

No. 356531

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**COURT OF APPEALS, DIVISION III
IN AND FOR THE STATE OF WASHINGTON**

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

In the Matter of the
GUARDIANSHIP OF ANNA MAY BLACK

LORI SORENSEN, GUARDIAN OF THE PERSON

Appellant,

v.

JAMES P. SPURGETIS, Trustee of the Second Amended and Restated
Living Trust of JACK P. BLACK and ANNA MAY BLACK;
RICHARD W. PEREDNIA, Guardian Ad Litem Under RCW 4.08.060
for ANNA MAY BLACK

DEBORAH A. BLACK, Daughter of ANNA MAY BLACK; and
JOHN BLACK, Son of ANNA MAY BLACK

Respondents.

BRIEF OF RICHARD W. PEREDNIA,
GUARDIAN AD LITEM FOR ANNA MAY BLACK

Richard W. Perednia, WSBA #5773
Law Office of Perednia and Evans
28 West Indiana Avenue, Ste. E
Spokane, Washington 99205
Telephone: (509) 624-1369
Facsimile: (509) 777-1820
Email: richard@legalrwp.com
Richard W. Perednia, guardian ad litem, pro se

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I. INTRODUCTION

In early 2016 Richard W. Perednia was appointed as guardian ad litem for Anna May Black in various actions, including but not limited to the ongoing proceeding in the case involving the guardianship of the person, Grant County Cause No. 14-4-00036-1, and two actions involving interpretation of the trust, Grant County Cause Nos. 15-4-00128-4 and 14-4-00042-5.

He objected to payment for attorney's fees incurred by the guardian of the person for her involving herself in litigation regarding trust and estate disputes between Anna May Black's children, between the guardian of the person and the Trustee, and in financial matters beyond the scope of her authority.

He is concerned that the guardian of the person's attempts to expand her authority aggravated the relationships between Anna May Black's two children which has cost the trust substantial attorney's fees to defend each allegation brought forth by said children, especially John P. Black. The guardian of the person's efforts to remove a Successor Trustee proved costly to the resources that should be preserved for the care of Anna May Black.

II. ASSIGNMENT OF ERROR AND STATEMENT OF ISSUES

A. Assignment of Error.

The guardian ad litem believes that there was no error in the lower court's decision.

B. Issues Pertaining to Assignment of Error.

1. Whether RCW 11.88.045(2) requires a guardian of the person to obtain court approval of legal representation prior to the attorney providing legal services to

the guardian of the person when the guardian of the person attempts to expand the guardianship to a guardianship of the estate?

2. Whether attorney's fees incurred by a guardian of the person are barred from being awarded if the guardian of the person does not obtain prior court approval for representation of the guardian of the person in matters beyond the authority of the guardian of the person?

3. Whether RCW 11.92.180 is the appropriate statute that should be applied in determining whether attorney fees incurred by the guardian of the person should be reviewed and approved by the court?

4. Whether the due process rights of the trustee and beneficiaries were violated when the guardian of the person requested that the guardian of the person's attorney's fees be awarded when the guardian of the person filed an annual report?

III. FACTUAL BACKGROUND

Richard W. Perednia was appointed as guardian ad litem for Anna May Black in these several cases referred to above just prior to mediation. He believes that the statement of facts is essentially correct except he would like to emphasize several different facts that are relevant.

It was clear to me from the beginning that engine forcing ahead much of the carbuncle of the litigation is the deep animosity between Deborah Black and her brother, John P. Black. As this antagonism carried on into the guardianship of the person of Anna May Black, Lori M. Sorensen was appointed as guardian of the person only in lieu of Deborah Black.

Although the guardian of the person made an effort to modify and expand her role in March 2016, the court ruled that this was not appropriate and a motion to revise that ruling was filed but later abandoned. CP 475 and CP 719.

One goal of the mediation was to resolve the tension between Deborah Black as Trustee and Lori Sorensen as guardian of the person and to work out a smooth mechanism to allocate the trust resources to Anna May Black's care. The mediation also addressed a \$250,000.00 bequest in Jack P. Black's Will to Deborah Black but this issue was not settled at mediation.

As guardian ad litem for Anna May Black, I felt that it was essential to have Lori Sorensen at the mediation because we were working out issues of Anna May Black's personal care and paying for that care. There is an interplay between the finances and the personal care. There was a tension and animosity between Lori Sorensen and Deborah Black. One needs only read Lori Sorensen's declaration at CP 206 to sense the departure of their mutual lack of cooperation.

