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NO. 36774-6-III

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

In re:

THE SANCTION ORDER AGAINST ATTORNEY ROBERT W.
CRITCHLOW

BRIEF OF DSHS

ROBERT W. FERGUSON
Attorney General
DAWN VIDONI, WSBA #36753
Assistant Attorney General
Office Code: OC638509
1116 W Riverside Ave., Suite 100
Spokane, WA 99201
(509) 456-3123

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I. INTRODUCTION

Spokane County Superior Court Commissioner Pro Tem Steven Grovdahl did not abuse his discretion and acted within his authority when he imposed sanctions against attorney Robert Critchlow at the request of the Guardian ad Litem (“GAL”) for repeated frivolous filings. Pro Tem Commissioner Grovdahl complied with Civil Rule (CR) 11 in determining that Mr. Critchlow’s motions needlessly increased the cost of litigation and that Mr. Critchlow had not conducted a reasonable inquiry into the law and facts. Pro Tem Commissioner Grovdahl specifically found that Mr. Critchlow had a “profound misunderstanding” of guardianship law, his arguments were “not well thought out,” “overreaching,” and relied on law extracted from other statutes and incorrectly applied to RCW 11.88. The GAL was forced to respond to Mr. Critchlow’s many motions, and because the GAL’s fees were charged to the estate of the alleged incapacitated person, she sought sanctions in an effort to prevent Mr. Critchlow from unnecessarily draining the estate. Pro Tem Commissioner Grovdahl did not abuse his discretion when assessing sanctions against Mr. Critchlow and this Court should affirm the sanctions order and deny Mr. Critchlow’s request for fees and expenses.

II. COUNTERSTATEMENT OF THE FACTS

Mary Green is a now 100-year-old blind woman with senile dementia and advanced breast cancer. CP 153. She has a narrowed esophagus, which causes her to choke and puts her at risk of asphyxiation if she drinks unthickened liquids or eats anything other than soft foods cut into very small pieces. CP 154. She must eat and drink sitting up and must be observed for 30 minutes after eating to ensure she does not choke. CP 154. Ms. Green's dementia renders her unable to understand basic information or make sound judgments about her daily activities. CP 151, 153-54. Jerome Green is one of Ms. Green's seven children; Mr. Green lived with her and acted as her caretaker. CP 5, Br. of Appellant at 2-4. Reports from family and law enforcement indicate that Mr. Green often left Ms. Green alone for several hours without access to food, water, a bathroom, or safety in case of an emergency. CP 154. On numerous occasions, Mr. Green's siblings and Ms. Green's professional caregivers have witnessed Mr. Green provide food and drink to his mother contrary to her dietary requirements. CP 154.

Adult Protective Services ("APS") filed a petition for a Vulnerable Adult Protection Order ("VAPO") on January 31, 2019, to restrict Mr. Green's involvement with Ms. Green. CP 150. The VAPO was issued on

February 22, 2019¹. CP 200-04. A Petition for Guardianship of Person and Estate of Ms. Green was filed on February 25, 2019, along with an Order Appointing GAL. CP 1-7; CP 10-16. Within a matter of weeks of these filings, Mr. Green, and his attorney Robert Critchlow, began filing motions in the guardianship matter. CP 25-26; 36.

On March 15, 2019, Mr. Green, acting on his own behalf, filed motions to intervene in the guardianship, to join the VAPO and guardianship, to have an attorney appointed for the alleged incapacitated person, and to have the guardianship case pre-assigned to a judge. CP 27-35. Before Mr. Green's motions were heard on March 29, 2019, Mr. Critchlow filed additional motions on March 22, 2019, to strike the order appointing a GAL, to dismiss the guardianship case, and to impose CR 11 sanctions on the GAL and counsel for APS. CP 38-39, 40-51. The GAL responded to Mr. Critchlow's motions on March 29, 2019, and, as part of her response, requested that CR 11 sanctions be assessed against Mr. Critchlow. CP 63-69.

