

NO. 66853-6-I

**COURT OF APPEALS, DIVISION
OF THE STATE OF WASHINGTON**

ALIXANDRA LIBIN,

Appellant,

v.

SPENCER DOLDER,
An Incapacitated Person,

And

CYNTHIA MAXWELL,
Guardian for Spencer Dolder,

And

STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND
HEALTH SERVICES,
Petitioner on Behalf of Spencer Dolder

Respondents.

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2012 MAY 22 AM 11:21

DSHS RESPONDENT'S BRIEF

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I. INTRODUCTION

The Department of Social and Health Services (State), Adult Protective Services, filed a Guardianship Petition Regarding Spencer Dolder on July 21, 2010, in Skagit County Superior Court. The Petition alleged that Mr. Dolder was an incapacitated adult based upon his developmental delays, requirement for 24 hour supervision and care and various medical conditions that limited his mobility. Ms. Libin was not a party to the guardianship proceeding nor did she seek to intervene in the proceeding.

The State additionally filed a petition for a Vulnerable Adult Protection Order, under separate cause number, in Skagit County Superior Court, asking that all contact between Ms. Libin and Mr. Dolder be supervised based upon the ongoing concerns identified in the guardianship petition along with new concerns reported to the Guardian ad Litem that Ms. Libin would harm herself, Mr. Dolder or others should Mr. Dolder be removed from her home. An ex parte protection order was put into place just prior to the release of the Guardian ad Litem's report recommending that a professional guardian be appointed for Mr. Dolder.

The trial court ultimately determined that the Guardianship Petition should be granted, and appointed a professional guardian, Cynthia

Maxwell, was appointed on January 7, 2011. The Temporary Vulnerable Adult Protection Order was extended on January 7, 2011 and ultimately a one year protection order continuing the supervised contact restriction was entered on February 18, 2011. The Order has since expired on February 18, 2012.

Ms. Libin filed a Notice of Appeal under the Vulnerable Adult Protection Order case, to which she is a proper party. However, her Brief of Appellant, fails to assign any error to the Vulnerable Adult Protection Order Proceedings, and instead requests review of the guardianship determination, to which she is a not a party. Ms. Libin does not appear to disagree that a guardianship is appropriate for Mr. Dolder, but seeks appointment by the Court of Appeals as his guardian rather than the trial court's selection of a professional guardian.

Ms. Libin's appeal is improperly before this court and should be dismissed. Ms. Libin is not a party to the guardianship proceeding, and lacks standing to seek review of the guardianship order. Additionally, Ms. Libin's appeal was filed more than 30 days following entry of the guardianship order and would be untimely even if she did have standing. Ms. Libin fails to request any relief relating to the Vulnerable Adult Protection Order proceedings, and even if she had requested relief, any

request would now be moot as the order has since expired and not been renewed.

II. RESTATEMENT OF ISSUES

- A. Does Ms. Libin have standing to appeal a guardianship order when she was not a party at the Superior Court to the proceedings and did not seek to intervene in the proceedings?**
- B. Was Ms. Libin's appeal to the guardianship order timely when it was filed more than 30 days after entry of the guardianship order?**
- C. Has Ms. Libin waived any challenge to the Vulnerable Adult Protection Order by failing to seek relief relating to the Protection Order or cite any relevant authority to review the Protection Order in her Brief?**
- D. Is Ms. Libin's appeal to the Vulnerable Adult Protection Order Moot as the order has since expired?**
- E. If this Court determines that Ms. Libin has standing to appeal the Guardianship and the appeal was timely:
 - 1. Does Substantial Evidence support the trial court's decision that guardianship was appropriate for Spencer Dolder?**
 - 2. Did the Guardian ad Litem perform his duties as required under RCW 11.88?**
 - 3. Did the trial court err in failing to appoint an attorney for Mr. Dolder?****

III. RESTATEMENT OF FACTS

Alixandra Libin, appellant, is the mother of 20-year-old Spencer Dolder. Mr. Dolder is profoundly developmentally delayed, requires "medical care around the clock" and cannot complete activities of daily living, such as feeding, toileting, bathing and walking. *See* Guardian ad Litem Report, Medical Report (Attachment A) at pg. 6.

Mr. Dolder's parents were divorced at some point prior to Mr. Dolder's age of majority. The relationship between Thom Dolder, father of Spencer, and Ms. Libin was strained at best. The father did not have regular visitation in the five years prior to the guardianship proceedings, although he paid child support to Ms. Libin in the amount of \$1,000 per month, continuing past Mr. Dolder's eighteenth birthday. Attachment A at page 11. Ms. Libin was Mr. Dolder's primary caretaker during his minority years. *Id.*

The Department of Social and Health Services, Adult Protective Services, determined that Ms. Libin had neglected her adult son by leaving him unattended at his home while she went out to run errands despite the fact that he needed continuous care. *Id.* Upon review of the case, it was determined that Mr. Dolder did not have a legal guardian responsible for ensuring his day to day care, despite his severe needs.

The Department subsequently filed a guardianship petition on behalf of Mr. Dolder pursuant to RCW 74.34.067(5) in King County Superior Court on June 8, 2010.¹ Ms. Libin relocated herself and Mr. Dolder to Skagit County shortly thereafter. The Department dismissed its guardianship petition in King County on July 7, 2010. The Department filed a second guardianship petition in Skagit County on July 21, 2010.

The guardianship petition did not propose a named guardian, but left this to the Guardian ad Litem to investigate and make recommendations to the court. The guardianship petition did contain concerns regarding Ms. Libin and her care of Mr. Spencer, as related to the recent Adult Protective Services investigation regarding Ms. Libin's neglect of Spencer. *See* (Skagit County Guardianship Petition) Attachment B.

Mr. Jeremy Yates was appointed on July 23, 2010, as Guardian ad Litem for Mr. Spencer. Mr. Yates was the next person on the Title 11 Guardian ad Litem Registry maintained by the Skagit County Superior Court. Mr. Yates completed his investigation for the court, contacting Spencer's current medical doctor, Mr. Dolder's parents and Spencer's

¹ The record does not appear to contain information about the original filing in King County, although Ms. Libin's brief mentions this to some extent in her brief. The dates and information are provided here to assist the Court in understanding Ms. Libin's brief although they do not appear to be contained in the record.

Division of Developmental Disabilities Caseworkers. Attachment A at pg. 10. Mr. Yates reviewed several letters of support written by various community members in support of Ms. Libin, of which he attached to the report for the court's review. *See* Attachment A.

Mr. Yates recommended that the court establish a full guardianship of the estate and person for Mr. Dolder. Attachment A at pg. 13. Mr. Yates reviewed three potential guardians: Ms. Libin, Mr. Thom Dolder (Mr. Dolder's father) and a professional guardian, Cynthia Maxwell, of Maxwell, Inslee and Associates. Attachment A at pgs. 12-13.

With a full understanding of Ms. Libin's role in Mr. Dolder's life up until the Guardianship was filed and her interest in serving as Mr. Dolder's guardian, he still recommended that a professional guardian be appointed to ensure that Spencer's care needs were consistently met. Attachment A at pg. 11. Mr. Yates recognized the important role of Mr. Dolder's parents in his life, and recommended that they continue relationships with him, but also had concerns about each parent and their ability to serve as a Guardian and ensure that Mr. Dolder's extensive care needs were met.

Just prior to filing the Guardian ad Litem report, the State, on behalf of Mr. Dolder, requested that a Protection Order be issued under a

separate cause number to protect Mr. Dolder from Ms. Libin in the event she had a severe reaction to the Guardian ad Litem's report, which would recommend against Ms. Libin serving as the Guardian. The court entered an ex parte Vulnerable Adult Protection Order on December 9, 2010, attended by the State and Guardian ad Litem, and at a hearing on December 17, 2010, reissued another temporary order providing for supervised contact between Ms. Libin and Mr. Dolder until the final hearing on the guardianship petition, January 7, 2011.

The guardianship hearing was uncontested, without testimony, and in front of a judge. Both Mr. Thom Dolder and Ms. Libin attended the hearing. Ms. Libin was permitted to provide an oral statement to the court. The Court, having reviewed the recommendations of the Guardian ad Litem, determined that guardianship was appropriate and supported by the record, and appointed the nominated guardian, Cynthia Maxwell of Inslee, Maxwell and Associates, a professional guardian. No appeal was filed regarding this order.

The Department's involvement in the guardianship case ended once the guardianship was established. The guardian assumes responsibility for the incapacitated person at the time he or she is appointed into the role. The Guardian ad Litem was similarly relieved of his responsibilities in the guardianship case when the guardianship was

established.

