

NO. 71917-3-I

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

IN RE THE MARRIAGE OF:

GEORGE LANE,

RESPONDENT,

and

SHARON LANE,

APPELLANT

APPEAL FROM KING COUNTY SUPERIOR COURT
CAUSE NO. 13-3-08461-2 SEA

OPENING BRIEF OF APPELLANT

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APPELLANT'S BRIEF
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I. INTRODUCTION

“A guardian ad litem is an arm of the court whose function is to protect the ward, and a court must not permit its arm to strangle him.” *In re Guardianship of Ivarsson*, 60 Wn.2d 733, 737, 375 P.2d 509 (1962) (quoting *Haden v. Eaves*, 226 P.2d 457, 462 (N.M. 1950)). It is the court’s imperative to protect the ward, not to simply defer to the guardian. Thus, when a guardian ad litem exceeds his or her authority, the court must utilize its equitable powers to correct the wrong.

Guardians ad litem do not have the authority to settle litigated matters without their ward’s consent. Here, the guardian ad litem signed a CR 2A agreement with Mr. Lane, even though Ms. Lane never authorized her to do so. The trial court, instead of protecting Ms. Lane’s interests, entered orders enforcing the CR 2A agreement. It was error for the court to do so, and Ms. Lane is entitled to have her marriage dissolution litigated.

II. ASSIGNMENTS OF ERROR

1. The Superior Court erred by ruling that Ms. Lane did not have a substantial right to a trial on the merits.
2. The Superior Court erred by ruling that the LGAL had the authority to enter a settlement agreement on Sharon Lane’s behalf.
3. The Superior Court erred by enforcing the CR 2A agreement and entering the Decree of Dissolution.

4. The Superior Court erred by enforcing the CR 2A agreement and entering the Findings of Fact and Conclusions of Law Regarding the Marriage.
5. The Superior Court erred by enforcing the CR 2A agreement and entering the Order of Child Support.
6. The Superior Court erred by enforcing the CR 2A agreement and entering the Parenting Plan.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Does Sharon Lane have a substantial right to have her marriage dissolution adjudicated on the merits?
2. Did Sharon Lane's Litigation Guardian ad Litem lack the authority to settle her marriage dissolution without her consent?
3. Did the Superior Court fail to comply with Court Rule 2A?
4. Should this Court exercise its equitable powers to permit Sharon Lane to adjudicate her marriage dissolution?

IV. STATEMENT OF THE CASE

Appellant Sharon Lane married Respondent George Lane on May 8, 1999 in Bremerton, Washington. CP 569. Mr. and Ms. Lane had one child, J.L.¹ CP 571. Mr. Lane filed for dissolution on May 13, 2013 in King County Superior Court. CP 1-5. Ms. Lane moved for reasonable accommodation under GR 33, and was appointed Landon Gibson to act as her attorney. CP 247. On August 16, 2013, the court appointed Jennifer Gilliam as a Guardian ad Litem (GAL), to report to the court on whether

¹ J.L. is a minor and is referred to by his initials.

Ms. Lane was incapacitated. CP 247. On October 1, 2013, the court determined that Ms. Lane had an ongoing need for a GAL, and appointed Gilliam to act as her Litigation Guardian ad Litem (LGAL). CP 248. Ms. Lane vehemently objected to the court's appointment. CP 248.

The LGAL failed to perform an adequate investigation into Ms. Lane's situation with respect to the marriage dissolution. At no time after her appointment did the LGAL ever meet with Ms. Lane. CP 310; RP 21. Additionally, Ms. Lane is a disabled individual who receives Social Security Income (SSI) benefits. CP 312; RP 9. The LGAL failed to investigate what effect the dissolution and any monetary awards therefrom would have on those benefits. CP 312; RP 9. In fact, the award of maintenance that the LGAL agreed to could reduce Ms. Lane's SSI benefits to zero, as SSI is need-based rather than disability-based. RP 9. Furthermore, the LGAL did not investigate any of Ms. Lane's assertions regarding the extent of Mr. Lane's property holdings, including allegations that Mr. Lane retained possession of certain belongings inherited by Ms. Lane prior to the marriage. CP 319; RP 5-6, 8, 26.

