

**FILED**

JUL 18, 2016

Court of Appeals  
Division III  
State of Washington

COA No. 32979-8-III

COURT OF APPEALS, DIVISION III, OF THE STATE OF  
WASHINGTON

---

In re the Guardianship of

PAULA A. FOWLER,

Respondent,

and

JOSEPH F. VALENTE,

Respondent,

v.

LIN O'DELL,

Appellant.

---

BRIEF OF APPELLANT

---

Kenneth H. Kato  
WSBA No. 6400  
Attorney for Petitioner  
1020 N. Washington St.  
Spokane, WA 99201  
(509) 220-2237

TABLE OF CONTENTS

I. ASSIGNMENTS OF ERROR

A. When appellant Lin O’Dell’s declaration and response to the order to show cause established there were disputed facts, the court erred by failing to hold an evidentiary hearing to resolve them, thus violating her due process rights.....1

B. The court erred by entering findings of fact 1.1, 1.2(A) through (M), 1.4, 1.5, 1.6, 1.7, 1.8, 1.9, and 1.11 to the extent it “finds that the performance of the guardian in this matter has fallen below a standard of conduct prescribed by both SOP and statute” .....1

C. The court erred by making conclusions of law 2.1, 2.2, and 2.3.....1

*Issues Pertaining to Assignments of Error*

1. When Ms. O’Dell’s declaration and response to the order to show cause established there were disputed issues of fact, did the court err by failing to hold an evidentiary hearing to resolve them, thus violating her due process rights? (Assignment of Error 1).....1

2. Did the court err by making findings of fact 1.1, 1.2(A) through (M), 1.4, 1.5, 1.6, 1.7, 1.8, 1.9, and 1.11 to the extent it “finds that the performance of the guardian in this matter has fallen below a standard of conduct prescribed by both SOP and statute? (Assignment of Error 2).....1

3. Did the court err by entering conclusions of law 2.1, 2.2, and 2.3? (Assignment of Error 3).....2

II. STATEMENT OF THE CASE.....2

III. ARGUMENT.....	16
A. The court erred by failing to hold an evidentiary hearing to resolve disputed issues of fact that were established by Ms. O'Dell in her declaration and response to the order to show cause.....	16
B. The court erred by ordering Ms. O'Dell to pay all of the investigator's fees.....	19
V. CONCLUSION.....	20

TABLE OF AUTHORITIES

Table of Cases

<i>Brogan &amp; Anensen, LLC v. Lamphiear</i> , 165 Wn.2d 773, 202 P.3d 960 (2009).....	19, 20
<i>Bryant v. Palmer Coking Coal Co.</i> , 67 Wn. App, 176, 858 P.2d 1110 (1992), <i>review denied</i> , 120 Wn.2d 1027 (1993).....	20
<i>Grays Harbor County v. Williamson</i> , 96 Wn.2d 147, 634 P.2d 296 (1981).....	17
<i>Hemenway v. Miller</i> , 116 Wn.2d 725, 807 P.2d 863 (1991).....	19
<i>In re Welfare of Myricks</i> , 85 Wn.2d 252, 533 P.2d 841 (1975).....	16
<i>Jones v. State</i> , 170 Wn.2d 338, 242 P.3d 825 (2010).....	18
<i>Locke v. City of Seattle</i> , 162 Wn.2d 474, 172 P.3d 705 (2007).....	18
<i>Lybbert v. Grant County</i> , 141 Wn.2d 29, 1 P.3d 1124 (2000).....	18
<i>Reid v. Pierce County</i> , 136 Wn.2d 195, 961 P.2d 333 (1998).....	18
<i>Specht v. Patterson</i> , 386 U.S. 605, 87 S. Ct. 1209, 18 L. Ed.2d 326 (1967).....	17
<i>Wilson v. Steinbach</i> , 98 Wn.2d 434, 656 P.2d 1030 (1982).....	18

Rules

CR 56(c).....17

## I. ASSIGNMENTS OF ERROR

1. When appellant Lin O'Dell 's declaration and response to the order to show cause established there were disputed facts, the court erred by failing to hold an evidentiary hearing to resolve them, thus violating her due process rights.