The hearing on the Vulnerable Adult Protection Order had been continued on January 7, 2011 until February 18, 2011 at the request of Ms. Libin so that she could contest the hearing and present testimony if needed. The Department and Guardian ad Litem did not appear at the hearing. Ms. Maxwell appeared as the petitioner on behalf of Mr. Dolder. A one year protection order was entered, requiring that all contact between Ms. Libin and Mr. Dolder be supervised and occur at the discretion of the guardian. See Order for Protection, Dated February 18, 2011 (Attachment C).² The order expired on February 18, 2012, without any request for extension.

Ms. Libin filed timely appeal on March 17, 2011, to the February 18, 2011, Vulnerable Adult Protection Order. Ms. Libin never filed an appeal to the Guardianship Order, issued on January 7, 2011 Guardianship Order. Ms. Libin now requests the following specific relief from the court:

² The February 18, 2011 Vulnerable Adult Protection Order notes that the proceeding is “joined” with the Guardianship proceeding from that point (February 18, 2011) forward. Review of the Guardianship filings and Protection Order filings on the Court website do not reveal any additional activity regarding a protection order in either proceeding.

The Logical person to be the Guardian of Spencer Dolder is his mother Alixandra Libin. Therefore, I Alixandra Libin, petition the Court of Appeals to return Spencer to his home with his mother and appoint Alixandra Libin, mother of Spencer Dolder, as Guardian of Spencer Dolder.

Appellant's Brief at pg. 24. Ms. Libin fails to identify any relief related to the Vulnerable Adult Protection Order proceedings in her brief.

IV. ARGUMENT

A. Ms. Libin lacks any standing to challenge the Order on Guardianship.

Standing requires that a person have a personal stake in the outcome of a case in order to bring suit. *Gustafson v. Gustafson*, 47 Wn. App. 272, 276, 734 P.2d 949 (1987). The doctrine of standing prohibits a litigant from asserting another person's legal right. *Miller v. U.S. Bank of Wash., N.A.*, 72 Wn. App. 416, 424, 865 P.2d 536 (1994). Only an aggrieved party may file an appeal. RAP 3.1.³

There is a general rule that "no one can appeal to an appellate court unless he has substantial interest in the subject matter of that which is before the court and is aggrieved or prejudiced by the judgment or order of the court. Some personal right or pecuniary interest must be affected."

³ While these proceedings were "joined" on February 18, 2012, without notice to the State at the request of the court-appointed guardian, this does not retroactively given standing to Ms. Libin for the guardianship order previously entered on January 7, 2011, nor does Ms. Libin make such a claim. See *Casebere v. Clark County Civil Service Commissioner- Sheriff's Office*, 21 Wn. App. 73, 584 P.2d 416 (1978) "[I]ntervenors must accept the original parties' pleadings as they find them upon entry into the litigation."

Guardianship of Lasky, 54 Wn. App. 841, 849, 776 P.2d 695 (1989). “The mere fact that one may be hurt in his feelings, or be disappointed over a certain result, or feels that he has been imposed upon, or may feel that ulterior motives have prompted those who instituted proceedings that may have brought about the order of the court of which he complains, does not entitle him to appeal.” *Id.* at 848-849. A party “must be “aggrieved” in a legal sense.” *Id.* Ms. Libin’s Brief of Appellant demonstrates that she is upset by the decision made by the Superior Court, and that she is concerned about Mr. Dolder’s well-being based upon how the guardian is making decisions about his care, referencing events occurring after the guardianship order was entered, but has not set for a legal basis for having standing in the matter, especially to intervene for the first time at the Court of Appeals.

Family members of an incapacitated person who is under the protection of a guardian have the right, with cause, to apply for an order modifying a guardianship. RCW 11.88.120(2). But statutory access to the court once a guardianship is established does not confer authority to act on behalf of the alleged incapacitated person or to make decisions on his behalf. *See* RCW 11.88.120(2). This right exists in the Superior Court, and only once guardianship is established. There is no indication that Ms. Libin has filed such a motion with the court nor is she seeking review of

such a motion. Ms. Libin's improper request to review the underlying guardianship determination should be dismissed for lack of standing.

B. Even if Ms. Libin has standing to appeal the guardianship order, her appeal to the guardianship order was untimely and this court lacks jurisdiction to hear her appeal.

A timely notice of appeal is a prerequisite to appellate jurisdiction. RAP 5.2; *In re Marriage of Maxfield*, 47 Wn. App. 699, 710, 737 P.2d 671 (1987). A notice of appeal must be filed within 30 days after entry of the trial court decision. RAP 5.2(a).

Assuming, *arguendo*, that Ms. Libin had standing, she had 30 days, from entry of the order in Superior Court, to file her Notice of Appeal. RAP 5.2(a). The 30 day time period begins to run the day after the order is entered. RAP 18.6(a). In this case, the order was entered on January 7, 2011, and therefore, the 30th day would have been on February 7, 2011.

C. Ms. Libin has failed to assign error, identify issues or request relief related to the Vulnerable Adult Protection Order Proceedings.

Ms. Libin has failed to challenge any of the trial court's findings and conclusions in the Vulnerable Adult Protection Order issued on February 18, 2011. This order was entered more than one month after a guardian was appointed by the court for Spencer Dolder, the incapacitated

person. The State was not present at the final protection order hearing as once the guardian is appointed, the guardian is in the best position to represent the incapacitated person's interest in separate legal proceedings. The guardian ad litem, Jeremy Yates, was similarly not present as he was discharged when guardianship was established on January 7, 2011. Attachment A, pg. 1, line 24.

Ms. Libin's brief assigns error to six distinct matters relating to the guardianship proceedings only, and only one of the six assignments of error relates to the Superior Court's findings and order contained within the Guardianship Order. Assignments of Error 1-5 relate to alleged factual errors alleged to be in the information contained in the various pleadings filed by the Attorney General's Office and the guardian ad litem. RAP 10.3(a)(4) requires "a separate concise statement of each error a party contends was made by the **trial court**, together with the issues pertaining to the assignments of error." *Emphasis added.*

While Ms. Libin's brief makes a passing reference to the Vulnerable Adult Protection Order Proceedings on page five of her brief, but has no further discussion relating to the protection order. "An assignment of error not supported by argument or authority is waived." *Guardianship of Atkins*, 57 Wn App. 771, 790 P.2d 210 (1990). Appellate courts should not review issues for which inadequate argument has been

briefed or only passing treatment has been made. *State v. Johnson*, 119 Wn.2d 167, 171, 829 P.2d 1082 (1992) and *See State v. Thomas*, 150 Wn.2d 821, 868-69, 83 P.3d 970 (2004).

As included in Appellant's brief, the only relief sought by Ms. Libin is in regards to the guardianship order. Accordingly, this case should be dismissed as Ms. Libin lacks standing and filed an untimely appeal. No issues regarding the Vulnerable Adult Protection Order Proceedings were raised in Appellant's brief for this court to review.

D. Even if Ms. Libin had identified issues to review in the Vulnerable Adult Protection Order proceedings, appeal at this point would be moot as the Order has expired.

The Vulnerable Adult Protection Order issued in this case and on appeal providing visitation conditions between Ms. Libin and Mr. Dolder was only effective for one year, and expired without being renewed in February 2012.

"A case is technically moot if the court cannot provide the basic relief originally sought, or can no longer provide effective relief." *Laffranchi v. Lim*, 146 Wn. App. 376, 382, 190 P.3d 97 (2008) (*quoting Josephinium Assocs. v. Kahli*, 111 Wn. App. 617, 622, 45 P.3d 627 (2002)). Moreover, the case presents no issue of continuing public interest that would justify the Court's consideration of this moot case.

A court may consider a moot case only if it raises an issue of continuing public interest. *Sorenson v. City of Bellingham*, 80 Wn.2d 547, 558, 496 P.2d 512 (1972). The court considers three factors when determining continuing public interest:

- (1) The public or private nature of the question presented;
- (2) The desirability of an authoritative determination that 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). None of the considerations justifies review in this case, especially in light of Ms. Libin's failure to assign error to request any relief relating to this portion of the proceedings.

Even if Ms. Libin had properly presented argument, assigned error or raised issues regarding the Vulnerable Adult Protection Order proceedings, because there is no longer any effective relief that can be provided by this Court, the appeal is now moot and should be dismissed. *See Blackmon v. Blackmon*, 155 Wn. App. 715, 230 P.3d 233 (2010) (declining to review several assignments of error as to the husband regarding a Domestic Violence Protection Order that had since expired).