On April 3, 2014, Mr. Lane, his attorney, and Ms. Gilliam engaged in mandatory mediation, but excluded Ms. Lane from participation. CP 248, 310. At the close of mediation, Mr. Lane and Ms. Gilliam entered into a CR 2A settlement agreement, with no input or approval by Ms.

Lane. CP 248, 256-57. This agreement was not signed by either Ms. Lane or her attorney. CR 256-57. In fact, at no time had Ms. Lane ever authorized the LGAL to settle on her behalf. CP 248-49; RP 4. Ms. Lane, through her attorney Mr. Gibson, submitted a declaration to the court opposing the entry of any orders resulting from the settlement brokered by the LGAL and Mr. Lane. CP 309-547. The trial court overrode all of Ms. Lane's objections and approved the settlement. RP 19. The trial court concluded that Ms. Lane "does not have a substantial right to proceed to trial on all issues in dispute and the LGAL has authority to enter into a settlement agreement," that the settlement was reasonable, and that the agreed-upon parenting plan was in the best interest of J.L. CP 614. On April 18, 2014, the trial court entered the decree of dissolution, findings of fact and conclusions of law regarding the marriage, an order of child support, and the parenting plan (collectively, "the April 18 orders"). CP 595-616.

Ms. Lane timely filed a notice of appeal.

V. ARGUMENT

This appeal addresses the question of whether a Litigation Guardian ad Litem (LGAL) can bind his or her ward to a CR 2A agreement without the ward's express permission, and whether the court can enforce such an agreement over Ms. Lane's objection. This brief will

examine the limitations on an LGAL's authority and how Ms. Lane's guardian exceeded that authority. This brief will also examine the trial court's duties to the ward when the guardian has taken an unauthorized action. Because Ms. Lane's guardian did not have the authority to settle her pending marriage dissolution, the CR 2A agreement signed by the guardian and Mr. Lane is invalid. As such, it was error for the trial court to enforce the purported agreement and enter binding orders thereupon.

A. Standard of Review

This Court reviews a trial court's decision to enforce a settlement agreement pursuant to CR 2A for an abuse of discretion. *Morris v. Maks*, 69 Wn. App. 865, 868, 850 P.2d 1357 (1993). "A trial court abuses its discretion only when its decision is manifestly unreasonable or based on untenable grounds." *In re Marriage of Fiorito*, 112 Wn. App. 657, 663-64, 50 P.3d 298 (2002). It is an abuse of discretion for the trial court to act contrary to established law. *Lakey v. Puget Sound Energy, Inc.*, 176 Wn.2d 909, 919, 296 P.3d 860 (2013). Additionally, "[f]ailure to enforce the requirements of rules can constitute an abuse of discretion." *State v. Neal*, 144 Wn.2d 600, 609, 30 P.3d 1255 (2001).

B. Ms. Lane had a substantial right to a determination on the merits.

In her brief to the trial court, Ms. Lane's LGAL asserted that "[w]hether Ms. Lane's request for a trial in this matter is a 'substantial right' that cannot be waived by an LGAL seems to be an issue of first impression for the court." CP 253. The trial court apparently accepted this assertion, stating in its oral ruling that "this is without specific precedence here in Washington." RP 18. Both the LGAL and the trial court were incorrect in that assumption.

It is well-settled law that a party has a substantial right to have material issues of fact tried on the merits. *Graves v. P.J. Taggares Co.*, 94 Wn.2d 298, 305, 616 P.2d 1223 (1980); *Morgan v. Burks*, 17 Wn. App. 193, 199-200, 563 P.2d 1260 (1977). That a client has a substantial right to pursue a cause of action, such that an attorney cannot settle a dispute without express permission, has in fact been established law for well over a century. *Pomeroy v. Prescott*, 76 A. 898 (Me. 1910) ("[T]he law is too well settled and familiar to admit of discussion that an attorney who is clothed with no other authority than that arising from his employment in that capacity, has no power to compromise and settle or release and discharge his client's claim.") (cited with approval in *Barton v. Tombari*, 120 Wash. 331, 336, 207 P. 239 (1922)).

