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NO. 374963

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

In Re:

ALAN PHILIP CARLIN,
Vulnerable Adult,

v.

MARY CHINEYE EZENWA,
Appellant.

BRIEF OF RESPONDENT

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I.

INTRODUCTION

This case involves the entry of a Vulnerable Adult Protection Order in Spokane County, Washington against Mary C. Ezenwa prohibiting her from contact with Alan Carlin. Peter Carlin is the son of Alan Carlin and was the petitioner in the Vulnerable Adult Protection Action. CP 5-40. A Permanent Order of Protection was ultimately granted by the court and remains in place today. CP 173-176; RP 26-33.

II.

STATEMENT OF FACTS

On January 31, 2020, Peter Carlin, through his attorney, Dianna Evans, filed a petition for Vulnerable Adult Protection Order (VAPO) on behalf of Alan Carlin in Spokane County Superior Court. CP 5-40. Peter Carlin's declaration alleged that his father, Alan Carlin, suffered from Cerebral Amyloid Angiopathy (CAA) and that his cognitive impairment placed him at risk of personal and financial exploitation by Mary C. Ezenwa. CP 5-40, 54-56, 61-62. The petition was supported by the declarations of both Mr. Carlin's primary care provider, Ellen Jenkins, MD, and primary neurologist, Argye Hillis, MD. CP 54-56, 61-62.

Both Dr. Jenkins and Dr. Hillis agree that Mr. Carlin is diagnosed with CAA, a progressive, untreatable disease that causes the buildup of

amyloid plaques in the brain and places one at risk of subsequent strokes. CP 8, 11. Both physicians opine that Mr. Carlin's CAA diagnosis has contributed to his being a target of financial scams that have resulted in considerable financial loss, and they agree that he remains at risk. CP 54-56, 61-62. According to the Petition, Mr. Carlin executed a durable power of attorney nominating his daughter, Nancy Bundics, as his agent for financial decisions on September 11, 2019. CP 5-40. This document was filed as an exhibit to the petition for the VAPO. CP 5-40.

Peter Carlin's declaration in the petition further alleged and outlined the details of how Ms. Ezenwa met his father, married him, removed him from the safety of his longtime residence in Virginia, and took him to Cheney, Washington, where she isolated him from his family and primary care provider. CP 5-40. He further declared that Ms. Ezenwa is now legally Mr. Carlin's spouse, and in the event he were to pass away, she would potentially gain financially from his death. CP 5-40.

According to the Petition, Ms. Ezenwa arrived in Virginia on January 18, 2020, and departed with Mr. Carlin on January 25, 2020. CP 5-40. In this short timeframe, she isolated him 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. CP 63-74. Once she received notice of the guardianship/

conservator petition that had been filed in Fairfax County Superior Court by Mr. Carlin's family, she promptly married him and took him with her out of state. CP 63-74. In response to this and their inability to contact him, the family filed a missing persons report in Fairfax County, Virginia. CP 5-40, 63-74. By initiating a cell phone ping, they ultimately located him in Cheney, Washington, where they contacted the Cheney Police Department and requested a welfare check. CP 5-40, 63-74.

According to the police report, on January 30, 2020, Officer Rocky Hanni of Cheney PD went to 515 West 6th Street, Cheney, Washington and contacted Ms. Ezenwa. CP 63-74. Upon contact, Officer Hanni observed that she was shaking and appeared to be very nervous. CP 63-74. The officer also noted that she appeared to have trouble spelling and pronouncing her middle name. CP 63-74. After further questioning, Ms. Ezenwa indicated that she was renting a room at that address and that Mr. Carlin was there with her. CP 63-74. Officer Hanni then made contact with Mr. Carlin, who confirmed that he had just arrived in Spokane and had married Ms. Ezenwa a few days prior. CP 63-74. When asked if his children had attempted to contact him in the past few days, he said he "did not believe so." CP 63-74. Officer Hanni provided his business card and left the scene. CP 63-74.

On January 31, 2020, Officer Hanni contacted Sara Miller, who is the manager of the boarding house at 515 West 6th Street, where Ms. Ezenwa and Mr. Carlin were staying. CP 63-74. Ms. Miller stated that this was the first week Ms. Ezenwa had ever lived there. CP 63-74. She indicated that she had originally thought Ms. Ezenwa and Mr. Carlin were going to stay with her for a few nights, but that Ms. Ezenwa had recently asked to stay for multiple weeks. CP 63-74. Ms. Miller indicated this was not an option since she had someone else moving in soon. CP 63-74. Ms. Miller also said Ms. Ezenwa had told her that she had been living with Mr. Carlin for two years in Virginia and they had recently gotten married. CP 63-74. Officer Hanni left the scene and did not again make contact with Mr. Carlin until February 4, 2020. CP 63-74.

Concerned about her father, Alan Carlin's daughter, Danielle Roselin, flew to Spokane on January 31, 2020. 58-60. When she arrived at the boarding house in Cheney, she found her father agitated and confused. CP 58-60. Due to Mr. Carlin's poor condition, law enforcement took him to the local hospital and sought an involuntary psychiatric hold on the grounds that he was gravely disabled. CP 63-74. Upon his admission to the hospital, Mr. Carlin was found to be dehydrated, anemic, at risk of sepsis, and suffering

from renal insufficiency, a urinary tract infection, and elevated lactic acid levels (which can occur when an infection is worsening). CP 58-60, 63-74.