E. The Guardianship Order was properly entered by the Court upon review of the required Guardian ad Litem and Medical Reports.

1. Substantial Evidence Support the Determination of Guardianship

Ms. Libin does not appear to contest that Mr. Dolder is in need of a guardian. Mr. Dolder has severe developmental delays, has physical limitations, and needs constant supervision and assistance with all activities of daily living, such as toileting, walking, bathing, and eating. *See* Attachment A. Mr. Dolder is unable to communicate to make arrangements to provide for his own care, and has disabilities that limit his ability to comprehend such decisions and legal matters. *Id.*

Instead, in Ms. Libin's final paragraph in her Appellant's Brief, she requests that she be appointed the guardian for Mr. Dolder as opposed to Ms. Maxwell, a professional guardian. Ms. Libin did not seek to intervene in the guardianship proceedings, yet the trial court permitted her to address the courts with her concerns, and the Guardian ad Litem attached all of her letters of support that Ms. Libin provided to him along with his report to the court for consideration.

The court properly concluded that the nominated guardian, Cynthia Maxwell, was appropriate and qualified to fill the role as Mr. Dolder's guardian. Mr. Dolder requires someone to ensure that his legal and

financial affairs are in order, that he has around-the-clock care for his needs and a professional that can make decisions based upon the best interests of Mr. Dolder and not their own interests. Ms. Maxwell and her associates are able to ensure that all of Mr. Dolder's needs are met.

Ms. Libin remains Mr. Dolder's mother. This fact does not change with a finding of guardianship. As recommended by the Guardian ad Litem, it will be critical that she maintain a relationship with Mr. Dolder throughout his life. The Court and Guardian ad Litem recognized the need for an ongoing relationship, and provided ongoing contact in the safest manner possible. Prior to the State filing guardianship proceedings, Mr. Dolder was without any legal guardian, and was in the sole care of Ms. Libin, who had left him unattended while she would go out to run errands, resulting in a finding of caregiver neglect.⁴ Ms. Libin was not the recommended guardian, nor was she ultimately chosen by the court to serve in this legal role, but this does not sever her parental relationship.

The trial court properly determined that Mr. Dolder was an incapacitated adult in need of a guardianship, and appropriately appointed

⁴ Because of the uncontested nature of the proceedings and Ms. Libin's pro se status, her brief is unclear on this point. While this is not part of the record, the State submits the following information: Ms. Libin had an administrative finding of neglect relating to Mr. Dolder, as referenced in the Guardian ad Litem's report. Ms. Libin appealed that finding, as referenced in her Appellant's brief, and an order from the Office of Administrative Hearings was issued in April 2012 affirming that finding. Ms. Libin has subsequently timely sought review of the April 2012 order, which is in process.

Cynthia Maxwell to this role, to ensure that Mr. Dolder's needs were met where Ms. Libin had been unable to do so in the past.

2. The Guardian ad Litem appropriately fulfilled his duties.

There are no indications that the Guardian ad Litem did not fulfill his duties in this case nor that he failed to provide information needed to the court for determination.

The GAL must investigate and submit a written report and provide recommendations to the court. The GAL's investigation must include meeting and consulting with the alleged incapacitated person, obtaining a medical evaluation, and consulting as necessary with relatives, friends or others who have an interest in the alleged incapacitated person's welfare. The GAL's report should describe the nature, degree, and extent of any incapacity, and the GAL's recommendations as to whether guardianship is appropriate, and if so, whether the guardianship should be general or limited. In addition, the GAL must appear at all hearings on the guardianship petition.

RCW 11.88.090(3); *Guardianship of Stamm*, 121 Wn. App. 830, 91 P.3d 126 (2004). The entire report, with attachments, is submitted as Attachment A for this Court's review.

Ms. Libin confuses the submission of Guardian ad Litem report to the court, as required by RCW 11.88.090(5)(f), with the testimony of a guardian ad litem, submitted at trial, in front of a jury as in the case cited

by Ms. Libin, *Guardianship of Stamm*. If a jury is requested, there is no judicial determination to be made based upon the Guardian ad Litem's report.

These statutory requirements indicate the legislature recognized the importance of the Guardian ad Litem and intended the fact finder be it a judge or a jury to have the benefit of the Guardian ad Litem's investigation and recommendations, including the Guardian ad Litem's opinions as to the capacity, circumstances and needs of the alleged incapacitated person. However, what might be appropriate in a written report and testimony to the court is not necessarily appropriate in testimony before a jury...

Id.

The concerns raised by Ms. Libin regarding reliance on hearsay are irrelevant to the proceedings that occurred in this case. Unlike *Guardianship of Stamm*, this matter did not go before a jury, and was not contested. The judge properly reviewed the report and applied appropriate weight to its contents. Ms. Libin has failed to show otherwise.

3. Mr. Dolder did not require appointment of counsel.

Ms. Libin additionally asserts that Mr. Dolder was denied counsel. Ms. Libin lacks standing to raise this issue on behalf of Mr. Dolder for the reasons addressed in the standing section. Additionally, the Court correctly determined that counsel for Spencer was not required. Attorneys for alleged incapacitated persons have a distinct role to represent the

alleged incapacitated individuals' "expressed preferences" RCW 11.88.045(1)(b). Mr. Dolder is non verbal, with developmental delays. He is unable to communicate with more than gestures and sounds for basic needs. Mr. Dolder did not or was unable to express any understanding or interest in having an attorney appointed on his behalf as reflected in the Guardian ad Litem's report, or any position contrary to what the Guardian ad Litem recommended.

Ms. Libin submits that an attorney would be able to interview friends, doctors, and others and determine what he would say if he could speak, (Appellant's Brief, pg. 18), and that an attorney could have represented Mr. Dolder's "best interests." (Appellant's Brief, Table of Contents). Ms. Libin's understanding of an attorney's role appears to be that he or she would function as a guardian ad litem, in direct contrast to RCW 11.88.045(1)(b), which provides "counsel's role shall be distinct from that of the guardian ad litem, who is expected to promote the best interest of the alleged incapacitated individual," and further permits attorneys to withdraw when they are unable to communicate with the alleged incapacitated person. RCW 11.88.045(1)(c).

Any appointment of an attorney would have been futile in this case, and would have likely resulted in a withdraw motion based on the Guardian ad Litem's report that Mr. Dolder is unable to communicate and

expressed no opinion on the issues of legal counsel when questioned on this subject as required by statute. *See* Attachment A. The trial court correctly determined that guardianship was appropriate without appointment of counsel for Mr. Dolder.

V. CONCLUSION

The State requests that Ms. Libin's appeal be dismissed for lack of standing and untimeliness. In the alternative, the State submits that the Guardianship and Vulnerable Adult Protection Order proceedings were supported by substantial evidence and the orders should be affirmed.

RESPECTFULLY SUBMITTED this 21 day of May, 2012.

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PROOF OF SERVICE

I certify that I served a copy of this document on all parties or their
counsel of record on the date below as follows:

US Mail Postage Prepaid:

Court of Appeals
Inslee, Maxwell & Associates
Jeremy Yates
Alixandra Libin

Faxed

Hand delivered

I certify under penalty of perjury under the laws of the state of
Washington that the foregoing is true and correct.

DATED this 21st day of May, 2012, at Bellingham, WA.


Kim M BOYD

**DSHS RESPONDENT'S
BRIEF:**

ATTACHMENT A

RECEIVED
ATTORNEY GENERAL

DEC 17 2010

REGIONAL SERVICES DIVISION
BELLINGHAM WASHINGTON

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SKAGIT

In the Matter of the Guardianship of:) Case No.: 10-4-00263-4
)
SPENCER DOLDER ,) REPORT OF GUARDIAN AD LITEM
)
) (RTGAL)
)
An Alleged Incapacitated Person.

RECOMENDATIONS

I recommend that the Court appoint Inslee, Maxwell and Associates as the guardian of the person and the estate of the AIP.

I recommend that reports be filed on an annual, then triennial basis.

I recommend that the AIP does not retain the right to vote.

Written Material Reviewed: I have reviewed the Medical/Psychological Report, case file of Adult Protective Services, Letters from Alexandra Libin, and the pleadings and records on file.

