

FILED  
Court of Appeals  
Division II  
State of Washington  
12/20/2019 12:33 PM

NO. 53261-1

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

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In re the Guardianship of T.H.,

Appellant.

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**RESPONDENT'S BRIEF**

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## I. INTRODUCTION

T.H. has been involuntarily committed to Western State Hospital for over ten years. Due to ongoing symptoms of his mental disorder, he will not agree to cooperate in discharge planning. This unwillingness to engage, based on reasons not rooted in reality, prevents his discharge. His treating professionals, seeking to help him transition from the locked hospital to a structured facility in the community, petitioned through the Attorney General's Office to have a guardian appointed. At a bench trial on the issue it was essentially undisputed that T.H. could not independently provide for his own nutrition, health, housing, or physical safety. It was also essentially undisputed that he could not handle sums of money larger than a small weekly stipend without risk of financial harm outside a structured setting. The trial court approved the guardianship, but after finding that T.H. was able to make some decisions on his own, the court appropriately limited the guardianship to those areas where T.H. actually needed assistance, including the ability to contract or agree to community placements.

T.H. appeals, agreeing that he is incapacitated but arguing that the trial court abused its discretion by imposing a guardianship when he was not in imminent or current danger of harm. Because the statute does not require a showing of imminent harm, and because the trial court has broad

discretion to order a guardianship over an incapacitated person, T.H.'s argument fails.

## **II. COUNTERSTATEMENT OF THE ISSUES**

- 1. Does substantial evidence support the trial court's findings of fact that T.H. was at significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety?**
- 2. Does substantial evidence support the trial court's findings of fact that T.H. was at significant risk of financial harm based upon a demonstrated inability to adequately manage property or financial affairs?**
- 3. Did the trial court abuse its discretion by ordering a limited guardianship after it had found T.H. partially incapacitated as to his person and estate?**
- 4. Was a guardianship reasonable and necessary when the evidence established that T.H. could not safely transition from institutionalization to the community without assistance from a guardian and no less intrusive measures would be adequate?**

## **III. COUNTERSTATEMENT OF THE FACTS**

T.H. has resided at Western State Hospital under involuntary commitment orders since 2009. The Department of Social and Health Services (DSHS), through the Attorney General's Office, petitioned on March 20, 2018 to have a guardian appointed to act on behalf of T.H.'s interests. T.H. contested the appointment of a guardian and counsel was appointed to represent him in the guardianship action. T.H. requested a

bench trial to resolve whether he met criteria for incapacity and appointment of a guardian. Trial was held on January 17, 2019. DSHS called T.H., guardian ad litem Suzanne Thompson Wininger, psychologist Nancy Larsen, Ph.D., and social worker Jessica Kastl as witnesses.

***Testimony of T.H.***

T.H. understood that he was being held at a hospital and about how long he had been there, describing his placement as a “punishment ward.” Verbatim Report of Proceedings (VRP) at 28. He believed he had already been discharged. *Id.* After responding off-topic to questioning by the State, T.H. relayed that he had previously lived with his sister but she had to kick him out after they got in a fight, saying he “grabbed her granddaughter” and his sister called law enforcement. VRP 29-30. He said he was arrested as a result of the incident. VRP 30.

He also claimed that he had no trouble paying for his life necessities at the time, and that he was getting SSI payments and working. *Id.* He claimed to have a bank account with \$750 million in it that some unknown malefactor was using for a “long-term loan.” VRP 31. He did not believe he needed psychiatric treatment and denied currently taking or needing psychiatric medications. VRP 32. He said that the hospital currently provides him with three meals a day and with his personal hygiene. VRP 33. He also testified about his on-campus job at the hospital doing

grounds-keeping. VRP 34. On cross-examination he named the psychiatric medications he is currently taking, but stated that he believed they were only “for sleep.” VRP 33.

