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

No. 40598-9-11

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**In re Guardianship of SEAN RAYMOND COBB**  
**Clark County #09-4-00700-5**

Christine Scott and Daniel Cobb, **Appellants**,

V

Lorraine Scott, **Respondent**.

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**Brief of Respondent**

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Lorraine Scott  
Limited Guardian for Sean Cobb  
P.O. Box 1118  
Elma, WA 98541  
(360)482-3673

## Table of Contents

	<b>Page</b>
TABLE OF AUTHORITIES.....	ii
I.    ASSIGNMENT OF ERROR.....	1
II.   STATEMENT OF CASE.....	1
III.  LAW AND ARGUMENT.....	8
IV.  ATTORNEY FEES AND COSTS.....	15
V.   CONCLUSION.....	15
VI.  APPENDIX	
Order appointment Guardian ad Litem.....	App 1
Motion for new trial.....	App 2
Documentation concerning disqualification issues.....	App 3
Email concerning a public guardian.....	App 4

## **Statutes**

<u>Washington Statues/Court Rules</u>	Page
RCW 11.88.010.....	7
RCW 11.88.020.....	5-6
RCW 11.88.045.....	10,12
RCW 11.88.090.....	10

## **I. ASSIGNMENT OF ERROR**

Respondent, Lorraine Scott found the Superior Court of Clark County Washington trial Judge (the honorable Judge Lewis) to be correct in his decision to rule on the case before him (guardianship case #09-4-00700-5 determining guardian for AIP Sean Cobb) with confidence knowing that all statutes concerning Sean Cobb's due processes were exercised to his satisfaction.

## **II. STATEMENT OF CASE**

**AIP, Sean Raymond Cobb (DOB August 3, 1967) is a Forty Four year old developmentally disabled man with severe hearing loss, and significant knee injuries. He has resided at the home of Limited guardian, Lorraine Scott since 2004. His mother, Carmen Cobb lived at the home of Lorraine Scott as well, until her death in 2009. Sean received Supplemental Security Income (SSI) due to his developmental disability. He has not received benefits from the Veterans Administration, as a disabled child of a veteran since his mother's death in 2009. Sean is the youngest sibling of seven children; Susan Didrickson, Joyce Cobb, Daniel Cobb, Christine Scott, Lorraine Scott, and Dianne Gruginski. Sean Cobb's mother was not his**

legal guardian. On September 4, 2009, three of Sean's sisters, Susan Didrickson, Joyce Cobb, and Christine Scott petitioned to be Sean's co-guardians, identifying Sean as an alleged incapacitated person CP15. Sean's other two sisters, Lorraine Scott, with the help of Dianne Gruginski sought an attorney to help Lorraine cross petition the guardianship as soon as they became aware that their older block of sibling sisters had filed to become Sean's guardians CP35-41. Sean's older block of sister siblings were represented by Sean's brother in-law Mark Didrickson. At a Clark County hearing on September 28, 2009, Sean was appointed a Guardian ad Litem GAL, Thomas Deutsch. See App - 1. Following the appointment of Mr. Deutsch, attorney, Julie Payne was appointed as Sean's guardian on October 7, 2009. CP 28-29. Lorraine Scott filed a cross petition on November 6, 2009 in which she also sought to become her brother, Sean Cobb's guardian. CP 35 – 41. Mr. Deutsch withdrew as GAL on December 3, 2009. Dee Ellen Grubbs, a Vancouver, WA attorney, replaced Mr. Duetsch. CP 44 – 35. Daniel Cobb (Sean's brother) filed his cross petition as he sought to be Sean's guardian on December 31, 2009. CP 63 – 57. Susan Didrickson, and Joyce Cobb filed to withdraw as petitioners for guardianship on January 16, 2010. CP 94 – 95. Original petitioner, Christine Scott filed an objection to GAL report, CP140 -147.

