

FILED
Court of Appeals
Division II
State of Washington
10/21/2019 8:00 AM

NO. 53261-1-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

GUARDIANSHIP OF:

T.H.,
Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR PIERCE COUNTY

The Honorable Susan K. Serko, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The trial court abused its discretion ordering a guardianship for T.H.'s person where the state did not prove that he is at significant risk of personal harm in his current setting.

2. The trial court abused its discretion ordering a guardianship for T.H.'s estate where the state did not prove that he is at significant risk of financial harm based upon a demonstrated inability to adequately manage property or financial affairs.

3. T.H. assigns error to finding of fact 5.1, which indicates without substantial evidence in the record that T.H. "is at significant risk of personal harm based on a demonstrated inability to adequately provide for his personal needs".

4. T.H. assigns error to finding of fact 5.2, which indicates without substantial evidence in the record, that T.H. "is at significant risk of financial harm based on a demonstrated inability to adequately manage his financial affairs."

5. T.H. assigns error to finding of fact 5.5, which indicates without substantial evidence in the record, that T.H. “is unable to manage property without risk of harm....”

6. T.H. assigns error to finding of fact 5.6, which indicates without substantial evidence in the record, that “he has refused recommended medical care”.

7. T.H. assigns error to finding of fact 5.7, which indicates without substantial evidence in the record, that T.H. “requires a guardian to advocate for his needs and provide an additional layer of support to prevent him from coming to harm”.

Issue Presented on Appeal

1. Did the trial court abuse its discretion ordering a guardianship based on T.H.’ future rather than for T.H.’s current situation where there is no risk of harm to his person or estate, and his current setting is in his best interests and least restrictive?

B. STATEMENT OF THE CASE

T.H. is a 74-year-old man who suffers from schizophrenia. RP 27, 73-74. T.H. has lived at Western State Psychiatric Hospital

(WSH) on and off since 2009. RP 28, 83. T.H. has achieved stability related to his mood and behavior while at Western State, but he still suffers from disorganized thoughts and grandiose delusions of being extremely wealthy and owning numerous homes. RP 45, 75-76, 109.

Based on T.H.'s improved psychological state, Western State wants to discharge him from the hospital. RP 68. T.H. does not seem to want to leave WSH and refuses to cooperate with the discharge process. 71. Specifically, T.H. refused to apply for Medicaid for discharge because he believes he is very wealthy and can afford his own care. RP 71-72.

The Washington State Department of Social and Health Services initiated proceedings to have a legal guardian appointed to T.H. for the purpose of assisting in the discharge process. CP 21-24. The trial court appointed a guardian ad litem (GAL) and T.H. elected to proceed to a bench trial on the issue of his incapacity. CP 27, 76-79. The court ordered the appointment of a guardian for T.H. and his estate. CP 24.

T.H. was diagnosed with schizophrenia when he was 16 years old and has been admitted and discharged from Western

State Hospital on 11 previous occasions without ever needing a guardian. RP 73-74 -83. RP 125. According to Dr. Nancy Larsen, PhD, the ward psychologist, T.H. does very well in a structured setting like WSH. RP 99.

T.H. earns money in WSH and unlike many other residents is able to manage his earnings well and knows how to make his funds last until he is eligible to obtain more funds for daily pocket money needs. RP 106. T.H.'s mood is stable and his nutritional, financial and other needs are all well met in this current setting. RP 109. T.H. states that he does not want to take his medications, but does so without issue. RP 105.

Despite T.H. not being at any risk of harm, Larsen recommended appointing a guardian to look after T.H.'s best interests. RP 110. Dr. Epistola, a psychiatrist, filed the formal request for a guardian but did not testify. RP 111. Larson relied on Epistola's report, even though the report was not admitted into evidence. Ex. 4; RP 111-12.

Larsen acknowledged that an adult home would provide for T.H.'s needs, but recommended a guardian to assist with daily needs despite acknowledging that a guardian would only see T.H.

monthly or quarterly, expect perhaps in the beginning where the contact could be more frequent. RP 115-16, 125.

a place where he has someone to make sure that he's receiving his medications; that he is provided with nutritious meals; that he has a safe place to sleep at night; you know, that he has adequate proper food and clothing when he leaves the building, that type of thing. So where there's assistance for anything that he's not able to do independently; that there's a proper support there to help him to maintain his highest level of possible functioning.

RP 115-16.

On a prior occasion, T.H. was taken to an adult facility to see if he wanted to live there, but refused to go inside, preferring to return to WSH. RP 121-22. Larsen admitted that with or without a guardian, no one could force T.H. to leave WSH. RP 121-22. Larsen also admitted that no one could force T.H. to take his medications. RP 102.

Suzanne Winiger, the GAL with a nursing and legal background appointed to T.H.'s case, reviewed all of the reports and met with T.H. nine months earlier. RP 42-44. Her only concern for T.H. consisted of moving T.H. to a non-structured location, even though no one made this recommendation. RP 42-43, 70, 79, 82-83, 88-89. Winiger believed that T.H. should retain the right to

make medical, social and health related decisions. RP 43.

