

Appeal No. 374963

FILED

JUL 13 2020

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 OPENING BRIEF

Sign: 
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I. SUMMARY OF MATERIAL FACTS

INTRODUCTION

Appellant, a 35-year-old black female and Dr Alan Carlin 82 (vulnerable adult) agreed to get married and finally solemnized the marriage in Virginia without fraud or undue influence after a brief courtship from December 24th, 2019, and Appellant Mary and Dr Alan Carlin have both resided continuously together since that time.

This appeal is against a vulnerable adult order for protection. This is the matter of Alan Carlin, who the petition was filed by Peter Carlin. Respondent is being represented by Dianna Evans as his counsel. While Appellant Mary Ezenwa was represented by Gary Stenzel as counsel.

The temporary order was issued by Commissioner Pro Tem Gregory Hicks on January 31st, 2020. **[CP 1-7)**

The permanent Vulnerable Adult Protection Order hearing was whether or not that order should continue under RCW 74.34.110. **(RP at 3 line 2-5)**

Superior court commissioner Pelc, Julia conducted a hearing on the protection order petition on 02/27/2020. Though, witnesses were never called but Counsels for both parties only presented their

arguments and the commissioner Pelc, Julia make permanent, the Vulnerable Adult Protection Order.

The original order for protection was signed on January 31st, 2020. (RP. at 24. line 20-5). Though Alan Carlin did not participate on the hearing (RP at 3 line 2-5). Though, there was no evidence to show that Alan Carlin, the vulnerable adult consented to the VAPO proceedings (RP at 3& 4).

Finally, restraining Appellant, among other conditions, from entering Alan Carlin's residence, having any contact with Alan Carlin, or from coming within feet of Alan Carlin's residence and his estate (RP at 3 -25).

STATEMENT OF THE CASE

Appellant, a 35-year-old black female American, and Dr Alan Carlin 82 (vulnerable adult) agreed to get married and finally solemnized the marriage in Virginia without fraud or undue influence after a brief courtship from December 24th, 2019, and Appellant Mary and Dr Alan Carlin have both resided continuously together since that time.

Appellant a US Citizen graduated from State University of New York with an excellent GPA, and have Master's Degree from Columbia University with Honors. (CP at Ex 11, 15).

The Respondent Peter Carlin is the son of Dr Alan Carlin. Dr Alan Carlin informed Appellant of his fear of his children incessant harassment (Peter Carlin, Nancy Bundics and Danielle Roselin) and of their taking over his life, and he hired an attorney to even contest a guardianship proceeding against his children. (CP at Ex 10).

On or around 1/29/2020 respondent raised false alarm to the Fairfax and Cheney Police Departments stating that his father is missing from Fairfax County VA and have eloped with Appellant to Cheney Washington State. (CP at 12).

Whereas, upon investigation, these allegations were false as Police Officer Rocky Hanni from the Cheney Police Department stated that, from his investigation, Alan Carlin was found to be rational and can make his own decisions contrary to what Respondent had reported and that the purported vulnerable adult Alan Carlin is not in any risk of financial exploitation. (CP at 12).

Respondent and the Cheney Police Department never contacted Appellant Mary to investigate these allegations by Dr. Alan Carlin's children before they went and obtained an ex parte Temporary Vulnerable Adult Protection Order from Commissioner Pro Tem Gregory Hicks on 01/31/2020 and Temporary Restraining Order from the Spokane County Superior Court on 02/13/2020, restraining

Appellant, among other conditions, from entering Alan Carlin's residence, having any contact with Alan Carlin, or from coming within feet of Alan Carlin's residence and his estate. [CP 1-7)

Indeed, two medical professionals **Ellen Jenkins MD and Argye E Hillis MD**, which were arranged by Respondent, relied on old medical records when falsely explaining 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).

Danielle Roselin, the vulnerable adult's daughter, falsely states in her Declaration that when she finally found Mr. Carlin, he lacked insight. He was in the hospital due to dehydration, sepsis and the condition he was found in.

Commissioner Pro Tem Gregory Hicks solely relied on these falsified declarations and emergency of their own making to grant an ex parte order (without prior notice to Appellant) which required allegations of "irreparable harm or financial exploitation".