Pro Tem Commissioner Grovdahl heard Mr. Green's motions on March 29, 2019. RP 5-6, 15; CP 40-51, 78-85. Pro Tem Commissioner Grovdahl determined Mr. Green had shown no basis for why he should be permitted to intervene in the guardianship, and ruled that the case would be

¹ Mr. Green has appealed the protection order with this court under cause number 368564; a decision is pending.

assigned in the usual course. RP 14. Mr. Critchlow argued that an attorney should be chosen from a list of three names on the GAL list. Pro tem Commissioner Grovdahl found Mr. Critchlow's argument unpersuasive. Relying on RCW 11.88.090, he found that unless the alleged incapacitated person has made other arrangements, appointment of an attorney in guardianship cases is done at the request and direction of the GAL. RP 14.

Undeterred by Pro Tem Commissioner Grovdahl's ruling on March 29, 2019, Mr. Critchlow filed another motion on April 1, 2019, asking the court to assign the motion to strike the order appointing a GAL to a judge outside of Spokane County. CP 77-85. This motion necessitated a response by the GAL on April 3, 2019. CP 86-88. On April 5, 2019, a hearing on Mr. Critchlow's motions took place. RP 18-38. Mr. Critchlow started the proceeding by questioning Commissioner Pro Tem Grovdahl's judicial authority and then stating he and his client were "not going to participate." RP 19-21. He later conceded that in addition to ruling on sanctions, he wanted Pro Tem Commissioner Grovdahl to rule on his motion to strike the order appointing GAL. RP 32.

The GAL argued that sanctions should be imposed against Mr. Critchlow, not his client, because of concerns that Mr. Critchlow was inciting anger in his client and prompting his client to reject the court's authority. RP 25. The GAL expressed her frustration that a non-party,

Mr. Green, was filing numerous frivolous motions which obligated the GAL to respond, thereby depleting the assets of Ms. Green's estate. RP 25. The GAL expressed concern that Mr. Critchlow did not conduct a pre-investigation before filing his motions and had no understanding of guardianship law. RP 24. She also pointed out that Mr. Critchlow failed to notify the parties that he would be moving for sanctions if they did not withdraw their pleadings. RP 24.

The Assistant Attorney General representing APS echoed the sentiments of the GAL, noting that Mr. Critchlow cited to the wrong statutes in his motions and frequently cited to parts of RCW 11.88 that were only relevant after an order appointing a guardian was in place, and, at that point, such an order was not in place. RP 29-30.

After reading the pleadings and motions filed by Mr. Critchlow, Pro Tem Commissioner Grovdahl determined that Mr. Critchlow did not apply the correct statutes to his numerous complaints, sought remedies that were overreaching, and exhibited a profound misunderstanding of the guardianship process. RP 34. Specifically he found,

there seems to be a profound misunderstanding about the guardianship process, the pleadings in this case. They are, they take a piece of law over here, and they throw it over here. It's just not well thought out. It seems to be overreaching; taking little bits of law here and it just boils down to being frivolous, the motions filed by Mr. Green and by Mr. Critchlow on behalf of Mr. Green. It has resulted,

with all these various motions being filed, it has resulted in an expenditure, a large expenditure by all of the parties for attorney's fees to fight what is regarded, what I would regard as clearly frivolous motions.

RP 34.

Mr. Critchlow appealed to this court, but other than permitting him to appeal the sanctions order, a panel of this Court upheld the Commissioner's Ruling of November 19, 2019.

III. COUNTERSTATEMENT OF ISSUES

- 1. Whether Pro Tem Commissioner Grovdahl abused his discretion when he assessed sanctions against attorney Robert Critchlow?**
- 2. Whether Respondents should bear the cost of attorney Robert Critchlow's defense of the sanctions imposed upon him?**

IV. LAW AND ARGUMENT

A. Pro Tem Commissioner Grovdahl Did Not Abuse his Discretion When Assessing CR 11 Sanctions Against Attorney Robert Critchlow for Filing Frivolous Motions

Mr. Critchlow contends the trial court abused its discretion issuing sanctions because Pro Tem Commissioner Grovdahl did not have the authority to do so. The Trial court did not abuse its discretion when it issued sanctions against Attorney Critchlow for filing frivolous motions as the appropriate procedures were followed and Commissioner Pro Tem Grovdahl had the authority to do so.

