IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In the Matter of the Settlement of: ALYSSA ARELLANO-HAWKINS, An incapacitated person	Supreme Court of Washington Case No. 97492-6 Court of Appeals No. 36005-9-III & 36067-9-III
In the Matter of the Guardianship of: ALYSSA ARELLANO-HAWKINS, An incapacitated person	**PETITION FOR DISCRETIONARY REVIEW**

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A. IDENTITY OF PETITIONER

Petitioner, Alyssa Arellano-Hawkins, a previously adjudicated incapacitated person, by and through her court appointed guardian and attorneys of record hereby ask the court to accept review of the decisions designated in Part B of this motion.

B. DECISIONS

The Honorable Supreme Court of Washington is asked to accept Discretionary Review of the initial orders issued by the Benton County Superior Court denying an incapacitated person the ability to keep her injury settlement amount confidential by sealing certain records or alternatively by redacting financial figures. Benton County Superior Court issued two orders denying the court appointed guardian's motions to seal in both the settlement approval action and the corresponding guardianship action dated April 19, 2018 and April 25, 2018 respectively. An Unpublished Opinion of the Court of Appeals issued July 2, 2019 affirmed. Each of these decisions are attached hereto.

C. ISSUES PRESENTED FOR REVIEW

1. May a court appointed guardian of an incompetent adult exercise and/or assert the incompetent adult's constitutional right to privacy?

2. May a court appointed guardian of an incompetent adult exercise and/or assert the incompetent adult's constitutional right to

contract for purposes of maintaining the ward's safety and/or privacy?

3. If a court appointed guardian is unable to assert and exercise the incompetent adult's right to privacy and/or right to contract, are these constitutionally protected rights, as applied to incompetent people rendered meaningless?

4. Do the constitutional protections of incompetent people extend to third parties whose actions are necessary to effectuate the exercise of that right where the individual themselves are not able?

5. Did Alyssa Hawkins lose her constitutional right to privacy and/or right to contract simply because the medical negligence she experienced was significant and pervasive enough to impair her mental incapacity?

6. Did the Legislature intend that the public policy favoring open government was to be so heavily weighted that an individual seeking court approval of a private settlement matter, with an agreed confidentiality provision designed to protect the safety of an incompetent person, does not constitute a "compelling circumstance" under GR 15 & 22?

7. What if anything in a private settlement of a civil case with an open guardianship, suffices for adequate "written findings that the specific sealing or redaction is justified by identified compelling privacy or safety concerns that outweigh the public interest in access to the court record" pursuant to GR 15?

8. Does GR 22 apply exclusively to the approval of settlements for incapacitated individuals with court appointed guardians?

9. Are the significant safety concerns of Alyssa Hawkins and her family sufficient to transcend the policy of public access and thereby constitute an unreasonable invasion of personal privacy?

10. May the court sua sponte, without any objection within the courtroom, deny a guardian's request to seal or redact portions of Alyssa Hawkins' private settlement records when the only evidence shows significant risk to the safety of Ms. Hawkins?

11. Do records of an incompetent person's injury settlement approval action included as a "personal health care record" under GR 22 requiring exemption from disclosure insofar as it is a 'record…that contains health information relating to the past, present, or future physical or mental health condition … or future payments for health care"?

12. Is Alyssa Hawkins' private injury settlement of "legitimate concern to the public" for purposes of forcing public disclosure?

D. STATEMENT OF THE CASE

1) Motions to Seal Records

This matter arises from the filing of a petition to approve the settlement of a claim for an adjudicated incompetent person in Benton County Superior Court pursuant to SPR 98.16W(a). CP 1-6 (S).[1] Initially, Benton County Judge Samuel Swanberg, on March 2, 2018, approved the settlement of Alyssa's claim as reasonable under the circumstances. Only Alyssa, her Guardian, her Guardian's attorney, Alyssa's mom & mom's boyfriend, the S-GAL and her injury attorneys were present at the approval hearing. Judge Swanberg's approval order and certain pleadings were filed under a "Sealed Source Sealed" cover page. Notably, neither Judge Swanberg, the litigation attorneys, the Guardian's attorney, nor the SGAL attorney recognized the error of this procedure, explained on the record, but

[1] Though the appeal was consolidated, the Clerks Papers were separately designated for the two actions. Clerks Papers are cited herein and distinguished by (S) for the settlement file and (G) for the guardianship file. Petitioner believes the files were tied together at the Clerk's office though the files required two separate actions with new filing fees.

believed the negotiated confidentiality terms of the settlement supported the sealed nature of the pleadings.