***Testimony of Guardian Ad Litem Suzanne Thompson Winger***

In April 2018, Suzanne Winger began working as the appointed guardian ad litem for T.H. VRP 38. Ms. Winger is a licensed registered nurse and an attorney. VRP 35-36. Ms. Winger specializes in elder law and nursing for long-term care. VRP 36. Since 2008, Ms. Winger has served as a guardian ad litem. VRP 37. Ms. Winger has worked on more than 300 guardian ad litem cases. *Id.*

Based on her interview with T.H. and her review of his records, Ms. Winger recommended that T.H. have a guardian ad litem to oversee his estate and his place of residence. VRP 40-41. Ms. Winger recommended that T.H. have primary responsibility for his social and health decisions. VRP 43. Ms. Winger recommended that T.H. be able to make his own care decisions, leaving the guardian to have authority only when T.H. is unable to make his own decisions. VRP 46. Additionally, Ms. Winger testified that T.H. should still retain the right to vote. *Id.*

Ms. Winger recommended that T.H.’s right to enter into a contract be limited. *Id.* She testified that she attempted to verify T.H.’s claims of having millions of dollars, but she was unable to confirm this claim.

VRP 45. Ms. Winger recommended that T.H. have a guardian for the estate because there is a risk of financial harm if T.H. were to manage larger sums of money. VRP 46-47. After interviewing T.H., Ms. Winger concluded that he would not have the ability to execute an enforceable power of attorney. VRP 47. Further, Ms. Winger testified that a power of attorney would not work because T.H. did not have the funds available. VRP 49.

*Testimony of Social Worker Jessie Kastl*

Jessica Kastl is a psychiatric social worker at Western State Hospital. VRP 63. Ms. Kastl testified that she works with T.H. on discharge and treatment planning. VRP 68. When asked about T.H.'s reaction to discharge planning, Ms. Kastl answered that T.H. claims to have his own discharge plan, that he plans to move to Vancouver, that he owns many houses and property, has billions of dollars and multiple high-end cars, and has a family in Vancouver. VRP 68. Ms. Kastl was unable to verify any of these claims, and testified that the treatment team concluded that an adult family home would provide the level of care most appropriate for T.H. VRP 69-70. Ms. Kastl testified that while T.H. is ready for a less restrictive placement outside of the hospital, he still faces barriers to discharge when it comes to making financial or health decisions. VRP 70, 71.

Based on her training and experience as a social worker, Ms. Kastl affirmed that a guardianship was necessary in order to shepherd T.H. through a number of barriers to living in the community that he did not have the capacity to navigate himself. VRP 71-72. Ms. Kastl testified as to T.H.'s history of poor compliance with his medical treatment and refusal to take medications. VRP 73-74. Further, Ms. Kastl testified that a guardian would be able to assist with acquiring Medicaid, which has not yet been accomplished due to T.H.'s delusions. VRP 75, 76. She also testified that while a payee could "possibly" help T.H. manage his finances in the community, a guardian would be more effective in helping him enter into contracts and administer funds. VRP 76-78.

***Testimony of Nancy Larsen, Ph.D.***

Nancy Larsen is a licensed psychologist and has treated T.H. at Western State Hospital for several years. VRP 93, 96. During that time, she has had continuous opportunities to observe T.H. and assess his mental functioning. VRP 97-98. She testified that T.H.'s significant cognitive impairments and disorganized thinking would place him at risk of harm, specifically in the sense that he would get into conflicts and be unable to secure basic necessities over time. VRP 99-100.

Dr. Larsen also believed that T.H. would not be able to independently maintain safe housing due to his delusional thinking. *Id.*

T.H.'s delusions include sincere beliefs, without evidence, that he owns mansions or has large amounts of money he can use to obtain his own housing, or that he can live independently without assistance. VRP 100.

Dr. Larsen also testified that T.H. would not be able to adequately maintain his own mental health. VRP 101. This inability to manage his own mental health needs could lead to him not managing bladder cancer follow-up care appointments appropriately or failing to follow food intake directives that are designed to keep him from choking when he eats. VRP 103. Compounding that, T.H. believes that he does not need his blood pressure medications despite counseling that failing to take it could increase his risk of stroke. VRP 103-04. Dr. Larsen said that T.H.'s behavior had become less angry and aggressive recent years, but still wasn't able to "process . . . information in a reality based way." VRP 105.

