

No. 33725-8/11  
No. 34805-5/11  
CONSOLIATED

FILED  
STATE BY *Am*

COURT OF APPEALS, DIVISION 11  
OF THE STATE OF WASHINGTON

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APPEAL FROM THE SUPERIOR COURT  
FOR KITSAP COUNTY  
HONORABLE JAY B. ROOF

APPEAL FROM THE SUPERIOR COURT  
FOR KITSAP COUNTY  
HONORABLE CRADDOCK VERSER

APPEAL FROM THE SUPERIOR COURT  
FOR KITSAP County  
HONORABLE KARLYNN HABERLY

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COLLEEN MULVIHILL EDWARDS, Appellant

v.

DENNIS MICHAEL EDWARDS Respondant  
JOHN DOUGLAS MORGAN, Respondant  
GUARDIANSHIP SERVICES OF SEATTLE, Respondant  
TOM O'BRIEN, Respdant  
EDWARD GARNDER, Respondant  
VEDAH HALBERG, Respondant

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REPLY BRIEF OF APPELLANT

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Colleen Mulvihill Edwards  
Pro Se for Colleen Mulvihill Edwards as  
Appellant

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NOTICE

This reply brief address the issues presented in respondents brief of respondents Guardianship Services of Seattle, Tom O' Brien, Edward Gardner and Vedah Halberg which was filed on March 20, 2007.

Respodants Dennis Edwards and John Morgan did not file a respondants brief in this appealed order of April 21, 2006.

This appeal is consolidated with case 34805-5/11 and 33752-8/11..

## TABLE OF AUTHORITIES

### TABLE OF CASES

Blomquist v. Pacific Investors' Co. (1925) 132 Wash. 388, 232 P. 315.  
Boyer v. Robison (1906) 43 Wash. 97, 86 P. 385.”  
Eugster v. City of Spokane (2002) 110 Wash.App. 212, 39 P.3d 380,  
Goupille v. Chaput (1906) 43 Wash. 702, 86 P. 1058.  
In re Cooke (1999) 93 Wash.App. 526, 969 P.2d 127  
Karnes v. Flint (1929) 153 Wash. 225, 279 P. 728.  
Roerber v. Dowty Aerospace Yakima (2003) 116 Wash.App. 127, 64 P.3d 691

### CONSTITUTIONAL PROVISIONS AND STATUES

RCW 9.91.170

### REGULATIONS AND RULES

Court Rules 11  
Court Rules 12

### OTHER AUTHORITIES

Combs v Carey's Trustee (Ky) 287 SW2d 443  
Re Ferrall's Estate, 92 Cal App 2d 712, 207 P2d 1077  
Re Tone's Estate, 240 Iowa 1315, 39 NW2d 401

## **1. REPLY TO STATEMENT OF FACTS**

### **Page 4, paragraph 2**

The amount placed into the Colleen Edwards Special Needs Trust was not \$9,600 but \$9,141.55. The amount was not contributed into the trust but came from the attorney client trust account of John Morgan of Liebert, Morgan & Fleshbeim.

### **Page 4, paragraph 3**

The Colleen M. Edwards Special Needs Trust intent and purpose is to benefit Colleen Edwards. The purpose is to provide for support, education and activities. The purpose is not discretionary.

#### **INTENT AND PURPOSE OF THE TRUST:**

Colleen Edwards and her attorney Mr. Sean Bleck and her family with her mother attorney in law fact, set up the Colleen M. Edwards Special Needs Trust for the benefit of Colleen Mulvhill Edwards. The purpose of the trust is to provide for Colleen Edwards's support, educational and activities and non-government paid medical needs while preserving her eligibility for Supplement Security Income (SSI) and Medicaid. The trust instrument states:

“The express purpose of the Trust is to provide for COLLEEN's extra and supplemental care. This can include supplemental care, support, education and activities, provided that it is over and above the benefits COLLEEN otherwise might receive or is receiving as a result of need, or disability, from any local, state, or federal government program, or from any private or charitable agency, which might provide services or benefits to persons with disabilities or who are in financial need.” CP

Mr. Sean Bleck and Colleen M. Edwards discussed the purposes of the trust for the proceeds of both the disillusionment of marriage spousal support, property and the personal injury case, Edwards vs. Le Duc.

