of representation of clients with diminished capacity and those who have been adjudicated to lack legal capacity in a guardianship).

harm. Yet, when a court fails to accurately identify the source of harm, the result can be the misapplication of law and an unnecessary interference with important (often familial) relationships. It may also cause a severe and unnecessary intrusion on one's personal privacy and character. This is exactly what happened to Brian Bennetts when a guardianship was inappropriately commenced over his mother, Margaret Bennetts, despite the existence of comprehensive durable power of attorney instruments in place naming him as her chosen fiduciary.

Our state has been proactive with its legislation as a way of offering various methods of protection for our aging and elderly populations, but also our vulnerable adult populations, generally.

First, in 1999, to ensure adequate protection of aging or elderly adults *from harm caused by others*, the state legislature expanded the definition of a vulnerable adult to specifically include a person who is sixty years of age or older who has a functional, mental or physical disability. RCW 74.34.020. Incorporating this definition into Ch. 74.34 RCW provides our elderly and aging population who meet this definition with increased protection for harm caused by others. Importantly, Ch. 74.34 RCW provides that the vulnerable adult, any interested person, and even the state, may file for a Vulnerable Adult Protection Order (VAPO) to stop

another from causing harm to the vulnerable adult. RCW 74.34.110 and RCW 74.34.150.

Second, on January 1, 2017, Washington's Uniform Power of Attorney Act took effect and includes a provision that provides protection to the "principal" *from harm caused by others*. Revised Code of Washington section 11.125.160 specifically provides that judicial relief under a durable power of attorney may be sought by a variety of persons, including government agencies having regulatory authority to protect the principal from another person. RCW 11.125.160.³

Third, most recently, the state's guardianship statutes (which serve to protect an "incapacitated person" *from harm caused by himself or herself, stemming from his or her own incapacities*) were modified, in part, to reemphasize the legislature's intent that guardianship be limited in favor of less restrictive alternatives that respect individuals' rights, autonomy and personal privacy while protection only to the extent necessary. Effective on July 23, 2017, Ch. 11.88. RCW was updated to include specific, affirmative duties on our judicial branch in crafting guardianships. RCW 11.88.120.

³ A petition can be brought seeking an order (1) directing the agent to exercise or refrain from exercising authority in a power of attorney in a particular manner or for a particular purpose; (2) modifying the authority of an agent under a power of attorney; (3) removing the agent on a determination by the court of that both the agent has violated or is unfit to perform the fiduciary duties under the power of attorney; and that the agent's removal is in the best interest of the principal; and (4) confirming the authority of a successor agent to act under a power of attorney upon removal or resignation of the previous agent. RCW 11.125.160(2)(d), (e), (f), and (h).

ASSIGNMENTS OF ERROR

1. The trial court erred, in two material ways, when it granted the guardianship petition of Adult Protective Services (APS) to commence guardianship of Margaret Bennetts. First, the trial court erred in its understanding that guardianship would afford protection for the alleged harm being caused to her by another. Second, the trial court erred when it failed to reject APS's petition that did not contain important, statutorily required information.

2. The trial court erred when it established a full guardianship of person and estate over Margaret Bennetts without substantial evidence. In so doing, the trial court compounded its error by terminating Margaret Bennetts' comprehensive durable power of attorney instruments (which were more appropriate less restrictive alternatives to guardianship).

3. The trial court erred when it rejected a nomination of her son, Brian Bennetts, as guardian without substantial evidence to show "unsuitability" or "good cause."

4. The trial court also erred when it denied Brian Bennetts' Motion for Reconsideration.

Consequently, this appeal respectfully asks for reversal of the trial court's order appointing a guardian for Margaret Bennetts' person and estate.

STATEMENT OF CASE

This case involves Margaret and Harry Bennetts,⁴ an elderly married couple, each with their own set of memory problems and declining physical capabilities associated with advancing age. CP 340-80; 448-63; CP 409-14; CP 630-56; CP 664-761; CP 766-76. Margaret was the more obviously medically fragile of the two: chronic weight-loss issues, dizziness/light-headedness, depression, signs of dementia, and a recent, albeit successful, cancer treatment. *Id.* Harry, a diagnosed diabetic, relied on his wife for medication management, which proved challenging, given her memory issues. CP 782, lines 25-26. Dr. Bunn, their family physician, and Margaret began speculating in the spring of 2015 as to the cause of Harry's episodes of aggressive behavior and encouraged him to seek medical help, but Harry avoided addressing it. CP 448-63.

Notably, the couple maintained their household with Kevin Bennetts,⁵ their eldest son, 40 years, who is a long-time client of the Washington State Division of Developmental Disabilities. CP 495, lines 1-4.

⁴ Margaret Bennetts and Harry Bennetts will be referred to herein using their first names. No disrespect is intended.

⁵ Kevin Bennetts will be referred to herein using his first name. No disrespect is intended.

One night in August 2015, the couple woke each other up in a physical altercation. CP 495-96; CP 517-24; CP 449, lines 25-40; line 8. Harry allegedly hit Margaret repeatedly on the head, and Margaret allegedly bit him repeatedly on the arm. *Id.* The next day Margaret complained of headaches and visited Dr. Bunn, who was initially concerned that Margaret might have a concussion. CP 495, lines 18-24; CP 455. However, a CT scan produced no evidence to support that concern. CP 455; CP 455; CP 494 lines 20-13; CP 518; CP 687. Kevin reported the physical altercation to his social worker, and both 9-1-1 and APS were notified.

The investigating sheriff's deputy filed an official report in which the deputy wrote that Dr. Bunn told him that she:

[B]elieves both of them completely on this incident as she has seen and observed a definite shift in Harry's personality in . . . the past 3-4 months. . . .

and that she:

[I]s afraid Harry might be suffering from some medical issue that might be causing his severe mood and behavior changes.

No charges were filed, but Margaret sought a Petition for [an] Order of Protection against Harry, which was granted August 21, 2015. CP 526-39. Following that incident, Brian Bennetts,⁶ 39 years, the younger of the Bennetts' two children, who is employed as a geo-technical engineer

⁶ Brian Bennetts will be referred to herein using his first name. No disrespect is intended.

outside of Vancouver, Washington, traveled to the Bennetts residence and accompanied his mother to a doctor's appointment. CP 495, lines 5-6; CP 55, lines 12-13; CP 88, lines 11-12; CP 458-59.

Six days later, on August 27, 2015, the Order for Protection was terminated at Margaret's request. CP 540-46. Nonetheless, an effect of the Order for Protection was that the court had, as required by law, entered a finding that Harry had "committed domestic violence as defined in RCW 26.50.010."⁷

Over the next two years, Margaret and Harry struggled to recognize the implications of their limitations and were able to make only sporadic and halting attempts to address them. CP 502; CP 502; 599-606. Signs of their limitations and behaviors became noticeable to others, including Dr. Bunn and to Kevin, who, at times, reported incidents to his social worker. CP 553-54; CP 558-64. APS became more involved, periodically visiting the Bennetts' residence to check on the family. CP 396-402; CP 548-49; CP 563-64; CP 567, line 24 to 568, line 7; CP 619-626.

Significantly, in April 2016, after consulting legal counsel, Margaret executed a pair of durable powers of attorney instruments that became effective immediately: one for "Health Care Decisions," and another for

⁷ The court elected to not find Harry to "represent a credible threat to the physical safety of the protected person." Consequently, no appeal was taken from this ruling.

“Financial” matters (hereinafter referred to as “Health Care DPA” and “Financial DPA,” respectively). CP 92-105. In both documents, Margaret designated Harry as her agent for both financial and health care decisions, with Brian, as successor agent.⁸ CP 92; CP 100. She also nominated Harry as her guardian, with Brian as her successor guardian. CP 98; CP 104. Then, several months later, following a Silver Alert incident when Margaret went missing (CP 261-66), Harry and Brian hired a caregiver to help the Bennetts family with meal preparation, light housekeeping, and medication management. CP 608; CP 627-56; *see supra* at 35.

On May 12, 2017, the caregiver made a confidential report to APS that she suspected Harry was physically abusing Margaret. CP 396, lines 19-21.⁹

Then, while in their car returning from a trip to the ocean in June of 2017, an altercation occurred between Harry and Margaret. Margaret claimed Harry punched her in the eye, which prompted Kevin and a caregiver to call APS and 9-1-1. CP 658-62. However, the sheriff’s official report identified Margaret as the alleged perpetrator for biting Harry’s arm

⁸ For simplicity and consistency, the term “agent” is considered synonymous to “attorney-in-fact,” “power of attorney,” and similar positions of fiduciary, but non-guardian, authority.

⁹ Notably, the Advance Home Care caregiver’s daily chart notes contain no entries documenting any physical abuse. CP 628-56.

when he attempted to stop her from exiting the moving vehicle. CP 658-62; CP 504-46.

About this same time, Margaret was experiencing a dramatic period of weight loss, dropping from 107 pounds 9.6 ounces on May 16, 2017 (CP 355) to 104 pounds 8 ounces on June 14, 2017 (CP 351), when Harry took Margaret to Dr. Bunn's office complaining of dizziness and headaches after falling down at least three steps a few days earlier. CP 348. Harry took Margaret back to see Dr. Bunn the next day, June 15, 2017 for the same complaints, and she weighed only 101 pounds 8 ounces. CP 343. Dr. Bunn's only reference to Margaret's weight at that time was: "Abnormal weight loss[.] [W]e will repeat CT scan, mammogram, GI referral." CP 344. The last two entries on Dr. Bunn's medical notes for June 15, 2017 are, as follows (CP 346):

The patient is instructed to call our office if not notified of radiology results, referrals, or lab tests within 2 business days.