At the hospital, Mr. Alan Carlin told his daughter that he had fallen during his stay with Ms. Ezenwa, which he said was due to “sleeping on a low airbed in the dark without a light, and being in a cluttered room with trash and belongings in it, where it was difficult to walk.” CP 58-60. Danielle Roselin expressed that she did not believe her father had insight into how his behavior had placed him in such a dangerous situation and that she supported a protection order. CP 58-60.

On February 4th, Officer Hanni arrived at the hospital to follow up with Alan Carlin. CP 63-74. Mr. Carlin indicated that he was concerned about his mail being forwarded to an address in Spokane with which he was unfamiliar. CP 63-74. Mr. Carlin also said that he had opened a bank account with Ms. Ezenwa at Bank of America just a short while ago, and had funded it with \$6,000.01 of his money. CP 63-74. Alan Carlin didn't have any of the paperwork associated with this account and believed Ms. Ezenwa had possession of it. CP 63-74. Mr. Carlin expressed to Officer Hanni that Ms. Ezenwa had told him she was a patient advocate and she owned two tech firms worth five million dollars. CP 63-74. Officer Hanni asked Mr. Carlin if he thought it was odd that Ms. Ezenwa said she lived in Spokane but had to

find a place to live upon their arrival and that she had never lived with Ms. Miller before that week. CP to 63-74. Mr. Carlin responded that he did not realize Ms. Ezenwa had never lived with Ms. Miller. CP 63-74.

The petition for a vulnerable adult protection order was filed on January 31, 2020. CP 5-40. Law enforcement filed a return of service on February 3, 2020, and attested that Ms. Ezenwa had been served with the petition, the temporary order for protection, notice to the vulnerable adult, and notice of hearing on January 31, 2020. CP 50-51, 52-53. The temporary order imposed a number of restrictions on Ms. Ezenwa and indicated that a full hearing would be held on February 13, 2020. CP 46-49. Law enforcement filed a second return of service on February 3, 2020, attesting that Mr. Alan Carlin had also been served with copies of the petition for order for protection, the temporary order for protection and notice of hearing, and the notice to the vulnerable adult. CP 50-51, 52-53. Ms. Ezenwa subsequently retained counsel, Mr. Gary Stenzel, to represent her in this matter. CP 75.

The parties appeared at the hearing on February 13, 2020. CP 78. Peter Carlin was present by telephone and was represented by and through Ms. Dianna Evans; Ms. Ezenwa was present in person, represented by and through counsel, Mr. Gary Stenzel. CP 78. Alan Carlin was not present, but

provided a sworn declaration in support of the petition in which he expressed to the court his desire to “make permanent these restrictions against [Ms. Ezenwa].” CP 76-77. The hearing took place before Spokane County Superior Court Commissioner Jaqueline High-Edward. CP 78. At the hearing, Mr. Stenzel requested a continuance on the basis that he needed more time to prepare for the hearing. CP 78. The court granted the continuance over petitioner’s objection. CP 78. The hearing was continued to February 27, 2020. CP 78.

An evidentiary hearing took place on February 27, 2020 before Spokane County Superior Court Commissioner Julia Pelc. CP 173-176; RP 6-33. At the hearing, Peter Carlin was present in person, represented by and through counsel, Ms. Evans; Ms. Ezenwa was also present in person, represented by and through counsel, Mr. Stenzel. CP 173-176; RP 6-33. Alan Carlin was again not present, however, he submitted a second sworn declaration in support of the petition. CP 79-82. This declaration outlined his experiences with Ms. Ezenwa and again affirmed his support of the permanent protection order. CP 79-82.

At the start of the hearing, petitioner’s counsel indicated that three witnesses were available to testify if the court needed additional information to support the petition. RP 7-8. The court reserved the issue and ultimately

declined to take testimony from petitioner's witnesses. RP 7-33. The court heard argument from petitioner's counsel, RP 9-17, 24-26, and from respondent's counsel. RP 17-24. At no time during the hearing did respondent, Ms. Ezenwa, offer any lay witnesses or expert testimony; nor did she provide any third party affidavits in support of her case. CP 1-546; RP 6-33. At the conclusion of argument the court took a brief recess before issuing its ruling. RP 26.

In its ruling, the court weighed all the evidence presented and granted the petition for the Vulnerable Adult Protection Order (VAPO). RP 26-33. The Vulnerable Adult Protection Order was entered on that same day. CP 173-176.

Counsel for respondent, Mr. Stenzel, withdrew his representation on March 5, 2020. CP 546. On March 12, 2020, the respondent filed a motion for reconsideration of the issuance of the VAPO with the Spokane County Clerk's Office. CP 268-272. On March 27, 2020, she cancelled her motion after discovering that the same judicial officer who issued the order would consider her motion. CP 178-530. The respondent now appeals directly to this Court. CP 280-446.

III.