1. The standard of review for assessing CR 11 sanctions is abuse of discretion

The standard of review on appeal for sanctions, including CR 11 sanctions, is the abuse of discretion standard. *Biggs v. Vail*, 124 Wn.2d 193, 197, 876 P.2d 448, 451 (1994) (citing *Washington State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 338–39, 858 P.2d 1054 (1993)). The abuse of discretion standard is extremely deferential. *Wade's Eastside Gun Shop, Inc. v. Dep't of Labor & Indus.*, 185 Wn.2d 270, 279, 372 P.3d 97 (2016). Under an abuse of discretion standard, a reviewing court will reverse a trial court's decision only if the decision applies the wrong legal standard, relies on unsupported facts, or adopts a view that no reasonable person would take. *Mayer v. Sto Indus., Inc.*, 156 Wn.2d 677, 684, 132 P.3d 115 (2006). As long as some factual basis exists to support a trial court's decision, the abuse of discretion standard is met and further scrutiny is unwarranted. *Hoffman v. Kittitas*, 4 Wn. App. 489, 495-96, 422 P.3d 466 (2018).

2. CR 11 sanctions were properly awarded against attorney Critchlow

When applying the abuse of discretion standard specifically to federal CR 11 sanctions, the United States Supreme Court held that a trial court was in the best position to determine whether sanctions are appropriate. *See Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 403–4,

110 S. Ct. 2447, 2460, 110 L. Ed. 2d 359 (1990). The Court found that “[t]he issues involved in determining whether an attorney has violated Rule 11 likewise involve ‘fact-intensive, close calls.’” *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. at 404.

CR 11 requires attorneys to date and sign all pleadings, motions and legal memoranda. Rule CR 11. Such signature constitutes the attorney's certification that:

to the best of the ... attorney's knowledge, information, and belief, formed after reasonable inquiry it [the pleading, motion or memoranda] is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

Biggs v. Vail, 124 Wn.2d 193, 196, 876 P.2d 448, 450–51 (1994).

CR 11 was modeled after the Federal Rule of Civil Procedure (Rule 11), and federal decisions interpreting Rule 11 often provide guidance in interpreting Washington's rule. *Bryant v. Joseph Tree, Inc.*, 119 Wn.2d 210, 219, 829 P.2d 1099, 1104 (1992). “[T]he purpose behind CR 11 is to deter *baseless* filings and to curb abuses of the judicial system” and both the federal rule and CR 11 were designed to reduce “delaying tactics, procedural harassment, and mounting legal costs.” *Bryant*, at 218–19 (emphasis in original) (citing 3A L. Orland, Wash.Prac., *Rules Practice* § 5141 (3d ed. Supp.1991)). If it appears that CR 11 has been violated, “the

court, upon motion or upon its own initiative, shall impose upon the person ... an appropriate sanction which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing.” CR 11.

While notice that sanctions are contemplated is required, informal notice is sufficient even if notice of the exact penalties ultimately imposed is not provided. *Biggs v. Vail*, 124 Wn. 2d 193, 199, 876 P.2d 448, 452 (1994). When assessing sanctions,

it is incumbent upon the court to specify the sanctionable conduct in its order. The court must make a finding that either the claim is *not* grounded in fact or law and the attorney or party failed to make a reasonable inquiry into the law or facts, *or* the paper was filed for an improper purpose

Biggs v. Vail, 124 Wn. 2d 193, 201, 876 P.2d 448, 453 (1994) (emphasis in original).