Patient told if they [sic?] do not improve or if anything worsens then return to the clinic.

Four days later, on June 19, 2017, Dr. Bunn called Kevin and told him that Margaret may have a "subdural hematoma from falling and needs an immediate workup[.]" CP 463.¹⁰ Kevin followed Dr. Bunn's

¹⁰ There is nothing in the record indicating whether Harry was present or absent during Kevin's telephone conversations with Dr. Bunn.

instructions and arranged for an ambulance to transport Margaret to Providence St. Peter Hospital. CP 665; CP 673. Medical professionals there later diagnosed her with an acute onset urinary tract infection (CP 667) “which can contribute to weakness, confusion and falling.” CP 673.

During her ten-day hospital stay, both Brian and Harry researched various housing options to care for Margaret in the short and long term. CP 668; CP 689; CP 701; CP 704-05; CP 7081 CP 701. When she was discharged, Margaret was transferred to a rehabilitation facility. CP 758.

On July 28, 2017,¹¹ while Margaret was under medical care at the rehabilitation facility, APS filed a petition for guardianship over Margaret. CP 1-4; CP 396-402. A guardian ad litem (GAL) was appointed to investigate and make recommendations to the court, as is typical, in guardianships actions. CP 6.¹² The GAL reviewed Margaret’s Health Care DPA and Financial DPA on August 2, 2018. CP 141.

A month and a half later, after Margaret had been moved to an Adult Family Home (AFH), the GAL petitioned the trial court, ex parte, for an order immediately suspending Harry’s authority as Margaret’s agent for

¹¹ Not insignificantly, less than a week earlier, on July 23, 2017, Washington’s newest guardianship statutes had taken effect. Specifically, the statutes reiterated the importance of carefully crafting the scope of guardianships to respect the autonomy and personal privacy of individuals.

¹² “[A] GAL is an agent of the court with duties and obligations flowing from the GAL to the court with a duty to protect the interests of an incapacitated person.” *In re Guardianship of Matthews*, 156 Wn.App. 201, 209, 232 P.3d 1140 (2010).

both medical and financial matters and replacing him with Brian, the named successor. CP 6-10. The trial court denied the GAL's request, ordering a show cause hearing. CP 30-32. Ten days later, the trial court (and notably a different judicial officer), again denied the GAL's request to suspend Harry's authority as Margaret's agent, but did require Harry's visits with his wife to be supervised, and restricted his authority to move Margaret out of the AFH, or make changes to the existing medical plan.¹³ CP 38.

Six months later, the guardianship matter remained unresolved. On December 15, 2017, Margaret requested a jury trial on the question of whether she needed a guardian. CP 86-87. Then, three months later, on March 16, 2018, she changed her mind, "waiv[ing] her right to trial on the issue of her need for a guardian" and agreeing to have "the issue of who should be guardian [] be decided upon motion and sworn declarations." CP 106-111. An agreed order was entered and a hearing was set for the following week. CP 108-11.

On March 23, 2018, having received briefing from the GAL, and attorneys for Margaret, Harry, Brian and APS, the trial court heard oral argument. The GAL recommended the establishment of a full guardianship of the person and estate and recommended that a certified professional

¹³ The then-existing "Plan of Care" (CP 11-29) contained no reference to a "medical plan" although it does mention only "medication assistance" and "therapies" for "weight loss." CP 15-16.

guardian (CPG) be appointed. RP (March 23, 2018) 5-9. Margaret's counsel objected to a CPG, advocating that Brian be appointed pursuant to RCW 11.88.010(4).¹⁴ *Id.* at 10-12. Harry's counsel also advocated for Margaret's wishes that Brian be appointed as guardian. *Id.* at 18-22. Brian's counsel raised objections that the standard for guardianship had not been met in this case, and that the GAL's recommendations as to its establishment, its scope, and the appointment of CPG were not well-founded. *Id.* at 12-18.

APS argued to the court that (1) the *only* issue to be decided was who the guardian should be and (2) it had concerns about how Brian had exercised his "apparent authority" as Margaret's agent during the guardianship. *Id.* at 23, lines 2-5; *Id.* at 24, lines 6-9, respectively.

The trial court entered an Order Appointing Full Guardian of Person and Estate, which terminated Margaret's Health Care DPA and Financial DPA and stripped her of all her rights (except the right to vote.) CP 168, lines 9. The trial court also appointed a CPG as her guardian. *Id.*

¹⁴ RCW 11.88.010(4) provides, "A principal may nominate, by a durable power of attorney, the guardian or limited guardian of his or her estate or person for consideration by the court if the guardianship proceedings for the person's person or estate are thereafter commenced. *The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause shown or disqualification.*" (emphasis added).

Brian timely filed a Motion for Reconsideration. CP 177-285. The court denied the Motion for Reconsideration without oral argument. CP 389. This appeal timely followed.

STANDING

Standing is a question of law, which is reviewed de novo. *In re Guardianship of Karan*, 110 Wn.App. 76, 81, 38 P.3d 396 (2002).

“Any aggrieved party may seek review by the appellate court.” RAP 3.1. The general rule is that a person who “has a 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 . . .” may appeal to an appellate court. *State ex Rel. Simeon v. Sup. Ct.*, 20 Wn.2d 88, 89, 145 P.2d 1017 (1941). Some personal right or pecuniary interest must be affected. *Id.* The appellant must be “aggrieved” in a legal sense. *State ex Rel. Simeon*, 20 Wn.2d at 89 (citing *Elterich v. Arndt*, 175 Wash. 562, 27 P.2d 1102; *Terrill v. Tacoma*, 195 Wash. 275, 80 P.2d 858).

Revised Code of Washington section 11.88.040 identifies Brian as a notice party. Washington law also invites Brian to provide information to the court, such that the court can comply with the new legislative intent of strictly construing guardianships in the least restrictive way. RCW 11.88.120(1)(b). To preclude Brian’s material participation in the trial court

(with respect to his Motion for Reconsideration) and to preclude his participation in the appellate court is contrary to above-referenced intent.

Moreover, Brian's participation in the guardianship proceedings is beneficial to the court because he has a substantial interest in the subject matter: ie: his parents. The trial court acknowledged this at the March 16, 2018 hearing, stating in response to APS's objections that Brian was not a party to the action:

[E]ven if [Brian] is not a party to this action, he's clearly a party in interest, a party who wants to have a presence at the hearing, and so if [his attorney is] not available in the afternoon, . . . [that hearing date] is not a possibility.

RP (March 16, 2018) 12, lines 13-8.

Where a statute is unambiguous, the court assumes the legislature means what it says and will not engage in statutory construction past the plain meaning of the words. *Estate of Marcella Louise Jones*, 93 P.3d 147, 152, Wash.2d 1, at 11 (2004) citing *Davis v. Dept of Licensing*, 137 Wash.2d 957, 963-64, 977 P.2d 554 (1999). Here, the law is clear that courts strictly tailor guardianships in a way that affords protection but still respects in individual's rights. Precluding Brian from bringing this appeal on that very issue is contrary to such legislative intent.

1. Brian has a substantial personal interest.

Brian has a substantial personal interest in being able to serve as Margaret's named agent under her durable power of attorney instruments and her nominated guardian. Importantly, his position throughout the guardianship reflected his and his mother's interests which were perfectly aligned: (i) that her choice of fiduciary be honored, and (ii) that he be able to serve as her chosen fiduciary.¹⁵ Therefore, he has a substantial interest.

2. Brian is aggrieved or prejudiced.

Through the trial court's misapplication of the guardianship, Brian's relationship with his mother has suffered. Additionally, the trial court's unnecessary examination of his actions and behavior was an assault on his personal privacy and his character (and quite possibly, could affect his ability to serve as a fiduciary for his brother, Kevin, should that be necessary at some point in the future). Finally, during the guardianship proceedings, Brian expended significant time, energy and financial resources as an interested party therefore has a disappointed pecuniary interest. (He retained counsel to represent him with authoring declarations and appearing at hearings. CP 44; 55-57; 88-90; 112-20; 121-22; 286-92. He completed

¹⁵ Arguably, given his relationship, he is in a better position than that of a CPG to employ a substituted best interest standard on her behalf. Additionally, under the informed consent statutes, adult children are specifically identified in the hierarchy of individuals having authority to provide informed consent for their parents. RCW 7.70.065.

the required lay guardian training. CP 40. He communicated and worked cooperatively with various medical professionals and APS. CP 180-81 lines 1-6. He crafted proposed orders limiting guardianship to meet her specific inabilities, as he understood them. CP 112-20; CP 286-92. He also crafted a 24/7 proposed plan of care to care for his mother in her home.) CP 90.¹⁶ For these reasons, he is aggrieved.