2. The court erred by entering findings of fact 1.1 [CP 303], 1.2(A) through (M) [CP 303-310], 1.4 [CP 310], 1.5 [CP 310-311], 1.6 [CP 311], 1.7 [CP 311-312], 1.8 [CP 312], 1.9 [CP 312-313], and 1.11 to the extent it "finds that the performance of the guardian in this matter has fallen below a standard of conduct prescribed by both SOP and statute" [CP 313].

3. The court erred by making conclusions of law 2.1 [CP 314], 2.2 [CP 314] and 2.2 [CP 314]?

### *Issues Pertaining to Assignments of Error*

A. When Ms. O'Dell's declaration and response to the order to show cause established there were disputed facts, did the court err by failing to hold an evidentiary hearing to resolve them, thus violating her due process rights? (Assignment of Error 1).

B. Did the court err by making findings of fact 1.1, 1.2(A) through (M), 1.4, 1.5, 1.6, 1.7, 1.8, 1.9, and 1.11 to the extent it "finds that the performance of the guardian in this matter has fallen

below a standard of conduct prescribed by both SOP and statute”?

(Assignment of Error 2).

C. Did the court err by entering conclusions of law 2.1, 2.2, and 2.3? (Assignment of Error 3).

## II. STATEMENT OF THE CASE

On March 6, 2007, the court entered an order appointing limited guardian of estate and limited guardian of person of Paula Lynn Fowler, an incapacitated person. (CP 13). Ms. O'Dell was appointed guardian. (CP 15, 17). As stated in the petition for guardianship, the reason was:

The AIP filed a dissolution action wherein it was determined that there was a need for the appointment of a Title IV guardian ad litem to assist in the proceeding. During the process of appointing the Title IV GAL it was determined that the AIP's serious mental health issues significantly and negatively impacted the AIP's ability to make rational decisions in her own interest. In addition it was discovered that the AIP has a demonstrated history of inability to manage her considerable financial resources. (CP 3).

Areas of Assistance were stated in section IX of the petition:

A. The nature and degree of the alleged incapacity: Due to significant mental health issues the AIP is particularly vulnerable to influence and is unable to protect herself from financial predators or to make rational decisions related to her own health, welfare and safety.

B. The following are specific areas of protection and assistance required: The AIP requires protection and assistance related to her current and future financial matters. She is a named beneficiary of the considerable estate of her mother Norma Shank.

C. The duration of Guardianship should be the life of the ward. (CP 4).

In the order appointing limited guardian, the court found Ms.

Fowler was incapable of managing her personal affairs as they

relate to personal safety in intimate relationships:

PAULA LYNN FOWLER is in need of a Limited Guardianship over the Estate.

PAULA LYNN FOWLER is capable of managing most personal affairs, but is in need of the protection and assistance of a limited Guardian of the Person in the area as follows:

Decision making regarding seeking protection should an intimate relationship become abusive in the future. (CP 15).

The court concluded the powers of the guardian and restrictions placed on the incapacitated person should be:

All income except income earned by the ward through employment shall be under the management and control of the Guardian, including but not limited to paying monthly expenses. The Guardian shall consult monthly with the ward to determine a monthly amount for PAULA LYNN FOWLER, sufficient to allow autonomy related to entertainment, hobbies and other reasonable day to day comforts or enjoyment. This monthly amount shall be under the ward's sole control. The Guardian shall have the express authority to seek and control maintenance of

a protection order on behalf of PAULA LYNN FOWLER should the Guardian believe protection is necessary to ensure Ms. Fowler's safety and protection, including emergency relief in any proceeding, with the exception that Ms. Fowler may seek a voluntary dismissal of her petition in Case No. 06-3-00177-1. (CP 16).