Here, the GAL requested CR 11 sanctions against Mr. Critchlow in a motion and memorandum filed March 29, 2019². CP 63-69. The GAL argued sanctions should be imposed to curb the frivolous filings by Mr. Critchlow and noted that the court could also impose sanctions on its own under RCW 2.28.010 (2)-(3) and RCW 2.28.150. CP 66-69. As noted

² The AAG has not filed a formal request for sanctions, but supported the GAL’s request noting the taxpayer resources that were unnecessarily diverted because of required responses to Mr. Critchlow’s motions. RP 28, 31. A declaration of fees was submitted at the direction of the court. RP 35.

above, the GAL was not required to provide Mr. Critchlow formal notice of her intention to request sanctions, the motion filed on March 29, 2019 was sufficient. Mr. Critchlow had ample time to respond to the GAL's request for sanctions, and in fact did so on April 1, 2019. CP 89-113. "While it is fundamental that due process requires notice and opportunity to be heard, this does not necessarily mean that an attorney is entitled to a full evidentiary hearing on CR 11 sanctions." *Watson v. Maier*, 64 Wn. App. 889, 900, 827 P.2d 311 (1992).

Throughout the guardianship, Mr. Critchlow has filed an exhaustive array of motions and appeals all of which have been unsuccessful to date. CP 40-51, 78-85. On March 29, 2019, Mr. Critchlow argued that Mr. Green should be permitted to intervene in the guardianship petition to "protect himself" from "defamatory statements" in the guardianship petition. RP 7. He also filed motions to appoint an attorney for Ms. Green from the GAL list, strike the order appointing GAL, order a non-Spokane county judge to hear the motion, dismiss the guardianship, and impose CR 11 sanctions. CP 40-51, 78-85, RP 7. Pro Tem Commissioner Grovdahl explained the proper procedure in his ruling and cited the law to Mr. Critchlow. RP 13-14. Pro Tem Commissioner Grovdahl reviewed the many pleadings before him and found that Mr. Critchlow's motions were not well grounded in law or fact. RP 34.

In his ruling, Pro Tem Commissioner Grovdahl repeatedly stated that Mr. Critchlow's motions were "clearly frivolous." RP 34. He specified that "they take a piece of law over here, they throw it over there...it's not well thought out...it has resulted in a large expenditure for all the parties...what I would regard as clearly frivolous motions." RP 34. He went on to find that "the proper procedure was engaged in throughout this process, so again, just to reiterate these pleadings are frivolous and as a result of that it's appropriate to entertain or grant a request for attorney's fees that were expended as a result of responding to these frivolous motions." RP 35.

Pro Tem Commissioner Grovdahl complied with the requirements of CR 11 as well as the overall purpose of the rule – to deter baseless filings – and did not abuse his discretion in finding that sanctions should be assessed against Mr. Critchlow.

3. Appointment of the GAL was appropriate.

Mr. Critchlow contends that the issuance of sanctions was inappropriate because the procedures utilized for the appointment of the GAL were not followed and therefore the trial court erroneously found his motion to remove the GAL frivolous. Here the court, counsel, and GAL did follow the appropriate procedures for the appointment of the GAL and even if the procedures had somehow deviated from the prescribed method,

the trial court's finding of sanctions should not be overturned as it is rooted in a factual basis.

A guardianship case is initiated by the filing of a Petition for Guardianship of Person and Estate, as authorized by RCW 11.88.030. RCW 11.88.090(3) directs that “*upon receipt of a petition for appointment of guardian* or limited guardian, except as provided herein, the court *shall* appoint a guardian ad litem to represent the best interests of the alleged incapacitated person...” RCW 11.88.090(3) (emphasis added). In Spokane County, a GAL is “appointed pursuant to statute (RCW 11.88) and the policies and procedures established by the Guardianship.” Spokane County Superior Court Local Special Proceedings Rule (“LSPR”) 98.22(i)(1). RCW 11.88.090(4)(a) directs the superior court of each county to develop and maintain a GAL registry list. In Spokane County, the qualifications and requirements for remaining on the GAL registry list are found in LSPR 98.22.

Here, the Attorney General's Office, on behalf of APS, filed a Petition for Guardianship of Person and Estate on February 25, 2019.³

³ Although Mr. Critchlow insists that the order was filed on February 22, 2019, it is clear from the clerk's filed copy that the order was filed on February 25, 2019. The VAPO hearing conducted on the afternoon of February 22, 2019, did not conclude until after the clerk's office was closed, thus necessitating filing on the next court day (i.e. the following Monday). Commissioner Rugel signed the petition for guardianship and order appointing GAL on February 25, 2019, but inadvertently dated his signature February 22, 2019.

