

FILED
SUPREME COURT
STATE OF WASHINGTON
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CLERK

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

SUPREME COURT NO. 97280-0

(Court of Appeals, Div. I, No. 76777-1-1)

ROBERT J. BOSONE,

Petitioner,

vs.

ANN LONGINOTTI,

Respondent.

**RESPONDENT'S ANSWER TO
PETITION FOR REVIEW**

Douglas R. Shepherd
Heather C. Shepherd
Shepherd and Allen
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July 26, 2019

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I – IDENTITY OF RESPONDENT

Respondent is Ann Longinotti, Respondent/Cross-Appellant at the Court of Appeals and Petitioner/Respondent at the trial court.

II – STATEMENT OF THE CASE

On January 20, 2017, a guardianship matter was filed by Ann Longinotti (“Longinotti”) to address the financial and personal needs of her father, Robert (Buzz) Bosone, under cause number 17-4-00026-4 (Guardianship matter). On January 19, 2017, one day prior to filing the Guardianship matter, Longinotti also filed and served a Petition for Vulnerable Adult Order for Protection against Robert H. Bosone (hereinafter “Bobby”), under cause number 17-2-00071-2 (Longinotti’s VAPO). Longinotti CP 1.

On January 27, 2017, Bobby filed and served a Petition for Vulnerable Adult Order of Protection under cause number 17-2-00113-1 (Bobby’s VAPO). Bobby CP 1.

On February 1, 2017, prior counsel for Longinotti, Mr. Neubeck, and counsel for Bobby, Mr. Seguire, appeared and presented evidence before the trial court, including three witnesses

addressing issues raised in Bobby's VAPO, Longinotti's VAPO and the Guardianship matter. 2/1/17 RP 9.

On March 1, 2017, Mr. Neubeck and Mr. Seguire again appeared and presented evidence regarding issues for all three matters. 3/1/17 RP 107.

On March 14, 2017, Mr. Shepherd substituted in as counsel for Longinotti in Longinotti's VAPO. Longinotti CP 45. On March 16, 2017, Mr. Shepherd substituted in as counsel on behalf of Longinotti in Bobby's VAPO. Bobby CP 33. As of March 16, 2017, Mr. Shepherd was the attorney of record on behalf of Longinotti for all three matters. *Id.*; 3/27/17 RP 3.

On March 27, 2017, Mr. Shepherd and Mr. Seguire appeared before the trial court, again addressing all three matters. 3/27/17 RP 1-2. In the March 27 hearing, upon oral motion of Mr. Shepherd, Longinotti's VAPO and Bobby's VAPO were ordered dismissed, and all issues related to issues contained in the VAPO Petitions were ordered to be resolved in the Guardianship matter.¹ Bobby CP 35; Longinotti CP 47.

¹ MR. SHEPHERD: So anyway I think we ought to proceed in the guardianship with all due -- . . . I mean any of these claims that we're talking about right now do not belong to the children. They belong to Mr. Bosone. Someone independent should be advancing these not the children. 3/27/17 RP 24.

III – LEGAL AUTHORITY AND ARGUMENT

A. Standard to Accept Petition for Review.

A petition for review will be accepted by the Supreme Court **only**:

- (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
- (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or
- (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
- (4) *If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.*

RAP 13.4(b) (emphasis added). Petitioner cites subsection (4) as the only basis for this Court to accept review.

B. The Purpose of VAPO Proceedings is to protect the Vulnerable Adult, not Bobby.

A superior court's focus is properly "on the protection and well-being of the vulnerable adult: 'The stated purpose of the [Act] is to protect vulnerable adults from abuse, financial exploitation, and neglect.'" *In re Knight*, 178 Wn.App. 929, 938, 317 P.3d 1068 (Div. 2, 2014).

As in this case, it is common for a petitioner to seek a vulnerable adult protection order at the same time as filing a petition to establish a guardianship under chapter 11.88 RCW. See, e.g., *Endicott v. Saul*, 142 Wash.App. 899, 176 P.3d 560 (2008). Both the Act and the guardianship statutes are concerned with the

personal and financial health of vulnerable or incapacitated adults.

Id. at 939. VAPO proceedings provide no protections for Bobby Bosone. The Court of Appeals agreed the priority in a VAPO proceeding is the alleged vulnerable adult:

But, the purpose of the VAPO and guardianship statutes is to protect the interests of vulnerable adults, not the interests of those who seek to manage their care. "The real party at interest in a guardianship proceeding is the alleged incapacitated person and it is the trial court's duty to ensure that his interests are protected." In re Guardianship of Matthews, 156 Wn. App. 201, 210, 232 P.3d 1140 (2010). Similarly, "[t]he abuse of vulnerable adults act, chapter 74.34 RCW, was enacted in 1995 **to provide protection and legal remedies to vulnerable adults** living in the community but dependent on others for their care." Cummings v. Guardianship Servs. of Seattle, 128 Wn. App. 742, 749, 110 P.3d 796 (2005).

Matter of Bosone, 2019 WL 1258927, p. 5, Not Reported in Pac. Rptr. (Div. 1, March 18, 2019).

C. Bobby was Not Denied Due Process.

Bobby disguises his continued due process argument as "an issue of substantial public interest." Bobby was not denied process.

The fundamental requisites of due process are "the opportunity to be heard," and "notice reasonably calculated, under all the circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections," Thus, "at a minimum" the due process clause of the Fourteenth

Amendment demands that a deprivation of life, liberty or property be preceded by "notice and opportunity for hearing appropriate to the nature of the case." Moreover, this opportunity "must be granted at a meaningful time and in a meaningful manner.

Matter of Deming, 108 Wn.2d 82, 96, 736 P.2d 639 (1987)

(internal citations omitted).

