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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 324559

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

SARAH EVERT and STEPHEN EVERT
Petitioners,

VS

DEPARTMENT OF SOCIAL AND HEALTH SERVICES,
Adult Protective Services,
Respondent.

BRIEF OF APPELLANTS

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I. Assignments of Error

1. The administrative Initial Decision¹²³ dated April 23, 2013 affirmed in the Review Decision and Final Order⁴ dated October 24, 2013 erred in finding the Adult Protective Services (APS) investigator did not commit legal error in conducting her investigation which error is the Superior Court Memorandum Decision issued March 25, 2014 affirmed.
2. The Initial Decision, Review Decision and Final Order, and Memorandum Decision regarding the APS

¹ This is an appeal of an Department of Social and Health Services (DSHS) administrative hearing. The record consists of the adjudicative record which is Bates numbered and will be cited by AR and the Bates number; the transcript of the administrative hearing which will be cited by TR the volume number (I, II or III) and page number. The clerks papers shall be numbered by the sub. number the only one of which will be used being the memorandum decision no. 15.

² AR 34-47.

³ After the initial reference to a family member the first names or common nickname shall be used to avoid confusion, no disrespect is intended.

⁴ AR 1-17.

investigation are not supported by substantial evidence in the record.

3. The Initial Decision, Review Decision and Final Order, and Memorandum Decision finding the Everts mentally abused a vulnerable adult⁵ by inappropriately isolating that vulnerable adult is not supported by substantial evidence in the record.
4. Sarah Evert is harmed by the finding of mental abuse/inappropriate isolation of a vulnerable adult as it can impact her ability to pursue her profession as an occupational therapist⁶.

⁵ Thomasene meets the definition of vulnerable adult in RCW 74.34.020(17) which section reads: a "vulnerable adult includes a person: (1) sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself;

⁶ This Assignment of error will not be addressed further in this brief as this issue is on appeal in a separate matter. See further footnotes 9 and 10.

Issues Pertaining to Assignments of Error

1. Is an APS investigator required to conduct an investigation which complies with RCW 74.34.067(2)⁷
2. Does the record contain substantial evidence to allow an APS investigator to not comply with RCW 74.34.067(2)?
3. Does the record support Sarah and Stephen mentally abused a vulnerable adult by isolating that vulnerable adult?

⁷ RCW 74.34.067(2) states: In conducting the investigation, the department shall interview the complainant, unless anonymous, and shall use its best efforts to interview the vulnerable adult or adults harmed, and, consistent with the protection of the vulnerable adult shall interview facility staff, any available independent sources of relevant information, including if appropriate the family members of the vulnerable adult.

II. Statement of the Case

This case involves a family dispute regarding the care of elderly parents, both of whom are suffering from physical and mental issues (varying degrees of memory problems as well as other mental health problems such as depression). AR 94-111.

In March 2012 the Everts took Ms. Evert's mother Thomasene from Plantation Place in Boise ID to the Evert's home in Spokane WA. TR I p.84 lines 9-12. The Everts' home was licensed as an adult family home (AFH) at the time Thomasene was brought there though Thomasene was not considered a resident of the AFH. TR I p.135-136 lines 25-1.

While Thomasene lived with the Everts she talked on the phone with numerous person: all of her children though apparently not her step-son, with her younger sister, with friends, some grandchildren; had visits with people, participated in water therapy. TR I p.100-101;

104 lines 22-24; 106-107; II p.235; 243-244 lines 21-18. Sarah Evert did contact Idaho's equivalent of APS though they did nothing; she attempted to obtain protective orders in Spokane, Washington, she called the sheriff, the police regarding what Sarah Evert believed was abuse of her mother by Sarah Evert's father and two of her sisters. TR I p.93- 94 lines 18-25; II p.255-256. Sarah Evert believed she was protecting her mother. TR II p.239-240 lines 21-9. Sarah Evert took her mother to the emergency room the day after the Everts returned to Spokane with Thomasene for an infected toe which apparently had not been treated in Boise. TR I p.104 lines 2-5; II p.237 lines 7-15. In the time Thomasene lived with the Everts she did not ask to speak with Glenn, her husband. TR I p.103 lines 8-15.

