

FILED

AUG 17 2016

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

COA No. 32979-8-III

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

In re the Guardianship of

PAULA FOWLER,
Respondent

And

JOSEPH F. VALENTE,

Respondent

v.

LIN O'DELL

Appellant.

BRIEF OF RESPONDENT
JOSEPH F. VALENTE

Joseph F. Valente
WSBA No. 6119
Respondent Pro Se
6214 South Paula Ct.
Spokane, WA 99223
(509) 448-0557

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I. STATEMENT OF THE CASE

The proceedings in the trial court were hearings to review intermediate accounts filed by the guardian in a guardianship case. This is provided for in RCW 11.92.050. After an initial review of the reports, the court issued an Order to Show Cause on November 21, 2013, citing numerous suspected violations of fiduciary duties, statutes and standards of practice governing certified professional guardians [CP 199 – 206]. At the show cause hearing on December 31, 2013, the guardian appeared and filed five amended reports [CP 226 -230, 231 -236, 242 – 246, 257 – 266, 247 – 256]. She filed a ten page declaration in response to the show cause order [CP 213]. She also provided over 1500 pages of additional information, including hundreds of pages of e-mails. [Ex. C.1 – C. 1GG]. The Order Appointing Investigator/special master, entered on Dec. 31, 2013 [CP 277], required the investigator to review the court filings. The findings set forth as the basis for the order indicate the materials provided were voluminous and not easily understood by the court. It was a review of these court filings, provided by the guardian, which formed

the basis of the investigator/special master's report to the court [Supp. CP 348, et. seq.]. Contrary to the guardian's statement of the case, the material facts ultimately adopted by the court in its Findings, Conclusions of Law and Order on Show Cause [CP 302 et. seq.] are facts provided by or conceded to by the guardian. While the guardian and the court disagree, it is actually a dispute regarding the interpretation of statutes, orders, standards of practice and fiduciary duties. It is not a dispute about material facts or credibility.

Finding of Fact 1.2A [CP 303] is illustrative. There the court finds that the guardian had not designated a certified professional guardian as standby guardian for the period between Oct. 14 and Dec. 9, 2013. On page 2 of O'Dell's declaration, filed on Dec. 10, 2013, she states, "it was my intention to appoint Mr. Robinson as my standby limited guardian and I must have failed to file the notice" [CP 214]. Page one of the same declaration states that prior to this, the named standby guardian was Carole Gaherin [CP 213]. Ms. Gaherin had been a professional guardian, but had been de-certified by the Certified Professional Guardian Board in 2011 for persistent incompetence and gross neglect [CP 293-301]. The trial court's findings directly track the admissions of the guardian.

Finding of Fact 1.2B [CP 303] is essentially that the guardian's reports were opaque and not complete, accurate and understandable. The court held hearings on Dec. 10, 2013, Mar. 4, 2014 and Nov. 20, 2014. The guardian was given an opportunity at each hearing to present her case. The totality of the record is voluminous. The reports speak for themselves. The Investigator's report at section 2, [Supp. CP 351 et seq.] explains why the trial court might have had difficulty understanding the misleading, chaotic, and inconsistent information contained in the guardian's reports. By way of example, the investigator's report details how the guardian reported the same type of transfer of trust funds into the guardianship in three different and contradictory ways in three different reports. Ultimately, the reports are clear, complete, accurate and understandable or they are not.

A cursory examination of a sample report, filed Aug. 30, 2012 [CP 157], illustrates the basis for the court's finding of inaccuracy. The report states that Tom Robinson is the standby guardian. However, in her declaration on this point [CP 214], the guardian concedes that she intended to designate Mr. Robinson as standby but failed to actually do so. In sec. 2, on the same page of the report she states she is the "full"

guardian of the estate. Later in the report she states in narrative, "I am the full guardian of the estate..." [CP159]. This inaccurate statement is repeated throughout the case. The Order Appointing Guardian [CP 17], entered Mar. 6, 2007, specifically creates a very limited guardianship as a negotiated compromise. The report goes on to state in sec. 10 that the court requires "0" bond [CP 159]. This is directly contradicted by the court order entered Mar. 28, 2008. It sets the bond at \$20,000 [CP 050]. Finally, the report, at sec. 15 [CP 164], shows the balance of assets of the guardianship estate at \$1,807,606.32. This is accomplished by commingling in the report the value of two Idaho trusts which are not even part of the guardianship estate. Trusts are separate legal entities. Again, there is no adverse witness. It is the guardian's report itself which provides the material facts.

