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NO. 60522-4

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

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STATE OF WASHINGTON  
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IN RE THE GUARDIANSHIP OF: VALENTIN K. MEDVEDEV

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**BRIEF OF RESPONDENT**

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## **A. INTRODUCTION**

The University of Washington, by and through its attorneys of record, Robert M. McKenna, Attorney General, and Matthew E. Lund, Assistant Attorney General, responds as follows to the Brief of Appellant filed by Andrei Medvedev and Maria Medvedeva .

## **B. ISSUE PRESENTED**

Whether Appellants' appeal of the Superior Court's July 30, 2007, Order Appointing Successor Full Guardian of Person and Full Guardian of Estate is moot because Maria Medvedeva's guardianship rights and conditions of guardianship terminated with the death of Valentin Medvedev (the ward in the proceedings and late husband of appellant Maria Medvedeva) and, therefore, the appellate court can provide no meaningful relief.<sup>1</sup>

## **C. STATEMENT OF THE CASE**

### **a. Procedural History**

On February 28, 2006, Valentin Medvedev suffered a stroke. Brief of Appellant 4. On December 21, 2006, the King County Superior Court issued an Order Appointing Guardianship which found Valentin Medvedev legally incapacitated due to the effects of his stroke and also appointed Partners in Care as the full guardian of Valentin Medvedev's person and estate. Brief of Appellant 4.

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<sup>1</sup> The University of Washington reserves the right to argue and provide briefing regarding the underlying merits of this matter in the event this Court determines that it will consider the merits.

On April 16, 2007, the King County Superior Court issued an Order of Protection for a Vulnerable Adult and an Order of Protection Against Unlawful Civil Harassment (“Order of Protection”) on behalf of Partners in Care against Anna Medvedeva, Andrei Medvedev, and Maria Medvedeva (collectively, “the Medvedevas”). CP 2-12. Thereafter, Partners in Care withdrew from guardianship of Valentin Medvedev. CP 26.

On July 30, 2007, the Superior Court issued an Order Appointing Successor Full Guardian of Person and Full Guardian of Estate which granted guardianship rights to Maria Medvedeva, wife of Valentin Medvedev, and imposed specific restraints as a condition of that guardianship, including restraining and prohibiting the Medvedevas from entering the premises of University of Washington Medical Center and Harborview Medical Center<sup>2</sup> and restraining and prohibiting the Medvedevas from contacting any staff at the facilities. CP 35.

Maria Medvedeva and Andrei Medvedev now appeal the trial court’s July 30, 2007, Order Appointing Successor Full Guardian of Person and Full Guardian of Estate. Brief of Appellant 1-9.<sup>3</sup>

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<sup>2</sup> The University of Washington Medical Center and Harborview Medical Center are operated and controlled by the University of Washington.

<sup>3</sup> Appellants’ made five assignments of error in their appeal; the University of Washington is only implicated in the fourth and fifth assignments. Accordingly, this

**b. Statement of Relevant Facts**

On December 21, 2006, the court appointed Partners in Care as Guardian for stroke victim Valentin Medvedev. Brief of Appellant 4. Despite, the court's appointment of Partners in Care as the Guardian, Valentin Medvedev's son (Andrei Medvedev), daughter (Anna Medvedeva), and wife (Maria Medvedeva), made attempts to prevent Partners in Care from fulfilling its duty to make necessary and appropriate healthcare decisions on behalf of Valentin Medvedev. CP 4.

In the months following the court appointment of Partners in Care, the Medvedevas continued to harass Partners in Care as well as Valentin Medvedev's healthcare providers, which resulted in Swedish Hospital Medical Center issuing Trespass Admonishments to both Andrei Medvedev and Maria Medvedeva for disruptive behavior. CP 4-5. The Medvedevas' harassment prevented Partners in Care from conducting its court appointed duties. CP 4.

On April 16, 2007, after months of inappropriate conduct, the court issued an Order of Protection to ensure the protection of Valentin Medvedev and prevent his family from committing the ongoing harassment of Partner's in Care and Valentin Medvedev's healthcare providers. CP 2-11. The court's Order of Protection also concluded that

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brief will respond only to the fourth and fifth assignments of error. See Brief of Appellant 5.

the Medvedevas had engaged in unlawful harassment under RCW 10.14 and engaged in abuse of a vulnerable adult under RCW 74.34. CP 6. Despite the Order of Protection, Partners in Care petitioned to withdraw as guardian. CP 30.

On July 30, 2007, King County Superior Court Commissioner Carlos Velategui issued an Order Appointing Successor Full Guardian of Person and Full Guardian of Estate which appointed Maria Medvedeva as guardian for Valentin Medvedev. CP 35-47. Based on the record before the Commissioner, the Order imposed specific conditions upon the guardianship. CP 35-46. Specifically, the order required that the previous Order of Protection would remain in effect and that the Medvedeva family be prohibited from contact or entry of the University of Washington Medical Center or Harborview Medical Center, each operated by the University of Washington. CP 43-44.