In *Graves*, the defendant's attorney stipulated to vicarious liability without ever informing the defendant that the issue had even been raised. 94 Wn.2d at 302. Because the issue of vicarious liability was critical to the ultimate resolution of the case, the Supreme Court ruled that the defendant had a substantial right to have the issue tried. *Id.* at 305. Thus, the defendant's attorney had no authority to enter stipulations without his client's knowledge, and the stipulation was not binding on the defendant. *Id.*

Similarly, in *In re Marriage of Ebbighausen*, 42 Wn. App. 99, 101, 708 P.2d 1220 (1985), attorneys for the spouses in a pending marriage dissolution action met with the judge in chambers to discuss the case before a hearing. Following the conversation, the judge stated that he would not permit either party to testify, and divided the property and custody rights of the parties on the spot. *Ebbighausen*, 42 Wn. App. at 101. The Court of Appeals held that this constituted a violation of the parties' due process rights. *Id.* at 102. This was true regardless of whether the attorneys agreed to a settlement in chambers. *Id.* at 103. The parties had "a substantial right to have a trial on the merits of joint custody." *Id.* Accordingly, "[a]ny stipulation or agreement by counsel to grant sole custody, without his client's permission, without a hearing, compromised

Mr. Ebbighausen’s substantial right to present the merits of his request.”
Id. at 103-04.

A party’s right to have his or her claim adjudicated on the merits is no less substantial when the party is represented by an LGAL. A judicial finding of incompetency does not deprive the ward of any substantial rights. *Cf. Matter of Guardianship of Ingram*, 102 Wn. 2d 827, 836, 689 P.2d 1363 (1984) (appointment of GAL did not deprive ward of right to refuse medical treatment). This is especially so when the GAL is appointed under Title 4,² rather than Title 11.³ When a guardian is appointed pursuant to Title 11, the court must follow a set of detailed procedures mandated by statute, designed to afford the alleged incompetent with numerous due process protections before his or her rights and abilities are restricted. *See* ch. 11.88 RCW. However, Title 4 provides no statutory procedures at all, and the alleged incompetent is only permitted to be heard if they object to the LGAL’s appointment. *In re Marriage of Blakely*, 111 Wn. App. 351, 358, 44 P.3d 924 (2002). These minimal due process protections are sufficient because a Title 4 guardianship is limited in scope and designed to leave the ward’s liberty and autonomy intact. *Id.* at 357, 360. Were the court able to divest a ward

² RCW 4.08.060

³ Ch, 11.88 RCW.

of substantial rights through a Title 4 guardianship, when it cannot even do so through a Title 11 guardianship,⁴ it would more than likely violate the ward's constitutional right of due process.⁵

Thus, a ward has a substantial right to a trial on the merits that cannot be surrendered by an LGAL. This has also long been the law. *Calhoun Cnty. Bank v. Ellison*, 54 S.E.2d 182, 193 (W.Va. 1949) (GAL lacked authority to stipulate to facts prejudicial to the ward) (cited with approval in *Quesnell v. State*, 83 Wn.2d 224, 239, 517 P.2d 568 (1973)). A contrary result would be inequitable, nonsensical, and possibly unconstitutional. The trial court erred in concluding that Ms. Lane did not have a substantial right to a trial on the merits.

The trial court further suggested that Ms. Lane did not have a substantial right to a trial on the merits, because allowing Ms. Lane to proceed to trial would "ha[ve] an impact on Mr. Lane's right to due process, as well." RP 18. It is unclear what, if any, due process rights of Mr. Lane's could possibly be affected by a trial on the merits. There is no right to a speedy resolution in civil cases. There is also no due process right to obtain a settlement. Mr. Lane received adequate notice that Ms.

⁴ *Ingram* involved a Title 11 guardianship. 102 Wn.2d at 836.

⁵ The Fourteenth Amendment to the United States Constitution provides that "No state shall ... deprive any person of life liberty, or property, without due process of law." U.S. CONST. Amend. XIV. Additionally, Article I, section 3 of the Washington Constitution states that "No person shall be deprived of life, liberty, or property, without due process of law." CONST. Art. I, § 3.