Finding of Fact 1.2D [CP304] is essentially that the guardian failed to obtain a bond. This finding could be relevant to a conclusion that involves the guardian's violation of a direct court order, a Standard of Practice and two statutes. The court ordered the guardian to obtain a \$20,000 bond in an order entered March 28, 2008 [CP 049-050]. A review of the record will disclose that no bond was ever obtained. The

Declaration of the Guardian [CP 216], filed Dec. 10, 2013, removes any doubt on this issue. In it, at line 27, the guardian states, "I inadvertently neglected to order the bond and did not catch it in subsequent orders". The findings [CP 304] go on to state that substantial changes in the income or assets of the guardianship did not result in the guardian reporting such change within 30 days. Finally, it states that the guardian did not seek a hearing for an amended bond. The court references RCW 11.88.100 and 11.92.040(3) to highlight the significance of these failures. While it is difficult to prove a negative, a review of the record would show that there is no notice of changed financial circumstances or request for a bond hearing. It is correct that the court did not take live testimony on these points. The facts were determined by examining the record.

In the guardian's report, filed Aug. 30, 2012 [CP 161], it shows \$86,000+ of income for the one year reporting period, in addition to a starting balance of \$21,928. Even if the required \$20,000 bond had been obtained, it would have been obviously inadequate. Yet the guardian took no action to secure these excess funds. The lack of a bond and the amount of unsecured funds passing through the estate are the facts

provided by the guardian and accepted by the court. The source of these facts is not an adverse witness whose credibility is in issue. O'Dell, in her brief at page 18 states that each challenged finding is controverted. However, this is contradicted by the facts conceded in her declaration [CP 216].

Finding of Fact 1.2E [CP 304], despite its caption, relates to the payment of attorney fees paid by the guardian. This is relevant to the court's review function as required by RCW 11.92.180. The report filed Aug. 30, 2012 [CP 162] illustrates the problem. In it the guardian discloses that \$22,154 in attorney's fees had already been paid to several attorneys, including the guardian (also an attorney), during the reporting period. The court was initially unable to assess the reasonableness of these fees as no fee declarations were provided. The court seemed to be concerned that it was being asked to approve fees without supporting documentation after the horse had left the corral. The facts are that the fees were paid prior to court approval. When the fees were disclosed after the fact, in the annual report, they were treated as any other bill having been paid in due course. In an addendum to the court's Order to Show Cause [CP 204], filed Nov. 21, 2013, the court states "However, the

associated billing statements for those services were not provided;”. The guardian and the court disagree on the interpretation of the applicable statute. Should attorney’s fees be paid before or after the court approves them? That is a legal question. The guardian does not dispute the material fact that she paid herself and several other attorneys’ legal fees during the reporting period prior to court approval. In her declaration [CP 220] the guardian indicates she has done things this way for many years. The court can determine the validity of that line of defense. Again, the court accepted the facts provided by the guardian that the fees were paid first and retroactive approval was sought in the annual report.

Finding of Fact 1.2F [CP 305] relates to the payment of guardian fees by the guardian to herself during the years 2012, 2013 and 2014 without court authorization and prior to approval thereof. An Order Approving Guardian’s Report, Accounting and Budget was signed and filed Jun. 30, 2011 [CP 138]. The order permits the guardian to advance a set amount of fees to herself each month until June 5, 2012. In the report filed by the guardian on Jun. 3, 2013 [CP 195], the guardian indicates that she paid herself guardian fees of \$8,483.49 during the report period from

Mar. 2012 to Mar. 2103. She was advancing fees each month, even though the order to do so expired June 5, 2012. On Dec. 10, 2013, after being alerted by the court of the numerous errors in her original reports, the guardian filed a series of amended reports. In the amended report [CP 253] covering this same period of Mar. 2012 to Mar. 2013, it is stated that she had paid herself almost \$16,000 in guardian fees. The guardian does not dispute that she kept paying herself fees after June 5, 2012. No order had been entered extending the guardian's authority to continue paying fees to herself. The facts and sequence of events are resolvable by reference to the existing record. The court accepted the facts in the record created by the guardian.