Dr. Larsen also believed that T.H. was not able to independently manage his own finances outside a structured setting. VRP 106. She noted that he makes \$35 a week at a vocational rehabilitation job and was able to responsibly handle a \$15 withdrawal once or twice a week. VRP 106-07. But she did not think he had the capacity to manage large amounts of money. VRP 107. T.H. delusionally claimed to have large sums of money in the bank and to own large amounts of property, but could not identify what bank the money was in or other details to display cognitive

understanding about how to manage money. *Id.* Dr. Larsen said that this, combined with T.H.'s other deficits, showed that he had "no clear conception of money . . . and what things would really cost and how to go about navigating that . . . in the community." VRP 107-08.

Dr. Larsen also testified that a guardian was necessary in order for T.H. to live safely in the community. VRP 108. She said he was not cognitively capable of making rational decisions about his own health and safety needs, nor would he cooperate with hospital discharge planning to the point that he was essentially stuck in that setting. *Id.* She did not see a clear alternative path other than guardianship for someone to adequately protect and advocate for T.H.'s interests. *Id.* She believed that T.H. was ready to live in a less restrictive setting than secure, involuntary hospitalization, and that a guardian was essential for helping him transition safely to the community. VRP 109-110.

Finally, Dr. Larsen related that while T.H. expresses verbally that he would like to leave Western State Hospital, his behavior indicates otherwise. VRP 125-26. But Dr. Larsen also expressed an important policy preference in the mental health system: that involuntary commitment should not be "the final destination" for someone like T.H. VRP 125. Indeed, she testified, it is better for people like T.H. to be treated in the community

rather than institutionalized, where he can be closer to friends and family who may be willing to help him manage his life. VRP 126.

***The Trial Court's Ruling***

At the close of trial, the court ordered a limited guardianship in accordance with the guardian ad litem report. VRP 138. Specifically, the trial court found by clear, cogent and convincing evidence that T.H. was at significant risk of personal harm based on the demonstrated inability to adequately provide for his own nutrition health, housing, or physical safety. *Id.*; Clerk's Papers (CP) 92. The court agreed with the guardian ad litem's proposed limitations on the findings of incapacity, ordering that he retain the right to vote, to marry, to possess a driver's license, and the right to make social decisions (among other rights that were not fully ceded to the guardian). CP 93-94. The court also found that T.H. was incapacitated with regard to his estate because he was at significant risk of financial harm due to a demonstrated inability to manage property or finances. VRP 138; CP 93. The court did, however, find that T.H. was able to manage a small amount of personal spending money and made specific provisions for that in its order. VRP 139; CP 97.

### *Additional Proceedings*

On January 25, 2018, the court filed the order appointing the limited guardian. VRP 150. On March 1, 2019, T.H.’s counsel notified the court that he was securing representation for T.H.’s appeal. VRP 159.

## **IV. ARGUMENT**

### **A. Standard of Review**

#### **1. Challenges to findings of fact are reviewed for sufficiency of the evidence**

While T.H. claims that he “does not challenge that he is incapacitated,” Opening Br. at 14, he assigns error to several of the lower court’s factual findings regarding incapacity, Opening Br. at 1-2. Challenges to findings of fact are reviewed for sufficiency of the evidence. *Josephinum Assocs. v. Kahli*, 111 Wn. App. 617, 621, 45 P.3d 627 (2002). A trial court’s findings of incapacity will be overturned at the appellate level “only rarely and then only when it is clear that there was no substantial evidence upon which the [fact-finder] could have rested its verdict.” *In re Guardianship of Stamm v. Crowley*, 121 Wn. App. 830, 842, 91 P.3d 126 (2004) (citation omitted) (rejecting incapacitated person’s argument that standard should be de novo). “Substantial evidence is evidence that is sufficient to persuade a rational, fair-minded person of the

truth of the finding.” *Ursich v. Ursich*, 448 P.3d 112, 117 (Wn. Ct. App. 2019) (citation omitted).

When sufficiency of the evidence is challenged, the appellate court must ask whether there was any “evidence or reasonable inferences therefrom to sustain the verdict when the evidence is considered in the light most favorable to the prevailing party.” *Goodman v. Boeing Co.*, 75 Wn. App. 60, 82, 877 P.2d 703 (1994). The appellate court must defer to the trier of fact on the persuasiveness of the evidence, witness credibility, and conflicting testimony. *In re Knight*, 178 Wn. App. 929, 937, 317 P.3d 1068 (2014).