In my working with both Deborah Black and Lori Sorensen, it became clear to me that neither of their positions was 100% reasonable. In my objection in the clerk's papers at CP253 I have articulated the tension between Deborah Black and Lori Sorensen. Since Lori Sorensen has the authority and duty to care for Anna May Black's person and Deborah Black controlled the finances we needed to reach a settlement for Anna May Black's benefit where funds could be applied to be sure Anna May Black gets what she reasonably needs. In the settlement agreement we worked out a plan to allow Lori Sorensen to have some spending money every month for Anna May Black's care and incidentals by making her payee of Anna May Black's social security. Lori Sorensen could expend these funds without a prior request to Deborah Black. Ms. Sorensen still had the obligation to account for how the funds had been spent. Deborah Black was deeply concerned about every penny being properly expended. On the other hand, it was clear to me that Lori Sorensen was pursuing extremely expensive plans, including remodeling a house which was totally unsuitable for caring an elderly woman with dementia. A cheaper and a more responsible manner to care for Anna May Black would be keeping her in Summerwood or purchase a different house.

The mediation agreement was designed to resolve these issues once and for all.

Once Deborah Black resigned as a Trustee, however, issues continued to arise between the guardian of the person and the sole Trustee, Lee Nordstrom. The guardian of the person kept litigation going attempting to enforce the mediation settlement agreement to have James P. Spurgetis take over as Trustee in place of Lee Nordstrom. As can be seen from the pleadings, James Spurgetis was not interested in acting as Successor Trustee until all litigation had been resolved.

At the mediation I did not request the presence of Lori Sorensen's counsel, William Buckholt, but I left it to Lori Sorensen to make that decision. I requested the guardian of the person's presence but not that of her counsel at the mediation for the facts and details she could provide concerning the care of Anna May Black's person not for financial or property disputes. I suggested in my email that her counsel might have been helpful if he attended but also that he could be available telephonically to advise Ms. Sorensen if she felt it necessary. CP 236.

I was especially disappointed that after we reached the mediation settlement Lori Sorensen as guardian of the person kept pushing to have Lee Nordstrom step down when her relationship with Mr. Nordstrom deteriorated. The existence of Ms. Sorensen's motions kept litigation alive which prevented Mr. Spurgetis from taking over.

The court made a finding that the guardian of the person did not seek an order authorizing or appointing Randall Danskin as attorney for the Incapacitated Person and that Ms. Sorensen sought to have herself substituted as the party in the litigation in which the ward was a named party. The court further found that she had no authority to represent the ward in legal proceedings and that only the guardian of the estate or a guardian ad litem may represent the Incapacitated Person. The guardian of the person had filed a motion to be appointed as guardian of the estate but the court had ruled previously that it was not appropriate to expand her role. Finally, the guardian of the person did engage in activities outside the scope of her authority as designed by statute and the court's order appointing her when she engaged Randall Danskin and attempted to represent the ward in litigation. CP 479. These findings of fact have been appealed.

IV. ARGUMENT

A. The Acts Performed were Beyond the Scope of the Authority of the Guardian of the Person.

I am an 11.88 guardian ad litem and I have served as guardian ad litem in over 140 cases not only in Spokane County but also Adams and Pend Oreille Counties.

The purpose of RCW 11.88.045 is to provide independent counsel to an Alleged Incapacitated Person or an Incapacitated Person at any stage in the proceedings. "During the

pendency of any guardianship, any attorney purporting to represent a person alleged or adjudicated to be incapacitated shall petition to be appointed to represent the incapacitated or alleged incapacitated person.” RCW 11.88.045(2)

Thus in a case where a person is alleged to be incapacitated that person still has a right to request counsel be appointed for him or her. It is the duty of an 11.88 guardian ad litem to ask the Alleged Incapacitated Person this and if there is the slightest hint that the Alleged Incapacitated Person would like an attorney appointed to represent him or her, the guardian ad litem has a duty to find counsel to represent the Alleged Incapacitated Person and petition the court to have that counsel appointed. The purpose of this statute is obvious. If a person is the subject of a guardianship action in the first place, there is a question concerning that person’s capacity. The court needs the opportunity to review the representations of counsel to ascertain whether or not the attorney to be appointed is in fact a person selected by at the request of Alleged Incapacitated Person or Incapacitated Person not just an interloper.

In this case there was no guardianship of the estate and there was no petition to appoint a guardian of the estate for Anna May Black other than the motion brought by Lori Sorensen to expand her authority. The trial court in its discretion held that the guardian of the person did not have the authority to hire Randall Danskin to represent the Alleged Incapacitated Person and under RCW 11.88.045 did not appoint Randall Danskin as Anna May Black’s counsel. Although Mr. Buckholdt claims that Lori Sorensen asked him to represent Anna May Black because he had previously done so, CP 253, the guardian of the person only retained Randall Danskin in October 2015 to provide services to the guardian of the person even then without a court order.