Finding of Fact 1.2G [CP 306] relates to the guardian's failure to report not having any in-person contact with Ms. Fowler during the report period from Mar. 2011 to Mar. 2012. The guardian does not dispute the complete lack of in-person contact in her declaration in response to the court's concern [CP 221-222]. The court's findings express frustration with the guardian making a unilateral decision to avoid personal contact with the client without disclosing the plan and justification in her report or by separate notice. The guardian failed to explicitly bring this issue to

the court's attention. After the absence of contact was discovered in reviewing billing statements, the guardian tried to justify the lack of contact by stating that Ms. Fowler was verbally abusive and disliked the guardian intensely [CP 222]. She just concluded contact would likely be unproductive. By implication, it was the court's conclusion that this decision would be best made by an impartial third party rather than a one of the principals in a toxic relationship. This might be the origin of the court's conclusion that the guardian should have disclosed the decision to avoid contact and sought court approval [CP306]. However, the fact of no in-person contact remains undisputed. A review of the annual report for this period confirms it makes no mention of a decision having been made to avoid all in-person contact or the reasons therefore [CP 156-165]. The court and the guardian simply disagree on the duty of a guardian to disclose and explain a decision to have no in-person contact.

Finding of Fact 1.2H [CP 306] relates to the guardian's failure to ever file a notice of change of address for the IP within 30 days of such change as required by RCW 11.92.043(3). The guardian only advised the court of a change of address when filing her annual reports. This issue can be resolved by a review of the court file which will not show any Change of

Address notices for the client. The court expresses frustration with only finding out about residential changes in the annual reports. Again, this issue can be resolved by reviewing the record.

Finding of Fact 1.21 [CP 306] relates to the guardian's failure to provide timely notice to the Superior Court that a guardianship proceeding had been commenced in Idaho, where Ms. Fowler resided. It finds that in the course of the Idaho proceeding temporary letters were issued Jan. 18, 2012. A final order was entered June 11, 2012. The Idaho guardianship papers are contained in an exhibit [Ex. C-1.S] entitled Idaho court papers. When the guardian filed her report late on Aug. 30, 2012, there was an oblique reference to an interested party called Onsite/Insight [CP 157]. It indicates that this party's relationship to Ms. Fowler is Guardian of the Person. The trial court expresses the view that if it had timely known about the duplicative case in Idaho, where Ms. Fowler had established residence, it could have made an earlier informed decision on whether to terminate this Washington guardianship. There is no Notice of Changed Circumstances to alert the court. The particulars of the Idaho case are not provided in the report, even though that case had been pending for many months. This can be determined by examining the

documents. The material facts are the existence of the Idaho guardianship and the lack of timely and meaningful notice to the Washington court.

Finding of Fact 1.2J and K are not adverse findings as to the guardian [CP - 307]. Perhaps the assignment of error was inadvertent.

Findings of Fact 1.2L and M, according to the trial court, are intertwined and merged [CP 307]. Essentially, the court finds that the guardian did not bring to its attention sufficient information regarding the Idaho trusts that benefited Ms. Fowler or the Idaho Guardianship proceedings. In the guardian's annual report, filed Aug. 30, 2012, [CP 156], she shows income from the Norma Shank (Ms. Fowler's mother) Trust [CP 161]. In sec. C of the report [CP 163] the guardian shows an adjustment to the value of the guardianship estate of \$423,038.11, described as Support Trust #300. It has been mentioned earlier that the trust is a separate legal entity and its assets are not those of the guardianship. The court expresses frustration at the paucity of information. While not entirely concealed, the court could not assess the impact and chart an appropriate course without knowing more. The court expressed a need in particular for the terms of

the trust and how this might impact Ms. Fowler and the identity and authority of the trustee who, it turned out, was the guardian.

The court expresses similar issues regarding the lack of timely information provided regarding the creation of a redundant guardianship in Idaho [CP 309 -310]. The concern seems to be that no Change of Circumstance Notice was filed to specifically draw the court's attention to the filing of a petition and the granting of guardianship orders in Idaho. The court could only deduce that something had happened after the fact. Guardians communicate information to the supervising court by filing reports and notices. What was or was not provided to the court can be determined by reference to the court file.