June 4, 2012 Adult Protective Services received a complaint from Thomasene's husband alleging Sarah Evert was mistreating Thomasene by not allowing Thomasene to talk with him, want a

divorce and half of everything. AR 85-86. The intake report lists collateral person(s)⁸ of Richard Eismann (family attorney); Frances Stern (GAL); Thomasene "Sene" Blevins (daughter); Diane Rudman (AP's attorney); Jay Gustafson (AV's husband's attorney); Glenn McCleary (AV's husband); Phyllis Keith (daughter); Glenna Kimball (daughter). AR 86-89. The allegation regarding Steve Evert is dated September 22, 2012 which repeats the allegations from the June 4, 2102 report and lists as collateral person(s) as Sene (daughter); Phyllis Keith (daughter); Glenn (husband); Glenna Kimball (daughter). AR 90-93. TR II p.108-109 138-144.

The APS worker stated she only spoke with persons named as collateral person(s) (TR II p.140); however she did not contact all the collateral person(s) noted in the intake report regarding Sarah Evert. The APS worker stated she did not talk with the daughter Thomasene (Sene).

⁸ The APS investigator at the trial testified she only spoke with "collateral" contacts. Tr. II p.140 lines 12-22.

TR II p. 139 lines 1-13. The APS investigator did note Thomasene stated on the investigator's visit with her "Thomasene denied being kidnapped, I don't really understand what happened. He - Glenn - can be crabby and hateful. He had me crying everyday. Uh Sarah had this room for me. Thomasene said she liked living with Sarah and, 'they've been really good to me." TR II p. 146 lines 5-10. In this interview Thomasene stated "I do talk with my kids. I miss them too." TR II line 21.

While the assigned APS worker was on vacation, another worker received a call from Glenna and told her "that she would not be put in the middle of a family squabble." AR 106; TR II p.145 lines 12-21. Sene, who spoke with Thomasene a couple of times a month prior to Thomasene's moving to the Everts' home, though Sene spoke with her mother about once a week after the move, (TR II p.22 lines 7 and 14), stated she and her sisters Glenna and Phyllis

believed they "could work it out as a family if given the opportunity. But it was a dead end." TR II p.43 lines 20-23. Sene believed "Sarah was giving mom wonderful care. And that's why it was so frustrating that the rest of the family couldn't talk to mom and we couldn't come to some sort of compromise between us of how mom could stay there and dad could still communicate with mom and the rest of us could still communicate. It would have worked out." TR II p.49-50 lines 23-3. The APS investigator stated the emails sent to her and (apparently) between family members document "a lot of the family discord." TR II p.165 lines 8-9.

The APS investigator noted Sarah Evert became very upset at the interview at the investigator's office. TR II. P.118 lines 1-8; 149-151 lines 22-3. The investigator agreed a finding of mental abuse by APS could impact Sarah

Evert's ability to continue her occupation⁹. TR 2-149 lines 5-14.

The APS investigator testified that while the original intake was June 4, 2012 she did not complete her investigation until September 22, 2012 when she spoke with Steve Evert for the first (and only) time. TR II p.151 lines 5-18. The letters sent regarding the findings of the allegation were dated October 15, 2012 (20 days after Thomasene was removed from the Everts' home). AR 75-77, 79-81. The findings as to both Sarah Evert and Steve Evert were "APS has determined more likely than not you: mentally abused a vulnerable adult." AR 75 and 79.

⁹ While the APS investigator agreed the vocation of occupational therapist could be affected by a founded finding by APS, the state's attorney did not believe Ms. Evert's occupational therapy license would be threatened. TR II p.242-243 18-18. RCW 74.34.063(5) states "the department shall notify the proper licensing authority concerning any report received under this chapter that alleges that a person who is professionally licensed, certified, or registers under Title 18 RCW has abandoned, abused, financially exploited or neglected a vulnerable adult." Sarah Evert is licensed by the State of Washington as an Occupational Therapist.

September 26, 2012 Sene had a call from Glenna that Sene needed to pick Thomasene up. TR II p.40 lines 14-15. Glenna gave Sene Ken Yancey's phone number and he told Sene she had to pick her mother up as soon as possible. TR II p.40-41 lines 19-4.

The APS investigator said she only learned Thomasene was to be moved September 26, 2012 when Mr. Yancey (who apparently worked in the same office TR 2-136 line 11-12) told her the state was shutting the Everts' AFH¹⁰ down. TR 2-136 lines 6-12.