3. Brian has standing to bring this appeal in his own right, even though doing so may also vindicate Margaret's rights.

In its Objection to Brians's Motion for Reconsideration, (CP 293-98) and in its Answer to Motion to Consider Additional Evidence filed in this appeal, APS challenged Brian's standing, arguing that Brian was vindicating only his mother's rights and that he had not satisfied *Cobb's* three-part test. *In re Guardianship of Cobb*, 172 Wn.App. 393, 401, 292 P.3d 772 (2012). In *Cobb*, the court held that the siblings of the incapacitated person lacked standing to bring an appeal. *Id.* The court identified a three-part test that must be satisfied for a third party to vindicate another's rights. *Id.* Notwithstanding, the court in *Cobb* and the court in a subsequent case, in dicta, clarified that the three-part test does not apply

¹⁶ The 24/7 care plan proposed by Brian is almost exactly identical to the plan proposed by the CPG and accepted by the trial court on July 27, 2018, precisely 364 days after APS had filed the petition for guardianship. It has been successfully in place ever since. Supplemental CP 743 et seq.

where the appellant alleged errors that “led to an erroneous incapacity determination or resulted in an erroneous appointment of guardian.” *In re Guardianship of Cobb*, 172 Wn.App. at 401; *In re Guardianship of Decker*, 188 Wash.App. 429, 443, 353 P.3d 669 (2015).

Here, the facts of this case are distinguishable from *Cobb* and *Decker*. First, Margaret named Brian as her preferred fiduciary. He is not simply an interested or concerned family member or friend. Second, Brian is asserting the very errors in the guardianship proceeding that were specifically excepted from the three-part *Cobb* test. He is alleging an erroneous incapacity determination and the erroneous appointment of a guardian.

For the above-referenced reasons, Brian has standing to bring this appeal.

STANDARD OF REVIEW

Courts review de novo issues of statutory interpretation, such as the trial court’s authority to act under a statute. *In re Guardianship of Decker*, 188 Wn.App. 429, 439, 353 P.3d 669 (2015), (citing *In re Guardianship of Beecher*, 130 Wn.App. 66, 70, 121 P.3d 743 (2005)).

Courts also review de novo conclusions of law, but challenged findings of fact are reviewed only for substantial evidence. *In re Guardianship of Knutson*, 160 Wn.App. 854, 862, 250 P.3d 1072 (2011).

Generally, evidence is considered substantial when there is a sufficient quantity of evidence to persuade a fair-minded, rational person that the finding is true. *In re Marriage of Rockwell*, 141 Wn.App. 235, 242, 170 P.3d 572 (2007).

Notably, in proceedings involving “the well-being of children or incompetents . . .” courts have acknowledged that it may be “appropriate” to impose a higher level of review than is ordinarily employed. *See In re Guardianship of Atkins*, 57 Wn.App. 771, 790 P.2d 210 (1990).

ARGUMENT

Guardianship serves to protect individuals from *harm caused by their own incapacities*, but does so at an expense:

Adult guardianship has been characterized as both a “gulag and a godsend” in which people with disabilities—including older individuals with dementia—lose their rights in the name of protection. Regardless of the good intentions of—and the essential care provided by—many guardians who often step in at a crisis point, guardianship is one of society’s most drastic interventions in which fundamental rights are transferred to a surrogate, leaving an individual without choice and self determination.¹⁷

Washington State has long recognized the importance of balancing an individuals’ fundamental rights, autonomy and personal privacy with protection. RCW 11.88.005 provides:

¹⁷ Erica Wood, Pamela Teaster, Jenica Cassidy, ABA Commission on Law and Aging with the Virginia Tech Center for Gerontology, *Restoration of Rights in Adult Guardianship-Research and Recommendations*, page 6, 2017.

. . . to protect the liberty and autonomy of all people of this state, and enable them to exercise their rights under the law to the maximum extent, consistent with the capacity of each person. . . . [T]heir *liberty and autonomy should be restricted through the guardianship process only to the minimum extent necessary* to adequately provide for their own health and safety, or to adequately manage their financial affairs.”

RCW 11.88.005 (emphasis added).¹⁸

Then in July of 2017, Washington State reiterated this policy and enacted affirmative duties on the courts to strictly tailor guardianships:

A court . . . should not remove or restrict the rights of an incapacitated person under a guardianship except when absolutely necessary to protect the incapacitated person. The legislature finds that less restrictive alternatives are preferred to guardianships . . . when they provide adequate support for an incapacitated person’s needs.

“The court *must* modify or terminate a guardianship when a less restrictive alternative . . . will adequately provide for the needs of the incapacitated person.”

RCW 11.88.120. (emphasis added).¹⁹

Recognizing and following this intent requires that before a guardianship action is commenced, an analysis²⁰ of (1) an individual’s

¹⁸ RCW 11.88.005. The quoted section is attached, in full, as appendix A.

¹⁹ RCW 11.88.120; findings; (1)(b). The quoted section is attached, in full, as appendix B.

²⁰ See the *American Bar Association’s PRACTICAL Tool*, which provides a step-by-step checklist for determining whether initiating a guardianship is necessary. Notably, this resource is utilized by Thurston County Superior Court in its guardianship forms packets available for purchase by pro se litigants who are considering whether guardianship is appropriate. This tool is attached as appendix C.

specific inabilities in order to provide the requisite protection from such inabilities, and (2) less restrictive alternatives such as those described in the legislative findings of RCW 11.88.120.²¹ Therefore, even where an individual demonstrates inabilities, there may be less restrictive alternatives available to protect them from the inabilities causing the harm.

1. The trial court erred in granting APS's petition to commence guardianship of Margaret.

A. Guardianship does not protect against the source of harm being alleged in this case.

“Guardianship derives from the medieval English concept of *parens patriae*, in which the state has a duty to care for those who cannot care for themselves.”²² Where the source of the harm is from someone other than the individual, guardianship is not effective in providing such protection. See RCW 74.34.110 and RCW 11.125.160.

Here, on July 28, 2017 APS filed its Petition for the Appointment of Guardian of the Estate (CP 1-4) of Margaret but indicated within the petition

²¹ “A less restrictive alternative may be in the form of a power of attorney, or a trust, or other legal, financial, or medical directives that allow an incapacitated person to enjoy a greater degree of individual liberty and decision making than for persons under a guardianship.” RCW 11.88.120.

²² Erica Wood, Pamela Teaster, Jenica Cassidy, ABA Commission on Law and Aging with the Virginia Tech Center for Gerontology, *Restoration of Rights in Adult Guardianship-Research and Recommendations*, page 19, 2017, quoting Wood., E. *History of Guardianship*, in Quinn, M.J., ed. *Guardianship of Adults: Achieving Justice, Autonomy and Safety*, New York, Springer (2005).

that it was actually seeking a full guardianship of the person and estate. CP 1, line 16. Its petition was supported by a declaration referencing allegations of abuse from her husband. CP 396-402. The declaration ultimately concluded, “Due to her physical and cognitive limitations, [Margaret] relies on others to assist with making appropriate decisions regarding her person, medical and financial needs [and] she does not have the necessary supports in place to adequately provide for her care, and . . . without the assistance of a guardian, she will be subject to further abuse.” CP 402 lines 17-20.

Ultimately, if APS’s real concern was protecting Margaret from harm caused by her allegedly abusive husband, APS could have, and should have, initiated a VAPO under RCW 74.34.150.²³ If APS’s real concern was protecting Margaret from harm caused by a breach of fiduciary duty by her husband, in his capacity as her agent under her Health Care DPA and Financial DPA, APS should have brought a petition under RCW 11.125.160. *See infra* at 2-3.

²³ Significantly, even after the guardianship was commenced and the GAL was appointed, the GAL took no emergency action to protect Margaret from Harry, even after reviewing the pleadings, APS records, and talking with APS and its attorney, CP 141. It was thirty-four days later before she sought to terminate Harry’s authority as agent and limit his interactions with Margaret. CP 6-10.

Notwithstanding, even if the trial court believed that a guardianship was necessary because of allegations of harm stemming from Margaret's own inabilities, the petition was still grossly inadequate.

B. APS's petition for guardianship did not include important, statutorily required information.

Revised Code of Washington section 11.88.030(1)(i) explicitly requires that a petition for guardianship include a "description of any alternate arrangements previously made by the alleged incapacitated person, such as trusts or powers of attorney, including identifying any guardianship nominations contained in a power of attorney, and why a guardianship is nevertheless necessary[.]" RCW 11.88.030. Further, RCW 11.88.030(3)(a) provides that where the attorney general is petitioning for guardianship, there must be "cause to believe a guardianship is necessary and that no private party is able and willing to petition." *Id.*

Notably, the APS Declaration makes no mention of Margaret's Health Care DPA and Financial DPA. CP 396-402. APS's petition provides simply that, "Mrs. Bennetts's family members have not produced a durable power of attorney document executed by her." CP 2, lines 5-6. Yet, two days after accepting the appointment as GAL, the record shows that the GAL reviewed Margaret's Health Care DPA and Financial DPA.

(CP 141 stating: “08/02/2017 Review POA for HC and POA Financial for Margaret Bennetts prepared by Brent Dille in April [2016]”).

APS’s petition does not speak to whether APS asked Margaret or her family for her Health Care DPA and Financial DPA as part of its analysis of determining whether a guardianship was necessary. Nor does it speak to whether APS approached Margaret’s family members to ascertain whether there was someone willing to take action to ensure Margaret’s safety.

For the above-stated reasons, the trial court erred when it granted APS’s petition for guardianship, allowing the premature appointment of a GAL. This was a clear misapplication of the law. Even if, however, the trial court did properly grant APS’s petition for guardianship, the trial court erred by establishing a full guardianship over Margaret’s person and estate.