Not only were these statements from **Ellen Jenkins, and Argye E Hillis**, false, Respondent and Danielle Roselin (daughter to Alan Carlin), knew that it was false since Alan Carlin's most recent medical report, carried out by his doctors: Dr. Debra Brown from

Brown and Associates and Alan's Physician at Sacred Heart Hospital show that he is competent and can make his own decision and not in any financial exploitation. Copies of Alan's current medical reports making him competent and able to make his own decisions were intentionally omitted and not revealed in the Copy of the Police Report. (CP at 12).

Appellant was denied procedural due process of law when the court did not or at least allow Appellant to subpoena Dr. Debra Brown from Brown and Associates and Alan's Physician at Sacred Heart Hospital to rebut the false declarations and medical records and or to show or proof beyond doubt that Alan Carlin is legally competent and can make his own decisions and to show whether Appellant has exploited her husband or her husband is in the risk of financial exploitation.

Respondent only sought the illegal Protective Order so that Appellant is legally restrained from coming close to her husband Alan Carlin. The inaccuracies are glaring in the Respondent's Affidavit. (CP at 15-16).

Again, not only were these statements false, Respondent and Danielle Roselin (daughter to Alan Carlin), knew that it was false since, 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 (purported vulnerable adult) 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).

This VAPO petition was done without the consent of Alan Carlin because there was no evidence to show that Alan Carlin, the vulnerable adult consented to the VAPO proceedings (RP at 3& 4).

Respondent Peter Carlin alleged that Alan Carlin was unable to consent or understand the petition/restraining order. (CP at 15-16 Petition/Declaration).

In Peter Carlin's declaration, he alleged Alan Carlin was in actual danger of financial exploitation, however, the Respondent never offered any evidence that Mary Ezenwa had actually harmed her husband or financially exploited her husband. (CP at 16).

Like anybody that's involved in domestic or family type relationship, certainly Appellant only call her Attorney after been served with the Temporary Order. (RP 18).

She doesn't go get it and violate the orders. She calls her husband's friend, because she doesn't have any counsel at the moment. Instead respondent try to use that against Appellant to suggest Alan Carlin is in risk of financial exploitation. Appellant think it's inappropriate she calls the people who got the order to say, Well, can I? Because she needs to defend herself against the Temporary Protection Order. (RP at 19,21)

The emails between Appellant and Alan Carlin were very telling in this case. (Appellant's Ex. 1-17); (CP at 20) ;(RP.at 15-line 15-25).

A review of parties' email chain will show that Alan pursued Appellant very hard, to the point that he was the first one to end his email with "Love Alan". His emails were articulate, caring, bright, inquisitive, and the very thing in a man Appellant was looking for. Age nor color of our skin was not a condition but granted on love. Alan Carlin was also the first one to suggest Appellant meet him "at the earliest opportunity" and maybe "on her way back to Spokane after the holidays???" December 25th, 2019 email. (Appellant Ex1;2); (CP 20).

Appellant told Respondent's Father Alan Carlin that she will "warmly accept [his] invitation" and planned on being there January 3, 2020. (CP 20; ex. 2). 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 weeks, or longer to see if they are compatible (Ex.4).

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

To further buttress the fact that Alan Carlin was legally competent, Alan Carlin invited Appellant to Virginia and offered her an opportunity to live in his home. (CP at 29).

Now who's there in Alan Carlin's home to say that Appellant's husband is not competent and not protected? Are Respondent and his siblings leaving Alan Carlin unprotected in his home in Virginia? (CP at 15-16).

What is that all about? And Respondent and his siblings say that he's incompetent, but nobody was there to do anything about the fact that Appellant stayed in the upper bedroom in her husband's home. That's not incompetence, that's a guest staying there that

Appellant is got to know over, sure, a whirlwind time. (RP at 16-17).

Appellant filed this appeal in good faith and not because of any ulterior motive but she doesn't want anything to stain her legal records and not to hamper her future and amongst other things.

II. ASSIGNMENTS OF ERRORS

1. That the superior court OF WASHINGTON FOR COUNTY OF SPOKANE erred in entering a vulnerable adult protection order, chapter 74.34 RCW, because sufficient evidence does not support a finding that ALAN CARLIN was a vulnerable adult and because the petition did not contain sufficient allegations of wrongdoing.
2. Did Comm. Pelc, Julia commit error when she made a finding that Mary Ezenwa committed acts of "Financial exploitation" on her Husband Alan Carlin without making specific findings that Mary Ezenwa acted with a "deception, intimidation, or undue influence or illegal or improper use, control over" as required by the Vulnerable Adult Protection Act RCW 74.34.020?
3. Commission's decision is manifestly unreasonable or exercised

on untenable grounds, or for untenable reasons.