Approximately two (2) weeks after the settlement had been approved and concluded, Benton County Superior Court Judge Bruce Spanner reviewed the file and authored a sua sponte order unsealing the documents filed with the sealed cover page[2]. CP 22-24 (S). Additional briefing and declarations were filed to provide an adequate factual and legal basis to support sealing the records. A representative of appointed Trustee for Alyssa's trust, Baker Boyer Bank, also filed supportive affidavit requesting the court seal the documents to keep the financial information out of the public eye for safety concerns. CP 106-107 (G). The Trustee opined that preventing the general public from learning how much money was available to an incapacitated person was to the benefit of Alyssa and her family. Id. The Trustee further indicated it had previously had similarly situated and local trust beneficiaries and their families move after instances of kidnapping for ransom/murders recently. Id.

[2] Alyssa attorneys were provided a 14 day stay of the order so that a motion to seal could be entertained by the court. The order further suggested that one attorney for Alyssa was going through a contentious divorce proceeding and was likely led by improper motivations when improperly sealing the records so as not to have her estranged husband's counsel learn of the large fee. Counsel for Alyssa adamantly denies the validity of Judge Spanner's improper opinions and conclusions which lack evidence and/or sufficient due process. Notably, Judge Spanner has been issued a formal Statement of Charges with multiple violations by the Code of Judicial Conduct based upon his conduct in issuing said order. Judge Spanner requires his own due process and is set to go to hearing on October 14, 2019 before the Commission.

Alyssa's court appointed guardian motioned to have the previously sealed settlement approval pleadings and approval order sealed. These pleadings revealed significant financial/settlement figures, details of the brain/kidney injury, details of the settlement trust, issues involving medical causation during litigation, including the S-GAL's compressive report, details of the Medicaid liens, and amount of attorney fees/costs (which reveal the total amount) all sealed.

Within the settlement approval action, several pleadings were not sealed including: 1) petition to approve settlement; 2) stipulation to change venue; 3) order appointing trust counsel; 4) order appointing S-GAL; 5) motion to approve settlement; and the 6) notice of issue RE: hearing to approve settlement. In addition, the entire heavily litigated with substantial discovery motions injury claim file exists completely and without impediment to the public's curiosity in Spokane County. Nevertheless, the court denied the guardian's motion to seal but agreed to stayed its order until Alyssa could seek review.

Thereafter, in the guardianship action, the court appointed Guardian moved to seal *prospective* guardianship filings which detailed the settlement value and significant structured trust income. The documents proposed included the inventory, budget, and order approving such items. At a minimum, the Guardian requested redaction pursuant to GR 15 & 22 of the financial amounts. In open court on April 25, 2018, the Benton

County Judge polled the courtroom to provide opportunity to anyone with any objections to the motion for sealing/redaction. Of the dozen individuals present, not one objected to the sealing. Nonetheless, the court again denied the Guardian's motion. Judge Cameron Mitchell reasoned that the public's interest outweighed Alyssa's privacy interests. Consistent with his previous denial, Judge Mitchell agreed to stay the order denying seal until appellate review could be sought.

Background Facts Surrounding the Guardianship and Settlement

Before resolving the injury case by settlement, Alyssa initiated a guardianship action within Benton County. CP 1-30 (G). Alyssa has at all times resided with her mother in Benton County. While Alyssa had already commenced her injury action through her parent/guardian as a minor, however, during the pendency of litigation Alyssa reached the age of majority necessitating a formal guardianship action to maintain and pursue the claim. Her mother was not eligible. Consequently, Alyssa's twin sister was proposed, and a 'sealed' Order Appointing Full Guardian of Person/Estate and Letters of Guardianship were entered giving rise to the official authority and corresponding obligations entrusted to Alyssa's Guardian. CP 30-40.

Prior to the settlement approval action initiated by Alyssa's Guardian, Alyssa's personal injury litigation attorneys filed the medical

malpractice claim against Deaconess Medical Center in Spokane Washington in 2016. The action was filed just after the statute of repose was struck down as unconstitutional as applied to minors. Along these lines, Alyssa's medical malpractice claim arose days after she was born by accidently receiving a lethal dose of potassium intravenously while treating at Deaconess. Tragically, a pharmacy tech on duty had inadvertently reversed her ordered therapeutic potassium dosage. The claim alleged that Alyssa's significant mental and physical incapacities/disabilities occurred from this event. As a result, the claim was properly filed in Spokane County.