Lane did not agree to the terms of the settlement, and even if he hadn't he would still be imputed with that knowledge. *Grossman v. Will*, 10 Wn. App. 141, 149, 516 P.2d 1063 (1973). There is no basis for the trial court's assertion that Mr. Lane's due process rights are somehow endangered by allowing Ms. Lane to proceed to trial. If anyone's due process rights were violated in this matter, it was Ms. Lane's, not her ex-husband's.

As its decision was contrary to law, the trial court abused its discretion by concluding that Ms. Lane did not have a substantial right to a trial on the merits.

C. The LGAL did not have the authority to enter into a settlement agreement with Mr. Lane.

RCW 4.08.060 provides that an LGAL shall appear on behalf of an incapacitated person that is a party to an action. However, that power is not without limits. In this case, the GAL exceeded her authority when she settled with Mr. Lane and signed a CR 2A agreement. Ms. Lane never authorized the GAL to settle with Mr. Lane, she was excluded from all participation in the process that generated the CR 2A, and she did not agree to the terms of the settlement. Accordingly, Ms. Lane cannot be bound by the settlement or any orders entered as a consequence of the settlement.

Although the functions of a GAL and an attorney differ in several important respects, both possess the same obligation to honor the substantial rights of those they represent. That is, “the guardian ad litem is no more permitted to waive a substantial right of the ward than is an attorney for a competent client.” *In re Houts*, 7 Wn. App. 476, 482, 499 P.2d 1276 (1972); accord *Quesnell*, 83 Wn.2d at 238-39; *In re Welfare of H.Q.*, ___ Wn. App. ___, 330 P.3d 195, 202 (2014).

This is so even when the client is incompetent and unable to waive any rights his- or herself. *Quesnell*, 83 Wn.2d at 238-39; *Matter of Guardianship of K.M.*, 62 Wn. App. 811, 816, 816 P.2d 71 (1991). As the Washington Supreme Court has noted, “[t]here is something fundamental in the matter of a litigant being able to use his personal judgment and intelligence in connection with a lawsuit affecting him, and in not having a guardian's judgment and intelligence substituted relative to the litigation affecting the alleged incompetent.” *Graham v. Graham*, 40 Wn.2d 64, 67, 240 P.2d 564 (1952).

As a GAL’s obligation with respect to the ward’s substantial rights are the same as an attorney’s obligation to the client, decisions addressing the authority of attorneys are persuasive in this case. The law is clear that an attorney does not possess the authority to settle a dispute without the client’s express consent. *Grossman*, 10 Wn. App. at 149. In *Grossman*,

two separate plaintiffs sued Melvin Heide and his wife, for actions Mr. Heide undertook for his business. 10 Wn. App. at 143. Douglas Hendel entered a notice of appearance on behalf of Mr. and Mrs. Heide; however, the appearance was authorized only by Mr. Heide, and Mrs. Heide had no knowledge of it. *Id.* Hendel stipulated to liability on behalf of Mr. Heide, and the stipulation was used to obtain judgments against both Mr. and Mrs. Heide. *Id.* at 144. Mrs. Heide moved to vacate the judgments entered on the stipulation, but was denied. *Id.* at 145.

On appeal, this Court reversed and vacated the judgments against Mrs. Heide. *Id.* at 153. In so doing, this Court noted that Hendel did not represent Mrs. Heide, and held that even if he did, the stipulation would still be invalid, as he could not stipulate to liability absent Mrs. Heide's express permission. *Id.* at 149. The plaintiffs' actual knowledge, or lack thereof, of Hendel's scope of authority was irrelevant to the nonbinding effect of the stipulation. *Id.* at 149.