STATEMENT OF ISSUES

- A. Did Respondent comply with statutory rules and procedures when he filed the petition for the VAPO?**
- B. Is preponderance of the evidence the correct standard of proof when a vulnerable adult has not objected to a VAPO?**
 - 1. Did the court make findings of fact and conclusions of law that Mr. Carlin was a vulnerable adult pursuant to RCW 74.34?**
 - 2. Did the court make findings of fact and conclusions of law that Ms. Ezenwa isolated, emotionally abused, and personally and financially exploited Mr. Carlin?**
 - 3. Was the court required to conduct a least restrictive restraints analysis for the VAPO hearing?**
- C. Was the Appellant afforded due process of law?**
 - 1. Was the Appellant afforded the opportunity to call witnesses at hearing and should Appellant be allowed to re-litigate the matter through further witness testimony?**
 - 2. Can the Appellant call a witness whose testimony is protected by privilege?**
- D. Was the Appellant unlawfully searched or seized?**
- E. Is the Respondent entitled to reasonable attorney's fees and costs?**

IV. STANDARD OF REVIEW

The acts and proceedings of superior court commissioners are, in the usual course, subject to revision by the superior court. RCW 2.24.050. Such revision may be made on the records of the case, the findings of fact, and conclusions of law by the court. *Id.* If a demand for revision is not filed “within ten days from entry of the order or judgment of the court commissioner, the orders and judgments ... become the orders and judgments of the superior court, and appellate review thereof may be sought in the same fashion as review of like orders and judgements entered by the judge.” *Id.*

The Court reviews the “superior court’s decision to grant or deny a protection order to determine if the superior court’s decision is manifestly unreasonable or exercised on untenable grounds, or for untenable reasons.” *In re the Matter of Knight*, 178 Wn. App. 929, 936, 317 P.3d 1068 (2014) (citing *Hecker v. Cortinas*, 110 Wn. App. 865, 869, 43 P.3d 50 (2002); *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971)). The Court reviews the superior court’s findings of fact for substantial evidence. *Id.* At 937 (citing *Scott v. Trans-Sys., Inc.*, 148 Wn.2d 701, 707-08, 64 P.3d 1 (2003)). The Court defers “to the trier of fact on the persuasiveness of the evidence, witness credibility, and

conflicting testimony.” *Id.* (citing *Morse v. Antonellis*, 149 Wn.2d 572, 574, 70 P.3d 125 (2003); *Burnside v. Simpson Paper Co.*, 123 Wn.2d 93, 108, 864 P.2d 937 (1994) (quoting *State v. O’Connell*, 83 Wn.2d 797, 839, 523 P.2d 872 (1974))). The Court reviews questions of law de novo. *Id.* (citing *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 880, 73 P.3d 369 (2003)).

V. LAW AND ARGUMENT

A. Respondent properly filed the VAPO according to the rules set forth by RCW 74.34 and timely served all parties in the action.

Appellant argues the court erred in entering the VAPO due to insufficient evidence in the petition and because Mr. Alan Carlin is not a vulnerable adult.

Washington State Legislature enacted RCW 74.34 to address the abuse, neglect, financial exploitation, and abandonment of vulnerable adults by family members, care providers, or others who have relationships with the vulnerable adult. RCW 74.34.005(1). As part of its findings, the legislature also acknowledged that a vulnerable adult may have health problems that place them in a dependent position. RCW 74.34.005(4).

An interested person, “on behalf of the vulnerable adult, may seek relief from abandonment, abuse, financial exploitation, or neglect, or threat thereof, by filing a petition for an order for protection in superior court.” RCW 74.34.110(1). The petition must allege that: (1) the “person on whose behalf the petition is brought, is a vulnerable adult,” and (2) that person “has been abandoned, abused, financially exploited, or neglected, or is threatened with abandonment, abuse, financial exploitation, or neglect by the respondent.” RCW 74.34.110(2). The petition must “be accompanied by an affidavit made under oath, or a declaration signed under penalty of perjury, stating the specific facts and circumstances which demonstrate the need for the relief sought.” RCW 74.34.110(3). “If the petition is filed by an interested person, the affidavit or declaration must also include a statement of why the petitioner qualifies as an interested person.” *Id.* An interested person is one:

who demonstrates to the court’s satisfaction that the person is interested in the welfare of the vulnerable adult, that the person has a good faith belief that the courts intervention is necessary, and that the vulnerable adult is unable, due to incapacity, undue influence, or duress at the time the petition is filed, to protect his own interest.

RCW 74.34.020(12). Lastly, the action must be:

filed in the county where the vulnerable adult resides; except that if the vulnerable adult has left or been removed

from the residence as a result of abandonment, abuse, financial exploitation, or neglect, or in order to avoid abandonment, abuse, financial exploitation, or neglect, the petitioner may bring an action in the county of either the vulnerable adult's previous or new residence.

RCW 74.34.110. It should also be noted that for every action initiated pursuant to RCW 74.34, the "standard petition and order for protection forms must be used for all petitions filed and orders issued" and are provided by the administrative office of the courts. RCW 74.34.115(1).

Here, Peter Carlin filed the standardized petition for a Vulnerable Adult Protection Order, under penalty of perjury, in Spokane County Superior Court on January 31, 2020. CP 5-40. He conveyed in his petition that he was filing as an interested person on behalf of his father, Alan Carlin. CP 5-40. He stated in the petition that he was concerned for his father's welfare because he had been removed from his longtime home in Virginia, isolated from his family, and had no connections to Spokane other than Ms. Ezenwa, whom he had only known for a few weeks. CP 5-40. Moreover, Peter Carlin stated, in light of his father's medical diagnosis of CAA, he had the good faith belief that his father was in danger of harm because he would not be able to protect his own interests.