**Page 5, paragraph 2**

The defendant did not authorize a majority of funds for the “care of Colleen’s dogs. In fact they a majority of the funds were spent as follows:

- \$2000 To Mr. Sean Bleck
- \$3000 To the Employees of GSS
- \$2700 Court Orders
- \$1400 To The Court Registry

However this look real good until you look at what they failed to provide

Asset	Acquired	Name	e
9,600	9,141.55	Spouse support lump sum payment	
77,000	0	Anatevka property	
100,000	0	Nelson property	
125,000	0	Edwards vs Le Duc	

**11. REPLY TO STATEMENT OF AFFADAVIDITS AND  
EVIDENCE PROVIDED.**

Colleen Edwards has provided numbers affidavits and evidence in both case 99 3 00758 7 and 05 2 02226 6. These consist of a reply to each appealed order prior to the hearing, motions, declarations, affidavits and findings of facts for each indigency hearing. And evidence in the following areas:

1. evidence of medical and disability needs
2. evidence of service dog needs
3. evidence of financial need
4. evidence of vocational goals, educational needs
5. evidence of the condition of the property in dispute
6. evidence of the property ownership, title, liens, homestead rights, etc.

Guardianship Services of Seattle received all information from February 2003 and continued to receive information through their legal counsel.

**THE TRANSCRIPTS OF EDWARDS VS LE DUC**

The trustee refused to pay for the transcripts needed by Colleen Edwards in the Edwards vs. Le Duc case. The jury verdict in this case is \$100,000 and would add to the corpus of the trust. CP

So, in another case that I looked at, the court determined that indigency was present if an appellant had paid court costs, and of course in my case I have paid extensive court costs recently, and within the last say year and a half, so those are notated on my affidavit of indigency, but I have laid them out for you. I am looking at about \$3,000. So that would leave my income at about \$4,000 a year, which would be well

below poverty level, well below indigency level, well below what these other court cases have determined. So,

I think that's quite relevant that I have paid these both trial court costs and appellate court costs, in both this case that we are deciding now, which is at Court of Appeals ready for appeal on three orders, and maybe a fourth, and also on a related case that is consolidated with that case, that is Colleen Edwards v. Dennis Edwards, and that is the post-divorce issues, 99-3-00758-7, and in that case I have paid court costs as well. There are some associated other court costs that I have paid to other courts, both at the trial and appellate level, but we are looking probably \$3,000 a year for transcripts, clerk's papers, just general mailing costs, and reproduction of briefs, that kind of thing.

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THE COURT: What was the source of the \$3,000 that you used to pay court costs?

MS. EDWARDS: I paid it.

THE COURT: From what sources?

MS. EDWARDS: SSI. So my income is probably almost cut in half.

THE COURT: How much do you receive -- How much did you receive last year from your special needs trust?

MS. EDWARDS: I received -- I received no -- Now let's be careful about how this is worded, okay, because I cannot receive any benefits from my special needs trust personally. Any benefits that are paid to me out of this special needs trust are paid directly to the provider. I paid three providers for hospitalization costs, for boarding of my dogs while I was in the hospital. The trust paid -- excuse me, the trust paid out of the court registry --

THE COURT: Let me ask you a question. Can your special needs trust pay monies directly to the court?

MS. EDWARDS: No, not at all.

THE COURT: Why not?

MS. EDWARDS: I tried that. When there was a trustee, the trustee refused, and I also tried it afterward, and by the time the court registry took those funds -- In May 13, 2005, there was approximately \$1,300, \$1,400. Of that amount, about \$1,200 was spent for me to have a seven-day stay at Harborview inpatient for seizure determination in October, and what remains in that trust fund right now is \$65.

THE COURT: Okay. All right. Then in this cause number, based on your motion that you have signed here, you have signed under penalty of perjury, I am going to make a finding that you are indigent."

RP 6/16/2006

**KNOWLEDGE OF THE ANATEVKA PROPERTY AND THE TRIAL COURT  
ORDER OF JUNE 13, 2003 AND THE COURT OF APPEALS DECISION IN**

The trustee did not take the sum of \$9,600 as stated in their respondent's brief but took the sum of \$9,141.55 which was not obtained from Colleen Edwards but from the law offices of John Morgan of Liebert, Morgan and Fleshbeim who were representing Dennis Edwards. CP

RP 11/18/2005

However the trustee failed to take possession of the Anatevka real and personal property of Colleen Edwards which formed the main corpus of the trust. During the May 13, 2005 hearing they admitted: RP 5/13/2006.