In another similar case, *Morgan v. Burks*, a trial date was set after settlement negotiations between the Morgans and Mr. Burks broke down. 17 Wn. App. at 195. When the parties appeared on the trial date, however, the Morgans' attorney agreed to a settlement offer and dismissal of the case. *Id.* Nothing in the record indicated that the Morgans had ever assented to the settlement, authorized their attorney to settle after the trial

date was set, or indeed that they even understood the terms of the offer. *Id.* at 199. The Court of Appeals held that “[t]his is reason enough to vacate the dismissal order.” *Id.*

If anything, courts should exercise even **more** caution when an LGAL attempts to settle a dispute on behalf of a ward than when an attorney attempts to settle on behalf of a client. Whereas attorneys are not required for civil cases, a GAL is required for incapacitated persons in all cases. RCW 4.08.060 (“When an incapacitated person is a party to an action in the superior courts he or she **shall** appear by guardian.”) (emphasis added).

Further, even though the LGAL has broad authority to represent the ward in court proceedings, the LGAL is not a substitute for the ward. Highly personal decisions, such as those relating to marriage dissolution, are not within the LGAL’s complete discretion. *In re Marriage of Gannon*, 104 Wn.2d 121, 124, 702 P.2d 465 (1985) (GAL may only petition for dissolution of client’s marriage upon permission of court). Additionally, other states require that a court approve **any** settlement agreement entered into by a GAL on the ward’s behalf. *McClintock v. W.*, 219 Cal. App. 4th 540, 549, 162 Cal. Rptr. 3d 61 (2013), *reh'g denied* (Sept. 30, 2013); *In re Guardianship of Mabry*, 281 Ill. App. 3d 76, 85, 666 N.E. 2d 16 (1996).

For a case directly on point, Appellant directs this Court’s attention to the opinion in *1234 Broadway LLC v. Feng Chai Lin*, 25 Misc.3d 476, 883 N.Y.S.2d 864 (N.Y. Civ. Ct. 2009). In that case, 1234 Broadway moved to evict Ms. Feng from an apartment in its building for an illegal-sublet holdover. *1234 Broadway*, 25 Misc.3d at 477. Ms. Feng suffered from schizo-affective disorder and was appointed a GAL pursuant to N.Y.C.P.L.R. Article 12, New York’s equivalent to RCW 4.08.060.⁶ *Id.* at 478. Ms. Feng was unable to properly communicate with her GAL for three years, as she had been assigned a translator for the wrong Chinese dialect. *Id.* at 479. Despite the communication difficulties, the GAL thought that Ms. Feng wanted her to settle, and entered an agreement with the landlord obligating Ms. Feng to vacate the premises. *Id.* at 478-79.

⁶ N.Y.C.P.L.R. 1201 reads:

Unless the court appoints a guardian ad litem, an infant shall appear by the guardian of his property or, if there is no such guardian, by a parent having legal custody, or, if there is no such parent, by another person or agency having legal custody, or, if the infant is married, by an adult spouse residing with the infant, a person judicially declared to be incompetent shall appear by the committee of his property, and a conservatee shall appear by the conservator of his property. A person shall appear by his guardian ad litem if he is an infant and has no guardian of his property, parent, or other person or agency having legal custody, or adult spouse with whom he resides, or if he is an infant, person judicially declared to be incompetent, or a conservatee as defined in section 77.01 of the mental hygiene law and the court so directs because of a conflict of interest or for other cause, or if he is an adult incapable of adequately prosecuting or defending his rights.

The purpose of Article 12, much like RCW 4.080.060, is to “help protect [the State’s] wards’ rights for the action or proceeding, but only in a temporary and limited capacity.” *Id.* at 481.

In vacating the settlement, the court held that Article 12 GALs do not have the authority to settle claims against the ward. *Id.* at 492-93. The court recognized that Ms. Feng had a fundamental right “to enter into or veto a settlement over person property.” *Id.* at 491. Before Ms. Feng could be divested of that right, she needed to be afforded due process. *Id.* at 490. However, “the due process and notice afforded wards before courts appoint guardians for them [under Article 12] is insufficient to grant GALs extensive power.” *Id.* at 493. It did not matter that the GAL thought that the settlement was in Ms. Feng’s best interests. *Id.* at 494. The Article 12 could not surrender Ms. Feng’s substantial rights without her express permission, and any purported agreement could not be binding on Ms. Feng. *Id.* at 479.