RP 1-7. An Order Appointing Guardian Ad Litem was filed in conjunction with the Petition for Guardianship. CP 1-7; 10-16. At the time the Petition and Order Appointing GAL were filed, Ms. Green was not represented by counsel and there was no reason to set a contested hearing for appointment of the GAL. CP 70-71.

An alleged incapacitated person has a statutory right to be represented by willing counsel of his or her choosing or to have counsel provided to him or her by the court at public expense. RCW 11.88.045(1). Within five days of meeting with the alleged incapacitated person, the GAL is charged with advising the court of the need for appointment of counsel. RCW 11.88.090(5)(g). Here, the GAL filed a petition to appoint an attorney for Ms. Green on March 29, 2019 and on the same day filed an order appointing attorney Levi Liljenquist. CP 54-55; 70-71. At the hearing on March 29, 2019, the GAL said she was requesting an attorney for Ms. Green, because Ms. Green was “profoundly disabled, does not have the ability to consent, to engage really at all.” RP 9. She specifically recommended attorney Levi Liljenquist because after reviewing the court file, interviewing family members and Ms. Green, the GAL believed Ms. Green deferred to the men in her life and a male attorney would be more appropriate. RP 9-10. She interviewed Mr. Liljenquist and noted he was particularly accustomed to guardianship matters. RP 10. The court

accepted her reasoning, saying she had made a “thoughtful recommendation.” RP at 14.

Mr. Critchlow objected to the appointment of GAL Evans to the case, but did not follow the correct procedure for removal of the GAL. See Br. of Appellant at 25. RCW 11.88.090(3)(b) provides that a GAL may only be removed for one of three reasons: “(i) Lack of expertise necessary for the proceeding; (ii) an hourly rate higher than what is reasonable for the particular proceeding; or (iii) a conflict of interest.” RCW 11.88.090(3)(b). A motion to have the GAL removed must be made “[w]ithin three days of the later of the actual service or filing of the guardian ad litem's statement.” *Id.* If the GAL is not removed after a hearing on the motion, “the court has the authority to assess to the moving party, attorneys' fees and costs related to the motion. The court shall assess attorneys' fees and costs for frivolous motions.” RCW 11.88.090(3)(b). Mr. Critchlow's argument for removal of the GAL is not timely and fails to address the applicable standards articulated in statute. The appointment of the GAL and counsel to represent Ms. Green were both appropriately done and there is no basis for the argument that Ms. Green's right to advocate her position was unmet. The Court properly appointed the GAL and counsel to Ms. Green and any argument to the contrary made by Mr. Critchlow fails to consider the applicable law. Accordingly, the trial

court did not abuse its discretion in issuing sanctions against Mr. Critchlow for the filing of frivolous motions.

4. Spokane County Local Special Proceedings Rule 98.22 does not apply to the orders signed by Pro Tem Commissioner Grovdahl because none of the orders were determinative guardianship issues

Mr. Critchlow contends that the April 5, 2019, order imposing sanctions against him, was improper because it was issued by a judicial officer acting as a Pro Tem Commissioner without the authority to do so. LSPR 98.22(a), within the context of appointment of GALs under RCW 11.88, expressly states, “Orders to Appoint Guardian Ad Litem may be presented to the Guardianship Calendar or to Guardianship Court Commissioner. Guardianship orders shall not be signed by a Pro Tem Commissioner.” LSPR 98.22(a). The remaining sections of LSPR 98.22 discuss the maintenance of the GAL Registry, actions of the Guardianship Monitoring Program, evaluations of GALs, complaint procedures, and other requirements for GALs. Nowhere else in LSPR 98.22 or LSPR 98.20 (Guardianship Estates) is a limitation on judicial officers evident. The intent of this provision appears to ensure that a Pro Tem Commissioner, unfamiliar with guardianship procedures, will not sign substantive orders in guardianship cases. None of the orders signed by Pro Tem Commissioner Grovdahl were determinative of the ultimate guardianship issues – whether

Ms. Green is incapacitated and in need of a guardian and the appropriate person to be appointed as her guardian.