Finding of Fact 1.4 [CP 310] ultimately ratifies the guardian's conduct as being reasonable, even though outside the scope of her limited appointment. This relates to the guardian charging to have an ignition interlock installed in Ms. Fowler's car. It is possible that assigning error to a finding in favor of the guardian was inadvertent.

Finding of Fact 1.5 [CP 310 -311] relates to the Spokane guardian, acting in the capacity of attorney, charging \$225 per hour to drive to Colville to sign the closing papers on the sale of Ms. Fowler's property. The

guardian had full opportunity to address this issue in the Guardian's Response to Investigative Report [CP 282]. The guardian explained what she did and why she did it. The court found that there were more economical and efficient means to accomplish this task at a more reasonable fee. The court found it was wrong for the guardian to pay herself attorney's fees prior to court approval. The guardian inexplicably responds in her objection that, "I object to the court regulating the amount of fees an attorney charges in this action." [CP 289] This issue has been fully litigated. The guardian and the court disagree on the nature of the guardian's duty to seek prior approval before paying attorneys' fees in a guardianship case. They also are in conflict on whether it would have been more economical or efficient to use alternative means to review and sign closing documents without driving to Colville. There is not a fact dispute as to what transpired.

Finding of Fact 1.6 [CP 311] relates to the guardian charging Ms. Fowler \$2,640 at \$75 per hour for the services of Jerry (sic) Smith. This may be a typo and should refer to Jimmy Smith. The court finds that Mr. Smith was an independent contractor paid by the guardian at the rate of \$30 per hour. In order to determine the reasonableness of charges for these

services the court needed to know Mr. Smith's qualifications. The court found that the guardian was unable to provide even a job application or resume or even a criminal background check. This issue was raised in the Investigator's report [CP 362 - 363]. While the guardian filed a Response to this report [279 -283] the issue was not addressed. In her objection to the court's findings, conclusions and order [CP 288] the defense on this issue is contradictory. It states, "He was an employee, not a contractor, and was issued a 1099 at his request rather than a W-2." The guardian never provided work history, education or any due diligence from which the court could justify a charging rate of \$75 per hour for mundane services, such as taking phone messages. Ultimately, the court found that a reasonable fee for Mr. Smith's services was \$30 per hour. The guardian was given ample opportunity to provide evidence justifying the reasonableness of a higher charge up rate and simply failed to do so. The court ordered a partial refund of the charges.

Finding of Fact 1.7 [CP 311 – 312] relates to the guardian charging Ms. Fowler to attend a Sheriff's eviction to clear out a tenant on her Northport property. The court finds that the guardian started out by hitching a trailer to her vehicle. After arriving at the property she began

collecting trash and then made a dump run. She was charging \$125 per hour for her time. The court found that hourly rate unreasonable for collecting trash and taking it to the dump and imposed a lower rate of \$75 per hour. The guardian had full opportunity to argue the merits of her side on this issue as was done in her response [CP 282]. The court reached an adverse finding that it was unreasonable to charge her full guardian rate when she elected to become a direct service provider as trash collector. The material facts are clear as to what transpired. The guardian and the court disagree on how those facts bear on the guardian's fiduciary duty.

Finding of Fact 1.8 [CP 312] relates to the guardian billing Ms. Fowler \$125 per hour for three hours to have the client's car washed and personally delivering it to a family member in the State of Idaho. The court finds that a reasonable rate for such mundane services was only \$35 per hour. There is no factual dispute about the tasks performed or the time billed. The facts would not likely be changed by an evidentiary hearing. It seems the real dispute is about the court's conclusion as to a reasonable hourly rate for this mundane direct service which, by the way, the court opined to be arguably outside the scope of the guardian's

appointment. The scope of the appointment is outlined in the order appointing limited guardian [CP 013 -020].