Prior to mediation of the malpractice claim, a Spokane Judge, together with the agreement of the parties, appointed seasoned Spokane attorney Richard Lewis, to serve as the Settlement Guardian Ad Litem. Given the size of the claim and complex causation issues, everyone agreed having the Settlement Guardian adequately prepared, duly authorized, and directly participating at mediation was appropriate to protect Alyssa's interests. Mr. Lewis conducted an extensive review of multiple deposition transcript testimony, consulted with the attorneys, reviewed significant medical records, attended Alyssa's special education classes, met with the family, and participated in the lengthy mediation.

Also in attendance at mediation was Alyssa's court appointed Guardian together with her independent attorney Jeff Kruetz. Alyssa's mother and her injury litigation attorneys were also present. Alyssa's

interests were very well represented. Both sides requested and agreed the settlement amount and terms would be confidential.

Alyssa's injury attorneys elected to file the petition to approve settlement for an incapacitated person in Benton County given the existence of the guardianship and settlement proceeds which would fund her estate. Counsel for Deaconess and Alyssa's attorneys entered a stipulation and order transferring venue of the settlement action to Benton County per SPR 98.16. (S) CP 11. Benton County also authorized appointment of Settlement GAL Richard Lewis in the settlement action. (S) CP 7. Likewise, the court authorized appointment of Spokane attorney Richard Sayer as independent trust counsel. (S) CP 15.

Unpublished Opinion of the Court of Appeals

Upon appeal, Division III affirmed Benton County's decisions not to seal documents *in their entirety* without opining on the alternative options. The reviewing court then misconstrued and rejected all of Ms. Hawkins and her Guardian's constitutional arguments. While the appellate court acknowledged "at least some redactions of the record are likely appropriate" it simply remanded back to Benton County to 're-determine' and make additional findings for another review. Neither the court rules nor Ms. Hawkins's constitutional rights have been adequately been recognized necessitating this motion for discretionary review based on the following reasons.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

The lower courts' reliance on GR 15, GR 22 and *Ishikawa, infra.* in denying Ms. Hawkins request to seal portions of court files or alternatively redacting the amounts therein as well as any pleadings which detail the injury, her condition, or imply the amount of settlement, as applied, constitutes significant infringement upon Ms. Hawkins constitutional right to privacy and/or right to contract. Though she cannot act without a guardian, Ms. Hawkins still requires equal protection under the laws as an incapacitated person. Importantly, Ms. Hawkins's private financial affairs have been adequately safeguarded and are of no legitimate public concern to anyone. Notably, Ms. Hawkins settlement amount is only before the court for approval *to protect* Ms. Hawkins both personally and financially by ensuring the Guardian acted within her best interests in the compromise of the claim (to which there can be no dispute). Yet, neither Ms. Hawkins nor her court appointed Guardian waived her fundamental right to privacy or her right to contract for such basic privacy. Whereas competent people may engage in private injury settlements every day, Ms. Hawkins was required to file court documents, ostensibly designed ensure her protection but as applied, deny her/her guardian basic fundamental rights afforded to the rest of the public. The lower courts' complete denial to even acknowledge Ms. Hawkins' privacy desires, safety concerns and/or right to contract flies in

the face of the privileges and immunities clause[3] and ironically compromises the physical safety and financial freedom she was provided when settling the claim.

1. GR 15 & 22 as Applied to Alyssa Hawkins, Infringe upon her Constitutional Right to Contract

The right to contract, freedom of contract, or liberty of contract exists as an express protection conferred by the constitution. Indeed, both our State and Federal Constitutions prohibit any law that impairs the obligation of contracts. See *Wash. Constitution,* Article 1, §23; U.S. Constitution, Article 1, §10. The two clauses are substantially similar and are given the same effect. *Washington Federation of State Employees vs. State*, 101 Wn.2d 536, 539, 682 P.2d 869 (1984). The threshold question is whether the state law has in fact, operated as a substantial impairment of a contractual relationship. *Margola Associates v. City of Seattle*, 121 Wn.2d 625, 653, 854 P.2d 23 (1993). The impairment is substantial if the party relied upon the potential supplanted part of the contract. *Id.* Here, the terms and conditions of the settlement of Alyssa's claim were specifically conditioned upon a confidentiality provision which would protect Alyssa

[3] "No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations." Article 1, Section 12 of the Washington State Constitution.

into the future so that the public (particularly family and friends) would not discover her significant access to a multi-million trust fund. Given her substantial disabilities, this term was paramount to establish and considered necessary in order to proceed with negotiations. Indeed, Alyssa's court-appointed guardian, her guardian's independent counsel, the pre-appointed S-GAL, and Alyssa's injury attorneys were desirous of a binding and enforceable contract with a confidentiality clause to privately resolve her medical malpractice claim. The defending hospital was also desirous of confidentiality in the settlement amount and terms. By and through her court appointed guardian, Alyssa, be afforded the same basic constitutional right to contract as competent adults. Notably, the "authority to contract" was a specific enumeration supplied to the guardian by the court in the guardianship action. Despite granting the "right" the lower courts have systematically taken it away from Alyssa and her guardian.