Individuals Interviewed: During the course of my investigation, I interviewed the following person(s) thus far:

<u>Name</u>	<u>Dates of Contact</u>	<u>Relationship to AIP</u>
Spencer Dolder	8/13/10	He is the AIP
Alexandra Libin	Several between 8/13-11/10	Mother
Thom Dolder	9/27/10	Father
Holly Dolder	9/27/10	Wife of Father of Spencer
Josephine Fogarty	11/4/10	DDD caseworker

GUARDIAN AD LITEM REPORT - 1
2005 REVISED GUARDIANSHIP FORMS

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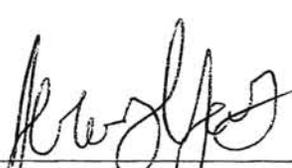
Attachment
"A"
1

1 Chris McKenzie 10/26/10, 11/4/10 DDD caseworker
2 Cynthia Maxwell 11/4/10 CPG

3 **Tests Conducted or Reviewed:** I asked several simple biographical and other questions of
4 the Alleged Incapacitated Person to apprehend whether he could understand me.

5
6 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE
7 STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

8 Signed at Seattle, Washington, Dec 9, 2010.

9
10
11 
12 _____
13 Jeremy Yates, WSBA #38492
14 Ascension Law Office, PLLC
15 3418 NE 65th Street, Suite A
16 Seattle, WA 98115
17 Phone and Fax: 206.686.0222
18 jeremy.yates@ascensionlaw.com
19
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RECEIVED
ATTORNEY GENERAL

DEC 17 2010

REGIONAL SERVICES DIVISION
SELLINGHAM WASHINGTON

**Superior Court of Washington
County of SKAGIT**

In the Matter of the Guardianship of

SPENCER DOLDER

An Incapacitated Person.

No. 10-4-00263-4

**Sealed Personal Health Care
Records
(Cover Sheet)
(SEALPHC)
Clerk's Action Required**

Sealed Personal Health Care Records

(List documents below and write "Sealed" at least one inch from the top of the first page of each document.)

Records or correspondences that contain health information that:

- Relates to the past, present, or future physical or mental health condition of an individual including past, present, or future payments for health care.
- Doctor's Medical Report
- Involves genetic parentage testing.

Submitted by:

 GAL #3842

Notice: The other party will have access to these health care records. If you are concerned for your safety or the safety of the children, you may redact (block out or delete) information that identifies your location.

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B. Date of most recent examination of the Alleged Incapacitated Person (most recent exam must be within 30 days of date of this request): 9/3/10

C. A summary of the relevant medical functional, neurological, psychological, or psychiatric history of the Alleged Incapacitated Person as known to me:
Profound developmental delay, hypocalcemia, hypoparathyroidism, gastroesophageal reflux, developmental delay, congenital cardiac anomalies

D. My findings regarding the Alleged Incapacitated Person's capacity to manage personal or financial matters are:
patient is unable to complete these tasks.

E. The following medication(s) are currently prescribed to the Alleged Incapacitated Person for the following condition(s).

- | | | | |
|-------------|-------------------------|------------|---------------------|
| Medication: | <u>Benzoyl Peroxide</u> | Condition: | <u>acne</u> |
| Medication: | <u>lansoprazole</u> | Condition: | <u>GERD</u> |
| Medication: | <u>levothyroxine</u> | Condition: | <u>Thyroid</u> |
| | <u>Ca Suspension</u> | | <u>Hypocalcemia</u> |

F. The effect of these current medications on the Alleged Incapacitated Person's ability to understand or participate in the Guardianship proceedings is:
none.

G. My opinion as to the specific assistance the Alleged Incapacitated Person needs (including items such as household chores, managing finances):
needs full care, for activities of daily living

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H. I have also met or spoken with the following individuals regarding the Alleged Incapacitated Person:

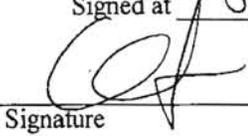
Dr. Shayl Monelli, Attending Physician

I. Other thoughts or concerns I have are:

Patient is severely delayed and need medical care around the clock. Patient cannot complete his activities of daily living, including feeding himself, bathing/toileting himself, only can crawl. Cannot ambulate, cannot transfer.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Seattle, Washington, 9, 3, 2010.



Christopher Ng

4245 Roosevelt Way

206-598-3000

Seattle, WA 98105

Email Address

**Superior Court of Washington
County of SKAGIT**

In the Matter of the Guardianship of

SPENCER DOLDER

An Alleged Incapacitated Person.

No. 10-4-00263-4

**Sealed Confidential Reports
(Cover Sheet)
(SEALRPT)
Clerk's Action Required**

Sealed Confidential Reports

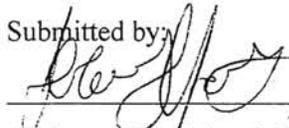
(List documents below and write "Sealed" at least one inch from the top of the first page of each document.)

This cover sheet shall be used to file the sealed portion of the following reports:

- Parenting evaluations
- Domestic Violence Assessment Reports created by Family Court Services or a qualified expert appointed by the court
- Risk Assessment Reports created by Family Court Services or a qualified expert
- CPS Summary Reports created by Family Court Services or supplied directly by Children's Protective Services
- Sexual abuse evaluations
- Reports of a guardian ad litem or Court Appointed Special Advocate
- Other:

The sealed portion of these reports include: 1) Detailed descriptions of material, or information gathered or reviewed; 2) Detailed descriptions of all statements reviewed or taken; 3) Detailed descriptions of tests conducted or reviewed; 4) Analysis to support the conclusions and recommendations.

Submitted by:

 GAL # 38492

Notice: The other party will have access to these confidential reports. If you are concerned for your safety or the safety of the children, you may redact (block out or delete) information that identifies your location.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SKAGIT

In the Guardianship of:) Case No.: 10-4-00263-4
)
SPENCER DOLDER,) REPORT OF GUARDIAN AD
) LITEM
)
) (RTGAL)
An Alleged Incapacitated Person.

RECOMENDATIONS

I recommend that the Court appoint Maxwell, Inslee and Associates as the guardian of the person.
I do not recommend a bond or blocked account because the AIP has no assets.
I recommend that reports be filed on an annual and then triennial basis.
I recommend that the AIP retains does not retain the right to vote.

1. Appointment:

Date of Appointment: July 21, 2010
Date of Service of Copy of Petition on Guardian ad Litem: August 2 or 3
Date Guardian ad Litem's Statement of Qualifications was filed & served:
Date of Service of Notice of Guardianship Petition on AIP:

I attest that I am free from influence by anyone interested in the results of these proceedings and that I have the requisite knowledge, training, and expertise to perform the duties required by statute. My Statement of Qualifications is on file with the Court. I attest that I am on the Guardian ad Litem Registry for King County and am qualified to serve as Guardian ad Litem in guardianship matters.

2. Precipitating Issues: The chief precipitating issue in this case appears to be the Department's concern that Ms. Libin was leaving Spencer alone at the family home for a

1 half an hour at a time in order to fetch his medications from the pharmacist.

2 **3. Personal Information Regarding Alleged Incapacitated Person:**

3 Date of Birth (optional): February 4, 1992

4 Age: 18

5 Current Residence: 40 Skokomish Way, La Conner, WA 98257

6 Phone Number: 360-466-4151

7 **4. Medical/Psychological Report:** I obtained a Medical/Psychological Report from Christopher Ng on September 3, 2010.

8 **5. Meeting with AIP:**

Date(s) of Meetings with Alleged Incapacitated Person	Location of Meeting	Other Persons Present (GAL must meet alone at least once with AIP.)
August 13, 2010	40 Skokomish Way	5 min with Spencer alone, about 2 hrs with Spencer and Mother

9 Agreement or objection to appointment of a Guardian: No expression of preference.

10 Reaction to the proposed Guardian: No Guardian named in petition.

11 Right to counsel: No Expression of preference

12 Preferences regarding choice of counsel: No expression of preference.

13 Right to a jury trial: No expression of preference.

14 *(Notes from the interview.)*

15 I arrived at the home that Mr. Dolder shares with his mother, Alexandra Libin to find Ms. Libin socializing with two neighbor ladies. Spencer was seated next to her on a small couch. He was in a diaper and no other clothing because it was a very warm afternoon.

16 The home itself is a very nice home with a view of a small harbor. There are gardens and a lawn which seemed decently kept. Ms. Libin reports that she does the yard work. She wishes to create an area where a safe swing can be erected for Spencer.

17 The inside of the home was extremely messy and disorganized, though the interior paint, carpet and general condition of the home is quite nice. However, boxes, papers, and other items are scattered everywhere; the kitchen is strewn with empty food containers and boxes.

18 The extremely messy environment, however, apparently does not stop the neighbors from visiting, and one neighbor who claimed to be a medical doctor made a very supportive statement about Ms. Libin's care for Spencer. Indeed, several people have stepped forward to attest to Ms. Libin's devotion; their letters are attached as exhibits.