**Cross petitioner, Lorraine Scott filed a response to Christine Scott's Objection to GAL report . CP148 – 150. Daniel Cobb filed a response to Christine Scott's Objection to GAL report. CP155.**

**The trial was held in the county of the original petitioners, Clark County, instead of Sean's home county, Grays Harbor on February 11, 2010. The honorable Judge Lewis of the Clark County Superior Court heard the case. During preliminary discussions, Christine Scott non-joined the guardianship case, giving her support to Daniel Cobb , Daniel Cobb then proceeded to inform the trial judge that he planned to act as Sean's guardian, but would have Sean live with his sister, and former petitioner, Susan Didrickson. RP 18 – 19 (2/11/2010). Christine Scott, along with her attorney, Jessica Dimitrov, remained before the court as a party, along with Lorraine Scott, with attorney Lori Ferguson, Daniel Cobb, and AIP, Sean Cobb, with attorney, Julie Payne. Eight people testified at the trial; Christine Scott, Daniel Cobb, Dr. Meyer, Craig Coic, Amanda Coic, Lorraine Scott, Dee Ellen Grubbs, and Sean Cobb. RP I – II (2/11/2010).**

**Daniel Cobb subpoenaed Dr. Meyer to appear at the trial. RP 77 – 78 (2/11/2010). Sean's attorney and the trial judge advised that Sean had not waived "physician/patient privilege:**

**The Court:** *Now, before we go on to your next witness, I'm going to take about a ten-minute break. And I did want to ask – there was some discussion about a counselor being subpoenaed, is that –*

**Ms. Payne:** *Correct, yes, at 11.*

**The Court:** *Is that alright with your client or are you going to have a motion in that regard?*

**Ms. Payne:** *I understand that he is willing to discuss just his abilities, but nothing of anything that is confidential. So if she is to testify regarding that he has other abilities that were not on the Guardian ad Litem report, he's agreeable to that but not anything that has been discussed between the two of them.*

**Sean Cobb:** *As I am.*

**The Court:** *Is that what you plan to call the counselor about? Because I want to make sure that we – if there were privilege issues, I wanted to deal with those before –*

**Mr. Cobb:** *Yes.*

**Ms. Payne:** *Right.*

**RP 50 – 51 (2/11/2010).**

**The trial judge instructed Dr. Meyer not to testify about any privileged communications. Dr. Meyer did not testify to any privileged information concerning AIP Sean Cobb. RP 77 (2/11/2010).**

**Sean Cobb was the last witness of the trial. During his testimony Sean answered questions for his attorney. The questioning was asked effectively, allowing the court to understand Sean Cobb's true wishes under as little pressure as possible.**

**After closing arguments, the trial court appointed Lorraine Scott as Sean Cobb's limited legal guardian RCW 11.88.020. As part of the order, venue was transferred to Sean's home County, Grays Harbor, where Sean would be living with his appointed limited guardian, Lorraine Scott.**

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## RCW 11.88.020 Qualifications

- (1) Any suitable person over the age of eighteen years, or any parent under the age of eighteen years or, if the petition is for appointment of a professional guardian, any individual or guardianship service that meets any certification requirements established by the administrator for the courts, may, if not otherwise disqualified, be appointed guardian or limited guardian of the person and/or the estate of an incapacitated person. A financial institution subject to the jurisdiction of the department of financial institutions and authorized to exercise trust powers, and a federally chartered financial institution when authorized to do so, may act as a guardian of the estate of an incapacitated person without having to meet the certification requirements established by the administrator for the courts. No person is qualified to serve as a guardian who is;
  - (a) under eighteen years of age except as otherwise provided herein;
  - (b) of unsound mind;

(c) convicted of a felony or of a misdemeanor involving moral turpitude;

(d) a nonresident of this state who has not appointed a resident agent to accept service of process in all actions or proceedings with respect to the estate and caused such appointment to be filed with the court;

(e) a corporation not authorized to act as a fiduciary, guardian, or limited guardian in the state;

(f) a person whom the court finds unsuitable.

**On March 1, 2010, even though, Christine Scott withdrew as a petitioner from the February 2010 guardianship trial, along with Daniel Cobb, filed a CR 59 Motion for new trial in the Clark County Superior Court, but they were denied a new trial by Judge Lewis. See App- 2. The issues brought forth by Mark Didrickson, on the behalf of Daniel Cobb and Christine Scott, were not well grounded in fact or law. One of the issues brought to the court was concerning the issue of the honorable Judge Lewis in accordance with RCW 11.88.010, appointing Lorraine Scott as Sean's "guardian" due to Lorraine Scott "living with Sean Cobb and Carmen Cobb prior to proceedings". Sean and Carmen Cobb, in fact, lived with Lorraine Scott, in the home owned by Lorraine Scott. Sean's living arrangements were not the only reason that the honorable Judge Lewis appointed Lorraine Scott as Sean Cobb's limited guardian. Lorraine was found to be a suitable guardian by GAL Dee Ellen Grubbs, in part, because Lorraine, like**