As early as Spring 2003 and Fall 2004 they negotiated for this property and did not take it. They did not attend any court hearings until after they had withdrawn as trustee without giving any notice to the court. CP RP

The trustee knew of the Anatevka real and personal property and were aware of both the June 13, 2003 trial court order and the Court of Appeals Decision in Case No 300343-11. CP

The trustee spent time and money talking to the Bureau of Alcohol, Tobacco and Firearms about Ms. Edwards firearms, however they failed to take possession of these firearms but spent assets from the trust talking about it. Ms. Edwards never placed those firearms into the trust's possession or control, nor was there any court order to do so. CP

The trustee did not attend any hearings on 11/18/2005 or 1/20/2006 nor did they attend any hearings in case 99 3 00758 7. They did not attend any hearing until April 21, 2006 but they were served as of September 2005. CP RP 11/18/2005, RP 1/20/2006, 4/21/2006.

#### **THE SUMMARY JUDGEMENT HEARING AND ATTORNEY FEES**

The trustee did not obtain legal fees for summary judgement in the court hearing of April 21, 2006.

#### **COLLEEN EDWARDS SERVICE DOGS**

The trustee Guardianship Services of Seattle neglected the care of Colleen Edwards's service animals. Colleen Edwards filed accommodations to the court in both case no 99 3 00758 7 and 05 2 02226 6 for accommodations of her service animals. It is known the Colleen Edwards suffered from both sensory and physical disabilities. To a prudent man if the trustee did not know that Colleen Edwards used four service animals, it is known by the physical observations of such use in actual courts of law and in the accommodations for physical disabilities in both cases and in the descriptions provided by the DSHS long term care report. CP RP

“THE COURT: You've had a long history of medical problems, and I know that's why you've got your canine with you.” RP 5/4/2005

The trustee knew of the dog's condition and needs but if they failed to know the dog's use and training certainly this would be negligence on the part of a professional trustee,

as Colleen Edwards service animals are know to both the court and to DSHS. A service dogs veterinary, boarding, grooming and transportation needs are for the lifetime of the canine, not just one month. A prudent man would know that any animal should be feed, groomed and provided with veterinary care. .There are two court orders regarding Colleen Edwards service dogs: CP

August 2003

October 5, 10, 12, 2

The care of, the interference of the use, and the neglect or abuse or carries with it special damages in our state under RCW 9.91.170.

#### **OTHER PAYMENTS BY THE TRUSTEE**

The trustee paid the following payments. Although these could be considered support, they are very minimal to the needs of Colleen Edwards.

#### **OTHER PAYMENTS NOT PAID BY THE TRUSTEE**

No payments made for activities. No payments for recreation in two years.

No payments for things like a movie, a dog show, computer game, birthday present.

No payments for education. No payments for educational needs in two years.

No computer equipment,

No payments for medical items not paid for by Department of Social and Health Services, although these needs were well known in the areas of durable medical equipment, wheelchair repair, personal care attendant.

No payments for transportation.

No payments for home repair or yard work.

**CONTRAST THE TRUSTEE'S RESPONSE WITH THE COURTS RESPONSE  
IN THE ORDERS OF OCTOBER 5, 10 & 12, 2005.**

The court determined the following needs

1. Boarding, grooming for the service dogs while impaitent hospitalization.
2. Transportation for the service dogs to and from the boarding kennel and to and from the hospital for Colleen Edwards and her computer equipment and books.
3. Protection of the client, her property and her service dogs.
4. Personal care of Colleen Edwards after hospitalization.

CP RP 10/5/2005, 10/10/2005, 10/12/2005

**IGNORING LONG TERM NEEDS**

However the trial court and the trustee ignored the long term needs of the trust funding by failing to protect and preserve the real, personal and potential fianncial capital that would be avaiable to the trust.

The trial court, the trustee and the opposing parties failed to obey the court order of June 13, 2004 leaving Colleen Edwards to take possesion and control of a property with such an order in place.

Colleen Edwards long term medical, educational, vocational, support and activity needs for the next thirty three years could never be meet by \$9,141.55. And in fact this was to be a 24 month spousal support payment of \$400 dollars per month. The amount was placed into a lump sum payment to not disqualify Colleen Edwards from SSI

and Medicaid. Certainly the accession of the Edwards vs. Le Duc jury verdict would have added to the corpus of the trust as well as any real and personal property. But the trial court, the trustee and the opposing party never followed their own decree and orders.

The intent of the trust, the intent of the decree of January 30, 2002 and the intent of the court order of June 13, 2003 was for the trust and trustee to give Colleen Edwards the benefit of assets while staying on SSI and Medicaid, but this never occurred.