Winiger has no information on T.H. financial status, but did not think that he could manage any large transactions on his own. RP 45. T.H. believes he is wealthy, but there is no evidence to support this. By contrast, the evidence established that T.H. is on SSI disability and receives \$947 per month. RP 30-32, 75. Winiger spoke to a potential guardian who was not available. RP 50.

Winiger believes that T.H. is well cared for in his current setting but would need a limited guardian to manage finances only if he was discharged. RP 48-49, 54. Winiger's sole concern, like Larsen's, related to the prospect of releasing T.H. to a non-structured facility, but Winiger recognized that a guardian could not keep T.H. safe. RP 56-57, 115-16, 125.

[A] guardian isn't going to solve his issues to keep him safe, healthy nutrition. They can control the money, they can control where it's spent in that realm and make sure he has shelter, but they can't force it. So I think from that perspective there are a lot of great things he can do on his own, but without family support, without outside supports like that, I think the risk for him was too great for me to say there's nothing that he needs if he should have to leave this secure facility.

RP 56-57.

Jessica Kastle is a psychiatric social worker who is part of

the discharge team at WSH. RP 63-64. She works with T.H. daily. RP 68. Kastle, like Larsen and Winiger agrees that T.H. needs a structured environment. RP 70. Kastle believes the least restrictive setting is an adult home where all of his needs would be met. RP 70, 79.

Like the others, her only area of concern involves T.H.'s unwillingness to cooperate with applying for Medicaid to pay for an adult home. RP 89. Kastle testified that this is necessary for discharge, even though T.H. has been discharged 11 times without a guardian. RP 71-73, 77, 80-83. Kastle did admit that the least restrictive alternative in lieu of a guardian would consist of a psychiatrist filling out a form indicating that T.H. needs a payee. RP 77-78. WSH is the current payee. RP 48-49.

T.H. moved to dismiss the state's petition before trial began on the grounds that the psychiatrist who evaluated him and provided a report to the trial court pursuant to RCW 11.88.045(4) did not appear at trial to testify in support of the state's petition. RP 8-9, 11-13. The state argued that the statute did not require the person who prepared the report to testify at trial and that the statute was satisfied so long as the author filed a written report. RP 15-16.

The appointed GAL informed the court that she was confused by the state's petition for a guardian because T.H.'s needs were being met in his current residence and there was no evidence that a guardian was currently needed. RP 40. The trial court denied T.H.'s motion to dismiss. RP 17.

The court orally ruled that it would appoint a guardian. RP 138.

Based on 11.88.010, I think I do have the power and authorization, based on the argument, based on the briefing, and most importantly based on the witness testimony, to appoint a limited guardian in this case in conformance with the guardian ad litem report. I have found by clear, cogent and convincing evidence that [TH] is incapacitated as to his person because he is at significant risk of personal harm based on demonstrated inability to adequately provide for his own nutrition health, housing, or physical safety.

Id.

Okay. As to the estate, I also find that he is incapacitated, based on the fact that he is at significant risk of financial harm, due to a demonstrated inability to adequately manage property or financial affairs. Now as to those two findings by clear, cogent and convincing evidence, I do want them somewhat limited. The first with regard to the person should be limited by the limitations suggested by the guardian ad litem. As to the second, it would mean those very limited financial distributions to [TH] so that he can have a modest amount of –

THE COURT: -- personal spending money. Thank

you.

And I do find that this guardianship is in his best interest so that an investigation can be made on a less restrictive alternative, some kind of a structured setting; not assisted living because that's where he ran into trouble before apparently, something living in the community, but it truly would have to be very structured with obviously some kind of a facility that understands his history and medical concerns. And then I hesitate on this last one but I'm inclined to retain jurisdiction on the issue of who should be the guardian, what should be the facility, what are the parameters of the structure, and so forth, so that he is safe and so frankly he's not a risk to himself or a risk to wherever he ends up being and the personnel at that facility.

RP 138-39. The written order is attached as Appendix A and provides in relevant as follows:

5.1 [TH] is at significant risk of personal harm based upon a demonstrated inability to adequately provide for his personal needs.

5.2 [TH] is at significant risk of financial harm based upon a demonstrated inability to adequately manage his financial affairs.

5.3 He has history of not sufficiently managing his mental health needs, leading to harmful interactions with others and law enforcement.

5.4. He lacks the cognitive organization to manage anything more than small amounts of money.

5.5 He is unable to manage property without the risk of harm, delusionally believing that he has millions of dollars in the bank and owns multiple properties.

5.6 He has refused recommended medical care.

5.7 His condition has recently stabilized to the point that he could live in a highly structured community setting, but requires a guardian to advocate for his needs and provide an additional layer of support to prevent him from coming to harm.

5.8 Based upon the recommendation of the Guardian ad Litem, the Court finds that he understands the process and importance of voting, so he will retain his right to vote.