"Procedural due process requires notice and an opportunity to be heard 'at a meaningful time and in a meaningful manner.'

The process due depends on what is fair in a particular context."

In re Detention of Morgan, 180 Wn.2d 312, 320, 330 P.3d 774

(2014) (citations omitted).

After Bobby's VAPO and Longinotti's VAPO were heard together by the trial court, all issues left to be addressed were properly placed in the hands of the pending Guardianship matter.

The March 1, hearing was clearly a combined hearing:

THE COURT: Am I understanding correctly that all three files have been joined to be heard this afternoon?

MR. SEGUINE: Your Honor, just for the record, Tom Seguire. I came in this morning, I looked at the deal, and I saw that the third one was on the calendar. Counsel and I did have a discussion about that earlier, but I don't think we ever actually entered an order or reached an agreement, so.

THE COURT: When you say third one, do you mean the guardianship?

MR. SEGUINE: Yes.

3/1/17 RP 107.

THE COURT: Well, my suggestion is to do what we're trying to do today, and that's combine all the cases, and they are so intertwined and spend one day perhaps on dealing with all of it and getting rulings on all of them and a plan going forward.

3/1/17 RP 119.

On March 27, 2017, the trial court correctly decided to address everything in the Guardianship matter, dismissing Bobby's VAPO and Longinotti's VAPO. The trial court correctly decided to appoint an attorney to represent the alleged incapacitated person, to have a hearing on capacity in the Guardianship matter, and to address the concerns raised in both VAPO Petitions in the Guardianship matter:

MR. SHEPHERD: Then there's a second question case. It's the duty of the Guardian ad Litem to explain to him all of his rights. If he doesn't understand his rights I don't know how he could ask for them to be implemented. That's my concern. It's an interesting argument that if he doesn't ask for an attorney when he's completely incapacitated he's not entitled to one. That doesn't make any sense. Because it's not a knowing, intelligent waiver of his right to have a jury trial in these proceeding.

.....

I was not comfortable getting involved in this without raising this issue at the first hearing, Your Honor. I think the guardianship is where we should be, where all of these things should be resolved, and there should be an independent person appointed to take care of his person and his estate. They can decide whether

any of these claims about misconduct of the two children should be brought.

THE COURT: I find that argument extremely persuasive under these circumstances. I believe at this point that an attorney should be appointed even if that attorney simply comes on board to agree with everything we're talking about.

3/27/17 RP 25-26.

Following Bobby's objection to the dismissal of Bobby's VAPO, the trial court clarified its ruling:

THE COURT: What I want to make clear is that I'm not dismissing his allegations against his sister in terms of the guardianship. They will all still be heard, if necessary. So when you say I'm dismissing his case you are correct. But I'm not dismissing his concerns. I'm putting them in another venue, if you will, or another cause number to be discussed there.

3/27/17 RP 27-28.

D. Duplicative Litigation was Unnecessary.

Bobby next argues that "any VAPO Petition related to [a guardianship proceeding] is subject to summary dismissal because they are 'basically' the same thing." Petition, p. 5. The Court of Appeals found that "allowing the parties to litigate their concerns about Buzz's care via the guardianship proceeding was eminently reasonable." Litigating a guardianship and two competing VAPOs was unnecessary and duplicative, as any relief sought and all

concerns brought in Bobby's [and Longinotti's] VAPO could be addressed in the guardianship. 3/27/17 RP 27-28.

These rules govern the procedure in the superior court in all suits of a civil nature whether cognizable as cases at law or in equity with the exceptions stated in rule 81. They shall be construed and administered to secure the **just, speedy, and inexpensive determination of every action.**

CR 1 (emphasis added).

IV – REQUEST FOR ATTORNEY FEES AND EXPENSES

Longinotti respectfully requests this Court award reasonable attorney fees and expenses for the preparation and filing of this Answer to Bobby's Petition for Review pursuant to RAP 18.1.

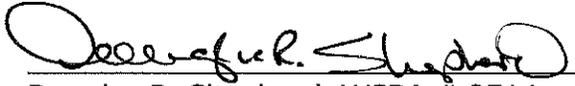
V – CONCLUSION

Bobby's petition does not raise any ruling by the Court of Appeals that is inconsistent with applicable case law. Bobby's appeal and petition are frivolous and warrant an award of attorney fees pursuant to RAP 18.1 and RAP 18.9(a). Longinotti respectfully requests that Bobby's Petition for Review be denied.

////

Respectfully submitted this 26th day of July 2019.

SHEPHERD and ALLEN

A handwritten signature in black ink, appearing to read "Douglas R. Shepherd". The signature is written in a cursive style with a large initial "D" and a long horizontal stroke at the end.

Douglas R. Shepherd, WSBA # 9514

Kyle S. Mitchell, WSBA #47344

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DECLARATION OF SERVICE

I, Heather Shepherd, declare that on July 26, 2019, I caused to be served a copy of the foregoing document: **Respondent Answer to Petition for Review**, and this **Declaration of Service**, in the above matter, on the following persons, at the following addresses, in the manner described:

Thomas Seguine, Esq. () U.S. Mail
Law Office of Tom Seguine () Certified Mail
1023 S 3rd Street () Hand Delivery
Mount Vernon, WA 98273 (X) SC/COA Portal E-File/Delivery

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 26th day of ~~June~~ ^{July} 2019.



Heather Shepherd

SHEPHERD AND ALLEN

July 26, 2019 - 2:38 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 97280-0
Appellate Court Case Title: Robert J. Bosone Jr. v. Ann Longinotti
Superior Court Case Number: 17-2-00113-1

The following documents have been uploaded:

- 972800_Answer_Reply_20190726143719SC459329_8190.pdf
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