2. The trial court erred in establishing a full guardianship over Margaret’s person and estate.

Washington law is clear that guardianship of the person is appropriate only where (1) a person demonstrates an inability to adequately provide for their nutrition, health, housing or physical safety, and/or to adequately manage property or financial affairs and (2) there are no less restrictive alternatives available to alleviate the harm. RCW 11.88.010(1)(a) and (b); RCW 11.88.005 and RCW 11.88.120. Such a

finding must be supported by clear, cogent and convincing evidence. RCW 11.88.045(3). That standard was not met here based on APS's statements to the court and the trial court's remarks.²⁴

A. The trial court's finding that Margaret was incapacitated as to her person and estate is not supported by substantial evidence.

Incapacity for guardianship purposes is a legal determination, not a medical decision, and is to be based on a demonstration of management insufficiencies over time with respect to the person. RCW 11.88.010(1)(c). "Age, eccentricity, poverty, or medical diagnosis alone shall not be sufficient to justify a finding of incapacity." RCW 11.88.010(1)(c). Determining incapacity is not always a simple one-size-fits-all

²⁴ Notably, the trial court's decision to establish a guardianship was based, in part, on the sworn declaration submitted by APS titled, "Call Summary for 01/01/2014 – 03/09/2018". This document appeared to show that "[f]rom August 2014 to June 2017, the sheriff's office [] responded to the Bennetts' residence 20 times." CP 202-203 (emphasis added). The trial court stated in its oral ruling: "I also find it significant that from August of 2014 until June of 2017, the sheriff was required to respond to the Bennetts' residence 20 times. Now was that all because of domestic violence? No doubt, no, it wasn't. But *law enforcement* does not regularly respond to anyone's home unless there is a problem." RP (March 23, 2018) 31, lines 17-23 (emphasis added). This statement clearly shows the trial court's misunderstanding of the law by believing a guardianship will solve this "problem."

Also worthy of mention is the fact that APS filed the above-referenced "Call Summary" (and other documents related to allegations of physical abuse (CP 448-463)) just days prior to the March 23, 2018 hearing. "The guardianship petitioner's role is essentially to alert the court of the potential need and reasons for a guardianship of an incapacitated person and to respond to any inquiries from the trial court. See former RCW 11.88.030(1). Once a trial court accepts a guardianship petition for review, the petitioner's roles in the process essentially ends." *In re Guardianship of Matthews, In re Guardianship of Matthews*, 156 Wn. App. 201, 209-10, 232 P.3d 1140 (2010).

determination and the American Bar Association has published a helpful handbook for judicial officers that includes a chart for determining capacity.²⁵ Importantly, a court’s order adjudicating incapacity “shall not be based solely upon agreements made by the parties.” RCW 11.88.095(1); *In re Guardianship of Cornelius*, 181 Wn.App. 513, paragraph 31, 326 P.3d 718 (2014). This, coupled with the recently enacted guardianship laws, requires that courts carefully review the unique facts of each case. They must also conduct a thoughtful and thorough analysis of the alleged incapacitated person’s needs not only at the beginning of a matter, but throughout the span of the guardianship proceedings.²⁶

Here, not only did the trial court (1) base its determination of incapacity primarily on the mere fact that Margaret has dementia, but it was also (2) underinformed by the GAL as to Margaret’s specific inabilities, and (3) erroneously informed by APS that the extent of Margaret’s incapacities were not before the trial court.

First, in its oral ruling, the trial court stated, “There is no question in this record that Ms. Bennetts is in need of a guardian. She has been

²⁵ American Bar Association, *Judicial Determination of Capacity of Older Adults in Guardianship Proceedings: A Handbook for Judges*, (2006), quoting Lawrence A. Frolik, Promoting Judicial Acceptance and Use of Limited Guardianship, 31 Stetson L. Rev. 735 (Spring 2002).

²⁶ Courts are ultimately responsible for making decisions in the best interests of the incapacitated person and in this way, courts considered the “superior guardians.” *Seattle-First Nat’l Bank v. Brommers*, 89 Wn.3d 190, 200, 570 P.2d 1035 (1977); RCW 11.92.010.

diagnosed with dementia. She has multiple issues.” RP (March 23, 2018) 28, lines 4-6. Importantly, neither the trial court, nor the Order Appointing Guardian identify or discuss Margaret’s specific incapacities from which she needs protection for her person and estate. CP 165-176. The Order Appointing Guardian simply states, “Mrs. Bennetts is at a significant risk of personal harm based on a demonstrated inability to adequately provide for her nutrition, health, housing and physical safety. Mrs. Bennetts is at significant risk of financial harm based on her inability to adequately manage property and financial affairs.” CP 167, lines 24 to 168, line 2.

Interestingly, on the issue of Margaret’s incapacity, the court found Margaret’s chronic weight loss (RP (March 23, 2018) 30, lines 22 to 31, line 3) and the Bennetts’ family’s alleged numerous interactions with “law enforcement” (CP 31, lines 17-23) to be significant in its decision; yet, the trial court did not identify these as Margaret’s “incapacities.”

Second, as to the trial court being underinformed, the only GAL report that specifically addresses the GAL’s impressions as to Margaret’s capacity and need for assistance is the November 15, 2017 report. (CP 566-86).²⁷ Margaret’s needs, identified by the GAL, encompass (1) assistance with meal planning, shopping and organizing (CP 575, lines 23-26); (2) safe

²⁷ The other five GAL reports focus extensively, and almost exclusively, on the alleged harm from Harry. CP 404-408; 415-23; 424-6; 427-36; 437-47.

social and residential decisions (CP 576, lines 1-17); (3) assistance with paying bills and entering into contracts²⁸ (CP 576, lines 25 to 577, lines 2); (4) assistance with driving²⁹ (CP 577, lines 4-8); and (5) medical care, understanding treatment proposals and medication management (CP 577, lines 16-19).³⁰ However, throughout all the GAL reports, the overarching concern was protecting Margaret from her allegedly abusive husband. CP 404-408; 416-21; 425-26; 428-38; 437-47; 566-86. Specifically, in the last report, the GAL acknowledged, “The ultimate issue is the safety of Margaret Bennetts, and her care needs.” CP 442, line 13. She, thus, concluded from her notes: “[T]he core safety issue of this case, [] is Mr. Bennetts.” CP 444, line 8. Even at the March 23, 2018 hearing, the GAL reiterated that her main concern was Margaret’s relationship and interactions with her allegedly abusive husband. RP (March 23, 2018) 4-9. In all, the lack of a comprehensive analysis of Margaret’s disabilities and the overwhelming amount of information devoted to Margaret’s interactions with Harry was a disservice to the trial court, and ultimately provided no

²⁸ Notably, the GAL does not engage in any analysis of why the Financial DPA is not an appropriate less restrictive alternative. The GAL does not allege that Harry, as Margaret’s agent, has misused or wasted assets.

²⁹ Notably, the record shows that Margaret had not been driving since her October 2016 accident (CP 500-501) and that Kevin could safely do so for her. CP 589.

³⁰ Importantly, in none of the six GAL reports filed in this matter, is there any discussion as to why Margaret should be stripped of her rights in order to address the alleged harm from her husband and from her own disabilities. CP 404-408; 416-21; 425-26; 428-36; 438-47; 566-86. Not one discusses whether Margaret Bennetts may have limited capacity to exercise some of her rights. CP 404-408; 416-21; 425-26; 428-36; 438-47; 566-86.

guidance upon which the trial court could artfully craft Margaret's guardianship.³¹

Lastly, at the hearing, APS argued that the issue of her capacity was no longer before the court because Margaret waived her right to jury trial on the issue of whether or not she needs a guardian and acquiesced to the court that she may "lack some capacity to make some decisions for [her]self." CP 106, lines 26-29; RP (March 23, 2018) 22-23. APS argued, therefore, that the only issue to be decided was who the appropriate guardian should be. RP (March 23, 2018) 22-23. This was a gross misstatement of the law. Regardless of Margaret's candid assertions, the trial court still had the statutory obligation under RCW 11.88.120 to identify her *demonstrated inabilities* before it could carefully tailor a guardianship or utilize less restrictive alternatives in a way that could provide her with protection and still respect her rights, autonomy and personal privacy. It is unclear whether APS's statements affected the trial court's decision. But if they did, this

³¹ "Judges are not like baseball umpires, calling strikes and balls or merely labeling someone competent or incompetent. Rather, the better analogy is that of a craftsman who carves staffs from tree branches. Although the end result—a wood staff—is similar, the process of creation is distinct to each staff. Just as the good wood-carver knows that within each tree branch there is a unique staff that can be 'released' by the acts of the carver, so too a good judge understands that, within the facts surrounding each guardianship petition, there is an outcome that will best serve the needs of the incapacitated person, if only the judge and litigants can find it." American Bar Association Commission on Law and Aging – American Psychological Association, *Judicial Determination of Capacity of Older Adults in Guardianship Proceedings: A Handbook for Judges*, (2006), quoting Lawrence A. Frolik, Promoting Judicial Acceptance and Use of Limited Guardianship, 31 Stetson L. Rev. 735 (Spring 2002).

coupled with the lack of substantial evidence in the record, suggests that the trial court's finding that Margaret is "incapacitated" for the purposes of guardianship was in error.