Valentin Medvedev's died in 2008. Brief of Appellant 4.

Maria Medvedeva and Andrei Medvedev now appeal the court's July 30, 2007, Order Appointing Successor Full Guardian of Person and Full Guardian of Estate. Brief of Appellant 1-9.

#### **D. ARGUMENT**

"A guardianship or limited guardianship is terminated ... by the death of the incapacitated person ..." RCW 11.88.140 (c).

Under RCW 11.88.140, a guardianship terminates at the death of the incapacitated. *In re Guardianship of Mayou*, 6 Wn. App. 345, 347-48, 492 P.2d 1047 (Wash. App. 1972) (analyzing RCW 11.88.140).

- a. Maria Medvedeva's Guardianship of Valentin Medvedev terminated upon the death of Valentin Medvedev in 2008.

It is undisputed that Valentin Medvedev died in 2008. Brief of Appellant 4. Accordingly, upon his death, Maria Medvedeva's guardianship of Valentin Medvedev and all associated orders terminated.

Although a guardian retains the limited duty to render an accounting and distribution of the property upon death of the incapacitated, all other duties of the guardianship end immediately. *In re Guardianship of Mayou*, 6 Wn. App. 345, 347-48, 492 P.2d 1047 (1972); See also *In re Medvedev*, 2010 WL 537637. As the guardianship terminates automatically at the death of the incapacitated, all conditions imposed by the orders associated with the guardianship, including the order on appeal, cease automatically. See *In re Guardianship of Mayou*, 6 Wn. App. at 347 ("the death of the ward terminates [the] guardian's powers").

The conditions imposed by the court in its July 30, 2007, Order were conditions of the guardianship. As the guardianship automatically terminated upon the death of Valentin Medvedev, the conditions no longer

apply. Of further note, the United States District Court of the Western District of Washington has already recognized the termination of this guardianship. *See In re Medvedev*, 2010 WL 537637. Therefore, Appellants' requests for relief cannot be granted and are moot.

- b. This appeal is moot because the guardianship and all associated orders terminated upon the death of Valentin Medvedev and the court cannot provide meaningful relief.

Maria Medvedeva's and Andrei Medvedev's appeal of the court's July 30, 2007, Order Appointing Successor Full Guardian of Person and Full Guardian of Estate seeks relief from the conditions imposed by the order as the conditions relate to the guardianship of Valentin Medvedev. However, upon Valentin Medvedev's death, the guardianship and all associated orders, including the order on appeal, terminated automatically and therefore, the automatic termination of the guardianship at the time of Valentin Medvedev's death granted the requested relief sought in this appeal. Accordingly, as the order on appeal is terminated, this court can offer no further relief to Appellants. Therefore, this appeal is moot.

The general rule in Washington is that appeals which involve non-issues or abstract propositions should be dismissed as moot. *Sorenson v. City of Bellingham*, 80 Wn.2d 547, 558, 496 P.2d 512 (1972). Dismissal is appropriate where the issues before the court do not rely on existing facts or rights. *In re Welfare of B.D.F.*, 126 Wn. App. 562, 569, 109 P.3d

464 (2005). An appeal is moot if the court cannot provide the basic relief that appellant originally sought or cannot provide effective relief. *In re Detention of LaBelle*, 107 Wn.2d 196, 200, 728 P.2d 138 (1986). For example, in *Hart v. Department of Social and Health Services*, the court held that the plaintiff's due process claim was moot because the modified license which imposed the condition at issue on appeal had expired. 111 Wn.2d 445, 447, 759 P.2d 1206 (1988). In *Hart*, the plaintiff appealed the DSHS's decision to grant her a modified certificate for 6 months which required her to work only under supervision until the EMS medical program director removed the condition. At issue was "whether DSHS denied Hart due process by modifying her paramedic certificate as recommended by Hart's EMS medical program." *Id.* However, the court did not reach the merits of the case. *Id.* at 451-52, 759 P.2d 1206 (1988). The court held that the appeal was moot because "the limited certificate in question ha[d] expired and [the] court [could] no longer provide an effective remedy by ordering the issuance of an unconditional certificate." *Id.* at 447, 759 P.2d 1206 (1988).

Similarly, in the present case, the court cannot provide an effective remedy by ordering the reversal of the order on appeal as it pertains to the specific restraints against Andrei Medvedev because the order on appeal expired upon Valentin Medvedev's death. *See In re Guardianship of*

*Mayou*, 6 Wn. App. at 347. Maria Medvedeva and Andrei Medvedev appeal the restraints imposed as a condition of guardianship. See Brief of Appellant 5. The appeal is moot because the conditions of guardianship expired automatically upon the death of Valentin Medvedev and the court can no longer provide an effective remedy by granting a new Order of Guardianship. See *Hart*, 111 Wn.2d 445 at 447.