**her sister Dianne, feels that AIP Sean Cobb should be allowed to live where he wants to live. CP 97 – 123. Other factors considered by GAL Grubbs included were living situation, finances, care, social aspects, and medical.**

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**RCW 11.88.010 Authority to appoint guardians — Definitions — Venue — Nomination by principal.**

(2) The superior court for each county shall have power to appoint limited guardians for the persons and estates, or either thereof, of incapacitated persons, who by reason of their incapacity have need for protection and assistance, but who are capable of managing some of their personal and financial affairs. After considering all evidence presented as a result of such investigation, the court shall impose, by order, only such specific limitations and restrictions on an incapacitated person to be placed under a limited guardianship as the court finds necessary for such person's protection and assistance. A person shall not be presumed to be incapacitated nor shall a person lose any legal rights or suffer any legal disabilities as the result of being placed under a limited guardianship, except as to those rights and disabilities specifically set forth in the court order establishing such a limited guardianship. In addition, the court order shall state the period of time for which it shall be applicable.

### **III. LAW AND ARGUMENT**

**A) Christine Scott and Daniel Cobb filed a notice of appeal concerning this guardianship case on April 9, 2010, but asked for ongoing continuances for several reasons. Instead of retaining new counsel after their original attorney was disqualified, (*disqualification due to clear evidence that attorney, Mark Didrickson borrowed funds from his client, Sean Cobb's mother, Carmen Cobb's account held by Mark Didrickson after a medical malpractice suit, settled by Mark Didrickson. The funds were to be distributed after doctors and insurances were paid, but Mark Didrickson held the funds for more than five years. During that time, Mark borrowed from the funds at least three times, with "sloppy" accounting to benefit Mark by several thousand dollars. Although Mark Didrickson paid the estate several thousand dollars after the matter was brought to the attention of the estate representative, Greg Durr, it's believed by Lorraine Scott that Mark Didrickson still owes the estate of Carmen Cobb several thousand dollars, and therefore, owes AIP Sean Cobb, heir, several thousand dollars*) See App – 3. Christine Scott and Daniel Cobb chose to wait several months for their attorney to be reinstated. Other continuances include; petitioners requested a continuance for more time to settle an ongoing probate case, and more time to enter a second attempt to vacate the case in Vancouver, WA, after the first attempt was in court stricken by the honorable Judge Lewis.**

**B) GAL Dee Ellen Grubbs performed well within her statutory duty while investigating and writing her final report as GAL for Sean Cobb RCW**

**11.88.090; Sean's rights were met through appointed attorney, Julie Payne, RCW 11.88.045 his Guardians ad Litem (Dee Ellen Grubbs, and Jean Cotton), the Social Security Administration, and his Limited Guardian, Lorraine Scott, and medical physicians. Sean has been receiving SSI for his mental disability since becoming an adult. He was evaluated by a Social Security Administration physician to determine his approximate fifty seven IQ in early adulthood. Sean was also assessed pretrial by a physician Dr. David David of the Vancouver Medical Clinic, to be "mentally retarded". During the trial, Psychologist, Dr. Serena Meyer, assessed Sean's unofficial GAF (Global assessment of functioning) to be between fifty and sixty at a pretrial assessment as well, and Sean was finally evaluated, post trial again by a Neurological Psychologist, Dr. Howard Lloyd. Dr. Lloyd determined Sean's IQ to be about sixty. GAL Dee Ellen Grubbs determined the nature, cause and degree of incapacity and the basis upon the judgment was made by documentation presented pretrial; (1) the fact that Sean had been receiving SSI his whole adult life based on the fact that SSI physicians evaluated Sean's IQ (initially 57), and assessed Sean to be eligible to receive SSI for his developmental disability as a young adult. (2) Sean received an education through the Aberdeen, WA school district in the Special Education program where his special needs were sought and determined by Children's Hospital in Seattle, WA. Children's Hospital diagnosed Sean to be developmentally disabled. (3) Sean received an**

**evaluation by Dr. David David. Dr. David David evaluated Sean to be “mentally retarded”. (4) Dr. Mitchell Cohen evaluated Sean to be developmentally disabled. (5) It was also determined by the Veterans Administration that Sean should receive benefits from our father’s VA account for his developmental disability. GAL Dee Ellen Grubbs filed a clear and concise report after her initial investigation.**

RCW 11.88.090 Guardian ad litem — Mediation — Appointment — Qualifications — Notice of and statement by guardian ad litem — Hearing and notice — Attorneys' fees and costs — Registry — Duties — Report — Responses — Fee.