2. GR 15 & GR 22, as Applied to Alyssa Hawkins, Infringe upon her Constitutional Right to Privacy

The right of the people to privacy is highly recognized and shall not be infringed without the showing of a compelling state interest. Article 1, Section 7 of the Washington State Constitution states "No person shall be disturbed in his private affairs, or his home invaded, without the authority of law." The right to privacy under the Washington State Constitution is broader than the reasonable expectation of privacy under the U.S.

Constitution. **State v Goucher**, 124 Wash.2d 778, 881 P.2d 210 (1994). Yet, in general, privacy rights must be harmonized with competing concerns, requiring a balance of interests. **Matter of A.B.,** 791 P.2d 615 (Alaska 1990). Since Alyssa's private settlement and financial affairs include a supporting-of-privacy defendant without any traditional 'opposing party', there is only the 'public's general right-to-know opportunity' to realistically balance. Again, no party objected in open court nor is there any other interested party stepping forward objecting the Alyssa's motion to seal either below or on review.

As Division III adequately points out that Alyssa's privacy right is not absolute. On review the court appears to opine despite the lack of any objections during open court proceedings, Alyssa's safety concerns alone are insufficient to warrant protection of her privacy. One must conclude, solely because Alyssa is incapacitated, she lacks the same constitutional guaranties of privacy that others who compromise and settle their injury claims with terms of confidentiality get to fully enjoy. Apparently, the vulnerable who need more oversight get an arbitrary construction of GR 15 & GR 22 which suffices as 'court protection' from their guardian while their constitutional right to privacy are grossly sacrificed.

Regrettably, as applied by the lower court, Alyssa's right to privacy is subordinate to the public's curiosity in the intimate financial details of her life. Tragically, had the defendant hospital in the malpractice action not

harmed her so profoundly, resulting in cognitive impairment, Alyssa's would not be seeking discretionary review in order to exercise her privacy rights. Adding to the horrible tragedy, the lower court's interpretation of GR 15 & GR 22 added a significant security risk all the while denying her basic constitutional privacy.

Ideally, this court should find the court appointed guardian and settlement guardian ad litem's work during the malpractice mediation and subsequent reports in the settlement action sufficient for purposes of accepting the settlement value while sealing portions of the record to preserve Alyssa's privacy. Along these lines, when evaluating a petition to vacate the compromise/settlement of an estate which had been previously approved by the court, the Washington High Court has been satisfied when there had been substantial compliance with the approval process statute, particularly when it finds the court in the guardianship proceeding was aware of the nature of the suit, claim or dispute, reason for settling it and has ordered or approved the settlement. **In re Phillips Estate**, 46 Was.2d 1, 20, 278 P.2d 627 (1956). Given the same process was followed for Alyssa, the Court should accept the adequacy of settlement as part of its 'public oversight function' and now administer justice by protecting Alyssa's privacy and/or safety.

3. The Lower Courts' Construction of GR 15 and GR 22 are Contrary to Court Rules Involving the Guardian's Obligation to Maintain Alyssa's Privacy and Thus Required to Seek Court Seal

The necessity of Alyssa's settlement approval action was, by virtue of legislative mandate, required to ensure settlements of incapacitated persons are reasonable. See SPR 98.16W. While Alyssa does not dispute the basis for such legislative mandate nor the requirements to facilitate the approval process, she does however, challenge the lower court's interpretation of the general rules which trump her own privacy and safety interests. Yet there are additional court rules which must be read harmoniously.

Accordingly, the settlement approval process identified in SPR 98.16W, requires very specific items are to be filed to order to adequately inform the court that the proposed settlement is in the incapacitated person's best interest. In large part, the Settlement Guardian Ad Litem acts as an arm of the court to conduct investigation and make recommendations upon which the court may rely. There is no question the Settlement Guardian Ad Litem report is confidential. See GR 22(e)(1)(F). The process is analogous to the Temporary Guardian appointed by the court to evaluate the basis and merit of the proposed guardian in a guardianship action. Clearly, the court uses the data received by the guardians to ensure the process was appropriate and fair to the

incompetent adult by issuing its approval on each the guardianship and/or the settlement.

