

FILED

AUG 31 2020

Appeal No. 374963

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

In re the Matter of:

PETER CARLIN

Respondent

VS.

MARY EZENWA

Appellant

SPOKANE COUNTY SUPERIOR CASE NO: 20-2-00391-32

Judicial Officer: Pelc. Julia

APPELLANT'S REPLY BRIEF

Sign: 

MARY EZENWA

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COMES NOW, Appellant, **MARY EZENWA CARLIN**, proceeding *Pro se* (hereinafter referred to as "Appellant"), and files her Reply Brief in opposition to Respondent's argument contained therein in his Brief.

Appellant adopts the arguments and summary of material facts contained in the number paragraphs in her opening Brief as if same is set forth fully herein. Appellant further relied on all the records and exhibits cited before this court and urge this court to discountenanced the arguments of the Respondent.

A. ARGUMENT IN REPLY

I. RESPONDENT'S STATEMENT OF FACTS INCLUDES COUNTER STATEMENTS THAT ARE TOTALLY FALSE.

The Appellant's brief includes a "Counter statement of the Facts" at RB 2 - 8.

RAP 10. 3(a)(5), which requires "[a] fair statement of the facts ... without argument," is violated throughout the Respondent's "Counter statement", particularly regarding Respondent's false allegations that Appellant married Alan Carlin on the ground that "in the event, he was to pass away, Ezenwa would potentially gain financially from his death." ... Respondent further lied that appellant isolated her husband from his family, had his

mail forwarded to an address in Spokane, then re-forwarded it to a second address that was not Mr. Carlin's".

In fact, the above allegation of the Respondent is flawed with inaccuracies and was writing in his affidavit for the purpose of making his own emergency to obtain the Temporary Vulnerable Adult Protection Order against Appellant.

Exhibit 2 will show that Appellant told Respondent's Father Alan Carlin that she will "warmly accept [his] invitation" and planned on being with him on January 3, 2020 when he invited appellant over to his home. (CP 20; ex. 2). More glaring is when Appellant purchased the tickets for the visit with her own money. (Ex 2.)

Appellant never rushed or orchestrated the marriage with Alan Carlin but rather Alan Carlin insisted in getting married to her, Appellant insisted they stay eight months, or longer to see if they are compatible (Ex.4).

And instead Alan Carlin says, No, let's get married and he arranges the marriage. (Ex.4); (RP at 16-line 15-25).

II. THE ORDER IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE

RCW 34.05. 570(3) (e), throughout the appeal in this matter, Appellant have raised the issue of the insufficiency of the evidence. The well - settled test for substantial evidence is a sufficient quantity of evidence to persuade a fair-minded person

of the truth or correctness of the order." *Campbell v. Bd. for Volunteer Firefighters*, 111 Wn. App. 413, 418, 45 P. 3d 216 (2002) (internal quotations omitted).

There was no witnesses called throughout the hearing of the case, this point, underscored by the fact that counsel's arguments are not evidence because it was premised on an unproven fact. *ibid*

The Respondent argument that he properly filed the VAPO according to the rules set forth by RCW 74.34 and timely served all parties in the action is not founded on any good faith filing. (RB 11-13)

The evidence presented by the Respondent in the trial court and attachments demonstrate a bad faith filing.

Respondent doesn't have the criteria of an Interested persons under RCW 74.34.020, 74.34.210 as he does not file the Petition in good faith belief that court intervention is necessary, and that the vulnerable person cannot, because of incapacity, undue influence.

Respondent's petition did not contain sufficient allegations of wrongdoing. Even the Police Officer from the Cheney Police Department during his investigation, found Alan Carlin to be rational and can make his own decisions contrary to what Respondent had falsely reported to make emergency of his own to obtain the Vulnerable Adult Protection Order (CP at 12).

III. THE COURT DID NOT MAKE PROPER FINDINGS AND CONCLUSIONS THAT
MR. CARLIN WAS A VULNERABLE ADULT PURSUANT TO RCW 74.34.

Respondent in his brief argued that the court made proper findings and conclusions that Mr. Carlin was a vulnerable adult pursuant to RCW 74.34.

The respondent's argument is not founded on any variable evidence.

Here, the Spokane County Superior Court Commissioner did not properly examine the evidence before concluding that Mr. Carlin was a vulnerable adult. **RP 28**. The Commissioner abused her discretion when its decision is "manifestly unreasonable or based on untenable grounds." *Grandmaster Sheng-Yen Lu v. King County*, 110 Wn.App. 92, 99, 38 P.3d 1040 (2002).

A court's decision is manifestly unreasonable:

"if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard" **Grandmaster Sheng-Yen Lu**, 110 Wn.App. at 99,38 P.3d 1040.

The legislature has defined a vulnerable adult as a person "who is sixty years of age or older who has the functional, mental, or physical inability to care for himself." RCW 74.34.020(22)(a).

From the provisions of RCW 74.34.020(22)(a), the law is clear that a vulnerable adult must be above sixty years of age and who at the same time must have functional, mental or physical inability to care for himself.

Respondent failed to proof that Alan Carlin is mentally defective or is physically unable to care for himself.

The emails between Appellant and Alan Carlin were very telling, in that Alan Carlin is not mentally defective neither was he under any physical inability to care for himself. **(Appellant's Ex. 1-17); (CP at 20) ;(RP.at 15-line 15-25)**. Alan Carlin also informed Appellant of his fear of his son Mr. Peter Carlin and his incessant harassment and of his taking over Appellant's Husband life, and he hired an attorney to contest the guardianship proceeding that he did not want. **(CP at Ex 10)**.