4. Mary Ezenwa's right of procedural due process and fair hearing under the US constitution's fourth amendment is violated
5. Based on the facts as applied in this case, Mary Ezenwa's rights to be free from unlawful searches and seizures under the US Constitution's Fourth Amendment when they authorized an unlawful entry into Mary Ezenwa's home without consent or a warrant and without any "civil standby" language in search of Alan Carlin and enforcement of this protection order.
6. Using of old Medical Records of Alan Carlin as a guise of emergency, when 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 is a breach of Appellant's Constitutional fair hearing and due Process rights.

III. LEGAL ARGUMENT

1. THAT THE SUPERIOR COURT OF WASHINGTON FOR COUNTY OF SPOKANE ERRED IN ENTERING A VULNERABLE ADULT PROTECTION ORDER, CHAPTER 74.34 RCW, BECAUSE SUFFICIENT EVIDENCE DOES NOT SUPPORT A FINDING THAT ALAN CARLIN WAS A VULNERABLE ADULT AND THE PETITION DID NOT CONTAIN SUFFICIENT ALLEGATIONS OF

WRONGDOING.

Under RCW 74.34.020(16), a vulnerable adult is a person sixty years of age or older who is unable to care for himself, or is subject to a guardianship, or suffers a developmental disability, or is admitted to any facility charged with the vulnerable person's care, or is receiving care from home health, hospice, or home care agencies, or is receiving services from an individual provider. RCW 74.34.020(16).

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.

ALAN CARLIN was not a vulnerable adult and the petition did not contain sufficient allegations of wrongdoing.

The actions of Alan Carlin are also glaring, in that he is not a vulnerable adult and all the definitions of a vulnerable adult under RCW 74.34.020(16), do not fit in here.

The emails between Appellant and Alan Carlin were very telling in this case. (**Appellant's Ex. 1-17**); (**CP at 20**) ;(**RP.at 15-line 15-25**).

For instance, Alan Carlin informed Appellant of his fear of his children incessant harassment (Peter Carlin, Nancy Bundics and Danielle Roselin) and of their taking over his life, and he hired an attorney to contest the guardianship proceeding that he did not want. (CP at Ex 10).

Also, Alan Carlin invited Appellant go to Virginia and offered her to live in his home. (CP at 29).

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.

Now who's there in Alan Carlin's home to say that Appellant's husband is not competent and not protected? Are Respondent and his siblings leaving Alan Carlin unprotected in his home in Virginia? (CP at 15-16).

What is that all about? And Respondent and his siblings say that he's incompetent, but nobody was there to do anything about the fact that Appellant stayed in the upper bedroom in her husband's home. That's not incompetence that's a guest staying there that Appellant is got to know over, sure, a whirlwind time. (RP at 16-17).

Further, Police Officer Rocky Hanni from the Cheney Police Department stated that, from his investigation, Alan Carlin was

found to be rational and can make his own decisions contrary to what Respondent had reported and that the purported vulnerable adult Alan Carlin is not in any risk of financial exploitation. (CP at 12).

a. The Petition and hearing were not personally served upon the vulnerable adult

RCW 74.34.120 (3) provides as follows:

When a petition under RCW 74.34.110 is filed by someone other than the vulnerable adult, notice of the petition and hearing *must be personally served upon the vulnerable adult* not less than six court days before the hearing. In addition to copies of all pleadings filed by the petitioner, the petitioner shall provide a written notice to the vulnerable adult using the standard notice form developed under RCW 74.34.115. (Emphasis added).

2. DID COMM. PELC, JULIA COMMIT ERROR WHEN SHE MADE A FINDING THAT MARY EZENWA COMMITTED ACTS OF "FINANCIAL EXPLOITATION" ON HER HUSBAND ALAN CARLIN WITHOUT MAKING SPECIFIC FINDINGS THAT MARY EZENWA ACTED WITH A "DECEPTION, INTIMIDATION, OR UNDUE INFLUENCE OR ILLEGAL OR IMPROPER USE, CONTROL OVER" AS REQUIRED BY THE VULNERABLE ADULT PROTECTION ACT RCW 74.34.020?

Appellant Mary EZENWA was accused of financial exploitation; however, the Respondent never offered any evidence that Mary Ezenwa had actually harmed her husband or financially exploited her husband. (CP at 16).