¹⁰ DSHS filed founded findings regarding the Everts' AFH. The Everts appealed the findings, there were hearings which upheld the findings and those (there were 2 matters joined in the hearing) are now also on appeal to Spokane County Superior Court and the reply brief by appellant is due 8/7/14 with oral argument 8/14/14 at 3:00 p.m.. Beyond the appeal of the AFH case DSHS has again filed founded findings against the Everts which were decided on summary judgment which is appealed at Spokane County Superior Court on the issue of failure to timely request review by the Appeals board of both the summary judgment and a prior filed motion to dismiss for res judicata and collateral estoppel. There is currently a status conference scheduled for 9/26/14 on this. The Everts have not operated an AFH since 9/26/12 when DSHS shut the home down and have not sought nor do they want an AFH license.

III. Argument

1. Standard of Review

Under the Administrative Procedure Act (APA) a person challenging the validity of a DSHS final Board order must demonstrate the invalidity of the Board's final order. RCW 34.05.570(1)(a); *Goldsmith v. DSHS*, 169 Wn.App. 573, 583 (2012). The party asserting the invalidity of an agency has the burden of showing the invalidity. *Raven v. DSHS* 177 Wn.2d 804, 816-817 (2013). An agency order may be invalidated only if one of the reasons in RCW 34.05.570(3) is present. *Ibid.* The appellate court reviews the conclusions of law and the laws application to the fact de novo and the findings of fact are reviewed under the substantial evidence test. *Ibid.* The findings of fact will be upheld if supported by "a sufficient quantity of evidence to persuade a fair-minded person of [the order's] truth or correctness." *Ibid, citations omitted.*

2. The APS investigation does not comport with the statute and is not supported by substantial evidence in the record.

RCW 74.34.067(2) states: "In conducting the investigation, the department shall interview the complainant, unless anonymous, and shall use its best efforts to interview the vulnerable adult or adults harmed, and, consistent with the protection of the vulnerable adult shall interview facility staff, any available independent sources of relevant information, including if appropriate the family members of the vulnerable adult."

This APS investigator started her investigation June 4, 2012 with the intake from Thomasene's husband's (Glenn) complaint. AR 85-89. The initial intake (AR 85-89) had 8 "collateral persons" listed of whom the investigator spoke with Glenn, Phyllis and Glenna, though not with the attorneys named, nor with the Idaho Guardian ad Litem (GAL) Frances Stern, though the

investigator did receive the GAL's report and traded phone messages with the GAL. TR II p.144 lines 3-11.

The investigator did speak with persons at DSHS who dealt with the Everts regarding their AFH. TR 2-108-109, 121. The investigator did not talk with all the persons named as "collateral persons" nor did she speak with any person not named as a "collateral person" as the investigator testified she is not permitted to speak with persons not named as "collateral persons." TR II p.140. The statute certainly does not limit the investigator to "collateral persons" as stated by the investigator. It directs an investigation include all persons having information about the situation of the alleged vulnerable adult regarding the alleged abuse, not just persons named as collaterals. This did not happen.

This limited investigation included no contact by the investigator with the caregivers

in the Everts' AFH. These caregivers cared for Thomasene, answered the phone in the AFH, knew what was going on in the AFH where Thomasene lived though not as a resident for purposes of the AFH rules. TR II p.251 lines2-5. The investigator relied instead on 2 of Thomasene's daughters and Glenn¹¹, all persons who were unhappy with the contact they had with Thomasene. The investigator had no contact with any person who had contact with Thomasene such as her sister in Florida or her friends with whom she spoke.

In this matter, the APS investigator and the Administrative Law Judge (ALJ) did not either investigate Thomasene's history¹² nor permit the history to be presented during the hearing. RCW 74.34.040(3) Reports- Contents - Identity

¹¹ Thomasene told several persons she did not want to talk with Glenn, in fact told him in the taped call which is the "verbatim report of exhibit tape "ZAA" which transcript mislabels the speakers.

¹² Thomasene had been left at the facility in Boise ID with virtually nothing by Glenn when he chose to move back to their home in Boise. This was just prior to the Everts' going to Boise after numerous phone calls from Thomasene for help. TR II p.111 lines 14-22; TR I p.99 lines 13-15.