Alan Carlin invited Appellant over to Virginia and offered her an opportunity to live in his home and Appellant lives with Alan Carlin in his upper room. **(CP at 29)**.

The medical reports examined by the commissioner were old medical records of Alan Carlin, whereas, the most recent medical reports were conceal by Respondent in his own emergency to obtain

the Vulnerable Adult Protection Order. Alan Carlin never suffers a developmental disability, neither is admitted to any facility charged with the vulnerable person's care, or receiving care from home health, hospice, or home care agencies. (CP at 15-16).

Neither the court made any material evidence findings and that Mr. Carlin was the victim of isolation, emotional abuse, and personal and financial exploitation pursuant to RCW74.34.

The argument of Respondent that Mr. Alan Carlin was isolated from his family is not founded on any admissible evidence. (RB 18-19).

All the facts stated in Respondent's affidavit in support of his petition for VAPO is a mere exaggeration or making false accusations, this was done to make the situation an emergency for the purpose of obtaining the VAPO.

Respondent's false allegations that Appellant isolated Alan Carlin from his family, had his mail forwarded to an address in Spokane, then re-forwarded it to a second address that was not Mr. Carlin's was not founded on any material facts, this was false and urge this court to countenance this argument. In fact, the above allegation of the Respondent is flawed with inaccuracies and was writing in his affidavit for the purpose of making his own emergency to obtain the Vulnerable Adult Protection Order against Appellant.

The fact is that Appellant Mary and Dr Alan Carlin have both resided continuously together in Virginia and Washington since their marriage.

The Police Officer Rocky Hanni, indicated that he contacted Alan in Appellant's place where he was living happily with Appellant Mary Ezenwa in Washington.

Alan Carlin told Cheney Police Officer he is tired of his family "harassing" him. (CP **Ex 8**). Alan told Cheney Police Officer his family is trying to say he is not competent so they can stop him from removing him from his will. Officer Hanni asked Alan if he was in Cheney on his own free will. Alan stated he bought his own plane ticket, boarded the plane by himself, and was not forced to do so. (CP at 12).

Appellant never forced or cajoled Mr. Alan Carlin to live in Washington.

IV. APPELLANT WAS DENIED CONSTITUTIONAL RIGHT TO ACCESS TO COURT.

Appellant urge this court to discountenanced the argument of the Respondent that Appellant's right of procedural due process and fair hearing under the US constitution's fourth amendment is not violated.

Mary Carlin has the right to be free from unlawful searches and seizures under the US Constitution's Fourth Amendment when they authorized an unlawful entry into Mary Carlin's place without

consent or a warrant and without any "civil standby" language in search of Alan Carlin and the enforcement of this protection order/injunction. *Osborne v. Seymour*, 164 Wn. App. 820 (Div. II, 2011). *Payton v. New York*, 445 U.S. at 585-86 quoting *United States v. US. Dist. Ct.*, 407 U.S. 297 at 313.

Further, the trial court's ruling violated Appellant's constitutionally guaranteed right to access to the courts.

Appellant was prevented from bringing in evidence of the most recent medical records by two licensed doctors, Dr. Debra Brown and Alan's Physician at Sacred Heart Hospital ER that both found Alan to be competent and able to make his own decisions.

Under Article I, § 10 of the Washington Constitution, [f]ull access to the courts . . . is a fundamental right." *King v. King*, 162 Wn.2d 378,390, 174 P.3d 659 (2007) (quoting *Bullock v. Roberts*, 84 Wn.2d 101, 104, 524 P.2d 385 (1974) (citing *Boddie v. Connecticut*, 401 U.S. 371, 91 S. Ct. 780,28 L. Ed. 2d 113 (1971))). The people have a right of access to courts; indeed, it is "the bedrock foundation upon which rest all the people's rights and obligations." *John Doe v. Puget Sound Blood Ctr.*, 117 Wn.2d 772, 780, 819 P.2d 370 (1991).

Here, Mary Carlin was denied access to court when she was not allowed to testify and present her case by calling witnesses. The evidence of Dr. Debra Brown from Brown and Associates and

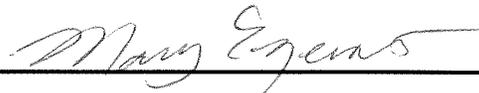
Alan's Physician at Sacred Heart Hospital would show that Alan is competent and can make his own decision and not in any financial exploitation. The allegations of financial exploitation need to be proven by properly supporting the argument with material evidence and not by merely making a statement without evidence.

Indeed, the commissioner relied on old medical reports of Alan when two medical professionals **Ellen Jenkins MD and Argye E Hillis MD**, which were arranged by **Respondent**, then falsely explained in their declarations that Mr. Alan Carlin has suffered strokes, has CAA, has deficits in his frontal lobe and he is at risk for personal and financial exploitation in their opinion. (CP 8,9).

B. CONCLUSION

For reasons stated herein and in appellant's opening brief, appellant requests the trial court ruling be reversed or, alternatively, this Court order a reference hearing.

Respectfully submitted, this 28th day of August 2020.



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(Appellant Pro Se)

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CERTIFICATE OF SERVICE

This is to certify that I have served the foregoing Appellant Reply Brief. I served it upon Petitioner/Respondent's Counsel on Record by placing a copy in the United States Postal Service, with postage prepaid, addressed to:

Dianna Joy Evans

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This August 28th, 2020



Mary Ezenwa