Along these lines, Title 11 guardians, like the court appointed guardian for Alyssa and the appointed Settlement Guardian, are subject to the Superior Court Guardian Ad Litem Rules (GALR). See GALR 1(a). Such guardians are naturally required to represent the best interests of the person for whom he or she is appointed. GALR 2(a). However, GALR(2)(m) further provides that the guardians are mandated to maintain the privacy interests of parties as follows:

> "**As an officer of the court**, a guardian ad litem shall make no disclosures about the case or the investigation except in reports to the court or as necessary to perform the duties of a guardian ad litem. A guardian ad litem shall maintain the confidential nature of identifiers or addresses where there are allegations of domestic violence or risk to a party's or child's safety. **The guardian ad litem may recommend that the court seal the report or portion of the report of the guardian ad litem to preserve the privacy, confidentiality, or safety of the parties or the person form whom the guardian was appointed**."
> GALR(2)(m) (Emphasis added).

The lower courts' construction of GR 15 and GR 22 cannot be viewed consistent with the GALRs requiring and prompting Alyssa's guardian to act only to fall on the inattentive ears of the Benton County Superior Court.

4. Alyssa's "Personal Privacy", as defined by GR 22, is being "Unreasonably Invaded".

Initially, Benton County Judge Bruce Spanner's order unsealing the records with a sealed cover sheet, contained an improper conclusion that GR 22 does not apply as the case was not a family law case. However, Alyssa's guardianship action was necessitated as a result of the malpractice litigation and once the court appointed guardian settled the claim she was required to seek court approval under SPR 98.16W. Hence, Judge Spanner was wrong, GR 22 does apply to guardianship records which necessarily includes the settlement action, filed separately for the clerk's organization/procedural policies. In that case, the purpose of GR 22, in relevant part provides: "The policy of the courts is to facilitate public access to court records, provided that such access will not present an unreasonable invasion of personal privacy." GR 22(a). The rule defines, "Personal Privacy is unreasonably invaded only if disclosure of information about the person or the family (a) would be highly offensive to a reasonable person and (b) is not of legitimate concern to the public. See GR 22(a)(4). Alyssa's private settlement awards provides her a structure dealing with millions of dollars designed to compensate her for her profound loss. The general public, without comprehending the details of her injury, damages, future prognosis, cognitive deficits, physical disabilities, medical ailments, etc. cannot possibly appreciate the value of her settlement. Indeed, being deprived of the private medical details,

discovering "the number" would be highly offensive to a reasonable person. Besides, there is no evidence or argument that knowing "the number" or breakdown thereof, amounts to a legitimate concern to the public. GR 22 contemplates certain private matters remaining private to certain individuals. Alyssa asks this court for the opportunity and privilege of becoming a private individual.

F. CONCLUSION

Based on the foregoing reasons, this Court should accept discretionary review as a significant question of law under the Constitution of the State of Washington is intimately involved.

RESPECTFULLY SUBMITTED this 31 day of July, 2019.

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Appendix

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CASE # 360059
In re the Settlement of: Alyssa Arellano-Hawkins
BENTON COUNTY SUPERIOR COURT No. 174005112

Consolidated w/ CASE #360679
In re the Guardianship of: Alyssa Arellano-Hawkins
BENTON COUNTY SUPERIOR COURT No. 174004230

Counsel:

A party need not file a motion for reconsideration as a prerequisite to discretionary review by the Washington Supreme Court. RAP 13.3(b); 13.4(a). If a motion for reconsideration is filed, it should state with particularity the points of law or fact that the moving party contends the court has overlooked or misapprehended, together with a brief argument on the points raised. RAP 12.4(c). Motions for reconsideration which merely reargue the case should not be filed.

Motions for reconsideration, if any, must be filed within twenty (20) days after the filing of the opinion. RAP 12.4(b). Please file the motion electronically through the court's e-filing portal or if in paper format, only the original need be filed. If no motion for reconsideration is filed, any petition for review to the Supreme Court must be filed in this court within thirty (30) days after the filing of the opinion (may also be filed electronically or if in paper format, only the original need be filed). RAP 13.4(a). The motion for reconsideration and petition for review must be received (not mailed) on or before the dates each is due. RAP 18.5(c).

Sincerely,

Renee S. Townsley

Renee S. Townsley
Clerk/Administrator

RST:btb
Attachment

c: **E-mail** Honorable Cameron Mitchell

FILED
JULY 2, 2019
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

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

In the Matter of the Settlement of: ALYSSA ARELLANO-HAWKINS, An Incapacitated Person.	)	No. 36005-9-III (consolidated with No. 36067-9-III)
In the Matter of the Guardianship of: ALYSSA ARELLANO-HAWKINS, An Incapacitated Person.	)	UNPUBLISHED OPINION

PENNELL, A.C.J. — Alyssa Arellano-Hawkins appeals two trial court orders, denying her motions to seal documents related to a settlement agreement. We affirm the trial court's decisions not to seal the documents in their entirety. Nevertheless, because at least some redactions of the records are likely appropriate, we remand for further proceedings.