On November 21, 2013, the court entered an order to show cause listing 13 areas of concern and attaching a Brief Explanation and Request for Additional Information/Documentation. The guardian was ordered to provide the court with the additional information/documentation requested in the attachment by December 10, 2013. (CP 199-206). On that date, Ms. O'Dell provided the court with what it characterized as "voluminous materials." (CP 277; Supp. CP 373 *et seq.*) She also filed several amended guardian's reports, a designation of standby guardian, and her declaration responding to the show cause. (CP 213-56).

On December 31, 2013, the court entered an order appointing a special investigator and deferring ruling on removal or termination. (CP 277). After noting Ms. O'Dell had responded to the order to show cause by "producing voluminous material," it appointed Joseph Valente as investigator and special master to review all court filings and report to the court whether there had been full compliance with reporting requirements, whether the

guardian had to supply additional documentation, whether additional investigative or forensic services should be utilized, and whether there were lapses by the guardian requiring restitution. (*Id.*).

Mr. Valente filed his investigative report on February 19, 2014. (Supp. CP 348). Addressing the issues raised by the court in its order to show cause, he found (1) a failure to re-designate a standby limited guardian from October 4, 2013, to December 10, 2013; (2) a failure to provide the court with complete, accurate, and understandable reports under SOP 401.5 in that the guardian had repeatedly filed reports indicating she was the full guardian of Ms. Fowler, had filed financial accountings that were unnecessarily confusing, had commingled transactions of the guardianship with those of two trusts where she served as trustee, and had reimbursed herself when reimbursements had not been approved in advance of self-payment as required by RCW 11.92.180 and SOP 410.2; (3) and (4) a failure to provide the court with notice of substantial changes in the estate's value, to accurately report the required bond amount, and to request the court's review of the bond, and a failure to provide proof of bond; (5) a failure to provide the court with complete and understandable billing records and

billing statements for third party service providers, a failure to identify third party service providers in the limited guardian's report/accounts or in her billing statements, and a failure to supply supporting records, *i.e.*, cancelled checks), even though some issues were moot "in that the guardian [had] provided substantial information in response to the Order to Show Cause," leaving an issue with regard to payments to third party providers; (6) a failure to obtain orders approving guardian's report/accounting for 2009 and 2012, but continuing to collect fees for services and pay third party providers without court authority to do so; (7) a failure to have meaningful in-person contact with Ms. Fowler; (8) a failure to provide the court with notice for each of Ms. Fowler's residential changes, although the guardian apprised the court of those changes in annual reports but not within 30 days of the change under RCW 11.92.043(3); (9) a failure to provide the court with notice of court proceedings initiated in another state that would significantly impact Ms. Fowler's facts and circumstances, particularly the Idaho guardianship petition filed in December 2011; (10) not well-founded any assertions of a failure to notify the court of the limited guardian's appointment as trustee of a substantial trust by an Idaho court, a failure to notify the court of the possible

conflict of interest presented by that appointment, and a failure to provide an accounting for the trust; (11) a failure to notify the court that a different guardian of the person was appointed by a court in Idaho, even though the report filed August 30, 2012, disclosed the guardian and was not concealed; (12) the guardian slowly, but eventually, concluded correctly the Washington guardianship should be closed so there was no failure to request that the court terminate or modify the guardianship; and (13) the guardian's rationale for keeping the Washington guardianship open until November 2013 "to protect Ms. Fowler if she sojourned into Washington seems weak, although not completely unreasonable." (Supp. CP 350-357).