1 Spencer is a small and thin 18 year old man with severe disabilities that render him largely
2 unable to communicate. He does vocalize, and he seems to make requests through grunts
3 and sounds that Ms. Libin seems to understand. However, he does not respond to open
4 ended questions, or to yes/no questions. He does respond to simple commands, like "sit up."
5 I observed such compliance with Ms. Libin's requests during my visit. Ms. Libin stated, and
6 Spencer independently demonstrated that he will sit for long stretches of time playing the
7 same musical buttons on a saxophone toy, or other toys that make sounds and flash lights.
8 Spencer was entirely unresponsive to my description of the guardianship process and his
9 rights under the same. He is without a doubt entirely incapacitated as to person and estate.

10 Spencer cannot be discussed without discussing Ms. Libin. Regardless of how this
11 guardianship proceeding resolves, I think it should be clear that Ms. Libin deserves
12 considerable credit for the care and sacrifice she has willingly given to Spencer since the day
13 he was born.

14 Ms. Libin is easy to talk to, but eager to talk. It is difficult to get a short answer from her.
15 She moves from tangent to tangent and many of her explanations for singular points are
16 very, very long. She comes across as exasperated and overwhelmed with her life and the
17 Department's involvement, as well as resigned to the involvement of the Department in her
18 and Spencer's affairs. She views their situation as one in which she does a great deal of hard
19 work, but is nonetheless scrutinized by all who are involved with their family. Perhaps she
20 is correct. She regularly states that "the world never stops punishing you for having a
21 disabled child." I observed Ms. Libin during our meeting to be attentive and caring towards
22 Spencer during my time at their house.

23 INVESTIGATION

24 **6. Written Material Reviewed:** I have reviewed the Medical/Psychological Report, the
25 APS case file, including letters from Ms. Libin, Spencer's Father Thom Dolder, and the
26 current wife of Spencer's father, and the pleadings and records on file.

7. Individuals Interviewed: During the course of my investigation, I interviewed the
following person(s):

<u>Name</u>	<u>Date(s) of Contact</u>	<u>Relationship to AIP</u>
Spencer Dolder	8/13/10	He is the AIP
Alexandra Libin	Several between 8/13-11/10	Mother
Thom Dolder	9/27/10	Father
Holly Dolder	9/27/10	Wife of Father of Spencer
Josephine Fogarty	11/4/10	DDD caseworker
Chris McKenzie	10/26/10, 11/4/10	DDD caseworker
Cynthia Maxwell	11/4/10	CPG

Investigation re the AIP's ability to manage health, safety, nutrition and housing.
Health: The AIP cannot manage his own health needs.

Housing: The AIP cannot manage his housing needs.

Nutrition: The AIP cannot manage his nutritional needs.

1 Safety: The AIP cannot manage his own safety.

2 Investigation re: the AIP's ability to manage finances: The AIP cannot manage his finances.

3 Investigation re: who is the appropriate guardian for the AIP:

4 As time passes and her age advances, Ms. Libin will no longer be able to care for Spencer.
5 She already struggles to do all of the things required to maintain her home and care for
6 Spencer. Lifting Spencer has become very difficult for her, and she has sustained injuries in
7 attempting to transfer him. She has been found to have neglected Spencer by leaving him
8 alone for periods of time in order to run truly essential errands. I view this particular
9 example, of errand running and leaving Spencer alone, as indicative not of neglect so much
10 as of the fact that Ms. Libin is overwhelmed and unable to cope with all of the household
11 and care related tasks that must be done. The home is a mess. Ms. Libin herself has waxed
12 on with the GAL about how much there is to do, and how hard it is to get it all done.

13 Ms. Libin is capable, with assistance, of providing decent care to Spencer. I do not,
14 however, believe she is capable of providing the kind of consistent and comprehensive care
15 to Spencer that would enable him to fully realize his potential. Spencer likely needs regular
16 physical therapy, speech therapy, and occupational therapy, and he would likely benefit
17 from these therapies. Problematically, Ms. Libin has stated that she does not wish to have
18 any other state supported caregivers regularly caring for Spencer, and she certainly has a
19 deficit of trust in potential outside caregivers or state involvement.

20 While Ms. Libin has undoubtedly made incredible sacrifices in her life to care for Spencer;
21 while she undoubtedly can provide certain modicums of care; while she ought to be
22 commended for sacrificing in favor of Spencer's well-being; while she has rallied credible
23 witnesses to write supportive letters on her behalf; and while she certainly knows his habits,
24 personality, communications, and basic needs more intimately than anyone else at the
25 moment, she is not the best person to serve as Guardian going forward.

26 It is in Spencer's best interests to begin to develop a healthy existence independent of his
mother. He deserves to have access to therapies and opportunities that his mother,
overwhelmed as she attests to being, simply cannot provide with consistency in my opinion.
Witnesses exist who express concern that Ms. Libin has some mental health problems.
Witnesses also exist that express concern for Spencer's safety should Ms. Libin not end up
his Guardian or caregiver. Spencer's father, Thom Dolder, and father's wife believe and
expressed to this GAL that they believe Ms. Libin has in the past hurt Spencer on purpose in
order to get in the way of his visits with his father. Thom stands to gain financially by
shedding \$1000.00 in support if Ms. Libin is no longer the caregiver for Spencer, and
likewise, Ms. Libin stands to lose this income. However, I thought Mr. Dolder's concern for
Spencer's safety was genuine.

Without regard to Mr. Dolder's allegation that Ms. Libin was hurting Spencer to get in the
way of visits, or her counter allegation that Thom Dolder abandoned Spencer, it is clear that
Spencer ought to have relationships with both of his parents. I believe that this can only be
accomplished if a professional is managing these relationships on behalf of Spencer. Ms.
Libin is no longer the appropriate Guardian for Spencer Dolder.

Conversely, Mr. Dolder is not currently an appropriate Guardian either. Whatever the

1 reason, he has not seen Spencer in 5 years, and it makes little sense, in the context of a
2 highly volatile divorcee' relationship, to transfer the care of Spencer from Ms. Libin to Mr.
Dolder.

3 Thus, I believe, the court is left with naming a professional guardian. I was impressed by
4 Inslee, Maxwell, and Associates.

5 I believe it is important for Inslee, Maxwell, and Associates to carefully consider the context
6 in which Ms. Libin will be permitted to spend time with Spencer going forward, if they are
7 appointed. Ms. Libin will likely and understandably experience very difficult emotions.
8 Spencer's safety remains a concern in this context. However, I do not intend to say that Ms.
Libin should not be very involved in his life. She should have plenty of contact with
Spencer, and hopefully can continue to be instrumental in his life. Whomever his caregiver
ends up being, if it is not Ms. Libin, will benefit greatly from her knowledge of his habits,
emotions, and communications.

9 **8. Nature, Cause and Degree of Incapacity - Functional Limitations:** The following is a
10 description of the nature, cause, and degree of incapacity, and the basis upon which this
judgment is made:

11 Medical Diagnosis and Cause: Ms. Libin states that Spencer is developmentally disabled,
12 has low muscle tone, reflux dysplasia, gastritis, and cerebral palsy, although the palsy
diagnosis is a "default" diagnosis for individuals who have difficulties such as Spencers.
13 The cause would seem to have been pre-birth.

14 Degree of Incapacity: Complete incapacity.

15 **9. Evaluation of Proposed Guardian(s):**

16 Name: Alexandra Libin

17 Mailing Address: 40 Skokomish Way, La Conner, WA 98257

18 Phone Number: 360-466-4151

19 Fax Number:

20 Email Address:

21 If Guardian is Certified,

22 Provide Certification No.: not certified.

23 Description of Steps Proposed Guardian Has, or Intends, to Take to Meet the Needs of the
24 AIP: Ms. Libin wishes to continue to care for Spencer at the family home, and has stated
25 that she does not want to have any more outside caregivers helping her.

26 _____
Name: Thom Dolder

Mailing Address:

Phone Number:

1 Fax Number:

2 Email Address:

3 If Guardian is Certified,
4 Provide Certification No.: not certified.

5 Description of Steps Proposed Guardian Has, or Intends, to Take to Meet the Needs of the
6 AIP:

7 Name: Inslee, Maxwell and Associates

8 Mailing Address: P.O. Box 28395, Bellingham, WA 98228

9 Phone Number: 360-676-7398

10 Fax Number: 360-733-8449

11 Email Address: insleemaxwell@hotmail.com

12 If Guardian is Certified,
13 Provide Certification No.: 10736

14 Description of Steps Proposed Guardian Has, or Intends, to Take to Meet the Needs of the
15 AIP: They are 3 professional guardians, and they are Masters level mental health
16 professionals, a fact which I believe could be important in this case. They take a lot of cases
17 with difficult family members and feel very well equipped to handle them. They have
18 clients as far South as Seattle. They have experience with cases where they have secured
19 services and technology to aid non-communicative people in communication skills. Spencer
20 would greatly benefit from this.