Finding of Fact 1.9 [CP 312] primarily raises other issues that the court might have delved into if it was so inclined. However, it does find that the guardian routinely disregarded the narrow scope of the guardianship when providing services to the IP. The guardian responded in a declaration [CP 214] that she disagreed. The guardian cites to the same language of the order creating a very limited guardianship to justify providing a very broad range of guardianship services. The crux of the dispute is not about the facts of what services the guardian performed. It concerns the interpretation of the limitations contained in the Order Appointing Limited Guardian of the Person and Limited Guardian of the Estate {CP 16 – 17}. In effect, the court sees what appears to be a guardianship of very limited scope and a guardian performing as if there is a full guardianship. The court and the guardian disagree on the interpretation of the order appointing limited guardian [CP 13 – 20].

It is regrettable that it has been necessary to parse through the trial court's findings in such great detail. However, it is important to clarify that the material facts are those derived from the record created by the

guardian's reports and supporting documents. It is the interpretation of statutes, court orders, Standards of Practice and fiduciary duties on which the guardian and the trial court disagree.

ARGUMENT

A. The central argument of the guardian's brief is that she was denied due process because the court failed to conduct an evidentiary hearing to resolve purported disputed issues of fact. RCW 11.92.050 provides that a hearing to settle an intermediate account in a guardianship may be scheduled by the guardian or the court. That is what took place in this case. The statute does not mandate an evidentiary hearing. The stated purpose of the hearing is for the trial court to satisfy itself that the actions of the guardian or limited guardian have been proper.

To expeditiously resolve disputes involving the estates of incapacitated persons the legislature adopted RCW 11.96A, also known as TEDRA. It applies to guardianships and, in effect, supplements RCW 11.88 and 11.92. See *In re Guardianship of McKean*, 136 Wn. App. 906, 151 P. 3d 224 (2007). The statute, at RCW 11.96A.020 (2), gives the trial court broad discretion, described as plenary power to proceed

“in any manner and way that to the court seems right and proper”. At RCW 11.96A.100 (7) it provides that the testimony of witnesses may be by affidavits. The statute expressly provides that the trial court may conduct a hearing without live testimony. One could infer that the legislature did not want such matters to drag on interminably, with ever increasing professional fees emulating the fictional *Jarndyce* case made famous by Charles Dickens in the novel *Bleak House*. O’Dell cites to no statutory requirement for an evidentiary hearing.

The trial court followed the statutory procedure for review of guardian’s intermediate report as prescribed by RCW 11.92.050. The court set a hearing to review the reports. It issued an Order to Show Cause to the guardian setting forth concerns derived from an initial review of the filed reports [CP 199]. The guardian submitted a “voluminous” record in an attempt to justify her actions and inactions. From December, 2013 through November, 2014 the court accepted her declaration [CP 213 – 223], response [CP 279 -283] and objection [CP 284 -290]. She was never prevented from filing anything. Oral argument was permitted on each occasion.

It is not disputed that the guardian is entitled to procedural due process. However, due process is a flexible concept and calls for such procedural protections as the situation demands. See *Morrissey v. Brewer*, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972). The essence of due process is the right to notice and an opportunity to be heard. The opportunity to be heard must be meaningful and appropriate to the case. However, there are cases in which it is appropriate to base a decision on written submissions when that process allows a party an effective means of communicating his or her case to the decision-maker. See *Mathews v. Eldridge*, 424 U. S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976). The process need not assure a perfect, error free determination. It just needs to minimize the risk of erroneous decisions. See *Mackey v. Montrym*, 443 U.S. 1, 99 S. Ct. 2612, 61 L. Ed. 2d 321 (1979). The *Mathews* case, *id.*, instructs us to use a three part test to analyze a procedural due process challenge. First, we look to the private interest at stake. Second, we evaluate the risk that the process will produce an erroneous decision. Finally, we examine the burden placed on the state if the request for additional process is granted.

In this case the guardian does have a private interest at stake. She needs to have her accounts approved. If they are not approved she may have to return some of the fees she advanced herself. However, this financial interest is not as great as when a party's personal liberty is at stake. An unfavorable decision will not result in prison time. She is a professional guardian and an attorney. Her basic subsistence is likely not in play. So, some process is due, but perhaps not the maximum.