In addition to the "findings" reflected in the Investigation Results section of his report, Mr. Valente also reached conclusions in the portions designated as Issues Raised by the December 31, 2013 Order Appointing Investigator/Special Master and Summary and Recommendations. (Supp. CP 357-366). He concluded there were 11 violations, "but [m]any of these actions or inactions fortuitously had no direct impact on the IP." (*Id.*). Mr. Valente further noted the case had been a nightmare for the guardian as Ms. Fowler was an extremely difficult client; review of the accounts

revealed the disbursements were reasonable for the most part; the guardian “did not respect proper boundaries between the Washington guardianship and the two trusts for Ms. Fowler,” but the instances of trust expenses being paid out of the guardianship and backing them out only to be legitimately paid from the trust served no useful purpose; the guardianship had run its course and should be closed.” (*Id.*). Mr. Valente also found a flaw in the court’s guardianship management system:

RCW 11.88.095(1)(d) contemplates that the Court will review a timely filed annual report within 30 days (120 days after the anniversary date of the order appointing guardian). In this case no action was taken for many months after a report was filed. In the interim, letters of guardianship expired creating confusion. If an annual report cannot be approved due to some deficiency, the Court should promptly notify the guardian of this and explain the nature of the deficiency. This would put the guardian on notice of the need to obtain an order extending letters temporarily and/or to remedy the deficiency. It should be made clear to the guardian whether the Court will schedule a hearing to resolve any disputes regarding administration of the guardianship or if that is the duty of the guardian. The Court should consider the adoption of a protocol which would be readily accessible to the public. (Supp. CP 366).

On December 10, 2013, she had already filed her declaration in response to the order to show cause. (CP 213). Mr. Valente requested additional information from Ms. O’Dell in an

email dated January 20, 2014. (Supp. CP 369). She responded with that information and explained her position, disputing his take on the facts. (Supp. CP 370-72).

Ms. O'Dell then filed her response to the investigative report on February 25, 2014. (CP 279). With respect to the summary section of the report, Ms. O'Dell responded (1) as to a standby guardian, she "had a standby guardian continuously appointed during the pendency of this guardianship; (2) as to paying attorney fees without review or approval by the court, she responded "[a]ll attorney fees up to 2012 were approved by the Court" and "[i]n 2012, the costs relating to the sale of the Northport property were divided by the court in the dissolution and deducted from Mark Fowler's share at closing" with "[t]he balance of the fees [occurring] in Idaho in regards to the trust; (3) as to acting as guardian after the letters of guardianship had expired, her letters "never expired;" (4) as to advancing guardian fees without court authority, she stated all of her fees were within the budget set by the court at the beginning of the period and approved by the court at the end through the reporting period ending March 5, 2011, and the court did not review the report ending March 5, 2012, despite her calls to the court inquiring about the report and approval process; (5) as to

meaningful visits in person, she stated personal meetings with Ms. Fowler would escalate with there being no meaningful conversation and, but she nonetheless was “in constant contact with Paula, her attorney(s) and the guardian of the person” where she would meet with Ms. Fowler with her attorneys but she refused to talk to the guardian; (6) as to the wolf dog puppy, the guardian did indicate in an email she was full guardian of the estate, but that was a scrivener’s error with the puppy purchased by the estate since Ms. Fowler never had any independent income; (7) as to unreasonable billings for a case manager, the guardian disputed Mr. Valente’s findings and conclusions relating to the issue and explained why her presence was necessary with regard to time spent on the IID for Ms. Fowler, time spent for review and signing of closing documents in Colville, and the writ of eviction on the Northport property with a necessary trip to the dump. (CP 279-83; Supp. CP 374-391, 450-471, 502, 601, 606-618, 624-628, 639, 649-651, 654-655, 662-669, 673-678, 689-697, 699-704, 750-758, 762-783, 805-825, ).832-844, 863-866, 868-872, 877-880, 882-887, 890-900, 902-906, 914, 916-919, 936-942, 946-948, 961, 968, 982-983, 998, 1084, 1147, 1162, 1170-82, 1283-1284, 1286-1291, 1295-1309,

1314, 1331, 1342, 1425-1426, 1445-1518, 1521-1531, 1556, 1602-1608, 1614-1619).