21 Assessing the appropriateness of his housing would be important. As he grows beyond the
22 age of 18 he will possibly need different living environments. They monitor based on a
23 minimum of monthly in person visits in addition to phone and internet contact with care
24 providers.

25 **10. Alternatives to Guardianship:** At the moment Spencer is not possessed of an Estate.
26 However, it proves very difficult for professional guardians to operate as Guardians only of
the Person of an indigent incapacitated person. While it is possible that Spencer only needs
a representative payee, it is not practical for him not to have a guardian of the Estate. Thus,
the guardian named ought to be full guardian of the person and estate.

11. Degree of Assistance Required: 24 hour care.

12. Recommendation as to Appointment of Guardian: Inslee, Maxwell and Associates

13. Duration and Limitations: No limitations and no limit on duration.

14. Recommendation Regarding AIP's Right to Vote: The AIP cannot meaningfully
exercise the right to vote; it should be taken away.

1 **15. Recommendation Regarding Right to Jury Trial:** Spencer did not request a jury trial.

2 **16. Recommendation Regarding Appointment of Independent Counsel:** Spencer would
3 not be able to communicate any preference or wishes to an attorney, therefore, an attorney
4 would not be able to represent Spencer.

4 **17. Estimate of Estate.** The assets, funds, and income of AIP are as follows:

	<u>Value (\$)</u>
5 Real property	\$
6 Stocks, Mutual Funds and Bonds	\$
7 Mortgages and Notes	\$
8 Bank Accounts	\$
9 Furniture and Household Goods	\$
10 Other Personal Property	\$
11 Total Approx. Value of Assets	\$
12 Social Security Benefits	\$680.00 in SSI
13 Washington State Assistance	\$
14 Other: Child Support Payment	\$1,000.00
15 Total Approx. Monthly Income	\$1,680.00

11 **18. Recommendation Regarding Bond/Annual Reports:**

12 No bond or blocked account is believed necessary-it is not clear at this writing that Spencer
13 has any substantial accounts.

14 The Guardian should file an annual report for the first year and then every third year

15 **19. Recommendation Regarding Presence of AIP at Hearing:**

16 The presence of the Alleged Incapacitated Person should be waived, however, the GAL will
17 enquire with Spencer's caregiver to determine if he can attend.

18 **20. Other Recommendations:**

19 **21. Recommendation as to Guardian ad Litem's Continuing Involvement in Future**
20 **Proceedings:** I recommend that the Guardian ad Litem not be involved in future
21 proceedings in this matter.

21 **22. Individuals Who Should Be Advised of Their Right to Request Special Notice of**
22 **Proceedings Pursuant to RCW 11.92.150:**

Name, Title and Address	Relationship to Alleged Incapacitated Person
23 Thom Dolder-address omitted for the 24 moment	Father
25 Alexandra Libin, 40 Skokomish Way, 26 La Conner, WA 98257	Mother

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23. Guardian ad Litem Compensation: To be handled in separate motion and order.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Seattle, Washington, Dec 10, 2010.



Jeremy Yates, WSBA #38492
Ascension Law Office, PLLC
3418 NE 65th Street, Suite A
Seattle, WA 98115
Phone and Fax: 206.686.0222
jeremy.yates@ascensionlaw.com

EXHIBIT A

Dear Mr. Thompson -

My name is William Van Cleve, and I am Spencer Libin-Dolder's primary care physician. I am a resident in Pediatrics at the University of Washington, and see Spencer as part of my continuity clinic. I have seen Spencer for both health maintenance and acute care visits several times over the past 18 months, and have developed a relationship with both Spencer and his mother, Alixandra Libin.

Ms. Libin recently brought Spencer to my office for a health supervision visit, at which time she brought up several events in recent months in which she felt her judgment regarding appropriate care for Spencer had been questioned. Situations in which this type of question is raised are obviously painful for Ms. Libin, who has dedicated much of her life to making sure that Spencer is loved, stimulated, and carefully protected from harm.

Spencer was born with a number of congenital problems, the most notable of which is a profound delay in his intellectual and physical development. He cannot walk unaided, suffers from poor bone mineralization, and is limited in his ability to verbally communicate his thoughts and desires. Despite these limitations, I have been nothing short of amazed by the degree to which Spencer and his mother are able to communicate. Spencer can be difficult to examine in clinic, but I have seen his mother have conversations with him in which it is clear that two-way communication is taking place. Spencer has never presented to my clinic in anything other than an impeccably clean and well-groomed state. His mother, who is constantly advocating for Spencer's development and access to stimulating environments and experiences, understands and describes Spencer's past and current medical problems expertly and clearly. When I have asked her to schedule referrals or to coordinate treatments for Spencer, she has done so efficiently and to his benefit. When she wheels him out of my office, I feel comfortable that he is going home with a family member with both the interest and the capacity to provide him with excellent care.

Ms. Libin is a woman with a very strong personality, and even stronger opinions. She and I have not always seen eye to eye on all issues : in particular, she is far more optimistic about Spencer's ability to gain new skills than I am. Despite these differences, she listens carefully to me, she integrates my opinions with her own, and she seeks always to strike a balance between the difficult realities of caring for a medically complex and fragile child and an equally important role as his advocate.

I cannot speak to the details of the complaints Ms. Libin feels are being lodged against her. What I can say, however, is that it has always been my impression that Spencer is well loved and expertly cared for. When Ms. Libin asked for my assistance, I agreed to write her this letter without hesitation or reservation.

Thank you for taking the time to read this letter. I have provided Ms. Libin with a copy of the above, and have entered it in his medical record.

Yours,



William Van Cleve, MD

EXHIBIT B

Cheshire
Chingoham H.S.
1819 North 135th
Seattle 98117

SEATTLE WA 98100
16 JUN 2010 PM 5 T



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Steve Alvar
Dept. Social Health Services
24847

Seattle 98124 0847

591043307

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HCS
MAIL

June 11, 2010

To Whom It May Concern;

I am writing on behalf of Alexandria Liben and [REDACTED]. S [REDACTED] was my student at Ingraham High School for the past four years. I am a Special Education teacher for the "Health-Impaired, Multiple Disabilities" class.

S [REDACTED] is well cared for by his Mom. He is happy, well-adjusted, and good-natured. He was rarely sick with colds, etc. and came to school every day unless he had an appointment.

Everyday he came to school showered, shaved and wearing nice-looking, well fitted clothing. Mom sent his supplies regularly including important medications. There was never a day when he did not have his important medication at school. Mom worked with the physical therapist and the people who make them, to keep his orthotics up to date and fitting properly. Alexandria is very articulate and knowledgeable about her son. She is always thorough and careful to explain everything to the nurse, the Instructional Assistants, the teachers, and the therapists who worked with him. She is always available by phone for questions and comes to school for special issues. She is conscientious about supplies (diapers, medications, food, orthotics, clothing, etc.)

Everyday Mom blended specially prepared food for him since he could not eat school food. Because of low muscle tone he can't swallow unless it is pureed. Every day she made special foods for a highly nutritious diet. He can only eat soft solids. He had to have special dishes, drinks and food for breakfast and lunch at school.

He requires heavy lifting, a wheelchair, orthotics, diapering, and many other special needs. He has to be lifted onto a bench for showering, a wheelchair for transport, lifting into the car seat, on the couch, toilet and bed. Mom has developed methods for handling all of this.

Alexandria is very articulate and knowledgeable about her son. She is always thorough and careful to explain everything to the nurse, the Instructional Assistants, the teachers, and the therapists who worked with him. She is always available by phone for questions and comes to school for special issues.

S [REDACTED] and his Mom have a great rapport. He laughs and smiles when she is with him. They joke around and he laughs heartily (he is non-verbal but understands what you are saying, funny sounds and faces). He has the "least restrictive environment" possible for him at home, safe, with some freedom to move around and explore. He likes to manipulate things that make noises and are a bit mechanical. She has made sure he has an interesting and stimulating home. He has a regular schedule that they stick to for care -dinner, shower, medications, etc. She works hard to give him positive feedback and lots of praise to make him feel loved and wanted.

He was our most pleasant student and is loved and missed by all. I feel confident that S [REDACTED] has a loving, caring home and caregiver/Mom.