Secondly, in this case the risk of an erroneous decision was minimal. This was a review of a guardian's intermediate reports provided for in RCW 11.92.050. The court scheduled three hearings, beginning with an Order to Show Cause scheduled for Dec. 31, 2013 [CP 199 -206]. In the show cause order the court outlined its concerns derived from an ex parte review of the guardian's filings. The guardian was invited to provide the court with additional information to justify her actions, which she did. Her additional information was "voluminous". At the conclusion of that hearing an order was entered setting a second hearing for Mar. 4, 2014 [CP 277]. The investigator/special master was appointed by that same order to review the guardian's filings. The investigator's report [CP 348 -372] was provided to the guardian in advance of the March hearing

and she filed a written response [CP 279-283]. A third hearing was held on November 20, 2014, resulting in the final order herein [CP 302-314]. Again, the guardian filed a written statement of objections [CP 284-290]. At each stage the court invited oral argument which the guardian took advantage of. As set forth in the Respondent's statement of the case, the court based its findings on the facts supplied by the guardian. There were no adverse fact witnesses. The guardian was impaired on the contents, or lack thereof, of her own reports. The investigator/special master, in his report [Supp. CP 348, et. seq.], simply created a road map for the court to assist in navigating through the hundreds upon hundreds of pages of filings. There were hundreds of pages of e-mails between the guardian and client. The investigator/special master also referenced the various guardianship statutes, cases and standards of practice which might be implicated by the actions or inactions of the guardian as set forth in her filings. No witnesses were interviewed. The guardian does not contend that she was prevented from presenting her case except as to oral testimony. However, a party seeking a hearing on due process grounds must show the facts they intend to establish at the hearing. See *Connecticut Dept. of Public Safety v. Doe*, 538 U.S. 1, 123 S. Ct. 1160, 155 L. Ed. 2d 98 (2003). In this case the guardian never made an offer of proof

or otherwise explained to the trial court what she intended to prove at an evidentiary hearing. Accordingly, the trial court was prevented from assessing the potential benefit of scheduling a fourth hearing to receive testimony from unnamed fact witnesses about heretofore undisclosed facts. Credibility was not in issue. The problems for the guardian came from the facts in her reports. The request for live testimony was, in effect, a Hail Mary pass with the clock running out and the facts and law looking doubtful. The risk of an erroneous decision based on the procedure afforded by the court was minimal at best.

Finally, the court is to assess the potential burden placed on the state if additional due process is required. The Superior Court is a court of general jurisdiction. It has finite resources spread across many areas of responsibility. Guardianship is only one small slice of its caseload. Should a fourth hearing involving live testimony be required in this case when the facts provided by the guardian herself show multiple significant breaches of fiduciary duty? This guardianship was redundant and unnecessary in 2013 at the time of the first hearing. We are now well into 2016. Is the burden of another evidentiary hearing proportional to the likely benefit? Should all reviews of guardianship intermediate

reports require an evidentiary hearing? Should the trial court be required to hold an evidentiary hearing if it is satisfied that the facts are clear? It would seem an undue burden to afford an evidentiary hearing solely because a guardian asks for one. If the trial court is afforded some discretion under RCW 11.96A.020, then it exercised that discretion reasonably to deny the request for live testimony. A review of the entire record should lead to a conclusion this was the correct decision. The state has a compelling interest in monitoring how court-appointed guardians manage the affairs of its vulnerable citizens. The trial court should be allowed to sufficient flexibility to do this in a reasonably expeditious manner. Mandating an evidentiary hearing in this case would frustrate that interest with no discernable benefit other than delaying the inevitable outcome. One might be tempted to consider whether delaying the inevitable disciplinary process is the ultimate objective of the appeal.

B. The guardian, in her brief at page 19, finds fault with the trial court ordering her to pay the investigator's fees. She attempts to shift blame to the court for the delay in resolving her reports. However, a solution was always within the control of the guardian. RCW 11.92.050 (1) provides that the guardian may petition the court at any time to settle her account. She filed her reports but took no action to bring the matters on for hearing. It was the court that ultimately took the initiative to issue

an Order to Show Cause [CP 199-206] and move the case forward. It seems clear from reading the Order to Show Cause that the court was unable to approve her reports after an ex parte examination. It declined to just rubber stamp them. It appeared to the court that there were multiple breaches of fiduciary duty. It is ironic that the guardian filed reports found to be inaccurate, opaque and not understandable [CP 303] and complains that they were not more promptly approved.