Confidential states: Evidence of previous abuse, neglect, exploitation, or abandonment (the requirement in the start of this section regards reports under RCW 74.34.030 which was repealed in 1999) references what shall be contained in reports.

The history in this case is pertinent as Glenn abandoned Thomasene at the Boise facility and then called her repeatedly even late at night among other problems. The investigator chose not to look into the history by limiting her investigation to the comments of Glenn, Phyllis and Glenna while admitting that Thomasene was cared for at the Everts' and did state she spoke with her kids. TR II p.148 line 21.

The APS investigation does not comply with the statute in not considering the history of Thomasene, particularly the allegations of abuse/abandonment alleged to have occurred in Boise instigated by Glenn who continued to badger Thomasene after she was at the Everts.

The APS investigator does not comply with the statute in not contacting persons other than those noted above. The APS investigator does not comply with the statute as she failed to fully investigate the allegation regarding the Everts' treatment of Thomasene by not looking into the history and then limiting the persons consulted.

An investigation which is this limited in scope is not a full and fair investigation.

The APS's letters to Sarah and Steve Evert (AR 75-81) stating there are substantiated findings they (according to APS) mentally abused a vulnerable adult, are not supported by substantial evidence and are not in compliance with the requirements of RCW 74.34.

For the foregoing reasons the allegations of mental abuse of a vulnerable adult by Sarah and Steve Evert must be dismissed or the matter remanded to allow a either a complete proper investigation or a hearing including the history of the family.

3. Sarah and Stephen Evert did Not Mentally Abuse Thomasene and did not inappropriately isolate her.

RCW 74.34.020((2)(c) Definitions states:

"Mental abuse" means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a vulnerable adult from family, friends, or regular activity, and assault that includes ridiculing, intimidating, yelling or swearing."

Goldsmith v. DSHS, 169 Wn.App. 573 (2012) discusses mental abuse in a situation where the child of a "vulnerable adult" yelled and argued with his father leaving the father upset.

Goldsmith, 578-579 and 584-485¹³.

This record shows Thomasene was very upset while at the facility in Boise ID when Glenn abandoned her and then called her repeatedly.

¹³ The undersigned found no Washington case specifically dealing with inappropriate isolation. Inappropriate is not defined in the statute.

She was crying frequently and calling at least Sarah Evert if not also Phyllis and Dale seeking help. After the Everts moved Thomasene to their home in Spokane WA, she regained her composure, was able to take much less lorazepam (usually only having to take it when upset by a call from Glenn, Phyllis or Glenna), the fecal incontinence stopped and she was happy. Thomasene stated several times to Sarah as well as to others she did not want to speak with Glenn. Thomasene spoke with, visited with a number of persons while at the Everts.

Sene knew the Everts were going to pick Thomasene up stating:

"Q: Were you informed that they were going to Boise to take your mother home with them when they did it?

A: Yes. Yes." TR II 21 11.9-11.

Sene also spoke with her mother more while she was at Sarah's than she had prior to her move to the Everts' home. TR II p.22-23 lines 25-19. Sene testified she could call her mother any time and visited her often. Sene testified her parents "always fought. Ever since I can

remember mom and dad have had a turbulent relationship." TR II p.46 line 16-17.

Ms. Glass¹⁴ (TR II p.177-183), who visited the home approximately 1 time a week as the professional guardian for one of the Evert's adult family home residents, testified:

"Q: Were you ever there when there were other people visiting with Thomasene?

A: Yes. . . .

Q: did you ever see or hear Sarah or Steve Evert restrict contact with - - from other people - uh, Thomesen's contact with other people?

A: No. . . .

Q: Did you talk to Thomasene on occasion?.

A: Yes?

Q: Was there any - ever any time that Thomasene said something to you that would indicate to you that she was unhappy with the case she was receiving or being -- not having contact with anyone?

A: No. Not where she was. No.

Q: Did she ever talk to you about wanting to see or talk to her husband?

A: No.

¹⁴ DSHS notes for these witnesses "their names did not appear in the APS investigation which is one of appellants arguments about the investigation i.e. how little it investigated.

Q. Her daughter Phyllis?

A. No. Q. Her daughter Glenna? A: No."

TR II p.178-180 line 21-23; 3-6; 18-4.