6. Guardian: There is no named proposed guardian at the time this order is entered. The guardian shall be a certified professional.

7. Guardian ad Litem Fees and Costs:

The Guardian ad Litem was appointed at County estate expense and shall be paid according to her Pierce County contract.

8. Bond: The assets of the Alleged Incapacitated Person:

Total less than three thousand dollars (\$3,000) and therefore no bond is required.

Are to be placed in a blocked account with an insured financial institution or are to be held by a bank or trust company, and therefore no bond is required.

Are in whole or in part to be held by the Guardian and bond in the amount of \$ _____ is required.

9. Right to Vote: The Alleged Incapacitated Person

is

is not

capable of exercising the right to vote due to the following facts [TH] could articulate what it meant to vote, and the process, purpose, and importance of voting.

CONCLUSIONS OF LAW

1. [TH] is an incapacitated Person within the meaning of RCW Chapter 11.88, and a [x] the Alleged Incapacitated Person is capable of managing some personal and/or financial affairs, but is in need of the protection and assistance of a limited Guardian of his or her

[x] person

[x] estate

CP 92-93.

The AAG clarified for the court that the civil commitment court under RCW 71.05, and this court under RCW 11.88, retain concurrent jurisdiction as long as T.H. remains civilly committed. RP 139-43. The court ordered a guardian without a known guardian available and sealed exhibits 1-4. RP 150-51. The parties explained that there cannot be a guardianship without a guardian appointed. RP 153. T.H. timely appealed. RP 156-57; CP 108-122.

C. ARGUMENT

1. THE TRIAL COURT ABUSED ITS DISCRETION BY APPOINTING A GUARDIAN OVER T.H. AND HIS ESTATE WHERE HE WAS NOT UNABLE TO MANAGE HIS AFFAIRS AT THE TIME THE GUARDIANSHIP WAS SOUGHT

The trial court misinterpreted the guardianship statute to order a guardianship based on the future possibility that T.H. may

be at risk of harm if moved from WSH, but not based on any current risk of harm. CP 27-31. In reviewing errors of law, the appellate court reviews *de novo*. See, e.g., *Lyster v. Metzger*, 68 Wn.2d 216, 226, 412 P.2d 340 (1966); *Sdorra v. Dickinson*, 80 Wn. App. 695, 701, 910 P.2d 1328 (1996).

Appointing a guardian is a tremendous intrusion on a person's liberty. Andrews, *The Elderly in Guardianship: A Crisis of Constitutional Proportions*, 5 Elder L.J. 75 (1997). The Washington State Legislature has clearly expressed that guardianship is only to be imposed as a last resort, and that the authority of a guardian is to be limited and tailored to the needs of an incapacitated person. RCW 11.88.05. ("liberty and autonomy should be restricted through the guardianship process only to the minimum extent necessary") RCW 11.88.05.

The court may not order a guardianship unless it is in the best interests of the individual. *In re Guardianship of Ingram*, 102 Wn.2d 827, 842, 689 P.2d 1363 (1984). "The court need not place on any party any particular burden of proof or persuasion, nor give any presumption of validity to the petition of the guardian or guardian ad litem."

Thus, while the guardian has the authority to “assert the incapacitated person's rights and best interests” RCW 11.92.043(4), it remains at all times the responsibility of the court to make the decision as to the ward's best interest. *Ingram*, 102 Wn.2d at 842.

The goal of a guardianship is to do what the ward would do, if the ward were competent to make the decision in question. *Id.* at 838. Superior courts are authorized to appoint guardians for the persons and estates of incapacitated persons upon determining that the individual is at a significant risk of personal or financial harm as a result of incapacities provided by statute. RCW 11.88.010(1). The guardianship act, chapter 11.88 RCW, sets forth the procedure for establishing guardianships and limited guardianships for incapacitated persons. *In re Marriage of Blakely*, 111 Wn. App. 351, 357, 44 P.3d 924 (2002).

The legislative intent of the guardianship statutes is to enable all people of this state “to exercise their rights under the law to the maximum extent, consistent with the capacity of each person. RCW 11.88.05. Liberty and autonomy are “to be restricted

through the guardianship process only to be minimum extent necessary". Id.

Initially, to legally appoint a guardian over a person's wishes, the court must determine the person to be incapacitated at the time appointment is sought and currently at risk of harm, rather than at some other time. RCW 11.88.010(1). An "incapacitated" person means "the individual has a significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety." RCW 11.88.010(1)(a).

"Incapacitated" as to the person's estate means "the individual is at significant risk of financial harm based upon a demonstrated inability to adequately manage property or financial affairs." RCW 11.88.010(1)(b). The decision regarding incapacity is a legal not a medical decision. RCW 11.88.010(1)(c). T.H. does not challenge that he is incapacitated. Rather he argues that he is in a setting where there is no risk of harm to his person or estate, and he is capable of managing all of his affairs in his current setting without a guardian.