In response to a notice of presentment, Ms. O'Dell filed on November 13, 2014, her objection to proposed findings of fact, conclusions of law and order to show cause. (CP 284). She objected to the denial of due process when the court refused to hold an evidentiary hearing on show cause even when she established disputed facts in her December 10, 2013 declaration, later supported as well by her February 25, 2014 response to the investigative report. (CP 284). Raised again at presentment, the court summarily rejected her due process argument. (11/20/14 RP 38). Ms. O'Dell also objected that Mr. Valente exceeded the scope of his appointment. (CP 285). On proposed finding of fact 1.2(A), she explained the original standby guardian was not compensated for the "violation" period between October 14, 2013, and December 10, 2013, noted by the investigator and thus could be the standby despite her decertification. (CP 286). With respect to proposed finding of fact 1.2(B), the annual report for March 6, 2011, through March 5, 2012, was filed on August 29, 2012. But the court did not enter an order settling the guardianship account or report or order a hearing to appoint a GAL if necessary to investigate the accounting

or report, so she satisfied her duties as limited guardian. (CP 286). As for the investigator noting disbursements made by the guardian must be approved in advance by the court under RCW 11.92.180, Ms. O'Dell objected to the investigator's interpretation of the statute as applied to this case:

The statute actually states that guardian expenses may be allowed at any annual or final accounting; but at any time during the administration of the estate, the guardian may apply to the court for an allowance upon the compensation or necessary expenses of the guardian and for attorney fees for services already performed. This is the way expenses had always been handled by this court in this case. (CP 286-87).

She further noted the court indicated an investigator was necessary because of the voluminous documents the guardian provided, but she produced exactly what the court wanted and ordered to be produced. Any need for an investigator was caused by the court, not the guardian, and costs should be shared. (CP 287). As for her billing statements, Ms. O'Dell stated they were easily explained "at the time of filing and/or additional information could have been provided that would have been clear to the court." (CP 287).

With respect to proposed findings of fact 1.2 (E) and (F), Ms. O'Dell noted the court had approved in the annual report filed on August 16, 2010, the prior year's attorney and guardian fees and

continued with the order to advance \$1,000 monthly for guardian fees. (CP 287). On June 30, 2011, the court also approved fees of \$12,696.63, which was within the previous order and approved attorney fees, along with an authorized \$1,500 monthly until June 5, 2012. (*Id.*). Objecting to the investigator's challenge to these existing orders where the practice had been to ratify fees or to provide additional information, Ms. O'Dell explained the next two annual reports were not approved by the court despite all guardian fees and third party fees being disclosed. (*Id.*). She inquired as to their status, but could get no answers and could not force the court to act. (*Id.*).

As for proposed finding of fact 1.2(H), she objected because she was the "limited guardian of the person to file domestic violence reports if needed" and had no control where Ms. Fowler lived and often had no idea of her whereabouts while she was in treatment, stayed with friends, went off with some fellow, lived in her car, or moved to apartments. (CP 288). With respect to proposed findings of fact 1.2(L) and (M), Ms. O'Dell objected because the court had misinterpreted the facts as Ms. Fowler never had any earned income. (*Id.*). Ms. Fowler's mother put money into the guardianship at \$2,000 monthly for living expenses plus extras

as needed and this arrangement did not change with the funding of the Idaho trust. (*Id.*). No fees were taken from both the guardianship and the trust. Once the trust funded, it continued to put money into the guardianship account to pay for Ms. Fowler's experiences. (*Id.*). Ms. O'Dell further disputed the finding that she did not assess the continued need for a limited guardian of the person in Washington as she made informed decisions based on her judgment and the facts. She indicated this finding of wrongdoing was made summarily without "testimony or even knowing the facts I considered in making my decision." (*Id.*). Ms. O'Dell objected as well to the court's finding she was intended to be just a representative payee and was just to receive income and pay bills without responsibility for any other assets or property of Ms. Fowler. (CP 289). But she was more than that and was not given the opportunity to dispute this finding. (*Id.*).