The conditions of Valentin Medvedev's guardianship expired upon the death of Valentin Medvedev. Accordingly, the appellate court is no longer able to provide the relief requested by Appellants; the relief requested by Appellants has already been granted in that the conditions of the order on appeal no longer apply. Accordingly, the issues raised by Appellants are moot. Therefore, the appeal should be dismissed.

- c. The court should not review the moot appeal because there is no matter of continuing and substantial public interest

In limited circumstances, an appellate court may decide a case despite its mootness where the case involves "matters of continuing and substantial public interest." *In re Pugh*, 68 Wn. App. 687, 690, 845 P.2d 1034, *rev. denied*, 122 Wn.2d 1018 (1993). This exception to the general rule is only to be applied "where the real merits of the controversy are unsettled and a continuing question of great public importance exists." *Sorenson v. City of Bellingham*, 80 Wn.2d 547, 558, 496 P.2d 512 (1972)

(Finding the real merits of the controversy were unsettled when the issue presented dealt with whether a Bellevue ordinance violated the fourteenth amendment of the United States Constitution). To determine whether a case involves “matters of continuing and substantial public interest,” the court must consider three factors: (1) the public or private nature of the question presented; (2) the desirability of an authoritative determination which will provide future guidance to public officers; and (3) the likelihood that the question will recur. *Dunner v. McLaughlin*, 100 Wn.2d 832, 838, 676 P.2d 444 (1984).

*i. Despite the Public Nature of the Question Presented, the Statute is Unambiguous and Therefore, There is No Public Interest in Clarifying the Statute.*

As there is no dispute regarding the interpretation of the statute, no public interest is served in deciding the moot appeal. Although courts have applied the exception to the mootness doctrine in cases involving constitutional or statutory interpretation, they have done so only when there is a dispute as to its interpretation. *See In re Mines*, 146 Wn.2d 279, 285, 45 P.3d 535 (2002). While the court has recognized that clarifying a civil commitment statute is of substantial public interest because of the strong constitutional concerns associated with confinement and the need to clarify due process concerns, there is no substantial public interest in clarifying an unambiguous statute. *See In re Detention of LaBelle*,

107 Wn.2d 196, 201, 728 P.2d 138 (1986). As the issues presented in the present case have minimal, if any, public interest, the case should be dismissed.

- ii. *There Is No Need To Provide Future Guidance to Public Officers Because The Statute Is Unambiguous And There Is No Disagreement*

RCW 11.88.140(1)(c) is unambiguous when it states that the guardianship terminates at the death of the ward and courts have routinely held that death of the ward terminates the guardianship. Therefore, it is not necessary to provide any further guidance to public officers. RCW 11.88.140(1)(c).

- iii. *There is No Likelihood That the Question Will Recur Because The Statute Unambiguously States That the Guardianship Terminates At the Death of The Incapacitated And Courts Consistently Hold Accordingly*

It is unlikely that there be another case in which this issue—whether death of a ward terminates the conditions of guardianship—will occur. Courts have consistently held that death of the ward terminates the guardianship *See In re Guardianship of Mayou*, 6 Wn. App. at 347. RCW 11.88.140 is unambiguous as to guardianship duties at the death of the ward. In the present case, Valentin Medvedev died in 2008. Accordingly, the issue of his death as it applies to his guardianship will not recur.

Courts may also “consider the likelihood that the issue will escape review because the facts of the controversy are short-lived.” *In re Welfare of B.D.F.*, 126 Wn. App. 562, 569, 109 P.3d 464, 467-68 (2005) (Finding that there was a substantial public interest in deciding a moot case dealing with a short 30-day shelter-care hearing because the strict time restraints made it unlikely a future plaintiff in similar circumstances would be able to bring an appeal before it would become moot). This is in contrast to the present case, where the facts of the controversy are not typically short lived as guardianships frequently last for a long enough period to appeal a court order. As there is no continuing and substantial public interest and no likelihood that all future cases will avoid review due to short-lived controversies, the court should dismiss the appeal as moot.

#### **E. CONCLUSION**

For the reasons set forth above, the University of Washington respectfully requests that the court dismiss the Medvedevas appeal as moot.

RESPECTFULLY SUBMITTED this 1<sup>st</sup> day of May, 2012.

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**CERTIFICATE OF SERVICE**

I certify under penalty of perjury in accordance with the laws of the State of Washington that I filed with the Washington State Court of Appeals, Division I, the original and one copy of the Brief of Respondent, via Seattle Legal Messenger, at the following address:

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And that I arranged for a copy of the Brief of Respondent to be served on the parties to this action by U.S. Postal Service, First Class Mail, postage pre-paid, at the following addresses:

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