Yet, even if the trial court adequately identified Margaret's inabilities, the guardianship analysis does not end there. There still must be an examination of less restrictive alternatives.

B. The trial court erred when it terminated Margaret's Health Care DPA and Financial DPA without substantial evidence showing the DPAs were not appropriate less restrictive alternatives to guardianship.

Durable power of attorney instruments provide protection to the incapacitated principal from his or her own incapacity. Durable power of attorney instruments are among the most widely known and used lesser restrictive alternatives to guardianship. RCW 11.88.120.³² According to the Uniform Power of Attorney Act, the purpose of a durable power of attorney is to provide safeguards for the protection of the incapacitated person while still preserving and respecting the principal's freedom to choose both the extent of an agent's authority and the principles that govern the agent's conduct.³³ One of the advantages of a durable power of attorney instrument

³² See also, *infra*, at 20 n. 21.

³³ National Conference of Commissioners on Uniform State Laws, *Uniform Power of Attorney Act (2006)*, Prefatory Notes & Comments, page 2, paragraph 2, line 1, (January 30, 2017).

over a trust or guardianship is the flexibility and informality with which an agent may exercise authority and respond to changing circumstances.³⁴ Importantly, when a principal grants authority to his or her agent, the principal is not divesting himself or herself from their rights; rather, the principal is granting someone else the authority to exercise his or her rights as may be explicitly provided for in the instrument.³⁵

Significantly, durable power of attorney instruments are *not* designed to protect the principal from harm caused by others. Again, where harm is being caused to the principal by others, protective action in the form of a VAPO can be taken under RCW 74.34.110 and 74.34.150 or protective action in the form of a modification of the durable power of attorney can be taken under RCW 11.125.160.

Only upon a finding both of incapacity and that no less restrictive alternatives exist, does the court have the authority to terminate the power of attorney. RCW 11.88.095(5). Such a determination must be based on clear, cogent and convincing evidence. RCW 11.88.045(3).

In April of 2016, when Margaret executed her Health Care DPA and her Financial DPA, she did so with the advice and assistance of competent

³⁴ *Id.* at page 26, lines 2-4.

³⁵ Conversely, in a guardianship matter, the incapacitated person *is* divested of specific (constitutional) rights; such authority is granted to the guardian whose exercise of those rights is overseen by the court.

legal counsel. CP 91-105. Arguably, the existence of these documents should have prevented or at least delayed the inception of the guardianship action as the scope of her durable power of attorney instruments were quite comprehensive. Notwithstanding, the trial court terminated Margaret's Health Care DPA and Financial DPA when it entered its *Order Appointing Full Guardian of the Person and Estate*. CP 165-76. The trial court in its oral ruling stated, in part as follows:

The . . . power of attorney that named Harry Bennetts as the attorney in fact and Brian Bennetts as the alternate attorney in fact has been previously used. Currently Brian Bennetts was the alternate attorney in fact acting on behalf of Ms. Bennetts. That has not worked well.

RP (March 23, 2018) 28, line 7-12.

Referring specifically to Dr. Bunn's declaration, the trial court characterizing it as "highly persuasive" and "highly important" stated:

[W]hen Ms. Bennetts went to the hospital in June of 2017 . . . she weighed 101 pounds. She was considered underweight She clearly could not have her needs met in her home by her husband or *by either of her sons*, who could see her wasting away, and no one did anything.

Id. at 30, line 22 to 31, line 3 (emphasis added).

The trial court thus concluded, with respect to RCW 11.88.010(4), as follows:

Clearly, in this case, as I've just articulated, there is good cause not to appoint the attorney in fact or *the alternate*

attorney in fact, as was designated by the durable power of attorney.

Id. at 32, lines 4-7 (emphasis added).

With specific reference to Brian, the trial court also stated, as follows:

And Brian Bennetts, although at times has done what was in his mother's best interests, such as ultimately calling 911 when Mr. Harry Bennetts refused to obtain medical attention,³⁶ again, *allowed his mother to waste away in that home and lose all of that weight.*

Id. at 32-3, lines 23, 7 (emphasis added).

C. The trial court's termination of Margaret's Health Care DPA was not supported by substantial evidence.

The trial court's oral ruling in support of its decision to terminate Margaret's Health Care DPA appears to be based on (1) an erroneous understanding of the authority of agents named in succession; (2) the misplaced assumption that Brian knew or should have known that Margaret was "wasting away" and "did nothing,"³⁷ and (3) that he would be unable to advocate for his mother, if it was contrary to his father's wishes.

First, Brian never had authority to act as Margaret's health care agent. RCW 11.125.100(2) provides that an agent's authority terminates

³⁶ See *infra*, at 9-10; it was Kevin, who resides with his parents, not Brian, who lives in Brush Prairie, who called 9-1-1 on June 19, 2017. See also CP 177-285.

³⁷ In this regard, the trial court ignores the fact that the family had hired a caregiver specifically for meal preparation. CP 608. See also *infra* at 8 and *supra* at 35-36.

only when: (a) the principal revokes the authority; (b) the agent dies, becomes incapacitated or resigns; (c) an action is filed for the dissolution or annulment of the agent's marriage to the principal . . . ; or (d) the power of attorney terminates. RCW 11.125.100.

Revised Code of Washington section 11.125.100(4) provides further that, “[u]nless the power of attorney otherwise provides, an agent’s authority is exercisable until the authority terminates under subsection (2) . . . , notwithstanding a lapse of time since the power of attorney.” RCW 11.125.100.

Harry was the first named agent with immediate authority to act under both Margaret’s durable power of attorney instruments. CP 92-105. Unless or until (1) he voluntarily relinquished his authority, (2) Margaret revoked his authority or the instrument in its entirety, or (3) his authority was revoked by the court, Brian could not act. There is no evidence to show any of these things occurred. Therefore, Brian never had any legal authority.

In fact, the GAL unsuccessfully requested that Harry’s authority under the durable power of attorney instruments be suspended. *See infra* at 10-11. Not insignificantly, the GAL asserted to Harry and his attorney that

he had no authority to act,³⁸ causing considerable confusion about *who* had authority for Margaret's medical decisions.

Second, Margaret's abnormally low weight was a chronic issue, among an array of diagnoses requiring a complex cocktail of prescriptions. CP 343-380. The medical records show that Dr. Bunn was aware of and actively monitoring her weight. *Id.* The family relied on Dr. Bunn to help address Margaret's chronic weight problem. For example, in August 2015, when Margaret's weight had last fallen to 111 pounds, Dr. Bunn offered the following advice to Brian: "There were worsening issues surrounding her eating habits and she has not been eating well and so we encouraged increasing caloric intake and doing some high-protein Ensure drinks." CP 367-68.

Following Dr. Bunn's advice, Margaret eventually 'weighed in' within "normal range" at over 116 pounds on January 7, 2016 (CP 363-64) and maintained her weight at that level until at least May of 2016. CP 359.

Beginning in November 2016, Harry and Brian hired Advanced Health Care to assist Margaret and the family in general. CP 608; CP

³⁸ Notwithstanding, the court's refusal to suspend Harry Bennett's authority on September 5, 2017 and September 15, 2017, the GAL asserted in correspondence to the parties and court pleadings, dated December 13, 2017 that "Mr. Bennetts does not have decision-making authority about Margaret's medical care[]" (CP 66, paragraph 3) and that his "unilateral" attempt to schedule a psychiatric evaluation of Margaret Bennetts was perceived by the GAL as contrary to court order prohibiting Harry Bennetts from interfering with "financial, medical or care plan of [Margaret Bennetts]." CP 61, lines 15-24.

627-56. The assigned caregiver recorded in her chart notes on various occasions that Margaret's weight was a concern and that she constantly encouraged Margaret Bennetts to eat more. CP 635; CP 637; CP 640; CP 650; CP 653. Yet, there is no evidence that the caregiver shared her chart notes or expressed concerns to Brian or to any other family members, for that matter.

Whether Brian can accurately be characterized as seeing his mother "wasting away" depends, in large measure, on the frequency and timing of his visits during the time when she was allegedly "wasting away" after May 2016: there is no evidence in the record showing he was ever present at the family home during that time.

Third, the record is replete with evidence showing Brian's substantial involvement, albeit without any legal authority to act, and his willingness to support his mother, at times contrary to his father's stated intentions:

- In August of 2015, Brian assisted Margaret following the DVPO against Harry. CP 458-59.
- On October 27, 2016 when Margaret went missing, Brian was instrumental in commencing a Silver Alert that was broadcast to all local law enforcement and accompanied Kevin to pick her up from the Auburn Police Department. CP 261-66; CP 590.
- On November 2, 2016, Brian helped Harry with the hiring of Advanced Health Care to visit the family residence three times a

week to assist with “errands, meal planning, meal prep and companionship.” CP 608; CP 628-56.

- In late February and mid-May of 2017, Brian visited his mother at the family home. CP 643, 652.
- In June 2016, when Margaret was hospitalized, Brian became even more significantly involved. He was in touch with APS and researched rehabilitation facilities and adult family homes. CP 668; 689; 701; 704-05; 708; 721. Notably, when Harry said he didn’t want Margaret in an adult family home, Brian intervened and found a way to stop his father’s stated intent, despite having no legal authority to do so. CP 708; 741; 743-44; 758.
- In July 2017, when APS initiated the guardianship matter, Brian was present and active in the proceedings. *See infra* at 15-16.