After the guardianship of the person action was filed, at no time was Randall Danskin ever appointed as Anna May Black’s attorney in any proceeding including the guardianship action.

The allegation of Appellant that Judge Knodell required the guardian of the person to petition the court under RCW 11.88.045(2) is spurious. CP 500. Judge Knodell is absolutely

correct in that RCW 11.88.045(2) requires court approval for an attorney to represent an Incapacitated Person. The guardian of the person cannot involve herself in litigation involving the estate and assert that she is representing the Incapacitated Person in these matters then hire counsel to represent the ward without court approval. Since the guardian of the person has no authority to act, she cannot hire counsel to assert positions in which she has no right to assert, then claim the counsel the guardian of the person retained is representing the Incapacitated Person.

The Court found as a matter of fact that the activities of Lori Sorensen involved in litigating financial issues for what she perceived as the interests of Anna May Black, were beyond the scope of her authority and these findings were never appealed. Randall Danskin thus could not be representing Anna May Black pursuant to RCW 11.88.045(2).

B. To be Compensated for Doing Ultra Vires Acts, the Guardian and Attorney must seek Prior Court Approval.

The fees and expenses incurred by guardian of the person are barred from being awarded if the guardian of the person does not obtain prior court approval when the guardian of the person has gone beyond the scope of the guardian of the person's authority.

In acting as a guardian ad litem under 11.88 one has certain authority given by the statute. This includes the authority to investigate obtain records, coupled with the duty to prepare a report to the court making a recommendation as to whether or not the Alleged Incapacitated Person is in fact incapacitated and whether there is a less restrictive alternative and who should be appointed as guardian. The statute in addition gives the guardian ad litem the authority to make emergency medical decisions on behalf of an Alleged Incapacitated Person. It is standard operating procedure for any guardian ad litem to ask the court for further authority if the guardian ad litem proposes to make any decisions on behalf of an Alleged Incapacitated Person other than emergency medical decisions. As a guardian ad litem I have petitioned the court for order authorizing me to remove a person from her home and them into a care center, block bank accounts, file Lis Pendens, and do plethora of other activities necessary to protect an Alleged Incapacitated Person. Because one is dealing with a person's

rights and freedom one has a duty to approach the court and ask for this authority. Similar rules apply to duly appointed guardians whether they be guardians of the estate or the person.

It is absolutely clear that under the standards of practice, when a guardian of the person or the estate attempts to act outside the authority granted by the court that guardian should seek direction of the court. SPR 401.2.

RCW 11.92.043 prescribes the scope of authority the court granted Lori Sorensen her authority as guardian of the person. This authority does not include involving the ward or the guardian of the person in trust and estate litigations regarding financial matters. If the guardian of the person hires an attorney and attempts to act on behalf of the Incapacitated Person in areas beyond the guardian of the person's authority, then under the standards of practice she has a duty to ask the court first. At no time was the guardian of the person authorized by the statute, RCW 11.92.043 to deal with trust litigation or in any property matters. If she is to move into areas of trust administration and in disputes related thereto, she must obtain an order of the court giving her such authority. She never asked.

RCW 11.92.180 acts as a shield for the Incapacitated Person and articulates the ultimate authority of the court to protect incapacitated persons. "Additional compensation may be allowed for other administrative costs, including services of an attorney and for other services not provided by the guardian or limited guardian." ... "In all cases, compensation of the guardian or limited guardian and his or her expenses including attorney's fees shall be fixed by the court and may be allowed at any annual or final accounting; ..."

Judge Knodell held RCW 11.92.180 is the appropriate statute governing the award of attorney's fees for counsel hired by the guardian of the person. This statute, for the reasons noted above, provides that attorney's fees can be awarded if they are reasonable. Attorney's fees for the guardian of the person for actions over which she has no authority are inherently unreasonable. The court acts in its probate capacity in the guardianship area by caring for a person who is no longer able to protect his or her resources. In doing this the court has a duty to protect Alleged Incapacitated Persons and Incapacitated Persons from unauthorized parties who wish to run up fees and expend time, without having prior approval for the acts that they are doing. The court has no problem with awarding attorney's fees for matters it found reasonable to assist the guardian of the person. RCW 11.92.180 applies in this

case and the court in its discretion applied it correctly to deny attorney's fees for Randall Danskin.