There is insufficient evidence to support findings of fact 5.1, 5.2, 5.3 because T.H. is not at a risk of harm; he is able to manage

himself and his affairs in his current setting. All of the state's experts testified that all of T.H.'s needs were being met at WSH, and that he is able to manage his needs in his current setting without a guardian. RP 42-43, 48-49, 54, 56-57, 70-74, 77, 79, 80-83, 88-89, 105-06, 109-10, 125. The only concern arose regarding the possibility of T.H. needing a financial guardian for his estate if he was discharged, but there was no evidence that he had an estate outside his receipt of less than \$1000 per month for SSI. RP 30-32, 75.

Further, the evidence indicated that T.H. manages his daily pocket money without assistance. RP 106. In sum, there is no evidence to support findings of fact 5.1, 5.2, 5.3 5.5. T.H. manages his limited property. Similarly, there is no evidence to support finding of fact 5.6 which stated T.H. has refused recommended medical care. Rather T.H. refused to fill out Medicaid paperwork. RP 72.

The guardianship statutes do not seem to authorize appointment of a guardian to serve the interests of WSH in discharging a patient who is doing well and does not meet the criteria for being at risk of harm to himself or to his estate. RCW

11.88.010. Guardianship is a last resort measure and is not needed in this case. Id. RP 70, 79, 115-16, 125.

At most, as indicated by Kastle T.H. may need a payee if discharged from WSH. RP 42-43, 48-49, 54, 56-57, 70-74, 77, 79, 80-83, 88-89, 105-06, 109-10, 125. If discharged to an adult home, like the previous 11 occasions, such a structured setting would take care of T.H.'s daily needs whereas as guardian would only be in contact with T.H. on a monthly or quarterly basis at best, and therefore would have no ability to prevent any harm coming to T.H. RP 70, 79, 115-16, 125.

Least Restrictive Alternative

RCW 11.001.501 authorizes the court to order a protective arrangement instead of a guardianship as a least restrictive alternative. RCW 11.001.501(1)(a). Currently, T.H. is in a protective arrangement where he is stable and does not wish to leave. An adult home is also a protective setting that can be arranged without a guardian, but with the assistance of a payee. RP 77-78. T.H. is doing very well in WSH and there is no evidence he desires a change in placement. If he should desire to move, the court could provide him with a payee, least restrictive alternative for T.H. that is

in his best interests. *Ingram*, 102 Wn.2d at 842.

D. CONCLUSION

The trial court abused its discretion by appointing a guardian for T.H.'s person and estate based on WSH's wish to discharge him rather than based on T.H. residing in a protective setting that is both least restrictive and in his best interests.

DATED this 21st day of October 2019.

Respectfully submitted,



LISE ELLNER, WSBA No. 20955
Attorney for Appellant

I, Lise Ellner, a person over the age of 18 years of age, served the Office of the Attorney General shsappealnotification@atg.wa.gov and T.H., 9601 Steilacoom Blvd SW, Tacoma, WA 98498 a true copy of the document to which this certificate is affixed on October 21, 2019. Service was made by electronically to the prosecutor and Thomas Hawes by depositing in the mails of the United States of America, properly stamped and addressed.



Signature

APPENDIX A



18-4-00544-5 52734573 ORAPGD 01-28-19



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

In re the Guardianship of:

THOMAS HAWES,

an Alleged Incapacitated Person.

) Case No. 18-4-00544-5

) ORDER APPOINTING:

) LIMITED

) FULL GUARDIAN OF PERSON

) AND/OR

) LIMITED

) FULL GUARDIAN OF ESTATE

) Clerk's Code:

) (ORAPGD/ORAPGDV)

) CLERK'S ACTION REQUIRED

GUARDIANSHIP SUMMARY

Date Guardian Appointed:	_____
Due Date for Report and Accounting:	_____
Date of Next Review:	_____
Letters Expire On:	_____
Bond Amount:	_____
Restricted Account:	_____
Agreements Required:	_____
Due Date for Inventory:	_____
Due Date for Care Plan:	_____
Right to Vote Revoked:	<u>No</u>

Mandatory review hearing set for April 5, 2019 at 9 am pending appointment of guardian. Once guardian is appointed, hearing will be scheduled.

11 9/23 [Signature]

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Incapacitated Person
(IP)

Guardian of: Person and Estate

Mr. Thomas Hawes

<u>Interested Parties</u>	<u>Address</u>	<u>Relation to IP</u>
Eleanor Chafon	Unknown	Sister

THIS MATTER came on regularly for hearing on a Petition for Appointment of:

_____, as

Guardian or Limited Guardian of Thomas Hawes, the Alleged Incapacitated Person. Trial was held January 17, 2019.