Ultimately, the trial court’s misunderstanding of the facts and law, as discussed above, leaves no substantial evidence upon which the trial court could rest its decision to reject Margaret’s Health Care DPA.

D. The trial court’s termination of Margaret’s Financial DPA was not supported by substantial evidence.

“The reason for appointing a guardian of property is to preserve the property from being squandered or improvidently used.” *United Pac. Ins. Co. v. Buchanan*, 56 Wn.App. 371, 375, 783 P.2d 1089 (1989) (quoting Restatement (Second) of Contracts 13, comment (a) (1981)).

With respect to Margaret’s Financial DPA, the trial court’s oral ruling made no mention, whatsoever, of actual harms caused to Margaret’s estate stemming from her incapacities or harm caused by Harry as her agent. RP (March 23, 2018) 26-36.

Moreover, there is not substantial evidence in the record to support the trial court's finding that her Financial DPA that named Harry was inappropriate.

APS contended in its petition that Margaret is "at significant risk of . . . financial harm based on demonstrated management insufficiencies over time." CP 167-68. The supporting declaration of APS alleged that Margaret was at risk of financial harm because her cognitive and physical conditions make her rely on others to make financial decisions. CP 402, lines 17-18. APS also claimed, specifically, that Harry had threatened not to pay the rehabilitation facility for Margaret's medical care after the facility stopped him from taking her home. CP 401, line 20; CP 402, lines 10-11. In the absence, however, of some evidence of actual prior harm or financial exploitation on Harry's part, there is nothing to support APS's assertion that Margaret needs any protection, let alone a guardianship, over the way the family has successfully conducted their financial affairs for nearly half a century.

Washington case law provides a plethora of examples as to what constitutes "good cause" for the removal of a guardian of an estate. Arguably, these same examples can be equally helpful when contemplating a financial agent's actions. A guardian may be removed for gross mismanagement of the ward's estate, gross violations and derelictions of fiduciary duty, or management of the estate in a way otherwise inimical to

the ward's interests. *In re Gardella*, 152 Wash. 250, 253, 277 Pac. 847 (1929). A guardian of an estate may also be removed for defrauding a ward or the court. *South Bend Land Co. v. Denio*, 7 Wn. 303, 304, 35 P. 64 (1893). A guardian of an estate may also be removed for self-dealing. *In re Eisenberg*, 43 Wn. App. 761, 766 719 P.2d 187 (1986). Notably, in any action to remove a guardian, the action must be egregious and substantiated by "ample evidence." *In re Gardella*, 152 Wash. 250, 253, 277 Pac. 847 (1929).

Notably, the GAL stated that, "Harry Bennetts has a history in this case of not meeting financial obligations until after much delay and pressure." CP 442, lines 21-22. But again, there is no evidence he purposely did not pay Margaret's expenses or medical bills, either for the purpose of harming or controlling her. Certainly, allegations that he complained and worried about the exorbitant costs of medical bills and facility fees, in and of itself, does not rise to the level of "ample evidence" upon which to support a finding of good cause to remove him as agent under Margaret's Financial DPA.

In sum, there is no evidence that Harry, in his capacity as Margaret's financial agent, mismanaged or wasted her share of their community property. There is also no evidence suggesting that he unduly influenced her or defrauded her with respect to her share of the community property.

Ultimately, the trial court's misunderstanding of the facts and law, as provided for above, therefore, leaves no substantial evidence upon which the trial court could rest its decision to reject Margaret's Financial DPA.

Even if the court finds that the trial court appropriately revoked both Margaret's Health Care DPA and Financial DPA, the trial court should have honored Margaret's wishes (expressed in her durable power of attorney instruments and in her numerous declarations) that Brian be appointed as her guardian. CP 34, lines 16-20; CP 42, line 12, CP 107, lines 4-5; CP 126, line 5.

E. The trial court's rejection of Margaret's nomination of Brian as her preferred guardian was not supported by substantial evidence.

Under both the guardianship statutes and Uniform Power of Attorney Act, the law is clear that the court *shall* appoint the nominated guardian absent disqualification or good cause shown. RCW 11.88.010(4)³⁹ RCW 11.125.080. "Deference for the principal's autonomous choice is evidenced by both the presumption that an agent's authority continues unless limited or terminated by the court and in the directive that the court shall appoint a fiduciary in accordance with the principal's most recent nomination." RCW Annotated (West § 108).

³⁹ RCW 11.120.080 provides, in part, "This act applies to a power of attorney created *before*, on, or after the [January 1, 2017] effective date of this section." (emphasis added).

The simple fact that Margaret nominated Brian as her fiduciary should have been sufficient to allow him to serve without further inquiry from the trial court. That the trial court even conducted an analysis of good cause was error given the trial court's initial error in failing to reject the petition to commence guardianship and start an investigation. *See infra* at 18-22. The unfortunate and unnecessary result was an intrusion on Brian's privacy, an attack on his character and actions, and an interference with his familial relationship with his mother.⁴⁰ (It was also an unnecessary intrusion of Margaret's right to choose a fiduciary). This was error because Brian was objectively qualified to serve.

i. Brian was qualified to serve.

Revised Code of Washington section 11.88.020(1) establishes five objective requirements a person must satisfy in order to qualify as a guardian. A person is qualified if he or she is (1) over eighteen, (2) of sound mind, (3) not convicted of a felony or a misdemeanor involving moral

⁴⁰ Notably courts have acknowledged that Washington's guardianship statutes "do 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, paragraph 21, 326 P.3d 718 (2014) (emphasis added). Notwithstanding, this case is distinguishable for two reasons. First, the guardian mother in *Cornelius* was not the incapacitated person's chosen fiduciary; in this case, Brian is the chosen fiduciary. Second, the guardian mother in *Cornelius* was already serving and her actions were the subject to court oversight; in this case Brian has not yet had an opportunity to serve as guardian or in any fiduciary capacity. To subject him to extra scrutiny before being able to serve unfairly imposes upon him a higher standard than the law requires of others.

turpitude, (4) a nonresident who has appointed a resident agent, and (5) a corporation not authorized to act as a fiduciary. RCW 11.88.020(1).

Brian meets each and every one of these objective requirements to qualify as his mother's guardian. CP 88, lines 11-13. He confirmed that he was qualified and willing to serve. CP 88, lines 18-19. Moreover, he also completed the online lay guardian training and filed the Certificate of Completion with the trial court, which is required prior to the court's appointment of a lay guardian. CP 40.

But even if the court finds that the trial court appropriately determined that a further analysis (investigation) was warranted, there is not substantial evidence supporting the trial court's finding of good cause to reject Margaret's nomination of Brian as her guardian.

ii. No good cause exists to reject Brian as Margaret's nominated guardian.

The only remaining factor under RCW 11.88.020(1) which could justify the rejection of Brian as Margaret's guardian is if the trial court subjectively finds him "unsuitable." For purposes of this case, Appellant considers "unsuitability" and "good cause" to reject him are considered synonymous.

Good cause is defined in Black's Law Dictionary as, "A legally sufficient reason." Black's Law Dictionary page 265 (10th ed. 2014). The

definition explains that “good cause” is often the burden placed on a litigant to show why a request should be granted or an action excused. Black’s Law Dictionary page 265 (10th ed. 2014). A finding of good cause is a factual question. *Bering v. SHARE*, 106 Wn3d 212, 220, 721 P.2d 918 (1986), cert. dismissed, 479 U.S. 1050 (1987).

Examples of good cause to reject or remove a guardian of a person may include (1) dissention or conflict in the family; (2) interests adverse to the incapacitated person; (3) rendering inadequate care to the incapacitated person; and (4) any other reason that would best serve the interests of the incapacitated person. 39 Am. Jur. 2nd Guardians & Ward § 41.

With respect to Brian’s potential unsuitability or good cause to reject him as guardian, there is clearly not substantial evidence to support the trial court’s conclusions as referenced above. *See infra* at pages 32-36.

Moreover, none of the above-referenced factors are satisfied. First, there is not dissention or conflict in the family when it comes to Margaret’s best interest and in fact, the whole family is in agreement to Brian serving in a fiduciary capacity for her. *See infra* at 11-12. Additionally, there is also no evidence that Brian ever had authority to serve as Margaret’s health care agent such that he could be accused of breaching a duty by rendering inadequate care. *See infra* at 32-33. Finally, his substantial involvement,

especially in times of medical crisis, shows he is committed and willing to assist his mother and serve as a fiduciary. *See infra* at 15-16 and 35-36.

Without substantial evidence to support a finding of “unsuitability” or good cause to reject Margaret’s nomination of Brian under RCW 11.88.010 and 11.125.080, the trial court erred.

3. The trial court erred in denying Brian’s Motion for Reconsideration.

Revised Code of Washington sections 11.88.050 and 11.88.120 require courts to modify or terminate guardianships when less restrictive alternatives will adequately provide for the needs of an incapacitated person. *See infra* at 18-20.

When Brian filed his Motion for Reconsideration, its purpose was to (1) provide additional evidence as to the issue of “good cause,” and (2) request a modification of the guardianship. CP 177-285.