(3) Upon receipt of a petition for appointment of guardian or limited guardian, except as provided herein, the court shall appoint a guardian ad litem to represent the best interests of the alleged incapacitated person, who shall be a person found or known by the court to:

- (a) Be free of influence from anyone interested in the result of the proceeding; and
- (b) Have the requisite knowledge, training, or expertise to perform the duties required by this section.

RCW 11.88.045 Legal counsel and jury trial — Proof — Medical report — Examinations — Waiver.

(b) Counsel for an alleged incapacitated individual shall act as an advocate for the client and shall not substitute counsel's own judgment for that of the client on the subject of what may be in the client's best interests. 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, rather than the alleged incapacitated individual's expressed preferences

**C) The trial court didn't abuse its discretion by denying Sean Cobb's right to a jury trial; Sean met privately before the trial, with his attorney, Julie Payne, and articulated to her at that time, his wishes concerning this trial matter. When questioned by his attorney, Julie Payne during trial, Sean indicated that he wrote a letter to the judge prior to the trial at Mark and Susan Didrickson, prior to the trial. Sean then gave the judge a note requesting the jury trial. He also told his attorney that he didn't want to have a jury trial or any trial at all, as cited in Gal report. With an approximate IQ of sixty, it would be difficult for Sean to be able to understand the meaning of "jury trial" or even know how to spell jury trial. AIP Sean Cobb, as expressed through his attorney, Julie Payne, does not want to have a trial of any kind, so a retrial would be redundant in that the AIP's initial feeling of not wanting to have a trial, along with the lack of knowledge concerning what the meaning of a jury trial actually means, would lead a judge to arrive at the same decision as was decided by the honorable Judge Lewis.**

**Petitioners Christine Scott and Daniel Cobb have petitioned to appeal this case based on guardianship by citing RCW 11.88.045, but this case is clearly not in the appeals court due to failure by Judge Lewis to not follow RCW 11.88.045, because RCW 11.88.045 is a jury trial to determine a person's incapacity, rather than a right to trial by jury concerning a trial to determine a guardian in a guardianship trial for an AIP**

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RCW 11.88.045 Legal Counsel and Jury trial – proof –  
Medical reports – Examinations – Waiver

(3) The alleged incapacitated person is further entitled to testify and present evidence and, upon request, entitled to a jury trial on the issues of his or her alleged incapacity. The standard of proof to be applied in a contested case, whether before a jury or the court, shall be that of clear, cogent, and convincing evidence.

**D) AIP Sean Cobb's procedural due process rights were not violated. GAL Dee Ellen Grubbs performed well within her statutory duty while investigating and writing her final report as GAL for Sean Cobb RCW 11.88; Sean's rights were met through appointed attorney, Julie Payne, his Guardians Ad Litem (Dee Ellen Grubbs, and Jean Cotton), the Social Security Administration, and his Limited Guardian, Lorraine Scott, and medical physicians. Sean has been receiving SSI for his mental disability since becoming an adult. He was evaluated by a Social Security Administration physician to determine his approximate fifty seven IQ in early adulthood. Sean was also assessed pretrial by a physician Dr. David David of the Vancouver Medical Clinic, to be "mentally retarded". During the trial, Psychologist, Dr. Serena Meyer, assessed Sean's unofficial GAF**