CP 5-40. The evidence presented in the petition and attachments demonstrate a good faith filing.

At the time of the initial filing, Alan Carlin was still in Spokane County and residing at the address of 515 West 6th Street, Cheney, Washington. CP 5-40, 63-74. The commissioner found that jurisdiction was proper because Mr. Carlin had been removed from his Virginia home of nearly fifty years and brought to Spokane County as a result of Ms. Ezenwa's objective to isolate and exploit him. RP 27.

Once a petition is filed, the court orders a hearing within fourteen days from the date of filing. RCW 74.34.120. When a petition 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. RCW 74.34.120(3). The petition and hearing must also be personally served upon the respondent not less than six court days before the hearing. RCW 74.34.120(2). If timely service cannot be made, "the court shall continue the hearing date until the substitute service approved by the court has been satisfied." RCW 74.34.120(4).

Here, the petition was filed on January 31, 2020 and a hearing was scheduled by the court for February 13, 2020, which is within the fourteen-day statutory requirement. CP 46-49. Further, copies of the

petition for order for protection, temporary order for protection and notice of hearing, and notice to the vulnerable adult were personally served on both Alan Carlin and Mary Ezenwa on January 31, 2020 by Officer TJ Ewen of the Cheney Police Department. CP 50-53. Therefore, all parties received proper notice well in advance of the statutory requirement.

B. Preponderance of the evidence is the appropriate standard of proof when there was no showing that the vulnerable adult objected to the protection order and substantial evidence supports the findings made by the trial court.

Appellant argues the burden of proof was not met by Petitioner and that there was no evidence of wrongdoing in the petition. Appellant cites various comments of Ms. Ezenwa's counsel during oral argument but fails to provide any supporting evidence that Petitioner did not meet the standard of proof. Appellant makes arguments that directly contradict the record, like that the vulnerable adult was not personally served. *See* CP 50-53.

The Vulnerable Adult Protection Act was enacted to protect vulnerable adults who "may be subjected to abuse, neglect, financial exploitation, or abandonment by a family member ... or other person who has a relationship with the vulnerable adult." RCW 74.34.005(1); *Knight*, 178 Wn. App. at 937-38, 317 P.3d 1068 (2014). Under RCW 74.34.135(4),

If the court determines that the vulnerable adult is not capable of protecting his or her person or estate in connection with the issues raised in the petition or order, and that the individual continues to need protection, the court shall order relief consistent with RCW 74.34.130 as it deems necessary for the protection of the vulnerable adult. RCW 74.34.135(4). [If] the entry of the order is inconsistent with the expressed wishes of the vulnerable adult, the court's order shall be governed by the legislative findings contained in RCW 74.34.005.

RCW 74.34.135(4).

Unless the vulnerable adult objects to the petition for a protection order, the standard of proof is a preponderance of the evidence. *See Goldsmith v. Dep't of Soc. & Health Servs.*, 169 Wn. App. 573, 584, 280 P.3d 1173 (2012) (cases brought under RCW 74.34 are proved by preponderance of evidence); *Kraft v. Dep't of Soc. & Health Servs.*, 145 Wn. App. 708, 716, 187 P.3d 798 (2008) (standard of proof involving abuse of vulnerable adult under RCW 74.34 is preponderance of the evidence); *cf. Knight*, 178 Wn. App. at 937, 317 P.3d 1068 (standard of proof is clear, cogent, and convincing evidence where petition is contested by the alleged vulnerable adult). Appellate review is limited to determining whether the trial court's findings are supported by substantial evidence and, if so, whether the findings in turn support the conclusions of law. *Goodman v. Darden, Doman & Stafford Assocs.*, 100 Wn.2d 476, 670

P.2d 648 (1983); *Willener v. Sweeting*, 107 Wn.2d 388, 393, 730 P.2d 45, 49 (1986).

Contrary to Ms. Ezenwa's assertions, Alan Carlin had notice of the petition, hearing, and his rights as an alleged vulnerable adult. CP 5-40, 42-45, 50-53. In response to this notice, he filed two declarations expressing his support of the petition and desire to have a vulnerable adult protection order issued against Ms. Ezenwa. CP 176-77, 79-82. There was no evidence or testimony offered by Ms. Ezenwa to contradict this point during the hearing. CP 1-176; RP 6-33. Therefore the proper standard in this case is preponderance of the evidence.

- 1. The court properly made findings and conclusions that Mr. Carlin was a vulnerable adult pursuant to RCW 74.34.**

Appellant argues Alan Carlin is not a vulnerable adult. Appellant does not offer or contradict the evidence in the record that supported this finding, however.

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).