With respect to the additional evidence, Brian addressed the trial court’s three primary and erroneous reasons it articulated in its oral ruling to justify its decision. First, the trial court subjectively believed Brian allowed his mother to “waste away” and “did nothing.” *See infra* at pages 34-35. This finding is not supported by substantial evidence. Second, the trial court subjectively believed that Brian would be unable to “adequately protect his mother.” *See infra* at pages 35-36. This finding is also not supported by substantial evidence. Third, the trial court erroneously

believed that Brian was part of the Bennetts' "problem" household. RP (March 23, 2018) 31, lines 17-9. *See also infra* at 24, n. 24. But during the relevant time period, Brian lived independently two hours away. *See infra* at 7. With the additional information provided by Brian in his Motion for Reconsideration (CP 177-285), he attempted to show that this finding was not supported by substantial evidence.

With respect to the modification, Brian explicitly requested that the trial court modify the guardianship to replace the CPG with himself and to craft the guardianship so as to only restrict the rights absolutely necessary to address Margaret's disabilities. CP 177-183.

By denying Brian's Motion for Reconsideration, without oral argument and without rationale, the trial court essentially ignored the law. This was error.

ATTORNEYS FEES AND COSTS ON APPEAL

This case, having been brought before the Court of Appeals pro bono, does not request attorney fees for bringing this appeal. Notwithstanding, the following expenses are requested to be reimbursed or awarded to Brian Bennetts and the marital community of Harry and Margaret Bennetts, the latter of whom bore the bulk of the responsibility of paying them:

1. costs on appeal;

2. attorney fees paid to resist the petition for guardianship filed by Adult Protective Services (APS); and
3. expenses of complying with the guardianship order.

CONCLUSION

When the trial court allowed the guardianship to commence, it did so with a misunderstanding of the purpose of guardianship and without adequate scrutiny as to the information it was being provided. The result was a months-long intrusive investigation of Brian (and his mother Margaret) and he was subjected to an unnecessary and intrusive examination of his actions and his character.

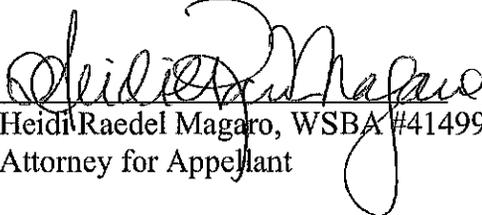
When the trial court ordered (1) the establishment of a full guardianship of Margaret Bennetts' person and estate (stripping her of important fundamental rights), (2) the termination of her durable power of attorney instruments, and (3) the appointment a certified professional guardian, it did so based on a misunderstanding and misapplication of the law. In so doing, the trial court unfairly interfered with Brian's right and interest in serving in a fiduciary capacity as Margaret intended. It also detrimentally affected his familial relationship with his mother. The trial court's finding of good cause to reject his appointment, without substantial evidence, also detrimentally affects his ability to serve in any type of fiduciary capacity in the future.

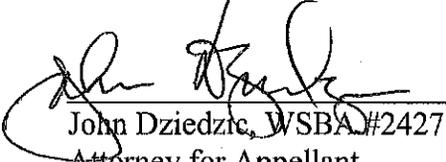
When the trial court denied Brian's Motion for Reconsideration containing additional information for the purpose of (1) rebutting the trial court's initial findings, and (2) modifying the guardianship pursuant to law, it did so in error.

Ultimately, the trial court's failure to follow the law in this case demands that the guardianship be terminated, but not *ab initio*.

Brian respectfully requests therefore that (1) the Order Appointing Guardian be overturned, (2) the durable power of attorney instruments executed by Margaret in April of 2016 be reinstated, and (3) Brian be appointed as his mother's agent or limited guardian for medical and health care decisions.⁴¹ Doing so will afford him the remedy he seeks for the harm he has endured. Not insignificantly, granting Brian's request also remedies the harm caused to Margaret in the unjust imposition of this guardianship.

Respectfully submitted this 31th day of August 2018.


Heidi Raedel Magaro, WSBA #41499
Attorney for Appellant


John Dzedzic, WSBA #2427
Attorney for Appellant

⁴¹ See proposed 24/7 care plan (CP 90); see proposed Order Appointing Limited Guardian (CP 112-120); and see proposed Order Appointing Limited Guardian (CP 286-292). See also Declaration of Jamie Boelow. CP 465-78.

Appendix A

RCW 11.88.005**Legislative intent.**

It is the intent of the legislature to protect the liberty and autonomy of all people of this state, and to enable them to exercise their rights under the law to the maximum extent, consistent with the capacity of each person. The legislature recognizes that people with incapacities have unique abilities and needs, and that some people with incapacities cannot exercise their rights or provide for their basic needs without the help of a guardian. However, their liberty and autonomy should be restricted through the guardianship process only to the minimum extent necessary to adequately provide for their own health or safety, or to adequately manage their financial affairs.

[1990 c 122 § 1; 1977 ex.s. c 309 § 1; 1975 1st ex.s. c 95 § 1.]

NOTES:

Effective date—1990 c 122: "This act shall take effect on July 1, 1991." [1990 c 122 § 38.]

Severability—1977 ex.s. c 309: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 309 § 18.]

Appendix B

RCW 11.88.120

Modification or termination of guardianship—Procedure.

(1)(a) 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 or modify the authority of a guardian or limited guardian. Such action may be taken based on the court's own motion, based on a motion by an attorney for a person or entity, based on a motion of a person or entity representing themselves, or based on a written complaint, as described in this section. The court may grant relief under this section as it deems just and in the best interest of the incapacitated person. For any hearing to modify or terminate a guardianship, the incapacitated person shall be given reasonable notice of the hearing and of the incapacitated person's right to be represented at the hearing by counsel of his or her own choosing.

(b) The court must modify or terminate a guardianship when a less restrictive alternative, such as a power of attorney or a trust, will adequately provide for the needs of the incapacitated person. In any motion to modify or terminate a guardianship with a less restrictive alternative, the court should consider any recent medical reports; whether a condition is reversible; testimony of the incapacitated person; testimony of persons most closely related by blood, marriage, or state registered domestic partnership to the incapacitated person; testimony of persons entitled to notice of special proceedings under RCW 11.92.150; and other needs of the incapacitated person that are not adequately served in a guardianship or limited guardianship that may be better served with a less restrictive alternative. All motions under the provisions of this subsection (1)(b) must be heard within sixty days unless an extension of time is requested by a party or a guardian ad litem within such sixty-day period and granted for good cause shown. An extension granted for good cause should not exceed an additional sixty days from the date of the request of the extension, and the court must set a new hearing date.

(2)(a) An unrepresented person or entity may submit a complaint to the court. Complaints must be addressed to one of the following designees of the court: The clerk of the court having jurisdiction in the guardianship, the court administrator, or the guardianship monitoring program, and must identify the complainant and the incapacitated person who is the subject of the guardianship. The complaint must also provide the complainant's address, the case number (if available), and the address of the incapacitated person (if available). The complaint must state facts to support the claim.

(b) By the next judicial day after receipt of a complaint from an unrepresented person, the court's designee must ensure the original complaint is filed and deliver the complaint to the court.

(c) Within fourteen days of being presented with a complaint, the court must enter an order to do one or more of the following actions:

(i) To show cause, with fourteen days' notice, directing the guardian to appear at a hearing set by the court in order to respond to the complaint;

(ii) To appoint a guardian ad litem to investigate the issues raised by the complaint or to take any emergency action the court deems necessary to protect the incapacitated person until a hearing can be held;

(iii) To dismiss the complaint without scheduling a hearing, if it appears to the court that the complaint: Is without merit on its face; is filed in other than good faith; is filed for an improper purpose; regards issues that have already been adjudicated; or is frivolous. In making a determination, the court may review the matter and consider previous behavior of the complainant that is documented in the guardianship record;

(iv) To direct the guardian to provide, in not less than fourteen days, a written report to the court on the issues raised in the complaint;

(v) To defer consideration of the complaint until the next regularly scheduled hearing in the guardianship, if the date of that hearing is within the next three months, provided that there is no

indication that the incapacitated person will suffer physical, emotional, financial, or other harm as a result of the court's deferral of consideration;

(vi) To order other action, in the court's discretion, in addition to doing one or more of the actions set out in this subsection.

(d) If after consideration of the complaint, the court believes that the complaint is made without justification or for reason to harass or delay or with malice or other bad faith, the court has the power to levy necessary sanctions, including but not limited to the imposition of reasonable attorney fees, costs, fees, striking pleadings, or other appropriate relief.

(3) 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 is punishable as contempt of court.

(4) The administrative office of the courts must develop and prepare, in consultation with interested persons, a model form for the complaint described in subsection (2)(a) of this section and a model form for the order that must be issued by the court under subsection (2)(c) of this section.

(5) The board may send a grievance it has received regarding an active guardian case to the court's designee with a request that the court review the grievance and take any action the court deems necessary. This type of request from the board must be treated as a complaint under this section and the person who sent the complaint must be treated as the complainant. The court must direct the clerk to transmit a copy of its order to the board. The board must consider the court order when taking any further action and note the court order in any final determination.

(6) In any court action under this section that involves a professional guardian, the court must direct the clerk of the court to send a copy of the order entered under this section to the board.

(7) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Board" means the certified professional guardianship board.

(b) "Complaint" means a written submission by an unrepresented person or entity, who is referred to as the complainant.