If this Court finds the substantial evidence standard has been met, “a reviewing court will not substitute its judgment for that of the trial court even though it might have resolved a factual dispute differently.” *Sunnyside Valley Irr. Dist. v. Dickie*, 149 Wn.2d 873, 879-80, 73 P.3d 369 (2003). This is particularly important where the trial court has heard conflicting testimony and evaluated the persuasiveness of the evidence. *See In re G.W.-F.*, 170 Wn. App. 631, 637, 285 P.3d 208 (2012). The reviewing court then evaluates the trial court’s conclusions of law de novo, determining whether they are supported by the findings of fact. *Id.*

**2. Whether the guardianship statute requires a finding of current or imminent harm to order a guardianship is a question of law reviewed de novo**

Questions of statutory interpretation, including whether the guardianship statute requires a court to find a person is at current or imminent risk of harm to order a guardianship, are questions of law that this Court reviews de novo. *In re Guardianship of Matthews*, 156 Wn. App. 201, 212, 232 P.3d 1140 (2010). This Court must “give effect to [the] plain meaning [of a statute] as an expression of legislative intent.” *Id.* at 212-13 (citation omitted). The Court’s interpretation of the statute “must not create an absurd result.” *In re Guardianship of Beecher*, 130 Wn. App. 66, 71, 121 P.3d 743 (2005) (citation omitted).

**3. The trial court’s decision to order a guardianship following a finding of incapacity is reviewed for abuse of discretion**

A court’s decision to appoint a guardian is reviewed for abuse of discretion. *In re Mignerey’s Guardianship*, 11 Wn.2d 42, 50, 118 P.2d 440 (1941). In *Mignerey*, the Supreme Court ruled that “[i]n appointing a guardian, the trial court is called upon to exercise a wide discretion, and the conclusion of the court carries great weight when its action is reviewed before an appellate tribunal.” *Id.* at 49-50. Not surprisingly, then, the Washington Supreme Court held in that case that when a relative challenged the trial court’s refusal to appoint him as guardian (and instead appointing

a “stranger”), the appellate court should apply an abuse of discretion standard when determining whether the trial court was within its authority to appoint the guardian.<sup>1</sup> *Id.* at 51.

Here, it follows that where the trial court heard substantial evidence that T.H. was incapacitated, that an abuse of discretion standard should also apply when determining whether the court was within its authority to order a guardian appointed. *Id.* at 49 (“the question of who shall be guardian in such cases rests in the discretion of the superior court”). If the lower court could have chosen between guardians, like in *Mignerey*, such an exercise of judicial power would have been a discretionary act – it would not have been a conclusion of law that this Court would review de novo. *See id.* Thus, it was a discretionary act for the trial court to order a guardian appointed at all in light of the finding of incapacity.

**B. Substantial Evidence Supported the Trial Court’s Findings of Fact That T.H. Was at Significant Risk of Personal and Financial Harm**

Substantial evidence supported the trial court’s findings of fact that T.H. was at significant risk of personal and financial harm, that he had previously refused necessary medical care, and that he needed a guardian to help advocate for his needs and to provide additional support to prevent him

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<sup>1</sup> “It cannot be held, from the record before us, that the trial court abused its discretion in refusing to appoint Mr. Mignerey as his mother's guardian.” *In re Mignerey's Guardianship*, 11 Wn.2d 42, 51, 118 P.2d 440 (1941).

from coming to harm. An individual is legally incapacitated as to their person when the court finds they are at “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). An individual is legally incapacitated as to their estate when the court finds they are “at significant risk of financial harm based upon a demonstrated inability to adequately manage property or financial affairs.” RCW 11.88.010(1)(b). A determination of incapacity is a legal decision, not a medical one, “based upon a demonstration of management insufficiencies over time in the area of person or estate.” RCW 11.88.010(1)(c).

The trial court has discretion to order a limited guardianship when the person needs “protection and assistance, but [is] capable of managing some of their personal and financial affairs.” RCW 11.88.010(2). By limiting the finding of incapacity to only those areas in which a person needs assistance, the trial court fulfills the legislature’s intent that the person’s “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.” RCW 11.88.005.