When Colleen Edwards advocated that she be allowed to place the assets into the Special Needs Trust the trial court ruled against that and she advocated the same in her appellant brief but the Court of Appeals ruled that the property should go into the Special Needs Trust directly by opposing counsel. However the trustee never moved to protect its own rights and thus failed its beneficiary duty of care.

### **JUST STEPPING ASIDE**

In the hearing of May 5, 2005 The Honorable Judge Laura Anna expressed the following:

:"Let me tell you, honestly, my other concern, and that is, I don't believe that Guardianship Services should be let off the hook as easily as sending you a letter saying, "We don't want to do this anymore." That is a highly unusual procedure for them to take, and I am certain any judge would want them in court explaining why they think they can step aside from your fiduciary duties that easily.

It is my inclination to bring Guardianship Services into court to show cause, as well as the more formal request that you need to make to replace them.

So, I've got all these concerns and I want to think about that before I sign your order." RP 5/4/2005

## ACCOMMODATION OF PHYSICAL DISABILITIES

The trial courts and the trustee's failure to accommodate Colleen Edwards physical disabilities request made by motion and in the trial court on May 4, 2005 created the problem of lack of pro se legal counsel for Colleen Edwards because of an emergency medical problem. The court and the trustee's legal counsel were aware of the medical problem.

“THE COURT: All we're looking at right now is whether Guardianship Services can withdraw by sending you a letter and your current request for submittment of funds to pay for the neurological consult. I don't want you wasting your attorney's time with the history of this case, which is voluminous, you need to focus and focus your attorney.

MS. EDWARDS: Sure.

THE COURT: As to your objection, if we do not go forward, if you are not here, I'm not sure what Judge Hartman's -- since the court is bringing Guardianship Services in on that day to show cause why they are not in violation of your trust agreement, your particular contribution to that is not necessary. It is more looking at the trust, and I don't want to delay it.

MS. EDWARDS: I don't want to delay it. I'm just trying to put into place a request for an accomodation for disabilities. I really am very cautious about having court hearings going on without my presence.

It seems to have -- it's never a good policy, and I don't have legal representation at this time. I have talked to Claire, but that does not mean I will have legal representation, so I may be the legal representation --

THE COURT: Ms. Edwards, the clerk's notes will reflect that it is possible you won't be here because of a medical emergency. And then I'll leave it to Judge Hartman to make a decision whether to go forward or not. But I don't want to tie his hands --

MS. EDWARDS: Right.

THE COURT: So the record will show that you're

asking for an accomodation.” RP 5/4/2005

So the trial court and defendants failed to protect Colleen Edwards and the Colleen M. Edwards Special Needs Trust from fianncial indigency and poverty and failed to protect the assets both real property and funds from possession by others.

### 111 CONCLUSION

Colleen Edwards did not receive any more professional services than would have been provided by an ordinary bank with perhaps an end of the year accounting. The duty of a trustee is to determine the beneficiary’s needs and provide for their long-term needs. The trustee failed to do provide this level of service.

Colleen Edward’s asks the appellate court to the review the six court orders due to their conflicts with prior court decrees, decisions and orders. I ask the court to reverse and remand the issues of the court orders being reviewed and remand back for trial.

Colleen Edwards ask the appellate court to find for costs and fees for the plaintiff should Colleen Edwards prevail on any issues. I ask the Court of Appeals to rule under 18.1 if prevailing party fees are appropriate should Colleen Edwards prevail on any some issue. I ask the court to note to the commission that any orders for cost and expenses go directly to the Colleen M. Edwards Special Needs Fund or to The Colleen M. Edwards Program for Self Sufficiency under Social Security Administration.

Thank you for your time and consideration.

April 19, 2007

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Colleen Edwards", is written over a horizontal line.

Colleen Edwards]  
Pro Se for Appellant  
Colleen Mulvihill Edwards

STATE OF WASHINGTON

COURT OF APPEALS DIVISION 11

Colleen Edwards )

) CASE NO 33725-8 /11

) CASE NO 34805-5/11

Vs. )

) APPELLANT'S

) REPLY BRIEF

Dennis Edwards )

John Morgan )

Guardianship Services of Seattle )

) PROOF OF SERVICE

Tom O Brien )

Edwards Gardner )

Vedah Halberg )

I, Colleen Edwards have placed into first class mail the appellants reply brief

TO The Clerk of the Court of Appeals Division 11

TO: The law firm of Paulette Peterson,

TO: The law firm of Liebert, Morgan & Fleshbeim

Date: April 19, 2007

  
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STATE OF WASHINGTON  
APR 19 2007  
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