As for proposed finding of fact 1.5, Ms. O'Dell objected to the court regulating the amount of attorney fees an attorney charges as it is subject to court approval in any event and she found it necessary to hire "an attorney to review and sign closing documents for sale of real property." (CP 289). With respect to proposed finding of fact 1.6, Ms. O'Dell objected as Jimmy Smith

was employed as her care manager and billed at \$75/hour although not paid at \$75/hour. (*Id.*). He was an employee, not a contractor, and was issued a 1099 at his request rather than a W-2. (*Id.*).

Ms. O'Dell objected to proposed finding of fact 1.7 because the court mischaracterized her explanation why she needed to be physically present at execution of the sheriff's warrant in the unlawful detainer evicting the tenant from Ms. Fowler's Northport property. She objected to the \$300 disgorgement. (CP 289-90). As for proposed finding of fact 1.8 dealing with the guardian's involvement in driving Ms. Fowler's car to her brother, Ms. O'Dell objected because she was acting within the scope of her appointment:

I had Ms. Fowler's car because she refused to stop driving it with her license suspended. I ran through car wash and delivered the car to Rex Shank. I could have hired a \$35.00 driver and what would I have done if the car was in an accident. I personally drove the vehicle and Rex and I went through the car so the condition could be verified. It took [me] 3 hours from the place the car was stored to Post Falls, Idaho with time to confer with Rex. I spent the time as a guardian and should be paid for it. (CP 290).

On November 20, 2014, the court entered Findings of Fact, Conclusions of Law and Order on Show Cause. (CP 302). The court ordered the guardian (1) to pay Mr. Valente \$3,000 for his

fees as investigator/special master; and (2) disgorge to the guardianship estate \$2,591.50 with the guardianship dismissed after resulting guardianship funds were transferred to the Idaho trust. (CP 315). It also entered the final order approving guardian's report, accounting and budget with "the modifications noted herein." (*Id.*). Ms. O'Dell was not removed as guardian and the guardianship was dismissed as there was no longer any need for it. (CP 305, 313). This appeal follows. (CP 322).

### III. ARGUMENT

A. The court erred by failing to hold an evidentiary hearing to resolve disputed issues of fact that were established by Ms. O'Dell in her declaration and response to the order to show cause.

The essence of due process is the right to be heard; a hearing must be both meaningful and appropriate to the case. *In re Welfare of Myricks*, 85 Wn.2d 252, 254, 533 P.2d 841 (1975). Ms. O'Dell submitted her declaration, objections, and produced what the court asked for in her response to the order to show cause. These submissions created disputed issues of fact as previously noted in the statement of the case and they addressed each of the court's challenged findings of fact, which in turn adopted the investigator's findings. But the court, and the investigator, decided

these disputed issues of fact without giving Ms. O'Dell the opportunity for a fact-finding hearing with testimony and witnesses so it could properly resolve those factual issues. Indeed, due process demands the opportunity to be meaningfully heard and to confront witnesses, with the right to cross-examine and to offer evidence of her own. See *Specht v. Patterson*, 386 U.S. 605, 607-08, 87 S. Ct. 1209, 18 L. Ed.2d 326 (1967); *Grays Harbor County v Williams*, 96 Wn.2d 147, 152-53, 634 P.2d 296 (1981).

Ms. O'Dell was not afforded due process. Rather, the court resolved those disputed issues of fact and ruled against Ms. O'Dell through a summary judgment procedure. But when there are genuine issues of material fact, summary judgment is improper even on show cause, and there must be an evidentiary hearing. CR 56(c). When objected to by Ms. O'Dell at presentment, the court summarily dismissed her objection as well without explanation. (11/20/14 RP 38). The court erred.