The order appointing Steven Grovdahl as a Pro Tem Commissioner on March 15, 2019, delineates a number of specific powers conferred upon him including in part,

(1) To hear and determine all matters in probate, to make and issue all proper orders therein, and to issue citations in all cases where same are authorized by the probate statutes of this state; ... and (4) To act as referee in all matters and actions referred to him or her by the superior court as such, with all the powers now conferred upon referees by law.

CP 142-45.

Although the orders signed were filed under the guardianship cause number, Pro Tem Commissioner Grovdahl did not make any determinations regarding the ultimate issues for the guardianship. His orders regarding hearing dates, approval of counsel for Ms. Green, denial of Mr. Green's motion to intervene, and award of sanctions are well within the scope of authority granted to him by Judge Clarke on March 15, 2019.

5. The orders signed by Pro Tem Commissioner Grovdahl were properly signed and there is no jurisdictional issue

Mr. Critchlow asserts the orders signed by Pro Tem Commissioner Grovdahl are void for lack of subject matter jurisdiction as Pro Tem Commissioner Grovdahl did not have authority to enter orders in the guardianship matter. Br. of Appellant at 21-24. Subject matter jurisdiction

refers to a tribunal's power to hear a case and may be raised for the first time at any point in a proceeding, even on appeal. *Marriage of McDermott*, 175 Wn. App. 467, 479, 307 P.3d 717 (2013); *Matter of Estate of Reugh*, 447 P.3d 544, 558 (Wash. Ct. App. 2019), *review denied*, 194 Wn. 2d 1018, 455 P.3d 128 (2020).

Where a court lacks jurisdiction over the parties or the subject matter, or lacks the inherent power to make or enter the particular order, its judgment is void. *Chai v. Kong*, 122 Wn. App. 247, 254–55, 93 P.3d 936 (2004), *as amended on reconsideration in part* (Aug. 30, 2004). There is no question that the Spokane County Superior Court has subject matter jurisdiction to hear the guardianship petition regarding Ms. Green. RCW 11.88.010(1). If it did not, its judgment would be void. However,

[w]here the court has personal and subject matter jurisdiction, a procedural irregularity renders a judgment voidable. A voidable judgment may be vacated if the motion to vacate is brought within a reasonable time, and not more than one year from the judgment if the grounds asserted are mistake, inadvertence, surprise, excusable neglect, or irregularity in obtaining the order.

Chai v. Kong, 122 Wn. App. at 254-55.

Here, Mr. Critchlow asserts that the orders signed by Pro Tem Commissioner Grovdahl, including the order regarding sanctions were erroneous, as Pro Tem Commissioner Grovdahl did not have the authority

to enter the orders under LSPR 98.22. At most, this is an argument that the orders are voidable, not void.

Pro Tem Commissioner Grovdahl advised Mr. Critchlow that he had a right to revise the decision, but Mr. Critchlow has not done so. RP 22, CP 129-147. Mr. Critchlow has not motioned the trial court to vacate the orders signed by Pro Tem Commissioner Grovdahl nor has he asserted that any of the available grounds apply. Instead, he raises the issue for the first time on appeal. The court was clear that the only issue permitted to move forward on appeal at this time was the April 5, 2019 sanction order and accompanying judgments entered on May 10, 2019. Order Granting in Part and Denying in Part Motion to Modify Commissioner's Ruling filed February 18, 2020. Should Mr. Critchlow wish to challenge the validity of the sanctions order, or any of the other orders Pro Tem Commissioner Grovdahl issued, the appropriate method is a Motion to Vacate in the appropriate forum, the trial court.