**1. The guardianship statute requires only a significant risk of harm to order a guardianship, not imminent or current harm**

To the extent that T.H. argues that ordering a guardianship required that he be at current or imminent risk of harm, he applies an incorrect legal standard unsupported by either the guardianship statute or the prior decisions of our appellate courts. *See* Opening Br. at 1-2. The plain language of the statute expresses the legislature’s clear intent that incapacity and the subsequent ordering of a guardianship require only significant risk of personal or financial harm. RCW 11.88.010(1)(a)-(b); *see Matthews*, 156 Wn. App. at 212-13 (plain language of statute evidences legislative intent). Nowhere does the guardianship statute require imminent or current harm to find a person incapacitated. Nor does T.H. cite to any guardianship cases that require imminent harm.

In similar contexts, our Supreme Court has held that there is no requirement that a person be in imminent danger of harm in order to be involuntarily hospitalized as gravely disabled. *In re LaBelle*, 107 Wn.2d 196, 203, 728 P.2d 138 (1986). “The care and treatment received by the detained person in many cases will have lessened or eliminated the ‘imminence’ of the danger of serious harm caused by that person's failure to provide for his essential health and safety needs.” *Id.* at 203. This would effectively invalidate a person’s civil commitment “as soon as it occurs.” *Id.* at 203.

Similar logic should apply here. If this Court accepts T.H.'s argument, a person in a structured setting, whose immediate needs are being met through the assistance of others, could not be found incapacitated until those providing that support withdrew their aid. This would paradoxically require the person's caregivers who wished to pursue guardianship to place the person at risk of harm in order to meet the legal criteria for guardianship. This directly contradicts the plain language of the statute and the legislature's intent that some persons may require the assistance of a guardian in order to "exercise their rights or provide for their basic needs." RCW 11.88.005.

Such a legal argument, brought to its logical conclusion in this case, would require Western State Hospital to withdraw its aid of T.H. in order to pursue guardianship even if hospital staff believed guardianship was reasonable and necessary for T.H. "to exercise [his] rights or provide for [his] basic needs." RCW 11.88.005. The legislature could not have intended such harmful or absurd results. *Beecher*, 130 Wn. App. at 71 ("We look at the statute as a whole, and our interpretation must not create an absurd result") (citation omitted).

There was no legal requirement that the trial court find T.H. was at current or imminent risk of harm. The trial court properly rejected T.H.'s argument that guardianship should not be ordered because many of his basic

needs were met at Western State Hospital. The trial court likewise properly focused its legal inquiry on those areas in which T.H. could not manage his own affairs without assistance, without regard to whether someone was currently assisting him in those areas to the point that he was not at imminent or current risk of harm. RCW 11.88.010(2).<sup>2</sup>

**2. T.H. was at significant risk of personal harm due to management insufficiencies over time and has refused necessary medical care**

The trial court heard substantial evidence that T.H. was at significant risk of personal harm. Dr. Larsen testified that T.H.'s significant cognitive impairments rendered him incapable of getting basic necessities, getting shelter on his own, or avoiding conflicts. VRP 99-101. Dr. Larsen testified that T.H. had exhibited these deficiencies over the course of the approximately ten years she had known him. VRP 105-06. He had been diagnosed with bladder cancer and required significant counseling and prodding to accept appropriate treatment, and would often reject follow-up appointments to determine whether the cancer had returned. VRP 100-01.

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<sup>2</sup> “The superior court for each county shall have power to appoint limited guardians for the persons and estates, or either thereof, of incapacitated persons, who by reason of their incapacity have need for protection and assistance, but who are capable of managing some of their personal and financial affairs. After considering all evidence presented as a result of such investigation, the court shall impose, by order, only such specific limitations and restrictions on an incapacitated person to be placed under a limited guardianship as the court finds necessary for such person's protection and assistance.” RCW 11.88.010(2).

He did not believe he had high blood pressure or needed to take medication for that condition. VRP 103-04.

The trial court also heard testimony from the guardian ad litem that T.H. was capable of making most of his own social and health care decisions, requesting the guardian intervene only when he did not have capacity to make rational choices about those things. VRP 43, 46. She also recommended that he retain the right to vote. VRP 46. The trial court entered a limited guardianship of the person based on the guardian ad litem's recommendations. VRP 138, CP 93-97.