C. Due Process.

In reading Judge Knodell's opinion, it is clear that he considered it important that notice be given and there be an opportunity to be heard to all parties in interest before such huge attorney's fees can be awarded for an Incapacitated Person from her Trust. A guardianship is necessarily a court driven probate proceeding. As such it is in the nature of an in rem proceeding affecting the assets in this case of Anna May Black. Although it is a guardianship of the person only, the fees and costs of this guardianship are paid from the trust, which is a less restrictive alternative to a guardianship of the estate. As a result and the court has in rem jurisdiction over the assets of the Trust. The court thus has jurisdiction to determine these matters and if fees are going to be incurred for a purpose beyond the scope of the normal guardianship, then the court must set a hearing to approve the guardian of the person's motion to move beyond the scope of her authority as well as a later opportunity to have those fees reviewed by the court. Notice was provided to all parties, including the Trustees, remaindermen and income beneficiary after unauthorized attorney time had been expended. However, in this case where the guardian of the person embarked on an area totally beyond her authority without prior court approval her asking the court before hiring counsel is a matter of due process as well. She incurred substantial attorney's fees which would be at her own risk. The court rightfully noted there is a due process element here but that due process element is not necessarily dispositive because the court itself properly applied RCW 11.88.045 which requires a prior hearing to have an attorney appointed for an Alleged Incapacitated Person or Incapacitated Person directly, and also applied RCW 11.92.180, which provides that such fees were not reasonable as they were for matters beyond the guardian of the person's authority.

D. Attorney's Fees.

The Court of Appeals has the authority to award attorney's fees under RCW 11.96A.150 and RAP 14.1.18.1. The guardian ad litem would object to award of any attorney's fees to the Appellant under RCW 11.96A.150 or RCW 11.92.180. Further the guardian ad litem concurs with the analysis of the Respondent Deborah Black in that attorney's fees against BRIEF OF RICHARD W. PEREDNIA, GUARDIAN AD LITEM FOR ANNA MAY BLACK

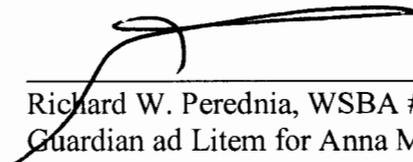
the Appellant should be awarded to the Trust for the benefit of Anna May Black as that Trust will be bearing the fees of the guardian ad litem in this appeal. It is equitable to award fees to the Trust because the guardian of the person is continuing to compound this litigation by this appeal which the guardian ad litem feels has no basis.

Anna May Black, by and through her trust, should not be bearing the costs of defense for the guardian of the person's poor judgment in proceeding without prior court approval and incurring substantial fees in interfering in matters over which she has no authority to act.

V. CONCLUSION

For the reasons stated above the guardian ad litem respectfully requests that the ruling of the trial court be affirmed in its entirety and that the Court of Appeals make an equitable award of attorney's fees for the benefit of Anna May Black to be awarded to the Trust for her benefit.

Respectfully submitted this 5th day of June 2018.


Richard W. Perednia, WSBA #5773
Guardian ad Litem for Anna May Black

CERTIFICATE OF SERVICE

I hereby declare under penalty of perjury according to the laws of the State of Washington that the following statements are true and correct:

On the 5th day of June, 2018, I caused to be served a true and correct copy of the foregoing Brief of Richard W. Perednia, Guardian ad Litem for Anna May Black by the method indicated below, and addressed as to the following:

Collette Leeland
Winston & Cashatt
601 W. Riverside Ave., Ste. 1900
Spokane, WA 99201

- Personal Service
- U.S. Mail
- Hand Delivered
- Overnight Mail
- Email

Michael L. Olver
Helsell Fetterman, LLP
1001 Fourth Avenue, Ste. 4200
Seattle, WA 98154

- Personal Service
- U.S. Mail
- Hand Delivered
- Overnight Mail
- Email

Ryan Best
905 W. Riverside Ave., Ste. 409
Spokane, WA 99201

- Personal Service
- U.S. Mail
- Hand Delivered
- Overnight Mail
- Email

Augustus Nelson
301 Sugar Pine Dr.
Bremerton, WA 98310

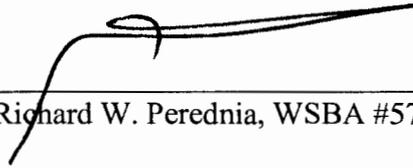
- Personal Service
- U.S. Mail
- Hand Delivered
- Overnight Mail
- Email

William A. Buckholdt, III
Randall Danskin PS
601 W Riverside Ave., Ste. 1500
Spokane, WA 99201-0653

- Personal Service
- U.S. Mail
- Hand Delivered
- Overnight Mail
- Email

James Brandon Nelson
3850 Sumantra Cliff
San Antonio, TX 78621

- Personal Service
- U.S. Mail
- Hand Delivered
- Overnight Mail
- Email


Richard W. Perednia, WSBA #5773