[2017 c 271 § 2; 2015 c 293 § 1; 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:

Findings—2017 c 271: "The legislature finds that an incapacitated person should retain basic rights enjoyed by the public, including the freedom of associating with family and friends. A court or guardian should not remove or restrict the rights of an incapacitated person under a guardianship except when absolutely necessary to protect the incapacitated person. The legislature finds that less restrictive alternatives are preferred to guardianships and limited guardianships when they provide adequate support for an incapacitated person's needs. The legislature also recognizes that less restrictive alternatives are typically less expensive to administer than a guardianship, thereby preserving state resources, court resources, and the incapacitated person's estate. A less restrictive alternative may be in the form of a power of attorney, or a trust, or other legal, financial, or medical directives that allow an incapacitated person to enjoy a greater degree of individual liberty and decision making than for persons under a guardianship." [2017 c 271 § 1.]

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.

Appendix C

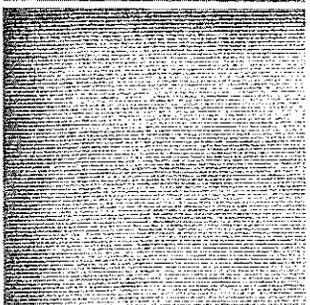


PRESUME
 Capacity
 is not needed

REASON
 Clearly identify
 the reason for
 concern

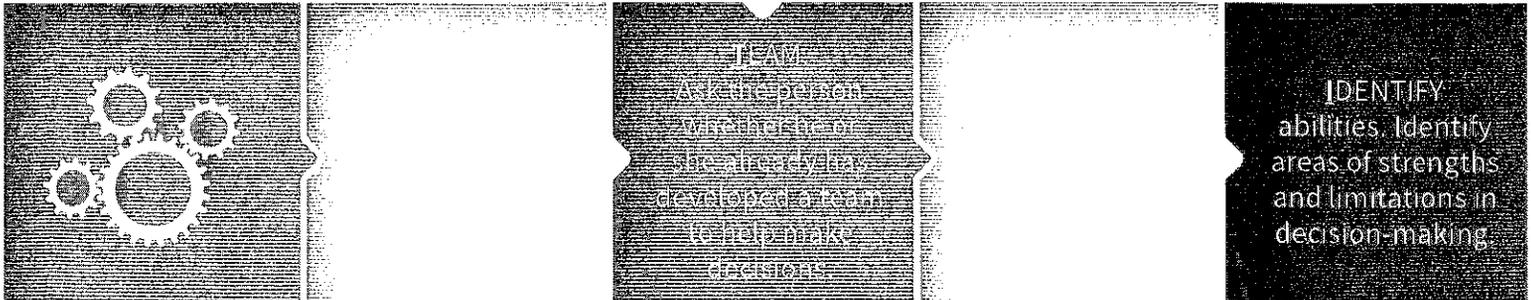


ASK
 If a triggering
 concern may
 be caused by
 temporary
 or reversible
 conditions.



PRACTICAL Tool for Lawyers:

Steps in Supporting Decision-Making



TEAM
 Ask the person
 whether he or
 she already has
 developed a team
 to help make
 decisions.

IDENTIFY
 abilities. Identify
 areas of strengths
 and limitations in
 decision-making.



CHALLENGES.
 Screen for and
 address any
 potential challenges
 presented by the
 identified supports
 and supporters.

LIMIT
 any necessary
 guardianship
 petition and order.



Jointly produced by the
 Commission on Law and Aging;
 Commission on Disability Rights;
 Section on Civil Rights and Social Justice; and
 Section on Real Property, Trust and Estate Law



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PRACTICAL Tool for Lawyers: Steps in Supporting Decision-Making

The PRACTICAL Tool aims to help lawyers identify and implement decision-making options for persons with disabilities that are less restrictive than guardianship. It is a joint product of four American Bar Association entities – the Commission on Law and Aging, Commission on Disability Rights, Section on Civil Rights and Social Justice, and Section on Real Property, Trust and Estate Law, with assistance from the National Resource Center for Supported Decision-Making. Learn more about the PRACTICAL Tool and Resource Guide at www.ambar.org/practicaltool.

PRESUME guardianship is not needed.

- Consider less restrictive options like financial or health care power of attorney, advance directive, trust, or supported decision-making
- Review state statute for requirements about considering such options

Observations and Notes:

REASON. Clearly identify the reasons for concern.

Consider whether the individual can meet some or all of the following needs:*

Money Management:

- Managing accounts, assets, and benefits
- Recognizing exploitation

Health Care:

- Making decisions about medical treatment
- Taking medications as needed
- Maintaining hygiene and diet
- Avoiding high-risk behaviors

Relationships:

- Behaving appropriately with friends, family, and workers
- Making safe decisions about sexual relationships

Community Living:

- Living independently
- Maintaining habitable conditions
- Accessing community resources

Personal Decision-Making:

- Understanding legal documents (contracts, lease, powers of attorney)
- Communicating wishes
- Understanding legal consequences of behavior

Employment:

- Looking for, gaining, and retaining employment

Personal Safety:

- Avoiding common dangers
- Recognizing and avoiding abuse
- Knowing what to do in an emergency

Observations and Notes
(List supports needed.):

*Adapted from University of Missouri Kansas City, Institute for Human Development, "MO Guardianship: Understanding Your Options & Alternatives," <http://moguardianship.com>.

ASK if a triggering concern may be caused by temporary or reversible conditions.

Look for steps to reverse the condition or postpone a decision until the condition improves.

Are concerns the result of or related to temporary or reversible conditions such as:

- Medical conditions:** Infections, dehydration, delirium, poor dental care, malnutrition, pain
- Sensory deficits:** hearing or vision loss
- Medication side effects**
- Psychological conditions:** stress, grief, depression, disorientation
- Stereotypes or cultural barriers**

Observations and Notes:

COMMUNITY. Determine if concerns can be addressed by connecting the individual to family or community resources and making accommodations.

Ask "what would it take?" to enable the person to make the needed decision(s) or address the presenting concern.

Might any of the following supports meet the needs:

Community Supports:

- In-home care, adult day care, personal attendant, congregate and home delivered meals, transportation
- Care management, counseling, mediation
- Professional money management

Accommodations:

- Assistive technology
- Home modifications

Residential Setting:

- Supported housing or group home
- Senior residential building
- Assisted living or nursing home

Informal Supports from Family/Friends:

- Assistance with medical and money management
- Communication assistance
- Identifying potential abuse

Observations and Notes:

T**EAM.** Ask the person whether he or she already has developed a team to help make decisions.

- Does the person have friends, family members, or professionals available to help?
- Has the person appointed a surrogate to help make decisions?

Observations and Notes:

I**DENTIFY abilities.** Identify areas of strengths and limitations in decision-making if the person does not have an existing team and has difficulty with specific types of decisions.

Can the individual:

- Make decisions and explain his/her reasoning
- Maintain consistent decisions and primary values over time
- Understand the consequences of decisions

Observations and Notes:

C**HALLENGES.** Screen for and address any potential challenges presented by the identified supports and supporters.

Screen for any of the following challenges:

Possible challenges to identified supports:

- Eligibility, cost, timing or location
- Risk to public benefits

Possible concerns about supporters:

- Risk of undue influence
- Risk of abuse, neglect, exploitation (report suspected abuse to adult protective services)
- Lack of understanding of person's medical/mental health needs
- Lack of stability, or cognitive limitations of supporters
- Disputes with family members

Observations and Notes:

APPOINT legal supporter or surrogate consistent with person's values and preferences.

Could any of these appointments meet the needs:

- Agent under health care power of attorney or advance directive
- Health care surrogate under state law
- Agent under financial power of attorney
- Trustee
- Social Security representative payee
- VA fiduciary
- Supporter under representation agreement, legally or informally recognized

Observations and Notes:

LIMIT any necessary guardianship petition and order.

If a guardian is needed:

- Limit guardianship to what is absolutely necessary, such as:
 - Only specific property/financial decisions
 - Only property/finances
 - Only specific personal/health care decisions
 - Only personal/health care decisions
- State how guardian will engage and involve person in decision-making
- Develop proposed person-centered plan
- Reassess periodically for modification or restoration of rights

Observations and Notes:

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CERTIFICATE OF SERVICE

The undersigned declares under penalty of perjury of the laws of the State of Washington as follows: On August 31, 2018, I filed the foregoing document with the Court and served a copy on the undersigned in the manner indicated:

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Harry Bennetts 9103 Chestnut Hill Lane SE Olympia, WA 98513	<input checked="" type="checkbox"/> by U.S. Mail, first class postage prepaid
Margaret Bennetts 9103 Chestnut Hill Lane SE Olympia, WA 98513	<input checked="" type="checkbox"/> by U.S. Mail, first class postage prepaid
William P. Kogut, WSBA #14992 Court-Appointed Attorney for Margaret Bennetts 1611 N. National Avenue Chehalis, WA 98532-2212 (360) 357-3007 wmkogut@rainierconnect.com	<input checked="" type="checkbox"/> by electronic filing
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Robert B. Nettleton, WSBA #17403 Attorney for Guardian Harlowe & Falk LLP One Tacoma Avenue North, Suite 300 Tacoma, WA 98403 (253) 284-4412 rnettleton@harlowefalk.com	<input checked="" type="checkbox"/> by electronic filing

Dated: August 31, 2018



Print Name: Heidi Raedel Magaro

BAUER PITMAN SNYDER HUFF LIFETIME LEGAL

August 31, 2018 - 4:36 PM

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Superior Court Case Number: 17-4-00484-1

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