This was enough evidence “to persuade a rational, fair-minded person of the truth of the finding” – that T.H. was partially incapacitated as to his person. *Ursich*, 448 P.3d at 117 (citation omitted). He exhibited this significant risk of harm to himself over the course of at least ten years. VRP 105-06. This Court should find that the trial court's findings of T.H.'s personal incapacity, his inability to adequately provide for his personal needs, and his refusal of recommended medical care were based on substantial evidence.

**3. T.H. was at significant risk of financial harm due to management insufficiencies over time.**

The trial court likewise had substantial evidence upon which it could rely to find that T.H. was incapacitated as to his estate. Dr. Larsen testified

that T.H. lacked psychological capacity to manage his own finances outside a structured setting. VRP 106. While he responsibly handled small amounts of money made at a vocational rehabilitation job on the Western State Hospital campus, Dr. Larsen believed he lacked the capacity to handle large amounts of money on his own. VRP 107. Finally, Dr. Larsen believed that that T.H. had “no clear conception of money . . . and what things would really cost and how to go about navigating that . . . in the community.” VRP 107-08.

T.H.’s social worker similarly testified that T.H. was incapable of navigating some of his barriers to community living, like applying for Medicaid, helping him enter into contracts for housing or services, and administer funds. VRP 71-72, 75-78. This mirrored the guardian ad litem’s assessment that T.H.’s ability to contract and handle large amounts of money needed to be limited in order to protect him from financial harm. VRP 46-47.

This was substantial evidence upon which the trial court could have made the factual findings that it did ruling T.H. incapacitated as to his estate. The bulk of the testimony relayed that he would be unable to handle any sum of money more than a small amount of personal spending money. *See, e.g.*, VRP 106-07. He had not shown cognitive capacity to otherwise manage his estate without assistance. VRP 106-08. The trial court did not

err in its findings of fact or ruling that T.H. was at significant risk of financial harm due to his management insufficiencies in this area, including that he had shown a demonstrated inability to adequately manage his financial affairs and that he is unable to manage property without risk of harm. Indeed, the trial court thoughtfully limited the scope of the guardianship to allow T.H. to have a small amount of personal spending money under the oversight of the guardian. *See, e.g.*, CP 97. This Court should affirm the lower court's rulings in these areas.

**4. Having properly found T.H. incapacitated, the trial court did not abuse its discretion in ordering a limited guardianship**

The trial court has broad discretion to appoint a guardian after finding a person incapacitated and in need of guardianship. *Mignerey*, 11 Wn.2d at 49-50. "A trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds, or when untenable reasons support the decision." *Matthews*, 156 Wn. App. at 214.

Here, the trial court based its imposition of a limited guardianship directly on the testimony of the witnesses who outlined T.H.'s specific areas of incapacity. VRP 138-39. The trial court followed the guardianship statute, which required only significant risk of harm and nowhere mentions a requirement of imminent harm. RCW 11.88.010(1)(a)-(b). And the trial court properly weighed whether less intrusive means would be as effective

in meeting T.H.'s needs. *See* CP 92 (“The Alleged Incapacitated Person did not make alternative arrangements for assistance”). The trial court’s rulings were well-founded on the evidence at trial and the law of guardianship. It did not abuse its discretion in ordering a guardianship over T.H.

**C. The Trial Court Properly Considered and Rejected T.H.’s Argument That the State’s Guardianship Action Was Improper Because it Was Intended to Help Facilitate T.H.’s Discharge From Institutionalization**

Implicit in the trial court’s inquiry about the nature of the person’s incapacity is “the requirement that before a court will appoint a guardian it must be shown that such appointment is necessary and reasonable.” *In re Guardianship of Harp*, 6 Wn. App. 701, 705, 495 P.2d 1059 (1972). In essence, T.H. appears to argue that appointment of a guardian was neither necessary nor reasonable because T.H.’s current needs were met by Western State Hospital and he had no apparent desire to leave institutionalization despite some statements to the contrary. VRP 125-26. The guardianship statute itself requires that the party petitioning for incapacity explain, for instance, whether any other arrangements had been made for the alleged incapacitated person (such as a power of attorney) and why guardianship was nevertheless necessary if such arrangements had been made. RCW 11.88.030(1)(i). It also requires that the guardian ad litem inquire into

such alternative arrangements or the possibility of such alternate arrangements in lieu of guardianship. RCW 11.88.090(5)(f)(iv).