- The Alleged Incapacitated Person was present in Court;
- The hearing was conducted outside of the courtroom at the location of the Alleged Incapacitated Person;
- The Alleged Incapacitated Person's presence was waived for good cause shown other than mere inconvenience, as set forth in the file and reports in this matter;

The Guardian ad Litem, **Suzanne Thompson Winger**, was present and testified. The following other persons were testified at the hearing: Steven Lust, attorney for Alleged Incapacitated Person; Assistant Attorney General Doug Boling, attorney for petitioners; Jessica Kastl, MSW; and Nancy Larsen, Ph.D.

The Court considered the written report of the Guardian ad Litem and the Medical/ Psychological Report by Dr. Rosa Epistola, the testimony of witnesses, remarks of counsel, and the documents filed herein. Based on the above, the Court makes the following:

FINDINGS OF FACT

1. Notices: All notices required by law have been given and proof of service as required by statute is on file.

- Notice, if required, was provided to the Regional Administrator of DSHS pursuant to RCW 11.92.150, but DSHS neither appeared at this hearing nor responded to the Petition.

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The Alleged Incapacitated Person is a child and Notice is not required to a Tribe because the child is not subject to the Indian Child Welfare Act, 25 USC 1983 et seq.

The Alleged Incapacitated Person is a child subject to the Indian Care Welfare Act and notice has been provided to the minor child's Tribe

2. Jurisdiction: The jurisdictional facts set forth in the petition are true and correct, and the Court has jurisdiction over the person and/or estate of the Alleged Incapacitated Person.

3. Guardian ad Litem: The Guardian ad Litem appointed by the Court has filed a report with the Court. The report is complete and complies with all the requirements of RCW 11.88.090.

4. Alternative Arrangements Made By The Alleged Incapacitated Person:

The Alleged Incapacitated Person did not make alternative arrangements for assistance, such as a power of attorney, prior to becoming incapacitated.

The Alleged Incapacitated Person made alternative arrangements for assistance, but such arrangements are inadequate in the following respect: _____

_____ has been acting in a fiduciary capacity for the Alleged Incapacitated Person and should / should NOT continue to do so for the following reasons: _____

5. Capacity: The Alleged Incapacitated Person, Thomas Hawes, is:

incapable of managing his or her personal affairs

incapable of managing his or her financial affairs

the Alleged Incapacitated Person is in need of a full Guardianship over his or her

person

estate

the Alleged Incapacitated Person is capable of managing some personal and/or financial affairs, but is in need of the protection and assistance of a limited Guardian of his or her

person

estate

The Court makes the following additional findings of fact based on the testimony at trial:

5.1 Mr. Hawes is at significant risk of personal harm based upon a demonstrated inability to adequately provide for his personal needs.

1 5.2 Mr. Hawes is at significant risk of financial harm based upon a demonstrated inability
2 to adequately manage his financial affairs.

3 5.3 He has a history of not sufficiently managing his mental health needs, leading to
4 harmful interactions with others and law enforcement.

5 5.4 He lacks the cognitive organization to manage anything more than small amount of
6 money.

7 5.5 He is unable to manage property without the risk of harm, delusionally believing that
8 he has millions of dollars in the bank and owns multiple properties.

9 5.6 He has refused recommended medical care.

10 5.7 His condition has recently stabilized to the point that he could live in a highly
11 structured community setting, but requires a guardian to advocate for his needs and
12 provide an additional layer of support to prevent him from coming to harm.

13 5.8 Based on the recommendation of the Guardian Ad Litem, the Court finds that he
14 understands the process and importance of voting, so he will retain his right to vote.

15 **6. Guardian:** There is no named proposed guardian at the time this order is entered. The
16 guardian shall be a certified professional.

17 **7. Guardian ad Litem Fees and Costs:**

18 The Guardian ad Litem was appointed at County estate expense and shall be
19 paid according to her Pierce County contract.

20 **8. Bond:** The assets of the Alleged Incapacitated Person:

- 21 Total less than three thousand dollars (\$3,000) and therefore no bond is required.
22 Are to be placed in a blocked account with an insured financial institution or are to be held
23 by a bank or trust company, and therefore no bond is required.
24 Are in whole or in part to be held by the Guardian and bond in the amount of
25 \$ _____ is required.

9. Right to Vote: The Alleged Incapacitated Person

is
 is not
capable of exercising the right to vote due to the following facts Mr. Hawes could articulate
what it meant to vote, and the process, purpose, and importance of voting.

CONCLUSIONS OF LAW

1. Thomas Hawes is an Incapacitated Person within the meaning of RCW Chapter 11.88, and a

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1 Full Limited Guardian of the Person ("Guardian of the Person") and/or

2 Full Limited Guardian of the Estate ("Guardian of the Estate")

3 There is no named proposed guardian at this time. One should be identified and once they agree
4 to serve, the parties shall return to Court for an order.