Here, the Spokane County Superior Court commissioner examined the evidence and concluded Mr. Carlin was a vulnerable adult. RP 28. The

evidence consisted of the petition and statements therein, declarations of medical providers and family members, as well as the police reports. RP 26-33. The court determined Mr. Carlin was eighty-two years of age and reviewed declarations from medical professionals (Dr. Jenkins, Mr. Carlin's primary care doctor, and Dr. Hillis, Mr. Carlin's neurologist), as well as from family members on the record. RP 28, 33. The declaration of Dr. Argyle Hillis, Mr. Carlin's neurologist, explained Mr. Carlin's diagnosis of CAA and the deficits it causes in his frontal lobe which put him at risk for exploitation. RP 28. The court also reviewed the declaration from Mr. Carlin's daughter, Danielle Roselin, who described in detail the condition in which she found her father when she met him in Cheney. RP 28. The court properly weighed and considered all of the evidence and properly found Mr. Carlin was a vulnerable adult.

2. The court properly made findings and conclusions that Mr. Carlin was the victim of isolation, emotional abuse, and personal and financial exploitation pursuant to RCW 74.34.

The Vulnerable Adult Protection Act provides that courts may step in to protect vulnerable adults from situations of alleged abandonment, abuse, financial exploitation, or neglect. RCW 74.34.005. In these cases, the court may order relief as it deems necessary for the protection of the

vulnerable adult. RCW 74.34.130. In seeking such relief, a petition must be brought before the court, be accompanied by a declaration, signed under penalty of perjury, and must state the specific facts or circumstances which demonstrate the need for the relief sought. RCW 74.34.110(2).

In order to satisfy the tenets of RCW 74.34.110, the petitioner must demonstrate that the vulnerable adult has been in fact abandoned, abused, neglected, or financially exploited. *Id.* Here, the petitioner alleged, and the court found that after extensive review of the evidence, Ms. Ezenwa isolated, emotionally abused, and personally and financially exploited Alan Carlin. RP 26-33.

The statute defines “abuse” as “the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult.” RCW 74.34.020(2). The statutory definition of “abuse” also includes both mental abuse and personal exploitation of a vulnerable adult. *Id.* “Mental abuse” is “a willful verbal or nonverbal action that threatens, humiliates, harasses, coerces, intimidates, isolates, unreasonably confines, or punishes a vulnerable adult.” RCW 74.34.020(2)(c). “Isolation” means “to restrict a vulnerable adult’s ability to communicate, visit, interact, or otherwise associate with persons of his or her choosing.” RCW 74.34.020(13). “Isolation” may also be evidenced by:

(i) [a]cts that prevent a vulnerable adult from sending, making, or receiving his or her personal mail, electronic communications, or telephone calls; or (ii) [a]cts that prevent or obstruct the vulnerable adult from meeting with others, such as telling a prospective visitor or caller that a vulnerable adult is not present, or does not wish contact, where the statement is contrary to the express wishes of the vulnerable adult.

RCW 74.34.020(13)(a)(i), (ii).

“Personal exploitation” is “an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.” RCW 74.34.020(2)(d). “Financial exploitation” is “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.” RCW 74.34.020(7). “Financial exploitation”

also includes:

(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.

RCW 74.34.020(7)(a), (b), (c).

Here, the court found Ms. Ezenwa isolated and abused Mr. Alan Carlin mentally and emotionally. RP 32. Further, the court found she personally and financially exploited Mr. Carlin with the objective to create her own personal and financial gain. RP 32. The court in its findings noted that Ms. Ezenwa from the very beginning, via email, communicated to Mr. Carlin that she loved him. RP 29-20. In fact, she communicated this in the first few hours of emailing Mr. Carlin for the first time. RP 29. The very next day she emailed him about traveling to Washington D.C. to stay with him. RP 29. She provided Mr. Carlin a list of items she needed to make her nutrition supplements, which he indicated he would procure for her. RP 29-30. The court also noted that Ms. Ezenwa also talked about being Mr. Carlin's "silent partner" to write his books, and that "she could do a lot of things for him: ... build a fancy website ..., one book per month,

one newsletter weekly, two blog posts weekly, marketing by social media platforms, weekly webmaster role for the email, etcetera,. Love Mary.” RP 29-30. This all occurred on the first day. RP 29-30. On day two, Ms. Ezenwa emailed Mr. Carlin about million dollar grants and how she would love to do paid research for him. RP 29-30.

The court also pointed out that less than twenty-four hours after they started conversing, Ms. Ezenwa told Mr. Carlin that they make a very good team and that if they ever had children together, they would be fabulous parents (not until later, when they were physically together, did she claim she was asexual). RP 29-30. Moreover, the next day, Christmas Day, Ms. Ezenwa emailed Mr. Carlin again, asking him if he would like to come live with her in her apartment in Spokane, saying they could stay with each other for eight months and then get married and begin the process of having children. RP 30. The court noted that Ms. Ezenwa wrote:

The concept of love of a lifetime is so exceedingly rare these days that I had at least conscientiously all but given up on that goal. I have failed before in my life in such a search, yet deep within me something prompted me to click that link [millionare.match](#).

RP 30-31. Mr. Carlin's response within hours of this was, "Wow, I think we may need to start soon. Time is not on our side. Would you like to visit me to get to know each other better?" RP 30-31. Ms. Ezenwa responded, "I really connect with you. I look forward to meeting you in person and we can start a family. Not try, it is can and will. I love you Alan." RP 31.

The court found that this dialogue clearly and persuasively demonstrated that Ms. Ezenwa was taking advantage of Mr. Carlin's vulnerable mental faculties so she could eventually exploit him. RP 31-32. Thee court found these actions to be mental or emotional abuse of a vulnerable adult. RP 31-32.