FACTS

Alyssa Arellano-Hawkins is an adjudicated incapacitated person. She sued Deaconess Medical Center for medical malpractice and her attorneys negotiated a sizeable settlement on her behalf. Counsel for Ms. Arellano-Hawkins moved to approve

the settlement, and to seal the order approving the settlement and disbursing the funds. The settlement was approved by Benton County Superior Court Judge Samuel Swanberg pursuant to SPR 98.16W (requiring court approval of settlements involving incapacitated persons). Judge Swanberg's written order[1] did not specifically address Ms. Arellano-Hawkins's motion to seal, but the order was filed under a sealed source document coversheet.

Shortly after the entry of Judge Swanberg's order, Benton County Superior Court Judge Bruce Spanner entered an order unsealing previously sealed documents. The majority of these documents were filed in support of the motion to approve settlement and were presented to the clerk's office as sealed source documents. Judge Spanner found that the documents should not have been sealed. Among other things, Ms. Arellano-Hawkins's counsel had never filed a GR 15 motion to seal. Judge Spanner also raised a concern that counsel for Ms. Arellano-Hawkins had sealed the documents in a nefarious effort to hide counsel's sizeable fee award from disclosure in counsel's ongoing dissolution proceedings. Judge Spanner stayed his order in order to permit time for a GR 15 motion to seal.

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[1] There is no transcript of the proceedings to approve the settlement in the record on review.

Counsel for Ms. Arellano-Hawkins subsequently filed a GR 15 motion to seal the entire court file. In her original briefing, Ms. Arellano-Hawkins requested alternative relief, should the court deny the request to seal the record in its entirety. However, in subsequent briefing, Ms. Arellano-Hawkins stated she was seeking to have the entire court file sealed, as the failure to do so "would deprive Alyssa Hawkins of her equal protection rights and her right to contract under the State and Federal Constitution[s]." Clerk's Papers (CP) at 45. Along with her motion to seal, Ms. Arellano-Hawkins filed a motion to strike portions of Judge Spanner's order. Specifically, Ms. Arellano-Hawkins moved to strike Judge Spanner's factual findings regarding counsel's pending dissolution proceeding.

Ms. Arellano-Hawkins's motions were heard by Benton County Superior Court Judge Cameron Mitchell. Judge Mitchell denied the motion to seal, explaining that the public has an interest in overseeing the court's approval of settlement agreements for incapacitated persons. At no point during the oral proceedings did Ms. Arellano-Hawkins request redaction in lieu of sealing the entire court file. Nor did counsel discuss the motion to strike. Judge Mitchell's written order stated that it denied Ms. Arellano-Hawkins's motion to seal or alternatively redact. The written order did not address the motion to strike. Judge Mitchell's order authorized a stay of the ruling pending appeal.

Ms. Arellano-Hawkins's counsel then filed a GR 22 motion to seal financial references and documents in a related guardianship action. Judge Mitchell denied the guardianship motion, explaining that GR 22 should be utilized to seal or redact financial documents that reveal sensitive information, such as Social Security numbers, financial account numbers, or credit card numbers. Again, Judge Mitchell stayed his order pending appeal.

Ms. Arellano-Hawkins appeals the trial court's orders denying her motions to seal the record for her settlement and guardianship actions.

ANALYSIS

We review a trial court's disposition of a motion to seal documents for abuse of discretion. *In re Dependency of M.H.P.*, 184 Wn.2d 741, 752, 364 P.3d 94 (2015). Under this standard, legal issues are reviewed de novo. *Id.* at 752-53. But the trial court's actual exercise of discretion is entitled to considerable deference. A trial court's exercise of discretion will be affirmed unless it is "manifestly unreasonable or based on untenable reasons or grounds." *State v. C.J.*, 148 Wn.2d 672, 686, 63 P.3d 765 (2003).