Under the extant provision RCW 74.34.020, to financially exploit a vulnerable adult, means: the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. "Financial exploitation" includes, but is not limited to:

(a) The use of deception, intimidation, or undue influence by a person or entity in a position of trust and confidence with a vulnerable adult to obtain or use the property, income, resources, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult;

(b) The breach of a fiduciary duty, including, but not limited to, the misuse of a power of attorney, trust, or a guardianship appointment, that results in the unauthorized appropriation, sale, or transfer of the property, income, resources, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult; or

(c) Obtaining or using a vulnerable adult's property, income, resources, or trust funds without lawful authority, by a person or entity who knows or clearly should know that the vulnerable adult lacks the capacity to consent to the release or use of his or her property, income, resources, or trust funds.

The above elements of financial exploitation are subject to proof and must be proved by a preponderance of the evidence by the

Respondent that Appellant takes the property of Alan Carlin without permission or with intent not to properly return it.

Further, Respondent must proof that Appellant is using fraud, coercion, or undue influence to get Alan Carlin to hand the property over to her. Proving any of the above by a preponderance of the evidence means that the evidence should show that it was "more likely than not" that the financial exploitation really or actually occurred as required by Vulnerable Adult Protection Act RCW 74.34.020.

It is the contention of Appellant that Comm. Pelc, Julia commit error when she made a finding that Mary Carlin Ezenwa committed acts of "Financial exploitation" on her Husband Alan Carlin without making specific findings that Mary Carlin Ezenwa acted with "deception, intimidation, or undue influence or illegal or improper use, control over" her Husband Alan Carlin as required by the Vulnerable Adult Protection Act RCW 74.34.020.

There can be no financial exploitation under this statute when the actions are not "deceptive, intimidating, not injurious or ill intended." *Brown v. Dep. Of Soc. & Health Services*, 145 Wn. App. 177, 180 (Div. III, 2008).

The emails between Appellant and Alan Carlin were very telling in this case. (**Appellant's Ex. 1-17**); (CP at 20); (RP.at 15-line 15-25). A review of parties' email chain will show that Alan pursued

Appellant very hard, to the point that he was the first one to end his email with "Love Alan". His emails were articulate, caring, bright, inquisitive, and the very thing in a man Appellant was looking for. Age nor color of our skin was not a condition but granted on love.

Alan Carlin was also the first one to suggest Appellant meet him "at the earliest opportunity" and maybe "on her way back to Spokane after the holidays???" December 25th, 2019 email. **(Appellant Ex1;2); (CP 20).**

Appellant told Respondent's Father Alan Carlin that she will "warmly accept [his] invitation" and planned on being there January 3, 2020. **(CP 20; ex. 2)**. 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 weeks, or longer to see if they are compatible **(Ex.4)**.

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

Appellant contents, these VAPO restraining orders/injunctions should be dissolved and the case should be dismissed with prejudice.

a. Did Commissioner Pelc, Julia commit error when she failed to make proper findings that Mary Carlin was guilty of "neglect" pursuant to RCW 74.34.020 (b)

RCW 74.34.020 (b) defines one type of neglect as follows: "An act or omission by a person or entity with a duty of care that demonstrates a serious disregard of consequences of such a magnitude so as to constitute a clear and present danger to the vulnerable adult's health welfare and safety ..."

VAPO restraining orders/injunctions could not proceed under RCW 74.34.020 (a) because that type of neglect requires them to prove that the V/A Alan Carlin suffered "mental or physical harm or pain" at the hands of Mary Carlin and there was never any evidence showing that she caused any harm to her husband.

There is nothing in commissioner **Pelc, Julia** order dated 02/27/2020 nor anything in her oral findings (incorporated by reference into the order) that Mary Carlin "demonstrated a serious disregard of such a magnitude so as to constitute a clear and present danger to the vulnerable adult's health, welfare and safety. RCW 74.34.020 (b). This order is defective as a matter of law. As such, these VAPO restraining orders/injunctions should be dissolved and the case should be dismissed with prejudice

3. COMMISSION'S DECISION IS MANIFESTLY UNREASONABLE OR EXERCISED
ON UNTENABLE GROUNDS, OR FOR UNTENABLE REASONS.

- a. The allegations alleged by Respondent are unreasonable or exercised on untenable grounds, as they do not constitute financial, physical, emotional or personal exploitation under RCW 74.34.

RCW 74.34 provides protection to a vulnerable adult whenever there is financial, physical, emotional or personal exploitation.