Ms. Johnston (TR II 187-190) cared for Thomasene for a few hours and saw her for a short while one other time while Thomasene was at the Everts. Thomasene was happy when Ms. Johnston saw her and commented how happy she was that Sarah recued her. TR II p.189 lines 2-8.

Mr. Greene (TR II p.195-201) testified his mother, who had become friends with Thomasene, never mentioned Thomasene saying she had any problems or fears in the home and he did not observe Thomasene uncomfortable around either of the Everts nor phone calls going unanswered. TR II p.199-200.

Ms. Lovelady (TR II p.205-213) never heard the phone ring and ring and Thomasene told her she never wanted to speak to her husband. Ms. Lovelady testified:

"Q: And how often did you go over to meet her mother - or visit with her mother?

A: Oh, probably once every week or every two weeks I'd go over there and just visit and say hi.

Q: and did you go over there other times to visit with Sarah or Steve or anybody else?

A: Yeah. Yeah. I would visit with

everybody while I was there. The other patients also.

Q: And in the time that you were visiting at different times at Sarah and Steves's home did you ever hear the just ring and ring and ring and nobody answer it?

A: Uh, no, Ma'am. I did not.

Q: Did you ever try to call there and the phone would ring and ring and ring and nobody answer it?

A: Um, not to my recollection. Used - if it did I would get a message when I would - leave a message. But, um, I-there was always a message machine on if I - I'd just leave a message... . . .

Q: Um, when you visited with Thomasene did she ever say to you or indicate to you that she wanted to talk to her husband?

A: No.

Q: Did she ever -

A: Quite the opposite.

Q: Oh, did she tell you she didn't want to talk to him?

A: Want me to quote her? She pretty much said, "I don't want to talk to that", u, -- I - I think her she said, "bastard. Uh, I like it here" is how she said it.

Q: Was that just at the beginning of her stay there or throughout?

A: Um, pretty much throughout when we chat she/d say, you know - she'd just tell me how much she liked it there and - and she didn't want to go back home is what she would tell me. . . .

Q: did she ever tell you that she wanted to talk somebody and nobody would let her?

A: No, Ma'am." TR II p.207 line 5-22; p.208 lines 2-23.

Ms. Lorenz (TR II p.215-223) testified at how much calmer and happier than she had been in the past though she only saw her one time between March and September 2012. Ms. Lorenz testified:

"A: I saw her one time

Q: did she seem to be the same sort of person as she been previously when you kne her?

A: No. Not all.

Q: How was she different?

A: Uh, she was a lot nicer towards me. Um, we didn't have a very good relationship in the past and I, kinda, didn't really want to be around her a whole lot. And the last time that I had seen her when she was living with my mom she was a lot more calm and happy and we actually got along. I wanted

to hang out with her." TR II p.217 line 3-13.

Sarah Evert testified when recalled for direct testimony (TR II 228-261) Thomasene called numerous times asking Ms. Evert to come get her (TR II p.228 line 20-24); regarding one call from Thomasene's daughter Glenna (TR II p.232 line 5-21); as to the phone being busy on Mother's day (TR II p.233 line 16-21). Sarah testified about persons who called Thomasene:

"Q: Who did your mother talk to on the phone that you would call in the months that she was - family-wise, friend-wise, everything?

A: She talked to her Aunt Jo (phonetic) (inaudible) that's her - her baby sister. And she called her once every week or two.

Q: She called her?

A: Jo called my mom.

Q: Oh.

A: Usually. If Jo called and couldn't get through then I would call her back when we had time.

Q: Okay.

A: 'Cause a lot of times she couldn't get through. There were other people on the phone. Or other stuff's going on. But we'd call her back. She had a friend named Ruby Strickland (phonetic) and she called - uh,

who called mom. Uh, Evelyn (phonetic) Strickland called mom, Patsy Fattick (phonetic) called mom. Um, I don't remember the Elsie person they were talking about. But she had several friends from - I mean, from when I was three years old - that called. Oh, um, Gloria Ridley (phonetic) called. And there's a letter in there from Gloria Ridley.

Q: okay. What about nieces and nephew?

A: Colleen called a couple of times. An Colleen said - her husband's an RN and she's a respiratory therapist. And they went to visit mom and dad and her husband said, "well, that almost looks like abuse". And Colleen was telling me this. And I said, "Colleen, it is abuse". It was abuse.. . ."