Court records are presumptively open to the public. *Rufer v. Abbott Labs.*, 154 Wn.2d 530, 535, 540, 114 P.3d 1182 (2005). A trial court should not grant a motion to seal court records unless the movant demonstrates compelling reasons to seal or redact,

pursuant to the factors set forth in *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 640 P.2d 716 (1982). *See Dreiling v. Jain*, 151 Wn.2d 900, 93 P.3d 861 (2004) (extending the use of the *Ishikawa* factors to civil proceedings). The "*Ishikawa* factors" include:

> (1) whether the proponent of sealing has established a "serious and imminent threat to some . . . important interest,"; (2) whether everyone present was given the opportunity to object to sealing; (3) whether the requested sealing or redaction is the least restrictive means available to effectively protect the threatened interest; (4) the weight of the competing interests of the defendant, the public, and alternative means suggested; and (5) the scope of the order to ensure that it is no broader in scope or duration than necessary.

In re Marriage of Treseler, 145 Wn. App. 278, 287, 187 P.3d 773 (2008) (citing *Ishikawa*, 97 Wn.2d at 37-39).

Ms. Arellano-Hawkins's analysis focuses on the first and fourth *Ishikawa* factors. She argues her constitutional rights to contract and privacy outweigh the presumption of openness and the public's interest in her judicial proceedings. She also asserts an equal protection right to seal her settlement documents, given that individuals who have not been adjudicated as incapacitated can enter into settlement agreements with confidentiality provisions limiting disclosure of the terms of the agreement.

We begin with Ms. Arellano-Hawkins's claim regarding the constitutional right to contract. Both the federal and state constitutions declare that the government shall not pass laws impairing the right to contract. U.S. CONST., art. I § 10; WASH. CONST.

art I, § 23. These constitutional prohibitions on contractual interference are not absolute. *Home Bldg. & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 428, 54 S. Ct. 231, 78 L. Ed. 413 (1934). Instead, the question is whether a "state law has, in fact, operated as a substantial impairment of a contractual relationship." *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244, 98 S. Ct. 2716, 57 L. Ed. 2d 727 (1978).

It is questionable whether a right to contract claim can be made in this case, given Ms. Arellano-Hawkins is disputing court orders, not a state statute. *See Dep't of Labor & Indus. v. Lyons Enters., Inc.*, 186 Wn. App. 518, 539-40, 347 P.3d 464 (2015). Nevertheless, Ms. Arellano-Hawkins can show no impairment. The trial court's orders denying Ms. Arellano-Hawkins's motions to seal did not hinder her ability to contract for a malpractice settlement. Although the settlement agreement included a confidentiality clause, the agreement also recognized that the court had authority to override this provision. CP at 150-51. The trial court's sealing decisions were therefore perfectly consistent with the terms of Ms. Arellano-Hawkins's settlement agreement and did not undermine her ability to benefit from the agreement.

Ms. Arellano-Hawkins next claims that the trial court orders violated her constitutional right to privacy. The right to nondisclosure of private information is not "a fundamental right requiring utmost protection." *O'Hartigan v. Dep't of Pers.*,

118 Wn.2d 111, 117, 821 P.2d 44 (1991). The government may properly require disclosure of confidential information if justified by a valid governmental interest and "provided the disclosure is no greater than is reasonably necessary." *Id.*

Here, there is a valid governmental interest in overseeing the financial and personal affairs of individuals who have been adjudicated as incapacitated. In addition, the constitutional mandate of open administration of justice, WASH. CONST. art. I, § 10, provides an important reason for making court records pertinent to the financial and personal affairs of an incapacitated person available for public inspection. Given these legitimate governmental interests, there is no absolute prohibition on public disclosure of financial and personal records contained within an incapacitated person's court file.

Finally, Ms. Arellano-Hawkins complains that the trial court's orders violate her right to equal protection. She reasons that if she were not an incapacitated person, she would be able to enter into a confidential settlement agreement without court involvement or the risk of disclosing sensitive information.

The constitutional guarantee of equal protection[2] provides that "all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 439, 105 S. Ct. 3249, 87 L. Ed. 2d 313 (1985). But not all persons are

[2] U.S. CONST. amend. XIV; WASH. CONST. art. I, § 12.

similarly situated. The government can legitimately distinguish between classes of persons for different treatment in a variety of circumstances. If the classification distinction is suspect, such as a classification based on race, or if the classification impinges on a fundamental right, we will subject the governmental classification decision to heightened scrutiny. *O'Hartigan*, 118 Wn.2d at 122. But in all other instances, the classification decision is reviewed with deference, under the rational basis test. *Id.*

The classification at issue here is between incapacitated persons and nonincapacitated persons. This is not a constitutionally suspect distinction. *Id.* Nor, as explained above, does it implicate a fundamental right. Thus, the distinction between incapacitated persons and nonincapacitated persons at issue in this case is reviewed under the deferential rational basis test.