**(Global assessment of functioning) to be between fifty and sixty at a pretrial assessment as well, and Sean was finally evaluated, post trial again by a Neurological Psychologist, Dr. Howard Lloyd. Dr. Lloyd determined Sean's IQ to be about sixty (assessment by Dr Lloyd filed at the Grays Harbor Superior Court). GAL Dee Ellen Grubbs found that the general nature, cause and degree of incapacity and the basis upon the judgment was made through documentation presented pretrial; (1) the fact that Sean had been receiving SSI his whole adult life based on the fact that SSI physicians evaluated Sean's IQ (initially 57), and assessed Sean to be eligible to receive SSI for his developmental disability as a young adult. (2) Sean received an education through the Aberdeen, WA school district in the Special Education program, where his special needs were sought and then determined by Children's Hospital in Seattle, WA. Children's Hospital diagnosed Sean to be developmentally disabled. (3) Sean received an evaluation by Dr. David David. Dr. David David evaluated Sean to be "mentally retarded". (4) Dr. Mitchell Cohen evaluated Sean to be developmentally disabled. (5) It was also determined by the Veterans Administration that Sean should receive benefits from our father's VA account for his developmental disability. In any case, the AIP's IQ in this case has been proven to be the same as his IQ pretrial, so the question of**

**AIP's IQ changing the outcome of this case at a new trial is incorrect. AIP Sean Cobb still has an approximate IQ of sixty at best.**

**E) The trial court did not violate the due process rights of petitioners, Christine Scott and Daniel Cobb. Due to the evidence offered to the court being frivolous, the request for a new hearing was denied. The honorable Judge Lewis denied the petitioners request for (CR59), and didn't find any fact or law to award a new trial. The issues brought forth by Mark Didrickson, on the behalf of Daniel Cobb and Christine Scott, were not well grounded in fact or law.**

**F) The trial court did not abuse it's discretion by applying the psychologist/patient privilege to testimony of the AIP Sean Cobb's former psychologist, Dr. Meyer. AIP Sean Cobb's attorney, Julie Payne informed the court that Sean Cobb had not waived his psychologist/patient privilege rights. Therefore the witness was instructed to not testify to privileged information. The information that the petitioners so badly wanted to be heard by Dr. Meyer concerned an unfounded APS report having nothing to do with Loraine Scott or any other petitioner or non-joined petitioner in this case. Sean Cobb has not changed his stand on this issue, so a retrial would arrive at the same conclusion.**

**G) The trial court didn't abuse it's discretion by denying Sean Cobb's right to a jury trial; Sean met privately before the trial, with his attorney, Julie Payne, and articulated to her at that time, his wishes concerning this**

**guardianship matter. When asked by his attorney, Julie Payne during questioning at the trial, Sean said that he wrote the letter prior to the trial at Susan and Mark Didrickson. RP 200 (2/11/2010). Sean gave the judge a note requesting the jury trial. Sean's attorney asserts that Sean didn't want to have a jury trial, as cited in Gal report. With an approximate IQ of sixty, it would be difficult for Sean to be able to understand the meaning of "jury trial" or even know how to spell jury trial.**

#### **IV. ATTORNEY FEES AND COSTS**

**Respondent, Lorraine Scott can not afford an attorney, so fees are not sought at this point in this case.**

#### **V. CONCLUSION**

**The WASHINGTON STATE COURT OF APPEALS DIVISION TWO should not award Christine Scott and Daniel Cobb a new trial in this guardianship case due to the honorable Judge Lewis of the SUPERIOR COURT OF CLARK COUNTY WASHINGTON satisfying all statutes concerning the guardianship case for AIP, Sean Cobb. 1). the alleged incapacitated person, Sean Cobb, was not denied his request for a new trial. AIP Sean Cobb asserts he didn't want a new trial, and didn't request a new trial, 2) the court received, but only considered "written" testimony from witnesses testifying in court or**

by telephone due to most of Sean's witnesses being from his home town of Elma, WA in his home county of Grays Harbor 3) The trial court properly asserted testimonial privilege for witness Dr. Meyer. Sean Cobb did not waive his physician/patient privilege, 4) GAL, Dee Ellen Grubbs performed her statutory duties to investigate the capacities, conditions, and needs of the alleged AIP Sean Cobb, and 5) The trial court did not fail to apply the appropriate standard of the evidence before it. Due to the evidence offered to the court being frivolous, the request for a new trial was denied. Judge Lewis denied the petitioners request for (CR59), and didn't find any fact or law to award a new trial. The issues brought forth by Mark Didrickson, on the behalf of petitioners, Daniel Cobb and Christine Scott, were not well grounded in fact or law. One of the issues brought to the court was concerning the issue of the honorable Judge Lewis appointing Lorraine Scott (natural guardian) as Sean's "guardian", due to Lorraine Scott "living with Sean Cobb and Carmen Cobb prior to proceedings". Sean and Carmen Cobb, in fact, lived with Lorraine Scott, in the home owned by Lorraine Scott. Sean's living arrangements were not the only reason that the honorable Judge Lewis appointed Lorraine Scott as Sean Cobb's limited guardian. The fitness of Lorraine Scott as guardian was found to be suitable according to GAL Dee Ellen Grubbs, in part, because Lorraine, like her sister Dianne, feels that AIP Sean Cobb should be allowed to live where he wants to live. Other factors considered by GAL Grubbs included were