B. Mr. Critchlow Fails to Advance any Reasonable Theory for Which This Court Should Impose Fees and Costs Against Respondents

RAP 18.1 allows a court to award reasonable fees and expenses on appeal if granted by applicable law. RAP 18.1(a). "Washington follows the American rule in awarding attorney fees." *Dayton v. Farmers Ins. Grp.*, 124 Wn.2d 277, 280, 876 P.2d 896 (1994). Under the American rule, a court

may award fees only when doing so is authorized by a contract provision, a statute, or a recognized ground in equity. *Hamm v. State Farm Mut. Auto. Ins. Co.*, 151 Wn.2d 303, 325, 88 P.3d 395 (2004). Here, there is no authority that calls for deviation from the American law for awarding attorney's fees, even if Mr. Critchlow prevails.

As addressed above, APS acted appropriately to protect the rights of Ms. Green. Under RCW 11.88.030(1) any person or entity may petition for the appointment of a guardian for an incapacitated person. "No liability for filing a petition for guardianship or limited guardianship shall attach to a petitioner acting in good faith and upon reasonable basis." RCW 11.88.030(1). Mr. Critchlow makes no showing that APS or the Attorney General's Office acted in bad faith in taking action under this statute and instead misinterprets the plain meaning of the law.

Mr. Critchlow has no claim for consequential damages as a result of the actions of opposing counsel. Mr. Critchlow accuses the GAL and counsel for APS of rampant wrongdoing. Br. of Appellant at 44-50. He asserts he was "drawn into" the case and forced to defend himself. Br. of Appellant at 48. In actuality, Mr. Critchlow placed himself where he finds himself to be. On March 22, 2019, he filed a Notice of Appearance for Mr. Green, and announced this representation by immediately filing motion

after motion, asking the court to dismiss the entire guardianship case and to impose sanctions on the adverse attorneys. CP 37-39.⁴

Mr. Critchlow raises the issue of a “Safe Harbor,” arguing that he should have been given the opportunity to withdraw the offending pleading or motion prior to sanctions being filed and assessed. Br. of Appellant at 36. Mr. Critchlow could have chosen to withdraw or not pursue the offending motion at the hearing on April 5, 2019; instead, he chose to performatively object to the jurisdiction of the court. RP 19-21. The request for sanctions by the GAL was based on a pattern of conduct by Mr. Critchlow, not necessarily on one wayward motion.

V. CONCLUSION

For more than a year, Mr. Critchlow has relentlessly fought the Guardianship petition filed on behalf of his client’s mother, Ms. Green. In his efforts, Mr. Critchlow filed numerous motions that the trial court ultimately deemed frivolous. Accordingly, the trial court after considering the facts acted within its authority and assessed CR 11 sanctions against Mr. Critchlow. The trial court did not abuse its discretion. The Department requests this Court uphold the order for sanctions imposed by Pro Tem

^{4 4} The State takes no position on the issue of whether the fees requested by Ms. Evans and Mr. Liljenquist should have been assessed at a county pay or private pay rate.

Commissioner Grovdahl and deny Mr. Critchlow's request for attorney fees
on appeal.

RESPECTFULLY SUBMITTED this 23rd day of July, 2020.

ROBERT W. FERGUSON
Attorney General



DAWN VIDONI, WSBA #36753
Assistant Attorney General
Office Code: OC638509
1116 W. Riverside Ave., Suite 100
Spokane, WA 99201-1106
(509) 456-3123

CERTIFICATE OF SERVICE

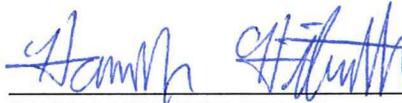
I certify that I served all parties, or their counsel of record, a true and correct copy of Response to the Sanctions Order Against Robert Critchlow at the following addresses:

ROBERT W. CRITCHLOW
Attorney at Law
208 E. Rockwell Ave.
Spokane, WA 99207

- US Mail
- Legal Messenger
- Hand delivered
- E-mail:

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

DATED this 23rd day of July, 2020 at Spokane, Washington.



HANNAH HITTERDAL
Legal Office Assistant

SPOKANE DIVISION - SHS / AGO

July 23, 2020 - 1:56 PM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 36774-6
Appellate Court Case Title: In re: The Sanction Order Against Attorney Robert W. Critchlow
Superior Court Case Number: 19-4-00298-2

The following documents have been uploaded:

- 367746_Briefs_20200723134923D3682735_0261.pdf
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