We find it readily apparent that there are rational distinctions between incapacitated persons and other citizens in the current context. An incapacitated person is a ward of the court. *In re Guardianship of Cornelius*, 181 Wn. App. 513, 523, 326 P.3d 718 (2014). As a result, the financial and personal affairs of an incapacitated person are of court concern. *See, e.g.*, RCW 11.92.040-.043. Given the unique ways that incapacitated persons differ from other citizens, there is a reasonable basis for

differentiating between the settlement records of incapacitated persons and those of other citizens.

In light of the foregoing, Ms. Arellano-Hawkins has not shown that the trial court abused its discretion in refusing to seal her settlement and guardianship records in their entirety. Ms. Arellano-Hawkins argues in the alternative that the trial court should have redacted portions of the record instead of simply denying the motion to seal. This may be true, but the trial court's failure to do so was understandable. Counsel for Ms. Arellano-Hawkins largely abandoned this request and failed to explain how individual redactions would be appropriate under the *Ishikawa* factors. Nevertheless, because Ms. Arellano-Hawkins likely does have significant privacy interests in at least some aspects of the settlement documents and related records, Ms. Arellano-Hawkins's arguments regarding redaction should be taken up on remand, pursuant to the terms of GR 15 and GR 22.

As a final matter, Ms. Arellano-Hawkins claims the trial court erroneously failed to grant her motion to strike portions of Judge Spanner's order unsealing documents. The trial court likely did not address the motion to strike because the bulk of the relief requested was mooted by the rulings on Ms. Arellano-Hawkins's motions to seal. To the extent that there are remaining issues pertaining to Judge Spanner's order, they can be taken up on remand.

CONCLUSION

The trial court's orders denying Ms. Arellano-Hawkins's motions to seal records in their entirety are affirmed. This matter is remanded for consideration of possible redactions under GR 15 and GR 22 and other related issues, consistent with the terms of this decision.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Pennell, A.C.J.

WE CONCUR:

Korsmo, J.

Siddoway, J.

JOSIE DELVIN
BENTON COUNTY CLERK

APR 19 2018

FILED

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR BENTON COUNTY

In re Settlement of: ALYSSA ARELLANO-HAWKINS, An incapacitated person.	Case No. 17-4-00511-2 **ORDER RE MOTION TO SEAL COURT FILE**

THIS MATTER having come before the Honorable Judge Cameron Mitchell on the Motion to Seal the entire court file or alternatively, portions thereof, and/or redaction. The Court having considered the argument of counsel and the following pleadings:

- Motion to Seal Records, filed March 27, 2018;
- Memorandum in Support of Motion to Seal Records, filed March 27, 2018;
- Declaration of Andrea Clare, filed March 27, 2018;
- Declaration of George E. Telquist, filed March 27, 2018;
- Motion and Memorandum to Strike Portions of the Order of the Honorable Judge Spanner, dated March 14, 2018, filed March 27, 2018;
- Supplemental Brief in Support of Motion to Seal Records, filed April 16, 2018; and
- Supplemental Declaration of George E. Telquist, filed April 16, 2018.

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Based upon the foregoing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Motion to Seal, or alternatively redact, portions of the file is denied; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that appellate review of this decision is appropriate given the potential constitutional issues and the incapacitated status of the party; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that those portions of the file that have been previously filed under seal shall remain sealed pending appellate review.

DONE BY THE COURT this 19 day of April, 2018.

CAMERON MITCHELL

JUDGE CAMERON MITCHELL

Presented by:

TELQUIST McMILLEN CLARE, PLLC

By: _____

GEORGE E. TELQUIST, WSBA #27203
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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In the Matter of the Settlement of: ALYSSA ARELLANO-HAWKINS, An incapacitated person	Supreme Court of Washington Case No. _____ Court of Appeals No. 36005-9-III & 36067-9-III
In the Matter of the Guardianship of: ALYSSA ARELLANO-HAWKINS, An incapacitated person	CERTIFICATE OF FILING AND SERVICE

I, David Gamboa, am over the age of eighteen and am competent to testify as to the facts contained in this Declaration.

1. On July 31, 2019, I hand delivered to the Court of Appeals, Division III, Motion for Discretionary Review by the Supreme Court and this Declaration of Filing and Service.

2. On July 31, 2019, I hand delivered a true and correct copy of the Notice of Discretionary Review, Motion for Discretionary Review and this Declaration of Filing and Service on Ryan M. Beaudoin, Witherspoon Kelley, 422 West Riverside Avenue, Suite 1100, Spokane, WA 99201-0300.

Respectfully submitted this 31st day of July, 2019.

TELARE LAW, PLLC

By: _____

DAVID GAMBOA, *Legal Assistant*