Ms. Ezenwa next flew out to Virginia and immediately began to isolate Mr. Carlin. CP 5-40, 63-74, 79-82. Within five days she systematically isolated, created dependence, and manipulated him, forwarded his mail to two different addresses, and married him. CP 5-40, 63-74, 79-82; RP 10-13, 26-33. It was in response to all of this, the court noted, that the family filed a guardianship action to try to protect him. CP 5-40, 63-74, 79-82; RP 31. However, Ms. Ezenwa tells Mr. Carlin they needed to flee for Spokane to prevent the guardianship action, even though Mr. Carlin told her that he shouldn't take flights with layovers due to his

medical condition; they nevertheless went anyway. CP 63-74, 79-82; RP

31. Once in Spokane, the court noted:

There's no phone. There's no address. The family cannot find him. He is found by law enforcement due to pings on cell phones on an air mattress, dehydrated, sepsis, having to be brought to Sacred Heart Medical Center. This is isolation. This is removing him from his home of [fifty] years. Removing hi[m] from family. This is exploitation, emotionally, financially, even after the service of this order she's asked for money.

RP 31-32. The court also expressed concern about the fact that Washington law would potentially grant Ms. Ezenwa a windfall in the event Mr. Carlin were to pass away since they are now married. RP 31-32. The court further noted Ms. Ezenwa attempted to revoke Mr. Carlin's power of attorney. RP 32. With these findings, the court properly concluded that Mr. Carlin was the victim of isolation, emotional abuse, and personal and financial exploitation pursuant to RCW 74.34 and granted the vulnerable adult protection order. RP 31-32.

3. The court is not required to conduct a least restrictive restraints analysis when hearing a VAPO matter.

The appellant argues in her submitted documents that the court erred by failing to conduct a least restrictive restraints analysis. However, this argument is without merit.

“After an interested person petitions for a protection order on behalf of a vulnerable adult, the superior court must order a hearing on the petition.” *Knight*, 178 Wn. App. at 940, 317 P.3d 1068 (citing RCW 74.34.110(1), .120(1)). In cases where “the superior court ‘determines the the vulnerable adult is not capable of protecting ... [his] person or estate in connection with the issues raised in the petition or order, ... the court shall order relief consistent with RCW 74.34.130 as it deems necessary for the protection of the vulnerable adult.’ ” *Id.* (citing RCW 74.34.135(4)) (emphasis added). Under the Vulnerable Adult Protection Act,

the superior court may order relief as it deems necessary for the protection of the vulnerable adult, including but not limited to: (1) [r]estraining respondent from committing acts of abandonment, abuse, neglect, or financial exploitation against the vulnerable adult; (2) [e]xcluding the respondent from the vulnerable adults residence for a specified period or until further ordered of the court; (3) [p]rohibiting contact with the vulnerable adult by respondent for a specified period or until further order of the court; (4) [p]rohibiting the respondent from knowingly coming within, or knowingly remaining within, a specified distance from a specified location.

RCW 74.34.130. “The stated purpose of the Vulnerable Adult Protection Act is to protect vulnerable adults from abuse, financial exploitation, and neglect.” *Endicott v. Saul*, 142 Wn. App. 899, 919, 176 P.3d 560 (2008) (citing RCW 74.34.110). The vulnerable adult protection order is used to

protect the best interest of the vulnerable adult, not the respondent. *Knight*, 178 Wn. App. at 940, 317 P.3d 1068. In light of this, the court in *Knight* concluded that “the superior court is not required to impose the lease restrictive conditions possible.” *Id.*

Here, the Spokane Superior Court Commissioner did not conduct a least restrictive restraints analysis in this case and was not required to conduct such analysis.

C. The Appellant was not denied due process of law and a fair hearing because she had proper notice of the hearing, was represented by counsel, had the opportunity to call witnesses, and was before a neutral tribunal.

Appellant argues her due process rights were violated. Appellant provides no facts to support this contention, however.

The due process clause of the Fourteenth Amendment provides that no state may “deprive any person of life, liberty, or property, without due process of law.” U.S. CONST. amend. XIV, § 1. “The fundamental requirement of due process is the opportunity to be heard “at a meaningful time and in a meaningful manner.” *Matthews v. Eldridge*, 427 U.S. 319, 333, 96 S.Ct. 893 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552, 85 S.Ct. 1187 (1965)). Due process is a flexible concept where varying situations can demand different levels of procedural protection. *Id.* at 334,

96 S.Ct. 893. In evaluating the process due in a particular circumstance, the Court must generally consider “(1) the private interest involved, (2) the risk that the procedures will erroneously deprive the party of that interest, and (3) the government interest involved.” *State v. Karas*, 108 Wn. App. 692, 699, 32 P.3d 1016 (2001) (citing *Mathews*, 424 U.S. at 335, 96 S.Ct. 893; *Spence v. Kaminski*, 103 Wn. App. 325, 335, 12 P.3d 1030 (2000)). A protection order may implicate several private interests, including exclusion from a dwelling, a particular location, or contact with a specific person. *Id.*; see also *Gourley v. Gourley*, 158 Wn.2d 460, 468, 145 P.3d 1185 (2006).