living situation, finances, care, social aspects, and medical responsibilities. The trial court didn't allow case information from AIP, Sean Cobb's Mother's estate (estate of Carmen Cobb in Grays Harbor County) as requested by appellants, Christine Scott and Daniel Cobb, to be heard at the guardianship trial because the information presented to the courts was not grounded by fact and/or law.

The petitioners, Christine Scott and Daniel Cobb have petitioned to appeal this case based on guardianship by citing RCW 11.88.045, but this case is clearly not in the appeals court due to failure by Judge Lewis to not follow RCW 11.88.045, because RCW 11.88.045 is a jury trial to determine a person's incapacity, rather than a right to trial by jury concerning a trial to determine a guardian in a guardianship trial for an AIP.

It's unclear at this point as to why Daniel Cobb and Christine Scott are pursuing this guardianship. Numerous personal emails (emails entered into another court case were made available to Lorraine Scott concerning the Guardianship of Sean Cobb) leading up to the February 2010 trial indicate that Daniel Cobb and Christine Scott either planned to have a public guardian, or Daniel as a compromise guardian for Sean. See App - 4 Given grounded facts, awarding a new guardianship trial in this case would result in the same outcome.

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RESPECTFULLY SUBMITTED THIS 27<sup>TH</sup> DAY OF 2011



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LORRAINE SCOTT, RESPONDANT

## **VI. APPENDIX**

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## **APPENDIX 2**

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Sherry W. Parker, Clerk  
Clark County

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IN THE SUPERIOR COURT OF CLARK COUNTY

In re the Guardianship of:

SEAN RAYMOND COBB,

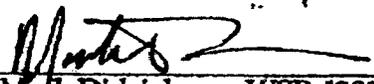
An Alleged Incapacitated Adult.

No. 09-4-0700-5

MOTION FOR NEW TRIAL

COMES NOW Petitioner Christine Scott and Cross-Petitioner Daniel Cobb, by and through their attorney of record, and move the court for a new trial in the above-captioned action. The moving parties allege that they are entitled to a new trial because 1) the alleged incapacitated person, Sean Cobb, was denied his request for a new trial, 2) the court received and considered inadmissible "written" testimony and used such matter in its decision, 3) the trial court improperly asserted testimonial privilege for witness Dr. Serena Meyer, Ph.D., 4) failure of the Guardian ad Litem to perform her statutory duties to investigate the capacities, condition, and needs of the alleged incapacitated person, and 5) failure of the court to apply the appropriate standard of proof to the evidence before it. This motion is based on CR 59, the files and records herein, and the moving parties' Memorandum in Support of Motion for a New Trial, filed with this motion.

Dated: March 1, 2010

  
Mark Didrickson, WSB #20349,  
Attorney for Christine Scott and Daniel Cobb

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DIVISION II  
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STATE OF WASHINGTON  
BY \_\_\_\_\_  
DEPUTY

ORIGINAL

**WASHINGTON STATE COURT OF APPEALS DIVISION TWO**

IN THE MATTER OF:

GUARDIANSHIP OF SEAN R. COBB

) No. 40598-9-11

)

) RE: Declaration

) Re: SERVICES

) OF BRIEF OF

) RESPONDANT

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I, Lorraine Scott, Limited Guardian for Seam Cobb, Declare:

On December 29, 2011, I served Mark Didrickson, Attorney for appellants, Christine Scott, and Daniel Cobb, with a copy of the brief of respondent herein by causing a full, true, and exact copy of the same to be deposited in the U.S. mail, postage prepaid, for delivery to Mark Didickson at the office of record, to-wit:

*Mark Didrickson Attorney at Law  
400 Columbus Street, Suite 110  
Vancouver, WA 98660*

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

Dated this 29<sup>th</sup> day of December, 2011

Signed at Elma, WA on December 29, 2011

*Lorraine Scott*

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Lorraine Scott, Limited Guardian for Sean Cobb