The overwhelming weight of authority indicates that Ms. Lane’s LGAL could not settle her marriage dissolution without her express permission. There is no evidence here that Ms. Lane ever authorized her LGAL to settle with Mr. Lane; the evidence is in fact all to the contrary. Thus, the CR 2A agreement is not binding on Ms. Lane. The trial court erred when it so held otherwise.

D. Because the requirements of CR 2A were not met, the trial court lacked the authority to enter the orders.

The trial court erred by entering the April 18, 2014 orders over Ms. Lane's objection. The Court does not have the authority to enter an order based on an agreement by the parties where there has not been compliance with CR 2A. *Long v. Harrold*, 76 Wn. App. 317, 320, 884 P.2d 934 (1994).

CR 2A provides that

No agreement or consent between parties or attorneys in respect to the proceedings in a cause, the purport of which is disputed, will be regarded by the court unless the same shall have been made and assented to in open court on the record, or entered in the minutes, or unless the evidence thereof shall be in writing and subscribed by the attorneys denying the same.

The purpose of this rule

is to insure that negotiations undertaken to avert or simplify trial do not propagate additional disputes that then must be tried along with the original one. **This purpose is served by barring enforcement of an alleged settlement agreement that is genuinely disputed**, for such a dispute adds to the issues that must be tried.

In re Patterson, 93 Wn. App. 579, 583-84, 969 P.2d 1106 (1999). Here, there was never any assent to the purported settlement, either in open court or in writing. To the contrary, neither Ms. Lane nor her attorney assented to the settlement agreement with Mr. Lane.

Howard v. Dimaggio, 70 Wn. App. 734, 855 P.2d 335 (1993) is on point. In that case, the attorney for Ms. Dimaggio proposed an agreement to settle the dispute between the parties. *Id.* at 736. Ms. Howard's attorney accepted the proposed amount contingent upon his client's approval to the other terms and conditions. *Id.* Ms. Howard refused to accept the settlement agreement. *Id.* at 737. The trial court nevertheless ruled that the settlement agreement was enforceable and entered an order accordingly. *Id.* On appeal, the Court of Appeals held that because there had been no written statement or statement in open court that the parties had ever reached a final agreement, as required by CR 2A, the trial court lacked the authority to enter an order enforcing the supposed settlement. *Id.* at 739. The Court accordingly vacated the order and remanded for a trial on the merits. *Id.* at 741.

Similarly, CR 2A was not complied with here. Ms. Lane did not authorize the LGAL to settle on her behalf, nor did she assent to the proposed terms of the agreement. Ms. Lane's attorney also objected to the proposed terms of the agreement, and voiced his objections thereto in an order to the court. The only party assenting to the settlement was the LGAL. As explained in subsection B *supra*, that assent was ineffective and does not bind Ms. Lane.

Nevertheless, the Court ruled that the agreement was enforceable and entered orders thereupon. This is in direct contradiction of CR 2A, which authorizes the Court to regard the agreement **only** when both parties have assented to it. As this Court held in *Grossman*, “an unauthorized consent judgment is not a valid judgment at all.” 10 Wn. App. at 151. Because the trial court acted outside of its authority and did not follow the rules of court, its decision to enter the April 18 orders was an abuse of discretion. The orders should thus be vacated and this case remanded for trial.

E. Equity requires that Ms. Lane be allowed to adjudicate her dissolution of marriage.

Finally, equity requires that Ms. Lane be provided the opportunity to adjudicate her marriage dissolution on the merits, as she intended to begin with. Trial courts have an equitable duty to protect the interests of the ward. *In re Guardianship of Hallauer*, 44 Wn. App. 795, 797, 723 P.2d 1161 (1986). Thus, the trial court also has a duty to step in on the ward’s behalf when the GAL fails to perform their duties. “[C]ourts of equity should not sit idly by and see guardians lose the estates of their wards through mistakes in judgment or neglect of their duties.” *Ivarsson*, 60 Wn.2d at 737 (quoting *Haden*, 226 P.2d at 462).