5 **2.** That the limitations and restrictions placed on the Incapacitated Person should be as follows:

6 SHALL NOT HAVE THE RIGHT TO MARRY, DIVORCE, OR ENTER INTO OR END
7 A STATE REGISTERED DOMESTIC PARTNERSHIP

8 SHALL NOT HAVE THE RIGHT TO ENTER INTO A CONTRACT OR MAKE OR
9 REVOKE A WILL, BUT MAY MAKE A WILL WITH ASSISTANCE FROM GUARDIAN

10 SHALL NOT HAVE THE RIGHT TO APPOINT SOMEONE TO ACT ON HIS/HER
11 BEHALF

12 SHALL NOT HAVE THE RIGHT TO SUE AND BE SUED OTHER THAN THROUGH
13 A GUARDIAN

14 SHALL NOT HAVE THE RIGHT TO POSSESS A LICENSE TO DRIVE

15 SHALL NOT HAVE THE RIGHT TO BUY, SELL, OWN, MORTGAGE, OR LEASE
16 PROPERTY

17 SHALL NOT HAVE THE RIGHT TO CONSENT TO OR REFUSE MEDICAL
18 TREATMENT, BUT ONLY IF DETERMINED UNABLE TO COMPETENTLY DO SO;
19 OTHERWISE RETAINS THIS RIGHT. THE GUARDIAN SHALL HAVE SOLE
20 AUTHORITY TO MAKE THIS DETERMINATION.

21 SHALL NOT HAVE THE RIGHT TO DECIDE WHO SHALL PROVIDE CARE AND
22 ASSISTANCE, BUT ONLY IF DETERMINED UNABLE TO COMPETENTLY DO SO;
23 OTHERWISE RETAINS THIS RIGHT. THE GUARDIAN SHALL HAVE SOLE
24 AUTHORITY TO MAKE THIS DETERMINATION.

25 SHALL NOT HAVE THE RIGHT TO MAKE DECISIONS REGARDING SOCIAL
ASPECTS OF HIS/HER LIFE

SHALL NOT HAVE THE RIGHT TO VOTE OR HOLD AN ELECTED OFFICE

3. That the Guardian of the person upon the issuance of Letters, shall have the following authority
and responsibilities:

All of the powers and responsibilities of a Guardian of the person pursuant to the provisions
of Chapter 11.92 RCW.

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1 To review, release, consent to the release of and use as appropriate all medical, dental,
2 mental health, psychological, psychiatric, medication, laboratory and social services work
3 records, charts, evaluations and reports concerning the incapacitated person;

4 To monitor the conditions and needs of the incapacitated person.

5 To consent to and arrange for, or refuse to consent to, medical, dental, psychological or
6 psychiatric treatment and care, including any and all medications, diagnostic testing,
7 evaluation, or examination, but only if the incapacitated person is determined unable to do so
8 competently. **HOWEVER, guardian shall have authority to consent to and arrange for,
9 or refuse to consent to placement and/or transfer to an appropriate health care facility
10 such as, but not limited to, an adult family home, hospital, assisted living facility or
11 nursing home;**

12 To select or discharge any health care or medical provider;

13 To decide code status of the ward, including the use of life sustaining measures, including
14 intravenous therapy, tube feedings, hydration, antibiotics, pain medications and comfort care;

15 To provide substitute informed consent (RCW 7.70.065) to medical or dental treatment,
16 medications for the incapacitated person, including surgery, except where contrary to law and
17 only if incapacitated person is unable to competently decide;

18 To provide for or contract for case care or management services on behalf of the
19 incapacitated person;

20 To provide for such other personal assistance as the incapacitated person requires;

21 To establish a pre-need burial or cremation plan for the incapacitated person;

22 Pursuant to 45 CFR 164.514, all providers who are covered entities under the Health
23 Insurance Portability and Accountability Act (HIPAA), and/or their business associates **shall**
24 release any and all health information requested by the Guardian, to the Guardian, upon
25 receiving a copy of this document.

4. That the Guardian of the estate shall have, upon the issuance of letters, the following
authority and responsibilities:

All of the powers of a Guardian of the estate pursuant to the provisions of Chapter 11.92
RCW.

To undertake the management of the financial affairs of the incapacitated person, including
but not limited to contracting for and incurring obligations on behalf of the incapacitated

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1 person, becoming representative payee of any income from Social Security, income from
2 employment of the incapacitated person, and any other sources of revenue or income;

3 To locate and gather assets;

4 To enter any safe deposit box(es) held in the name of the incapacitated person (individually
5 or with another), and inventory and/or remove any contents there from, and to maintain and/or
6 close said box(es) or to add items thereto, or to drill open the safe deposit box(es) in the event
7 the keys to the box(es) are misplaced or missing, as deemed by the Guardian to be in the
8 incapacitated person's best interests;

9 To close any financial accounts, including bank accounts held individually or jointly with
10 another, and to make withdrawals, deposits or transfer of funds into or out of any such
11 accounts, without the necessity of obtaining the written authority of any other person named
12 on any such joint accounts;

13 To establish guardianship account(s);

14 To proceed to expend funds as necessary for the benefit of the incapacitated person subject
15 to review by the Court;

16 To convert all holdings, including but not limited to savings accounts, money market
17 accounts, IRAs, mutual funds, stocks, bonds, cash, automobiles, mobile homes, and any other
18 personal property, including pensions, annuities, 401Ks, and any other income, into the name
19 of said Guardian for the purposes of the guardianship; and all other reasonable duties required
20 of a Guardian.