The due process requirements of being heard at a meaningful time and a meaningful manner in front of a neutral magistrate are protected by the procedures outlined in RCW 74.34. The Vulnerable Adult Protection Act provides the following procedural protections: (1) a petition to the court, accompanied by an affidavit setting forth the facts under oath; (2) notice to the respondent within six days of the hearing; (3) a hearing before a judicial officer where the petitioner and respondent may testify; (4) a written order; (5) the opportunity to move for revision in superior court; (6) the opportunity to appeal; and (7) a five-year limitation on the the protection order. See RCW 74.34.110(1)-(3), .120(1)-(3), .130(1)-(7),

.135(1)-(4); RCW 2.24.050; *Gourley*, 158 Wn.2d at 460, 145 P.3d 1185; *Karas*, 108 Wn. App. at 700, 32 P.3d 1016; *Spence*, 103 Wn. App. at 334, 12 P.3d 1030.

Here, the above procedures were followed. RP 17-26. Moreover, Ms. Ezenwa was continuously represented by and through counsel, Mr. Gary Stenzel. CP 75, 546. In this matter, Peter Carlin filed a petition with Spokane County Superior Court. Notice was given to Ms. Ezenwa of the hearing the same day the petition was filed, which was fourteen days prior to the first scheduled hearing. CP 5-40, 42-45, 46-49, 50-53. The first hearing was conducted before a neutral court commissioner who continued the matter to afford more time for Ms. Ezenwa to prepare her case. CP 78. The second hearing was also conducted before a neutral court commissioner who issued a written order of protection, to which Ms. Ezenwa signed and of which she received a copy. CP 173-176. Ms. Ezenwa had the opportunity to seek revision but did not. CP 268-272. Ms. Ezenwa exercised her right to appeal. CP 280-446. Lastly, the order is only effective for a period of five years from its date of issuance. CP 173-176. Therefore, Ms. Ezenwa was afforded full due process of law.

- 1. The Appellant had an opportunity to call witnesses and provide expert testimony at the hearing and should not be permitted to re-litigate the matter.**

“RAP 9.11 restricts appellate consideration of additional evidence on review.” *Spokane Research & Defense Fund v. City of Spokane*, 155 Wn.2d 89, 98, 117 P.3d 1117 (2005) (citing *King County v. Cent Puget Sound Growth Mgmt. Hr.’gs Bd*, 142 Wn.2d 543, 549, n.6, 14 P.3d 133 (2000)); RAP 9.11. RAP 9.11(a) allows for introduction of additional evidence on review if:

(1) additional proof of facts is needed to fairly resolve the issues on review, (2) the additional evidence would probably change the decision being reviewed, (3) it is equitable to excuse a party's failure to present the evidence to the trial court, (4) the remedy available to a party through postjudgment motions in the trial court is inadequate or unnecessarily expensive, (5) the appellate court remedy of granting a new trial is inadequate or unnecessarily expensive, and (6) it would be inequitable to decide the case solely on the evidence already taken in the trial court.

RAP 9.11(a). RAP 9.11 allows supplementation of the record “only in extraordinary cases” *E Fork Hills Rural Ass’n v. Clark County*, 92 Wn. App. 838, 845, 965 P.2d 650 (1998). Each of the six requirements listed in RAP 9.11(a) must be satisfied. *Schreiner v City of Spokane*, 74 Wn. App. 617, 620-21, 874 P.2d 883 (1994).

Here, the Appellant argues that Ms. Ezenwa was denied due process as she was not permitted to testify or call her two additional expert

witnesses to testify. CP 280-446, 447-530, 532-540, 541. However, at the evidentiary hearing, Ms. Ezenwa chose to not testify. RP 6-33. Additionally, Ms. Ezenwa did not attempt to call any lay or expert witnesses to testify in her case-in-chief; nor did she file or provide any expert witness materials, opinion, or evidence. CP 1-176; RP 6-33. Moreover, there is no evidence indicating that any witness was under a subpoena on her behalf. CP 1-176; RP 6-33. The nature of the testimony that she now claims she would have provided is unknown. CP 1-176. Further, the testimony of these purported expert witnesses would doubtlessly have changed the decision of the court, as those physicians most familiar with Mr. Carlin, his primary care provider and neurologist in Virginia, provided declarations that were considered by the court. CP 54-56, 61-62. The Appellant's due process rights were not violated and she should not be permitted to call additional witnesses to testify.

2. The Appellant could not have called the purported expert witnesses to testify due to privilege.

Appellant argues she should have a second chance to have purported experts testify on her behalf. She presents argument that there are additional providers that were prevented from testifying but provides no support for this argument.

In Washington, a psychologist-patient privilege is established by statute: “confidential communications between a client and a psychologist are privileged against compulsory disclosure to the same extent and subject to the same conditions as confidential communications between attorney and client.” RCW 18.83.110. Psychologist-patient privilege also applies to client records to the extent that they were prepared during a meeting with the client, much like attorney-client privilege. *Redding v. Virginia Mason Medical Center*, 75 Wn. App. 424, 427, 878 P.2d 483 (1994). Further, a medical physician “shall not, without the consent of his or her patient, be examined in a civil action as to any information acquired in attending such patient.” RCW 5.60.060(4). “The holder of the privilege is the patient, and the patient alone has the power to waive the privilege.” *J.N. By and Through Hager v. Bellingham School Dist. No. 501*, 74 Wn. App. 49, 63, 871 P.2d 1106 (1994) (citing *Sauter v. Mount Vernon Sch. Dist* 320, 58 Wn. App. 121, 133, 791 P.2d 549 (1990) (abrogated on other grounds)).