RCW 11.96A.020 (TEDRA) seems to give the court broad discretion when resolving disputes in guardianship matters. RCW11.96.150 gives the court specific authority to allocate costs and fees among the parties. A factor in assessing fees under this statute is whether the party assessed is at fault and whether his or her conduct caused the fees to be incurred. See *Guardianship of McKean* 136 Wn. App. 906, 151 P. 3d 224 (2007). The burden is on the guardian, not the court, to satisfactorily account for the ward's funds. See *In re Carlson's Guardianship* 162 Wash. 20, 297 P. 764 (1931). The reason articulated by the court for appointing the investigator/special master was that the materials provided by the guardian were not easily understood and the court required assistance [CP 277]. Essentially, the court was overwhelmed by the confusing and inaccurate reports of the guardian. This was compounded by the guardian providing over 1500 pages of supporting documents with no form of organization.

While the trial court might have moved the case ahead more swiftly, that does not alter the fact that it was the guardian's actions which caused the appointment of the investigator. The guardian has not shown that the trial court abused its discretion by assessing investigator fees against her in a manifestly unreasonable manner or that the decision was supported by untenable reasons. Under the circumstances of this case, the failure to hold an evidentiary hearing prior to allocating fees was not unreasonable as the material facts were not in dispute as explained in the Statement of the Case herein.

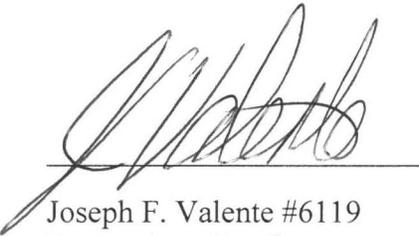
C. The investigator/special master should be awarded attorney's fees on appeal. RCW 11.96A.150 allows for such fees to be awarded in the trial court or on appeal. While this appeal has been pending, Ms. Fowler has been unrepresented. She filed a motion in this court asking that the court require the guardian to release funds to obtain counsel on the appeal. The guardian, now acting as her trustee, controls all of Ms. Fowler's funds. The motion was denied. If the guardian prevailed against the unrepresented party on appeal the fee awarded to the investigator/special master for services in the trial court might have been reversed also. It was in the interest of justice that the appeal be contested. An argument could be made that the guardian's assertion at page 17 of her brief that, "Ms. O'Dell controverted each finding made by the

investigator, and adopted by the court as its own,...” is frivolous or totally devoid of merit under CR 11. However, the court need not reach those issues in light of the specific statute set forth herein.

CONCLUSION

Based on the foregoing, Mr. Valente respectfully requests that this court affirm the trial court’s order and award attorney’s fee on appeal.

Dated this 17 day of August, 2016.



Joseph F. Valente #6119
Respondent, Pro Se
6214 S. Paula Ct.
Spokane, WA 99223
(509) 448-0557

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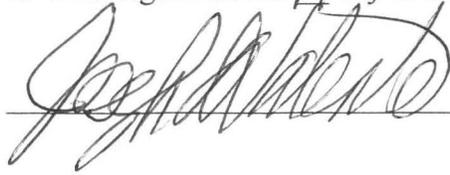
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| PAULA FOWLER, |) | |
| Respondent |) | COA No. 32979-8-III |
| |) | |
| And |) | Stevens County No. |
| |) | 06-4-00094-9 |
| |) | |
| JOSEPH F. VALENTE |) | Declaration of Service |
| Respondent |) | Brief of Respondent |
| |) | |
| V |) | |
| |) | |
| LIN O'DELL |) | |
| Appellant |) | |
| _____ |) | |

Joseph F. Valente, Respondent, declares as follows:

That on the day 17th of August, 2016, I served a copy of the respondent's brief on counsel for appellant, Kenneth Kato by personally delivering same to his offices at 1020 N. Washington St., Spokane, WA 99201.

I served a copy of respondent's brief on Paula Fowler (aka Paula Shanks), respondent pro se, by depositing it in the U. S. Mail, postage paid, addressed to her at 13757 N. Idaho Rd., Rathdrum, Idaho 83858 on the 16th day of August, 2016.

I make this declaration under penalty of perjury under the laws of the State
of Washington on this ^{17th} day of August, 2016, at Spokane, Washington.

A handwritten signature in black ink, appearing to read "Joseph F. Valente", written over a horizontal line.

Joseph F. Valente