TR II p.235-236 lines 2-4.

Sarah testified Thomasene's conversations with her son Dale:

"A: . . . One thing Dales was so frustrated was he said, "I can't carry on a conversation with her". He could call her after that and they could have a conversation.

Q: and did they?

A: Yes. I mean, it might not have been the quality he liked, but they did. . . ." TR II p.237-238 line. 23-4.

Annette Bundy (TR III p.18-43), a caregiver employed by the Everts from 7/16/12 until the end (TR III p.19 lines 21-22) testified to Thomasene's phone calls:

"Q: In the course of your employment did you answer the phone at their residence?

A: Mmm -

Q: (inaudible) -

A: -- on -on the average, no.

Q: And was there a reason for that?

A: A lot of times I was busy with the residents or Steve or Sarah were home to answer. Um, there was times where I did answer.

Q: Did you ever refuse to allow Thomasene to take a phone call?

A: No, Ma'am.

Q: Were you ever told by anyone not to allow certain people to talk to Thomasene?

A: No, Ma'am.

Q: Were you there when Thomasene - ever when Thomasene got a phone call?

A: No, Ma'Am." TR III p.20 lines 8-25.

Ms. Bundy did observe Thomasene upset after a phone call from her husband:

"Q: when you came on shift would people tell you what the various, u, residents and Thomasene - what their status was?

A: Yes, Ma'am.

Q: Would they tell you --

A: We did it -

Q: -- would they tell you if Thomasene had gotten a phone call?

A: Yes, Ma'am.

Q: And what phone calls upset thomasene? A: Her husband.

Q: He - were you ever told that either Glenna or Phyllis had Called?

A: I-you, I - that I don't recall. I know the last one was from her husband.

Q: Okay. And - and her response to that - how long would she be upset?

A: The whole evening. The entire evening. I spent hours trying to talk her down from being agitated, crying, upset." TR III p.22 line 5-25.

Ms. Bundy testified to conversations with Thomasene regarding her husband:

"Q: Did she ever talk to you about her feelings about her husband?

A: She just said he was bad. That's - she kept saying he was bad. He was mean.

Q: Did she indicate in any way that she wanted to go back and live with him?

A: No." TR III p.25 lines 18-24.

Steve Evert testified when recalled for direct testimony (TR III p.45-48) as to the calls he had helped Thomasene make to her sister:

"Q: What did she ask for?

A: Um, she wanted to call her sister several times. I gave her the phone helped her call her sister several times. . . ." TR III p.46 lines 4-10.

Mr. Evert also testified he (and Sarah) would have cared for Thomasene, divorced or not:

"MS. Coufal: And what I heard you say partly there was even if Thomasene had not wanted a divorce you would have cared for her anyhow? Mr. Evert: Absolutely." TR III 58 line 16-19.

Janyne West (TR III p.67-83), a friend of the family, testified regarding Thomasene:

"Q: And in those visits did you interact with Thomasene? A: Absolutely. Yes.

Q: And for the majority of the time what you're your observation of her demeanor, her behavior, her attitude?

A: Um, she was, um, talkative, happy. She would follow us around and, um at - at time - you know, she- she does have some, um

memory problems, um, but she was very very pleasant.

Q: Could she ask for things?

A: Absolutely.

Q: And did she?

A: Oh, yes. Yeah. She was often would call to find where - if Sarah was out of sight she would frequently come looking for her.

Q: Did she seem to you in your observation happy there?

A: Yes.. . . .

Q: Have you met Glenn?

A: Her husband?

Q: Thomasene's husband.

A: Yes.

Q: In your - in your conversations or interactions with Thomasene between March of last year and September did she ever discuss her husband with you or talk about him?

A: She did not.

Q: did she ever say that she missed him?

A: No.

Q: Early on when Thomasene was first at Sarah's and Steve's home you said she was remembering more of (inaudible). Was she upset with what - with the move and being there she was or with her recollections for what had occurred in Boise?

A: She was happy to be at Sarah's and she was very thankful to be at Sarah's. and she would - part of the dementia or the - she multiple times thanked Sarah that she come and got her because she been left with nothing but the dog at the assisted living where they were at.

Q: Nothing further.

Judge Pierce: All right. Ms. Ray?