21 Any bank, savings and loan, credit union, stock brokerage, insurance company, or other
22 institution holding assets of the incapacitated person, including but not limited to cash,
23 investments, stocks, bonds, certificates, funds, safe deposit box or personal property, shall
24 release information or deliver the assets to the Guardian as directed by the Guardian.

25 The Guardian is further authorized to remove the incapacitated person's name from any
joint bank account and/or financial account and change the mailing address of any bank and/or
financial statement to any address the Guardian may request. In the event that an asset has
signatories or co-owners in addition to the incapacitated person, the Guardian shall have the
authority to block all access to such account, safe deposit box or property until true ownership
has been discovered.

The Guardian is authorized to enter any dwelling, residence or storage area rented or owned
by the incapacitated person, or access the land or property owned or rented (individually or

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with another) by the incapacitated person without the necessity of obtaining the written authority of any other person named on any such dwelling, land, property or storage area.

If it appears that the sale of real estate will be necessary to pay for the incapacitated person's expenses, the Guardian shall have the authority to retain a real estate appraiser to appraise said real estate, in order to petition the court for authority to sell the real property.

The Guardian is authorized to make disbursements for nursing home care, medical expenses and incidental expenses on behalf of the incapacitated person; **HOWEVER, MR. HAWES retains the right to a small amount of reasonable spending money to be disbursed at reasonable intervals as determined by the Guardian.**

The Guardian shall also have authority to arrange pre-need cremation or burial arrangements as may be necessary.

The Guardian shall also have the authority to remove, change, and/or re-key any locks to the incapacitated person's home, apartment, storage unit, rental property, vehicles or any other locked property that is owned by the incapacitated person.

ORDER

All of the findings of fact and conclusions of law completed and checked off above are hereby ordered by the Court; and the Court also orders as follows:

1. Prior Power of Attorney: Any Power of Attorney of any kind previously executed by the Incapacitated Person:

- is not cancelled
- is canceled in its entirety
- is canceled in its entirety except for those provisions pertaining to health care.

2. Appointment of Guardian: TO BE DETERMINED is appointed as

- Full Limited Guardian of the Person ("Guardian of the Person") and/or
- Full Limited Guardian of the Estate ("Guardian of the Estate") of: Thomas Hawes, and the powers of the Guardian and the limitation and restrictions placed on the Incapacitated Person shall be as set forth in Conclusion of Law Paragraphs 2 thru 4.

3. Letters of Guardianship/Limited Guardianship: The Clerk of the Court shall issue

- at no cost to
- Full Limited Guardianship of the Person and/or
- Full Limited Guardianship of the Estate to

_____, upon the filing of an oath and

A Guardianship bond in the amount of \$_____.

All assets in excess of the bond amount shall be held in blocked financial accounts, a receipt for which shall be filed within 30 days from entry of this order.

bond is waived.

If bond is waived, the Guardian is required to report to the Court if the total assets of the Incapacitated Person reaches or exceeds Three Thousand Dollars. Pursuant to RCW 11.88.100, the Guardian of the Estate shall file a yearly statement showing the monthly income of the Incapacitated Person if said monthly income, excluding moneys from state or federal benefits, is over the sum of Five Hundred Dollars per month for any three consecutive months.

4. Notification of Loss of Voting Rights: If the Court has found sufficient facts, as stated in Paragraph 9 of the Findings of Fact above, that the Incapacitated Person is unable to rationally exercise the right to vote, the Clerk of the Court shall notify the County Auditor.

5. Report of Substantial Change in Income of Assets: Within 30 days of any substantial change in the Estate's income or assets, the Guardian of the Estate shall report to the Court and schedule a hearing. The purpose of the hearing will be for the Court to consider changing the bond or making other provision in accordance with RCW 11.88.100.

6. Inventory: Within three months of appointment, the Guardian of the Estate shall file a verified inventory of all the property of the Incapacitated Person, which shall come into the Guardian's possession or knowledge, including a statement of all encumbrances, liens and other secured charges on any item. A review hearing upon filing of the inventory

is required.

is not required.

7. Disbursements: On or before the date the inventory is due, the Guardian of the Estate shall also apply to the Court for an Order Authorizing Disbursements on behalf of the Incapacitated Person as required by RCW 11.92.040.

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

9. Status of Incapacitated Person: Unless otherwise ordered, the Guardian of the Person shall file an annual report on the status of the Incapacitated Person that shall comply with the requirements of RCW 11.92.043(2).

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1 **10. Substantial Change in Condition or Residence:** The Guardian of the Person shall report to
2 the Court within thirty (30) days any substantial change in the Incapacitated Person's condition,
3 or any change in residence of the Incapacitated Person.