Ms. O'Dell controverted each finding made by the investigator, and adopted by the court as its own, that she now challenges as well as the court's separate findings. Summary judgment is appropriate when there is no genuine issue as to any material fact and judgment follows as a matter of law. CR 56(c);

*Locke v. City of Seattle*, 162 Wn.2d 474, 483, 172 P.3d 705 (2007).

When determining whether any genuine issue of material fact exists, the court construes all facts and inferences in favor of the nonmoving party. *Reid v. Pierce County*, 136 Wn.2d 195, 201, 961 P.2d 333 (1998). Here, Ms. O'Dell was the nonmoving party to whom the show cause order was directed.

A genuine issue of material fact exists when reasonable minds could reach different conclusions. *Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982). The appellate court engages in the same inquiry as the trial court and review is de novo. *Lybbert v. Grant County*, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000). The court cannot resolve factual questions on summary judgment as that determination must be made at an evidentiary hearing. *Jones v. State*, 170 Wn.2d 338, 354, 242 P.3d 825 (2010). As noted in her declaration, responses, and objections, Ms. O'Dell controverted each challenged finding as fully set forth in the statement of the case at pp. 8-15. They are incorporated here by this reference as setting them forth again would be redundant.

There is no question the court and investigator resolved disputed issues of material fact against Ms. O'Dell without an evidentiary hearing. This was wholly improper and the show cause

should not have been decided by a summary judgment proceeding. The court, and investigator, weighed credibility on conflicting evidence and made fact findings. See *Hemenway v. Miller*, 116 Wn.2d 725, 731, 807 P.2d 863 (1991). By so doing, the court erred are there were genuine issues of material fact necessitating an evidentiary hearing. *Brogan & Anensen, LLC v. Lamphiear*, 165 Wn.2d 773, 775, 202 P.3d 960 (2009). And those findings did not support the conclusions. Accordingly, the order on show cause, including the disgorgement required by the court, must be reversed and the case remanded for further proceedings. *Id.*

B. The court erred by ordering Ms. O'Dell to pay all of the investigator's fees.

The investigator found fault with the guardian and the court itself with respect to its guardianship management system. (Supp. CP 366). In its findings, the court also "[noted] that it bears some responsibility for its own dilatory practice in bringing these specific issues to the attention of the guardian by way of citation to show cause or otherwise." (CP 305). It also found the guardian had some responsibility for managing the guardianship estate and assuring that all actions of the guardian are either authorized in advance or approved in annual reports, as the case may be." (CP

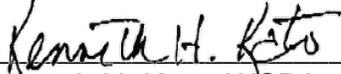
305-306). Yet, it ordered Ms. O'Dell alone to pay the investigator the entire \$3,000 for his fees. (CP 314).

The order for Ms. O'Dell to pay those fees is improper because the court based its decision on findings made without holding an evidentiary hearing when genuine issues of material fact existed. *Brogan & Anensen, LLC*, 165 Wn.2d at 775; *Bryant v. Palmer Coking Coal Co.*, 67 Wn. App. 176, 178, 858 P.2d 1110 (1992), *review denied*, 120 Wn.2d 1027 (1993).

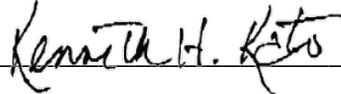
#### IV. CONCLUSION

Based on the foregoing, Ms. O'Dell respectfully urges this Court to reverse the trial court's order and remand for further proceedings.

DATED this 18<sup>th</sup> day of July, 2016.

  
\_\_\_\_\_  
Kenneth H. Kato, WSBA # 6400  
Attorney for Appellant  
1020 N. Washington St.  
Spokane, WA 99201  
(509) 220-2237

CERTIFICATE OF SERVICE: I certify that on July 18, 2016, I served a copy of the brief of appellant by email, as agreed, on Paula Fowler at plsef@rocketmail.com and Joseph Valente at jfv8847@q.com.

  
\_\_\_\_\_