Here, the LGAL failed to adequately perform her duties toward Ms. Lane. Guardians ad litem are not parties who may act at will. They are officers of the Court appointed to protect the interests of parties who cannot legally represent themselves. *In re Guardianship of Matthews*, 156 Wn. App. 201, 210-11, 232 P.3d 1140 (2010); GALR 2. Provisions of the GAL Rules relevant to this matter include the following:⁷

A guardian ad litem shall represent the best interests of the person for whom he or she is appointed. GALR 2(a).

A guardian ad litem shall maintain independence, objectivity and the appearance of fairness in dealings with parties and professionals, both in and out of the courtroom. GALR 2(b).

A guardian ad litem shall avoid any actual or apparent conflict of interest and impropriety in the performance of guardian ad litem responsibilities. GALR 2(e).

A guardian ad litem shall make reasonable efforts to become informed about the facts of the case and to contact all parties. A guardian ad litem shall examine material information and sources of information, taking into account the positions of the parties. GALR 2(g).

As an officer of the Court, a guardian ad litem has only such authority conferred by the order of appointment. GALR 4.

Guardians ad litem also have fiduciary duties to their wards. *Beal for Martinez v. City of Seattle*, 134 Wn.2d 769, 780, 954 P.2d 237 (1998)

⁷ Although the GALRs are not applicable to guardians appointed pursuant to RCW 4.08.060, this Court should view the rules as instructive.

(characterizing GAL as “fiduciary role”). When the guardian breaches those duties, it is incumbent upon the court to fashion an appropriate remedy. *Ivarsson*, 60 Wn.2d at 737.

Here, the LGAL never met with Ms. Lane at any point during the proceedings nor did she investigate any of Ms. Lane’s allegations, despite her duty to contact all parties and take Ms. Lane’s position into account. CP 310; RP 21. Further, the LGAL failed to properly investigate the effects that a dissolution settlement would have on Ms. Lane, specifically with regard to the effect that any property distribution would have on her eligibility to receive disability benefits. RP 9. Without having reasonably investigated the facts of the case, the LGAL could not have acted in Ms. Lane’s best interests.

Further, the LGAL acted with impropriety and a lack of objectivity by entering into a settlement agreement with Mr. Lane despite the vehement objections of both Ms. Lane and her attorney. The LGAL did not have the authority to settle the dissolution with Ms. Lane’s consent. The LGAL had no basis for simply assuming this authority, given the extensive case law to the contrary.

These breaches of duty constitute gross negligence and substantially prejudiced Ms. Lane. As a result of the settlement agreement entered by the LGAL, Ms. Lane could be disqualified from receiving

disability benefits.⁸ Even if Ms. Lane retains her disability benefits, Ms. Lane's income would total no more than \$1,900 per month, which is insufficient to cover all of Ms. Lane's living expenses. CP 250, 553; RP 9. Ms. Lane has also lost the chance to prove that Mr. Lane is in retention of some of her separate property, including antique furniture that she inherited. CP 319; RP 5-6, 8, 26. The LGAL's grossly negligent breach of duty substantially prejudiced Ms. Lane and the trial court did nothing to remedy that prejudice. This Court should thus reverse and remand for a trial on the merits.

VI. CONCLUSION

The Guardian ad Litem statutes are designed to protect the interests and rights of incapacitated persons. Here, however, instead of protecting Sharon Lane, the LGAL and the trial court excluded her from participation in her own case, and denied her due process in a matter most personal and fundamental concerning the intimate matters of marriage and family. Ms. Lane did not authorize her LGAL to settle her pending marriage dissolution, and in fact disputed the settlement brokered by the LGAL with the opposing party. The trial court denied her due process in imposing the unauthorized settlement upon her and in failing to allow her

⁸ It was undisputed in the trial court proceedings that Ms. Lane is unemployable and will continue to be for some time, if not permanently. CP 250; RP 9.

the right to have her “day in court.” This Court should reverse the trial court’s unauthorized entry of the April 18 orders and remand this case for a trial on its merits.

DATED this the 8th day of December, 2014.



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CERTIFICATE OF SERVICE

I certify that I caused one copy of the foregoing Opening Brief of Appellant and a copy of the Verbatim Report of Proceedings to be served on the following parties of record and/or interested parties by E-mail and ABC Legal Messenger, delivery to the same to the below named attorneys as follows:

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