Recross examination by Ms. Ray:

Q: How do you know she was left with nothing but the dog at the assisted - assisted living facility where she was at?

A: 'Cause she said, "I was left with nothing but the dog" .

Q: So, Thomasene told you that?

A: And in Sarah's presence, yes. TR III p.70 line 4-19; p.71 line 16-25; p.82-83 line 12-7.

Phyllis and Glenna, arguably, as well as Glenn upset Thomasene. The Everts limited the calls from those individuals. The Everts limited the conversations to topics that did not upset Thomasene. As Sarah Evert stated several times in the hearing, she believed she was protecting her mother. Protection of a vulnerable adult

from harassment, from becoming upset is appropriate. Limiting the scope of telephone conversations family members have with the vulnerable adult is appropriate. See *Goldsmith v. DSHS*, 169 Wn.App. 573 (2012) in which the court upheld the restriction of visits by the vulnerable adult's son because the son upset the vulnerable adult.

As the investigator stated in testimony, "inappropriate" is not defined in the statute and can be interpreted. As the investigator's associate noted when that associate took a complaint call from Glenna, the associate was not getting involved in a family squabble. The APS investigator assigned to the case chose to get involved in the family squabble, chose to not completely investigate the matter and chose to find the Everts "inappropriately" isolated Thomasene. The assigned investigator made these choices even though Thomasene was happy and well cared for at the Everts.

The family¹⁵ made no attempt to sit down and work out this situation. Rather Glenn, Glenna and Phyllis complained to APS when they felt they were not able to speak to Thomasene as they wished, when the conversations they had upset Thomasene. Limiting the upsetting calls to protect Thomasene is appropriate.

Thomasene was not isolated. She had numerous calls from family (Sene and Dale called as they wished), including her younger sister and friends; she had visitors, Sarah took her to water therapy, took Thomasene out to eat and to visit others. This is not isolation.

The limitations on the phone conversations with Thomasene were appropriate to allow Thomasene to maintain emotional regulation. She was permitted to and assisted with phone calls

¹⁵ Phyllis castigated Sarah in one email (before the Everts took Thomasene to Spokane) because Sarah stated she would call the Idaho equivalent of APS. Glenna, Glenn, Phyllis, and Sene believed the problem was Steve not Sarah as they had decided, from the testimony, Steve was controlling Sarah.

she wished to make and calls missed were returned. This is not isolation.

Substantial evidence does not support the finding the Everts inappropriately isolated or mentally abused Thomasene. The Everts rescued Thomasene and attempted to protect her from contacts upsetting to her. The only persons even arguably mentally abused were Glenna, Phyllis and Glenn, no Thomasene who was happy with the Everts.

The APS erroneously applied the statute as to "inappropriate isolation" and thereby exceeded its legal authority. The findings against the Everts must be vacated or the matter remanded for a proper application of "inappropriate isolation and mental abuse."

IV. CONCLUSION

The investigation in this matter was incomplete. It did not comply with the requirements of RCW 74.34.067.

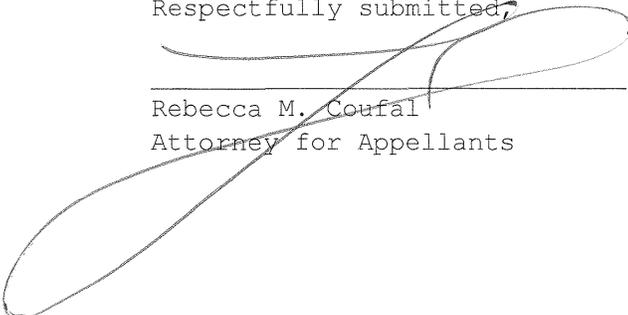
Thomasene was not inappropriately isolated and not mentally abused by the Everts. The findings she was abused and inappropriately isolated are not supported by substantial evidence nor does it comply with the statute.

Sarah Evert is harmed by the finding of mental abuse/inappropriate isolation as it can impact her ability to pursue her profession of Occupational Therapy.

The Everts respectfully request the founded findings in the October 15, 2012 letters (AR 75-81) be vacated and this matter either be dismissed as to them or remanded for a full and fair investigation and to have a hearing allowing them to present the complete case.

Dated this 7th of July 2014.

Respectfully submitted,



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