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SUPREME COURT OF THE STATE OF WASHINGTON

In the Matter of the
GUARDIANSHIP OF SANDRA LAMB

**DSHS RESPONSE TO BRIEF OF
AMICUS CURIAE JULIAN WHEELER**

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ORIGINAL

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I. INTRODUCTION

Amicus Julian Wheeler, in a *pro se* brief, provides personal anecdotes and opinions to address what he incorrectly characterizes as the Department's position "that advocacy has no value, or that persons with guardians are better off without guardians who advocate." Amicus Br. at 1. Mr. Wheeler provides no argument regarding the primary issue before this Court, which is the proper standard by which courts should determine whether a guardian should receive compensation for his activities. The Court should disregard the amicus brief and, for the same reasons, reject the Hardmans' claims.

II. ARGUMENT

The primary issue presented in this case is whether the Court of Appeals correctly held that a court-appointed guardian cannot be compensated from the assets of an incapacitated ward for time spent on activities that are not necessary to secure a benefit to the ward. Like the Hardmans, Mr. Wheeler fails to provide any realistic alternative standard by which courts might distinguish between compensable and uncompensable activities of a court-appointed guardian. His essential argument is only that political advocacy always has some inherent value

apart from any actual or likely results of that advocacy, an assertion neither supported by the record nor at issue in this case.¹

The Department does not dispute that public speech, including speech meant to defend the political interests of others, is a valuable part of American civil society. However, the question in this case is not whether political advocacy has some abstract value in general, but whether it is necessary for Ms. Lamb and Ms. Robins to pay the Hardmans to engage in wide-ranging political activity in order to secure some concrete benefit to themselves. The superior court denied the Hardmans' request for such payment, and the Court of Appeals upheld the superior court on the basis that the Hardmans' activities did not directly benefit their individual wards.

Mr. Wheeler does not claim any familiarity with, or expertise related to, guardianships or issues related to compensation of court-appointed fiduciaries. Moreover, the alleged fact from which he argues—that political advocacy has some abstract value regardless of its content or its likelihood of success—has no bearing on whether the Court of Appeals applied the proper legal standard in its review of the superior court's order

¹ Mr. Wheeler also seems to address his brief in part to constitutional arguments abandoned by the Hardmans. Amicus Br. at 4-6. The Court of Appeals rejected the Hardmans' constitutional arguments for payment of their political and lobbying fees. *Guardianship of Lamb*, 154 Wn. App. 536, 547-49 (2009). The Hardmans did not renew those claims in their petition for review.

allowing compensation. In any case, the record is insufficient to allow review of that question in the abstract.

Mr. Wheeler's brief adds nothing to the discussion of whether political advocacy by the Hardmans is necessary to secure any direct benefit to their wards; nor to the discussion of whether such advocacy is a compensable duty of a guardian.

A. Advocacy Was Not Necessary To Secure A Direct Benefit

The Court of Appeals found that the Hardmans presented no evidence of any direct benefit to Ms. Lamb or Ms. Robins from the Hardmans' political advocacy efforts. *Guardianship of Lamb*, 154 Wn. App. 536, 546 (2009). The Hardmans in their Petition for Review did not challenge that finding, and Mr. Wheeler has not shown that finding to be in error.

Mr. Wheeler suggests that merely speaking on behalf of one's wards is itself evidence of providing benefit. Amicus Br. at 2 ("the value of advocacy is realized the moment that such communication is made to another person, party, or decision-maker, regardless of the outcome of the proceeding or determination."). Like the Hardmans, Mr. Wheeler has confused what might theoretically be beneficial with actual evidence of benefit. Mr. Wheeler's unstated assumption, and the Hardmans' explicit argument, is that the evidence of benefit is a guardian's personal belief as

to what is beneficial. *See* Guardians' Supplemental Brief at 12 ("Thus, a guardian's objectively [sic] reasonable belief that the best interests have been served is a significant factor and there is no evidence to the contrary."). In other words, if the guardian in her fiduciary role believes an activity to be beneficial for her ward, then benefit is established. But a showing of benefit necessarily requires more. The Court of Appeals properly held that there must be some evidence of an actual benefit before a court allows a guardian to pay herself from her ward's estate. *Lamb*, 154 Wn. App. at 545-46. The abstract value of communication is not enough.

B. Advocacy Is Not A Guardianship Duty

Mr. Wheeler, along with the Hardmans, appears to endorse a guardianship function that is well beyond any prior conception of a guardian's role: using a ward's money to pursue a court-approved political agenda. He provides no authority for this vast expansion of guardianship duties, and the Department is aware of none.² What Mr. Wheeler is describing is in fact not a guardianship function at all. Rather, it is lobbying. *E.g.*, RCW 42.17.020(31) (definition of lobbying). If a guardian engages in such activities, she does so outside her role as guardian and subject to separate legal and ethical requirements.

² This issue is extensively discussed in the Department's briefing to the Court of Appeals, and will not be repeated. *See* DSHS Resp. Br. at 16-24; DSHS Resp. To Br. of Amicus Curiae American Civil Liberties Union of Washington.

Compare, e.g., RCW 11.92.040(2) and .043(2) (reporting duties of guardians) with RCW 42.17.170 (reporting duties of lobbyists).

III. CONCLUSION

Whatever the abstract value of speech and advocacy, the political advocacy activities of the Hardmans in this case were not necessary to secure any actual benefit for Ms. Lamb or Ms. Robins. The Court of Appeals correctly upheld the superior court's determination that the Hardmans cannot receive guardian fees for those activities, and its decision should be affirmed.

RESPECTFULLY SUBMITTED this 14th day of March 2011.

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