4 **11. Designation of Standby Guardian:** Within three months, the Guardian shall file a written
5 designation of a standby Guardian that complies with the requirements of RCW 11.88.125.

6 **12. Authority for Investment and Expenditure:** No investments shall be made without prior
7 order of the court in any property other than unconditional interest bearing obligations of this state
8 or of the United States and in obligations the interest and principal of which are unconditionally
9 guaranteed by the United States, and in share accounts or deposits which are insured by an agency
10 of the United States government.

11 **13. Duration of Guardianship:** This Guardianship shall continue in effect:

- 12 until _____ [date]; OR
- 13 until terminated pursuant to RCW 11.88.140;
- 14 the necessity for the Guardianship to continue shall be periodically reviewed.

15 **14. Discharge/Retention of Guardian ad Litem:**

- 16 The Guardian ad Litem is discharged; or
- 17 The Guardian ad Litem shall continue performing further duties or obligations as follows:
18 _The GAL does not have to submit reports every month. The GAL will work with Mr. Hawes'
19 counsel, and the petitioner to locate a suitable CPG willing to serve.

20 **15. Notice of Right to Receive Pleadings:** The following persons are described in RCW
21 11.88.090(5)(d), and the Guardian shall notify them of their right to file with the Court and serve
22 upon the Guardian, or the Guardian's attorney, a request to receive copies of pleadings filed by
23 the Guardian with respect to the Guardianship: _____
24 _____

25 **16. Guardian Fees:** The Guardian shall petition the Court for approval of fees. If the
Incapacitated Person is a client of the Department of Social and Health Services (DSHS), then the
Guardian shall provide notice of any request for approval and payment of its fees and costs to
DSHS. The Guardian may advance itself \$ 235 per month subject to Court review and
approval.

17. Guardian ad Litem Fee:

- Fees and costs are approved as reasonable; OR

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The Guardian ad Litem fees and costs are approved as reasonable in the total amount of \$ 1000. They shall be paid from the Guardianship estate assets, Pierce County or other source(s) as follows:

18. Legal Fees: The legal fees and costs of Steven Lust are approved as reasonable in the amount of \$ reserved, and shall be paid from the:

Guardianship estate assets,

Pierce County, *reserved* 

Other source(s) as follows: _____

19. Guardian's Report: The Guardian's report shall cover the

12 (twelve) month

24 (twenty-four) month or

36 (thirty-six) month

period following the anniversary date of the appointment. The Guardian's report is due within 90 days of the end of the reporting period and shall comply with the requirements of RCW 11.92.040(2).

[Note: If OPG selected, include the following:]

The Guardian shall submit all reports to the Office of Public Guardianship prior to submission to the court.

The Guardian shall have the authority to obtain any and all information and records from DSHS, I.R.S., Social Security Administration, Veterans Administration or other government agencies or entities.

The Guardian shall have the authority to apply for any government assistance needed by the Incapacitated Person and to assist the Incapacitated Person in accordance with statute to accomplish receipt of benefits he/she is entitled to.

The Guardian shall have the authority to apply for any government assistance needed by the Incapacitated Person and to assist the Incapacitated Person in accordance with statute to accomplish receipt of benefits he is entitled to. The Guardian shall have the authority to make arrangements for income tax reporting and making payment of income taxes. The Guardian shall have the authority to invest and reinvest guardianship assets as provided in chapter 11.100 RCW without further order of the court. The Guardian shall have the authority of a trustee, as

provided in RCW 11.98.0709 for a period of time not exceeding one year from the date of this order or until the filing of the next annual report.

DATED AND SIGNED IN OPEN COURT THIS 25th DAY OF January, 2019.

Juan Minko

JUDGE/COURT COMMISSIONER

Presented by:

Doug Boling

Signature of Attorney

Doug Boling
Printed Name of Attorney, WSBA #47081

PO Box 40124
Address

360-586-5379 / 360-586-6660
Telephone/Fax Number

Olympia, WA 98504-0124
City, State, Zip code

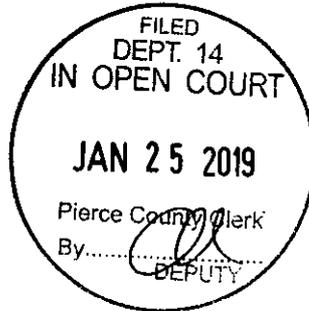
dougl@atg.wa.gov
Email Address

Until a guardian is appointed, the Rep Payee shall remain the same.
Approved for Entry:

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AS
JOS

Suzanne Thompson Winger

Suzanne Thompson Winger, WSBA #32870
Guardian ad Litem for Thomas Hawes



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Steven Lust, WSBA #22798
Attorney for Thomas Hawes

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LAW OFFICES OF LISE ELLNER

October 18, 2019 - 7:16 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 53261-1
Appellate Court Case Title: Guardianship of Thomas Hawes, Appellant
Superior Court Case Number: 18-4-00544-5

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