Alleging that Mary accessed Alan's email unlawfully and intercepted Alan's private privileged communications with Alan's attorney. And in addition, spammed several of Alan's friends through his email account seeking money for representation in this matter without no evidence to proof or show same is unreasonable. (RP. at 12 line - 5-7). No evidence was shown to proof those false allegations and the court solely relied on those allegations to enter the permanent protective Order.

Alleging that defendant went into a romance scam with Alan is unreasonable.

Appellant never attempted to exploit Alan Carlin, Appellant and Alan Carlin were legally married.

Those allegations are false and did not clearly fit within that scope. There are no actions of deception, and inducement on any alleged ruse that Appellant was Alan Carlin's soulmate.

b. Respondent Peter Carlin did not meet the Standard of Proof for Vulnerable Adult Protection Order

The Abuse of Vulnerable Adults Act (Act) was enacted to protect vulnerable adults who "may be subjected to abuse, neglect, financial exploitation, or abandonment by a family member." See RCW 74.34.005(1) (legislative findings).

One means of protection is a vulnerable adult protection order. RCW 74.34.110. "A vulnerable adult, or interested person on behalf of the vulnerable adult, may [file] a petition for an order for protection in superior court." RCW 74.34.110(1).

For Respondent to succeed, he must allege specific facts and circumstances that demonstrate the need for the relief sought. RCW 74.34.110(2).

Not only mere stating in affidavit that the alleged vulnerable adult is subjected to abuse, neglect, financial exploitation, or abandonment by Appellant without proof of the allegations of exploitation.

This court is urged to dismiss the Permanent Vulnerable Protection Order because they did not substantiate their argument that Appellant has exploited Alan Carlin financially or that Alan is legally incapacitated.

Further, Respondent Peter Carlin did not meet the criteria of an interested person as the Petition was filed maliciously in bad faith and the alleged Vulnerable Adult is able, has legal capacity, and was not under any undue influence, or duress at the time the petition is filed. 74.34.020(10).

Alan's declaration was fraught with falsehood, heavily manipulated by Respondent Peter Carlin. The definitions for mental abuse include willful, verbal and nonverbal action that in part humiliates, coerces, isolates or confines a vulnerable adult and that did not fit squarely here.

4. MARY CARLIN'S RIGHT OF PROCEDURAL DUE PROCESS AND FAIR HEARING UNDER THE US CONSTITUTION'S FOURTH AMENDMENT IS VIOLATED.

- a. Based on the facts as applied in this case, the violation of Mary Carlin 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 house**

without consent or a warrant and without any "civil standby"
language in search of Alan Carlin and enforcement of
Protective Order/Injunction

Appellant Mary Carlin and Alan Carlin were the only residents of Mary Carlin's home at the time in question. When the officers at the request and under the direction of Respondent Peter Carlin came to Appellant's home in search of Alan Carlin.

Officers entered Appellant residence without any authorization from either resident when the respondent raised false alarm to the Fairfax and Cheney Police Departments stating that his father is missing from Fairfax County VA and have eloped with Appellant to Cheney Washington State. (CP at 12).

The officers entered and remained in the Appellant's home and waited inside the residence to retrieve Alan Carlin and any possessions he deemed necessary for her absence.

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

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).

Again, when appellant was served with the ex parte Temporary Vulnerable Adult Protection Order, the officers entered Appellant's residence without any authorization from either residents, Mary Carlin or Alan Carlin.

Further, this ex parte Temporary Vulnerable Adult Protection Order had no "civil standby" language authorizing law enforcement to enter this residence.

As such, Respondent violated the Fourth Amendment rights of Mary Carlin to be free from unlawful intrusions. See generally *Osborne v. Seymour*, 164 Wn. App. 820 (Div. II, 2011), where the court held that the Fourth Amendment was violated when officers made a "physical entry into a private home without authorization." *Osborne*, id, citing *Payton v. New York*, 445 U.S. at 585-86 quoting *United States v. US. Dist. Ct*, 407 U.S. 297 at 313.

Based on the facts as presented in this case, the orders/injunctions against Mary Carlin should be dissolved and this case dismissed with prejudice.

b. Using of old medical Records of Alan Carlin as a guise of emergency, when 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 found Alan to be competent and able to make his own decisions is a breach of Appellant's Constitutional fair hearing and due Process rights.

Due process requires notice and a meaningful opportunity to be heard before a government deprives any person of life, liberty, or property.