Susan Cheshire
Susan Cheshire

Special Ed. Teacher

Ingraham High School

206-252-3975

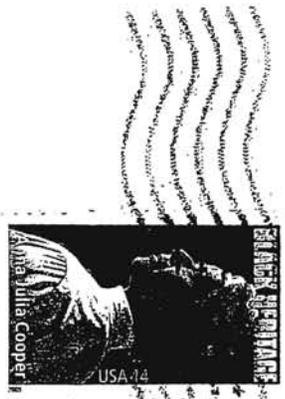
EXHIBIT C

PHYLLIS HERZOG
3402 E. JOHN
SEATTLE, WA 98112

Oliver and a sibling
40 Skokholm Way
La Conner, WA 98257



SEATTLE WA 981
24 NOV 2018 PM 2:1



August 16, 2010

Jeremy Yates
Ascension Law Office
3418 NE 65th Street, Suite A
Seattle, WA 98115

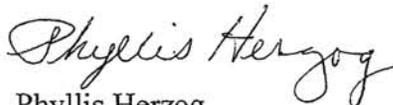
RE: Docket #07-2010-L-1525

To Whom It May Concern:

This letter is written in support of Alixandra Libin who is scheduled to appear in court in response to complaints about her parenting ability. I was Alixandra's next-door neighbor for 25 years. Her 18-year-old son, Spencer, has profound disabilities. He is unable to walk, communicate with words or toilet himself. He has other congenital limitations, as well. Alixandra was handed a major challenge 18 years ago and rose to the occasion. From my observations, Alixandra has cared for Spencer's multitude of needs with consistency and care. She has sought out the best medical treatment for him possible and advocated for his needs in this arena, as well as in the areas of social and physical development and educational opportunity. Spencer's needs have been first and foremost on her mind and she has prioritized those needs. I have never been aware of her putting her own needs ahead of his and have marveled at her ability to give him the best life possible.

Please note that I am a close neighbor and a special education teacher. It is my strong opinion that Alixandra has done the best for her son and that she is innocent of any wrongdoing in regard to his care.

Thank you.



Phyllis Herzog
3402 E. John St.
Seattle, WA 98112
206-325-7989

EXHIBIT D

TIMOTHY A. REID, P.S.

ATTORNEY AT LAW

P.O. Box 2907
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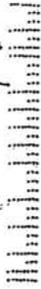
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Alix Liben
410 Skokomish Way
La Conner Wa 98257



The Law Offices of Timothy A. Reid, P.S.

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Email tim@reidlegal.com

November 29, 2010

Re: Spencer Dolder
Case: 10-4-00263-4

To Whom It May Concern:

I have known Alixandra Liben and her son, Spencer Dolder, for approximately 13 years. I became acquainted with them through my participation in the Skiforall Foundation, which is an organization dedicated to providing recreational opportunities for people with disabilities.

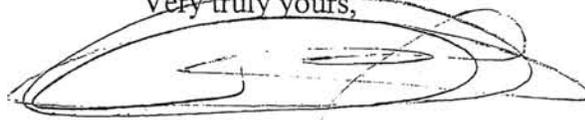
I have volunteered with the Skiforall Foundation for the past 21 years, and have served on its Board of Directors, and as President of the Board of Directors. However, my primary function with the Foundation is that of a volunteer instructor in the Saturday night Alpine Skiing Program. This is how I became acquainted with Alix and Spencer.

Alix brought Spencer to us when he was approximately 5 years old. From the first time I met Alix, she struck me as being very dedicated to giving Spencer every opportunity in life. Given Spencer's multiple challenges, we first started him skiing in a sit-ski, which is the basic equipment used for those participants with limited function. We then advanced Spencer to a bi-ski, which allowed Spencer to sit, but still attempt to manipulate the ski to make it turn, etc. As the years progressed and Spencer got bigger and gained more capabilities, we alternated his skiing between the bi-ski and stand-up skiing, with some assistive devices. The assistive devices used to help Spencer stand up, did incorporate a sling/harness for Spencer to rest in when he tired. During all of this, Alix was the driving force behind modifications in equipment, technique, and personnel, that were employed to give Spencer every opportunity to improve and to have fun.

I have known Alixandra Liben to be Spencer's greatest advocate. She has always sought the highest quality experience for Spencer. Through my experience with the Skiforall Foundation I have come to know dozens of participants and their parents/family members. Of these, I found Alix to be one of the most active participants in the opportunities afforded by Skiforall. At all times Alix was the greatest advocate her son could have had.

If you need any further information, please don't hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Timothy A. Reid', enclosed within a large, loopy, oval-shaped scribble.

Timothy A. Reid

TAR:jlr

**DSHS RESPONDENT'S
BRIEF:**

ATTACHMENT B

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SUPERIOR COURT OF WASHINGTON FOR SKAGIT COUNTY

IN RE THE GUARDIANSHIP OF:

NO. **10 4 00263 4**

SPENCER DOLDER,

PETITION FOR APPOINTMENT OF A
GUARDIAN OF PERSON AND ESTATE

Alleged Incapacitated Person.

COMES NOW the Washington State Department of Social and Health Services, Adult Protective Services, through the undersigned Assistant Attorney General and petitions pursuant to RCW 74.34 and/or RCW 11.88 for appointment of a guardian for the person and estate of Spencer Dolder.

I. ALLEGATIONS

In support of this petition the petitioner alleges as follows:

1. Spencer Dolder is 18 years of age, and is a vulnerable adult as defined in RCW 74.34, and is incapacitated as to his person and estate.
2. Spencer Dolder resides at 40 Skokomish Way, La Conner, Washington 98257. Mr. Dolder had previously resided in King County, Washington.
3. Mr. Dolder is completely dependent on others to meet all of his basic care needs. Spencer Dolder has several diagnoses that qualify him to be a client of the Division of Developmental Disabilities, including cerebral palsy. He has hearing loss and uses a wheelchair. Mr. Dolder is non-verbal and communicates with hand gestures. He has a

Attachment B

1 significant calcium deficiency disease that causes very poor muscle tone. Mr. Dolder's care
2 plan indicates that he needs 24-hour line of sight supervision.

3 Mr. Dolder's mother, Alixandera Libin, is his primary caregiver. Prior to Mr.
4 Dolder turning 18, the Department received several referrals about the condition of the
5 home, which included the floor space cluttered with broken glass and dirty diapers, causing
6 an unsafe environment because Mr. Dolder sometimes crawls on the floor.

7 His mother has admitted to leaving Spencer alone at home for up 30-minute
8 intervals. Ms. Libin has physical limitations making it unsafe for her to transfer Mr. Dolder
9 on her own. It has been recommended that Ms. Libin use a lift to transfer Ms. Dolder out of
10 bed and for his showers. Mr. Dolder has been left in soiled clothes for two or more days.
11 Because it is difficult to transfer Mr. Dolder, he is often left on the couch for long periods of
12 time, which leads to contractures of his limbs. Because of Ms. Libin's behavior and
13 admissions, the Department is no longer able to consider her as an appropriate contracted
14 caregiver for Mr. Dolder.

15 Spencer Dolder has digestive difficulties and subsequent nausea. If his nausea isn't
16 addressed appropriately he becomes dehydrated and requires hospitalization. Ms. Libin has
17 repeatedly violated doctor's orders related to Spencer's medication. She admitted
18 administering expired medication to Spencer Dolder.

19 Ms. Libin expects more of Spencer than he is capable of understanding. When she
20 has difficulty with a care task, she blames Spencer. Ms. Libin has been observed in these
21 situations to become angry and yell at him.

22 There have been chronic issues with Alixandra Libin's ability to get along with
23 agency providers. Ms. Libin is uncooperative with scheduling. She either hangs up when
24 called or is unwilling to speak with providers when they do reach her. This behavior results
25

1 in significant turnover in agency provider and has caused great difficulty for staff providers
2 to meet Spencer's needs.

3 Ms. Libin recently lost their home in King County. It is unknown if their move to
4 La Conner is temporary or permanent. Services have not yet been set up in the new
5 location. Ms. Libin is overwhelmed with the level of care that Spencer requires.

6 4. Spencer Dolder is incapacitated as to his estate because he is at significant
7 risk of financial harm based upon a demonstrated inability to adequately manage his own
8 financial affairs.

9 5. Spencer Dolder is incapacitated as to his person because he is at risk of
10 significant personal harm based upon a demonstrated inability to provide adequately for his
11 own nutrition, health, housing or physical safety.