Here, the trial court thoughtfully considered whether guardianship was necessary and reasonable under the circumstances. VRP 138-39. It heard from DSHS employees that the policy preference of the State was to treat people with severe mental disorders in the least restrictive setting possible. VRP 125-26; *see also* RCW 71.05.010(1)(b), (g).<sup>3</sup> The State's witnesses agreed that a limited guardianship was reasonable and necessary to safeguard T.H. and help him transition from the most restrictive treatment setting possible – involuntary hospitalization – to a life in the community. The witnesses agreed that a guardian would help T.H. advocate for his needs and contract with service providers as necessary to live on his own.

The testimony likewise established that no less intrusive measures would have been adequate in this regard: T.H. did not have a power of attorney and did not have the capacity to enter into a new power of attorney agreement. VRP 47-48, 108. And a payee would only have the authority to pay bills for him, not make necessary contractual agreements to, for instance, get Medicaid or go to an assisted living facility. VRP 43, 49, 76.

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<sup>3</sup>“(1) The provisions of this chapter are intended by the legislature: . . .  
(b) To prevent inappropriate, indefinite commitment of mentally disordered persons . . .  
(g) To encourage, whenever appropriate, that services be provided within the community.”

The trial court limited the scope of the guardianship only as was reasonable and necessary to safeguard those interests that T.H. was unable to manage himself. CP 93-97.

The State, through the Attorney General's Office, has the authority to petition for guardianship when "there is cause to believe that a guardianship is necessary and no private party is able and willing to petition." RCW 11.88.030(3)(a). The State was not prohibited by law from pursuing guardianship as a tool to help facilitate discharge from Western State Hospital (assuming without agreeing that this was the State's sole purpose), a tool that incidentally conforms with the legislature's intent in the Involuntary Treatment Act to "prevent inappropriate, indefinite commitment of mentally disordered persons" and to "encourage, whenever appropriate, that services be provided within the community." RCW 71.05.010(1)(b), (g). Because the evidence at trial supported the trial court's findings of incapacity and the reasonableness and necessity of ordering a guardianship, this Court should affirm the trial court's orders entering a limited guardianship for T.H.

## **V. CONCLUSION**

Substantial evidence supported the trial court's findings of fact that T.H. was incapacitated as to his person and estate, as the guardianship statute and case law do not require current or imminent risk of harm in order

to find a person incapacitated. To read in such a requirement to the law would lead to absurd results. Because the court had substantial evidence on which to base its findings, it was well within its broad discretion to order a limited guardianship. The evidence at trial likewise established that guardianship was reasonable and necessary to safeguard T.H.'s interests and facilitate his safe transition from institutionalization to community living. The trial court's order should be affirmed.

RESPECTFULLY SUBMITTED this 20th day of December 2019.

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**CERTIFICATE OF SERVICE**

I, *Holly McClure*, state and declare as follows:

I am a citizen of the United States of America and over the age of 18 years and I am competent to testify to the matters set forth herein. On December 20, 2019, I served a true and correct copy of this **RESPONDENT'S BRIEF** and this **CERTIFICATE OF SERVICE** on the following parties to this action, as indicated below:

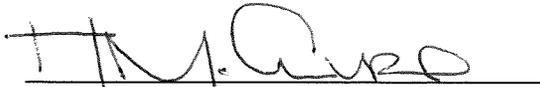
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Vashon, WA 98070

**By E-mail PDF:** [liseellnerlaw@comcast.net](mailto:liseellnerlaw@comcast.net)

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

DATED this 20th day of December 2019, at Tumwater, Washington.

  
\_\_\_\_\_  
HOLLY MCCLURE  
Legal Assistant

**SOCIAL AND HEALTH SERVICES DIVISION, ATTORNEY GENERALS OFFICE**

**December 20, 2019 - 12:33 PM**

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**Superior Court Case Number:** 18-4-00544-5

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