Here, the Appellant argues that she was not able to call two expert witnesses, either psychologists or psychiatrists, to testify regarding Alan Carlin’s purported lack of vulnerability. However, any information they could have potentially provided regarding his psychiatric condition would

be subject to privilege, which is held by Mr. Carlin. Mr. Carlin had not waived this privilege. Therefore, the Appellant could not have called the purported expert witnesses to testify even if they were available.

D. The Appellant was not unlawfully searched or seized under the Fourth Amendment to the United States Constitution.

Appellant argues her Fourth Amendment rights were violated by a “search and seizure” without civil standby language in the Temporary Order for Protection. This is argued for the first time on appeal.

The Fourth Amendment to the United States Constitution provides in part: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated...” U.S. CONST. amend. IV. A search and seizure that violates the Fourth Amendment is actionable under 42 U.S.C. § 1983. *Kalmas v. Wagner*, 133 Wn.2d 210, 215, 943 P.2d 1369, 1371 (1997).

Under the Fourth Amendment a search occurs if the government intrudes upon a subjective and reasonable expectation of privacy. *Id* at 216; see *Katz v. United States*, 389 U.S. 347, 351-52, 88 S. S. Ct. 507, 511-12 (1967); *State v. Young*, 123 Wn.2d 173, 181, 867 P.2d 593 (1994). The Fourth Amendment applies only to actions of governmental officials,

and not to private conduct. *United States v. Jacobsen*, 466 U.S. 109, 113, 104 S. Ct. 1652, 1656 (1984).

In this case, there is no evidence in the record indicating that any law enforcement officer or government actor, during any encounter with Ms. Ezenwa, ever entered the premises of Ms. Ezenwa or any location where she would have had a reasonable expectation of privacy, or seized any of her property. Moreover, even if law enforcement had conducted such a search or seizure, the proper claim would be against the officers under 42 U.S.C. § 1983, not against the plaintiffs in this case.

E. The Respondent is entitled to reasonable costs and attorney's fees due to the frivolous nature of this appeal.

RAP 18.9(a) provides, in part:

[t]he appellate court ... on motion of a party may order a party ... who uses these rules for the purpose of delay, files a frivolous appeal, or fails to comply with these rules to pay terms or compensatory damages to any other party who has been harmed by the delay or the failure to comply or to pay sanctions to the court.

RAP 18.9(a). "The compensatory damages may include payment of the moving party's attorney fees." *Schreiner*, 74 Wn. App. at 625, 874 P.2d 883 (citing *Boyles v. Dept. of Retirement Sys.*, 105 Wn.2d 499, 506, 716 P.2d 869 (1986)). An appeal is frivolous for the purposes of RAP 18.9 "if,

considering the record and resolving all doubts in favor of the appellant, the court is convinced the appeal presents no debatable issues on which reasonable minds could differ and it is so devoid of merit there is no possibility of reversal.” *Id.* (citing *Boyles*, 105 Wn.2d at 506-07, 716 P.2d 869; *Ramirez v. Diamond*, 70 Wn.App. 729, 734, 855 P.2d 338 (1993)). “An appeal is not frivolous, however, if the appellant can cite a case supporting its position.” *Id.* (citing *Van Dinter v. Kennewick*, 64 Wn. App. 930, 937, 827 P.2d 329 (1992), *aff’d*, 121 Wn.2d 38, 846 P.2d 522 (1993)). Lastly, Courts hold pro se litigants to the same standard as attorneys. *In re Marriage of Olson*, 69 Wn.App. 621,626, 850 P.2d 527 (1993).

Based on the unsubstantiated arguments of Appellant and the failure to provide any supporting evidence for her contentions, this appeal is entirely frivolous and devoid of merit. The Appellant should be sanctioned and ordered to pay the Respondent’s costs and attorney’s fees.

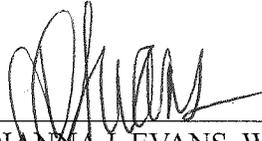
VI.

CONCLUSION

The trial court properly granted Respondent’s petition for a VAPO on behalf of Mr. Alan Carlin. The issues raised by Appellant are not supported by the record or statutory law and this court should deny her appeal and impose costs and attorney’s fees.

RESPECTFULLY SUBMITTED this 4th day of August 2020.

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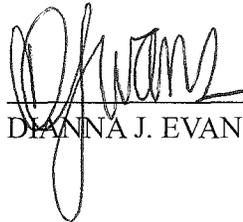
CERTIFICATE OF SERVICE

I, DIANNA J. EVANS, hereby certify that I served Mary C. Ezenwa, appellant pro se, via USPS regular mail, at the address indicated below, a true and correct copy of Petitioner/Respondent Brief, on file herein:

Mary C. Ezenwa
711 Commerce Way #13
Libby, MT 59923

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

DATED this 4th day of August 2020, at Spokane, Washington.



DIANNA J. EVANS, WSBA #45702

LAW OFFICE OF RICHARD W. PEREDNIA

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