12 6. The approximate known value and description of Spencer Dolder's
13 property, including any compensation, pension, insurance or allowance to which he may
14 be entitled are:

15 Wages/Salary:
16 Social Security:
16 Supplemental Security Income: \$680.00/month
17 Public Assistance:
17 Pension:
18 Veteran's Benefits:

19 7. To the knowledge of DSHS, no guardian of the person or estate of Spencer
20 Dolder has ever been appointed in the State of Washington, or in any other jurisdiction. A
21 guardianship petition was originally filed in King County, where Mr. Dolder previously
22 resided, but was dismissed without prejudice on July 12, 2010 upon GAL and
23 Department recommendation based on Mr. Dolder's permanent relocation to Skagit
24 County.

1 8. The names and residences, as far as are known, of persons most closely
2 related by blood or marriage to Spencer Dolder are:

3 a. Alixandra Libin, mother, 40 Skokomish Way, LaConner, WA 98257

4 b. Thom Dolder, father, 16817 – 188th Avenue SE, Renton, WA 98058,
5 (425) 264-0195

6 9. Spencer Dolder currently lives with his mother and caregiver, Alixander
7 Dolder.

8 10. Spencer Dolder is not known to have made any prior alternate arrangements.

9 11. Appointment of a full guardian of Spencer Dolder and his estate is sought
10 because Spencer Dolder is a vulnerable adult, as defined by RCW 74.34, and is in need of
11 protection. Pursuant to RCW 74.34, DSHS has authority as an interested person to petition
12 for appointment of a guardian for the protection of a vulnerable adult.

13 12. The petitioner is attempting to locate a proposed guardian.

14 13. No bond or security is required of petitioner pursuant to RCW 4.92.080.

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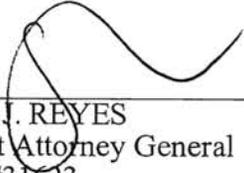
II. REQUEST FOR RELIEF

Having made the foregoing allegations, petitioner requests the following relief:

1. That an order be entered, appointing a guardian for the person and estate of Spencer Dolder.
2. That the term of the guardianship be perpetual, until the guardianship is terminated or modified.
3. Such other relief as may be just and equitable.

DATED this 19th day of July, 2010.

ROBERT M. MCKENNA
Attorney General

By 
SARAH J. REYES
Assistant Attorney General
WSBA #31623

**DSHS RESPONDENT'S
BRIEF:**

ATTACHMENT C

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**STATE OF WASHINGTON
SKAGIT COUNTY SUPERIOR COURT**

In Re the Guardianship of:

NO. 10-4-00263-4

SPENCER DOLDER
DOB: 02/04/92

ORDER APPOINTING GUARDIAN

An Alleged Incapacitated Person,

THIS MATTER came on regularly for hearing on a Petition for Appointment of Guardian of the person and estate of SPENCER DOLDER. The guardian ad litem was personally present.

The court considered the written reports of the guardian ad litem and the physician selected by the guardian ad litem, remarks of counsel, and the papers and pleadings filed herein. Based on the above, the court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. All notices required by law have been given. Certificates of service or mailing are on file.

2. SPENCER DOLDER did did not appear for the hearing on the petition. The guardian ad litem personally attended the final hearing on the petition.

3. Jeremy Yates, the court-appointed guardian ad litem, has filed the GAL report with the court as required by RCW 11.88.090. The guardian ad litem should be released.

Attachment C

1 4. The exact nature of SPENCER DOLDER'S estate is unknown. SPENCER
2 DOLDER receives \$680.00 per month in social security benefits and receives \$1000.00 child
3 support.

4 5. By prior order, prepayment of the filing fee was waived. The court finds that
5 payment of the filing fee would impose a hardship on SPENCER DOLDER.

6 6. The guardian ad litem's fee of \$1,405.00 in fees based upon 28.1 hours of
7 service at \$50.00 per hour, and \$52.05 in costs are reasonable. Payment of the guardian ad
8 litem's fee would result in substantial hardship for SPENCER DOLDER, and the county
9 should be responsible for such costs.

10 7. SPENCER DOLDER suffers from profound developmental delay,
11 hypocalcemia, hypoparathyroidism gastoeophygeal reflex; developmental delay, coyential
12 caldiac anomales. Because of his cognitive impairment, he is not able to make decisions on his
13 own. His judgment is significantly impaired.

14 8. SPENCER DOLDER is at significant risk of personal harm based on a
15 demonstrated inability to adequately provide for his nutrition, health, housing, and physical
16 safety. He is at significant risk of financial harm based on his inability to adequately manage
17 his property and financial affairs. SPENCER DOLDER is also incompetent for purposes of
18 giving informed consent for health care pursuant to RCW 7.70.050 and 7.70.065.

19 9. Inslee Maxwell & Associates, the proposed guardian, is qualified to act as
20 guardian of the person and estate of SPENCER DOLDER.

21 10. A guardian of the person and estate should be appointed. The authority of the
22 guardian should not be limited. The term of the guardianship should be perpetual.

23 11. SPENCER DOLDER does not have the ability to rationally exercise the right to
24 vote. SPENCER DOLDER'S right to vote should be revoked.

1 5. The guardian shall report to the court within thirty (30) days any substantial
2 change in the incapacitated person's condition, or any change in residence of the incapacitated
3 person.

4 6. The term of review shall be determined at the three-month hearing.

5 7. This guardianship shall continue in effect until terminated pursuant to RCW
6 11.88.140.

7 8. The following persons shall be advised of their right to require special notice of
8 proceedings with respect to the guardianship and shall provide their addresses confidentially to
9 the appointed Guardian for this purpose:

10 Alexandra Libin

11 Thom Dolder

12 8.1 Spencer's relationship with each of his parents shall be facilitated by the
13 Guardian. The Guardian may limit contact between Spencer and one or both of his parents, but
14 shall not have the right to limit contact to less than three (3) visits or 6 hours per week absent
15 order of the court. It is in Spencer's best interests that a long term relationship with both of his
16 parents be facilitated by the Guardian and any future caregiver.

17 9. SPENCER DOLDER'S right to vote is hereby revoked.

18 10. SPENCER DOLDER shall lose the following rights unless exercised by his
19 guardian:
20

- 21 a) to marry or divorce;
- 22 b) to hold elective office;
- 23 c) to enter into a contract;
- 24 d) to make or revoke a will;
- 25 e) to appoint someone to act on his behalf;
- 26

- 1 f) to sue or be sued;
2 g) to possess a license to drive;
3 h) to sell, own, mortgage, or lease property;
4 i) to consent to or refuse medical treatment consistent with RCW 7.70.067; and
5 j) to decide who shall provide care and assistance.

6 11. The guardian ad litem is discharged.

7 12. Any power of attorney of any kind previously executed by the incapacitated
8 person is canceled in its entirety.

9 13. If SPENCER DOLDER becomes a Department of Social and Health Services
10 client and is required to contribute his income toward his cost of care as described in WAC
11 388-79-010, the guardian shall provide the Department notice of proceedings as required by
12 WAC 388-79-040.

13 14. Reasonable guardian fees of _____ shall be paid from
14 SPENCER DOLDER'S income or other assets of her estate, as shall guardianship expenses,
15 including attorney fees. Inslee Maxwell & Associates shall furnish records of time and
16 expenses at the required accounting(s).

17 15. The guardian ad litem's fee of Jeremy Yates shall be paid by the county.

18 16. Pursuant to RCW 11.88.030(2)(b), the statutory filing fee is waived.

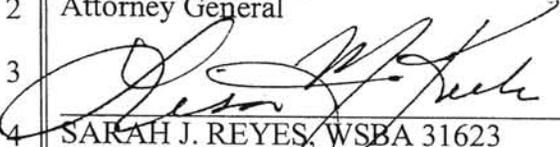
19 DATED this 7 day of Jan, 2011.

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22 Susan K Cook
23 JUDGE OF SUPERIOR COURT
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issue reserved
Appointe
Guardian
may submit
to the court
at a later
date

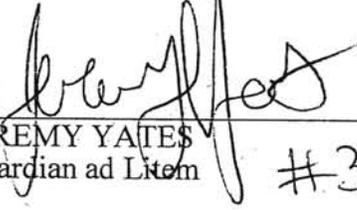
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Presented By:
ROBERT M. MCKENNA
Attorney General

 #39463 Sov

SARAH J. REYES, WSBA 31623
Assistant Attorney General
Attorneys for Department of Social and
Health Services

Approved for Entry:

 #38492

JEREMY YATES
Guardian ad Litem

INSLEE MAXWELL & ASSOCIATES
Guardian