The fundamental requirements of procedural due process are notice and an opportunity to be heard. *In re Bush*, 164 Wash.2d 697, 705, 193 P.3d 103 (2008).

The opportunity to be heard must be at a meaningful time and in a meaningful manner. *Mansour v. King County*, 131 Wash. App. 255, 264, 128 P.3d 1241 (2006).

Here, Mary Carlin was denied due process and fair hearing 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 he is competent and can make his own decision and not in any financial exploitation. The allegations of financial

exploitation need to be proven and not by merely stating same by the Petition in his Affidavit.

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**, 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).

While Danielle Roselin, the vulnerable adult's daughter, falsely states in her Declaration that when she finally found Mr. Carlin, he lacked insight.

Claiming that he was in the hospital due to dehydration, sepsis and the condition he was found in, and then the Court Commission solely relied on these falsified declarations and used this emergency of their own making in order to get an ex parte vulnerable protection order (without prior notice to Appellant) which required allegations of "irreparable harm or financial exploitation".

Not only were these statements from **Ellen Jenkins, and Argye E Hillis**, false, Respondent and Danielle Roselin (daughter to Alan Carlin), knew that it was false since Alan Carlin's recent medical report carried out by his doctors: Dr. Debra Brown from

Brown and Associates and Alan's Physician at Sacred Heart Hospital show that he is competent and can make his own decision and not in any financial exploitation.

Copies of Alan's current medical reports making him competent and able to make his own decisions were intentionally omitted and not revealed in the Copy of the Police Report. (CP at 12).

Appellant was denied procedural due process of law when the court did not or at least allow Appellant to subpoena Dr. Debra Brown from Brown and Associates and Alan's Physician at Sacred Heart Hospital to rebut the false declarations or to show or proof beyond doubt that Alan Carlin is legally competent and can make his own decisions and to show whether Appellant has exploited her husband or her husband is in the risk of financial exploitation.

Respondent only sought the illegal Protective Order so that Appellant is legally restrained from coming close to her husband Alan Carlin. The inaccuracies are glaring in the Respondent's Affidavit. (CP at 15-16).

The old medical Records of Alan Carlin were used as emergency of their own making in order to obtain the ex-parte vulnerable protection order when the most recent medical records by two licensed doctors, Dr. Debra Brown and Alan's Physician at Sacred

Heart Hospital ER found Alan to be competent and able to make his own decisions is a breach of Appellant's Constitutional fair hearing and due Process rights.

Here, the appellant was denied due process of law and fair hearing when the court wrongly evaluated the evidence and the court's decision was not supported by adequate and substantial Record, and should be set aside. Alan Carlin is not a vulnerable adult.

5. ATTORNEY'S FEES AND COST OF APPEAL

Appellant request attorney fees and cost under RCW 74.34.130. RCW 74.34.130(7). Alternatively, Respectfully, Mary Carlin argue this court should grant her attorney fees and cost under the "equitable grounds articulated in the common law in bad faith actions." Appellants Br. At 28 (citing *Rogerson Hitler Corp. v. Port of Port Angeles*, 96 Wn.App. 918, 982 P.2d 131 (1999)).

Respondent Peter Carlin's conduct constitutes bad faith or wantonness; "A court may grant attorney fees and cost to the prevailing party if the losing party's conduct constitutes bad faith or wantonness". *Miotke v. Spokane*, 101 Wn.2d 307 (1984) quoting *PUD 1 v. Kottsick*, 86 Wn.2d 388,390 (1976).

In the case under review, Respondent willfully, wantonly and recklessly sought and obtained an injunction/protection order evicting Appellant of her home. Appellant is entitled to attorney's fee and cost for having to retain a lawyer in the trial court and pursuing this Appeal Pro se by filing pleadings and other fees which were proximately caused by the willful and wanton action of Respondent.

RCW 4.84.080(2) STATUTORY ATTORNEY FEES-Mary Carlin is entitled to \$20000 statutory attorney fee per RCW 4.84.080(2).

IV. CONCLUSION

Based on the facts as applied to this case, and the foregoing legal arguments, Mary Carlin respectfully asks this court to dissolve all of these protection orders/injunctions; enter a judgment dismissing this case with prejudice, and award her costs and attorney fees.

Respectfully submitted, this 11th day of July 2020.



Mary Ezenwa

(Appellant Pro Se)

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CERTIFICATE OF SERVICE

This is to certify that I have served the foregoing Appellant opening 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:

Evans, Dianna Joy
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This 11th July, 2020



Mary Ezenwa