

FILED

JAN 28 2013

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 309851

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In re the Guardianship of:
KENYON CORNELIUS,
An Incapacitated Person.

APPELLANT'S BRIEF

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I. ASSIGNMENTS OF ERROR

A. The trial court's *sua sponte* decision to enter a final order on a petition for guardianship violated the mother's right to procedural due process and RCW 11.88.040.

B. The trial court erred in considering the merits of the petition for guardianship without sufficient time for the parties to respond to the Guardian Ad Litem's report.

C. The trial court erred in determining that a Memorandum of Agreement, which had been continued by agreement of the parties, was no longer in effect.

D. The trial court's decision to remove the mother as guardian, to appoint Ms. Cloaninger guardian, and to give her "great latitude" to limit contact between Ms. Cornelius and her mother was not supported by the evidence, was not in the best interests of Ms. Cornelius, and was erroneous.

II. STATEMENT OF THE CASE

This case involves the guardianship of Kenyon Cornelius, a woman who is 41 years of age, with a complicated medical history including Down's Syndrome and a traumatic frontal lobe brain injury. CP 3; RP 120:2-8, 169:9-19. On March 10, 1989, just before Ms. Cornelius turned 18, her parents Christina "Tina" Baldwin ("mother") and Scott

“Scotty” Cornelius (“father”) were appointed co-guardians of the estate and person. CP 4-5. The mother and father served in this capacity without controversy or problems until March 1, 2010, when the Washington Department of Social and Health Services (“DSHS”) filed a Petition for Substitution or Clarification of Guardian of Person and Estate, seeking appointment of a Guardian Ad Litem and review of the current guardianship of Ms. Cornelius. CP 7. The original Petition was based on allegations of mental abuse of Ms. Cornelius by her mother, which allegations were at the time under investigation by Adult Protective Services. CP 5. On March 11, 2010, the court ordered that Jill Wahl be appointed Guardian Ad Litem (“GAL”) for that purpose. CP 18-24. On March 17, 2010, the GAL notified the Court that Ms. Cornelius sought appointment of legal counsel on her behalf. CP 34. The court granted that request on April 2, 2010. CP 35.

On May 28, 2010, the mother filed a Response to Petition for Substitution or Clarification of Guardian of Person and Estate, seeking an opportunity to testify regarding her guardianship and seeking an order allowing her to continue as sole guardian of Ms. Cornelius’s person and estate. CP 42. On June 3, 2010, the GAL filed her report, finding that “a professional third party guardian is the best option so long as that guardian continues to allow Ms. Baldwin and Mr. Cornelius to be involved in

Kenyon's life and in the management of her affairs as much as is appropriate." CP 123. The GAL also wrote that the mother "has relevant information to share and plays an important role in Kenyon's life," and that "Kenyon deserves to have parents who are able to act just as parents." CP 123. The GAL did not substantiate the State's original concerns that the mother was abusing Ms. Cornelius, nor did she report that contact between mother and daughter should be limited in any way. CP 123.

On June 17, 2010, the GAL filed an Addendum to GAL Report, requesting that the Court appoint Leslie Cloaninger, a professional guardian and attorney, as the temporary guardian of the person while awaiting a contested hearing on the Petition. CP 246. In her Addendum, the GAL stated her opinion that "it appears that [Ms. Cornelius] is being adversely impacted and influenced by her mother's current actions and words related to this proceeding." CP 247. The GAL reported that her concern for Ms. Cornelius was based on the "stress in her life before the current court action was initiated," and on the service providers' reports of having difficulties due to the "problematic" guardianship situation. CP 247.

The following date, June 18, 2010, the court held a hearing to determine the GAL's request for temporary appointment. CP 251. On June 22, 2010, the court entered a Decision & Order Suspending Authority

of Guardians & Appointing an Interim Guardian of the Person. CP 251-254. In that Order, the court found that “[s]ubstantial evidence has been presented that leads the court to believe that Tina Baldwin’s service as guardian of the person of Kenyon Cornelius, while being carried out diligently and in good faith, is having a severe adverse impact on Kenyon’s physical, emotional, and psychological well-being.” CP 252-253. Accordingly, the court suspended the mother’s and father’s authority to act as co-guardians of the person, and appointed Ms. Cloaninger as the temporary interim guardian. CP 254.

Thereafter, the various concerned parties engaged in a series of mediations to attempt to address the State’s concerns regarding the co-guardianship. *See, e.g.*, CP 258. Ultimately, the parties were able to reach an agreement, which was memorialized in a Memorandum of Agreement (“MOA”), filed with the court on January 26, 2011. CP 265-268. The parties to the MOA included the State, the mother, the father, the temporary guardian of the person, the GAL, and the attorney for Ms. Cornelius. CP 268. In the MOA, the parties agreed that Ms. Cloaninger would remain the guardian of the person, at least temporarily. CP 267. The parties also agreed that the guardian “shall encourage a mother daughter relationship between Christina and Kenyon.” CP 266. The MOA provided that by May 1, 2011, should the mother meet certain

provisions as determined by the Court upon review by a newly-appointed GAL, the guardianship would return to the mother and father. CP 267-268.

Also on January 26, 2011, the court entered an Order Appointing Substitute Guardian of Person, re-appointing Ms. Cloaninger as guardian of the person. CP 269-273. In that Order, the court specifically incorporated the “duties as [*sic*] responsibilities as outlined in the ‘Memorandum of Agreement’ filed separately.” CP 270. The court ordered that the guardianship would continue until terminated or “as modified as agreed to pursuant to the mediation agreement.” CP 271.

After almost a year of delays, the State filed a Motion, Declaration, and Order Appointing a Guardian Ad Litem on January 11, 2012. CP 305-309. In that document, the State noted that “[d]elays in the matter have been agreed to by all parties based upon the availability of the selected psychologist and her schedule, in order to allow ample time to produce a thorough report.” CP 306. The State requested that Jim Woodard be appointed the new GAL in accordance with the MOA, which request the court granted. CP 307-308.

On January 26, 2012, with the relationship between the guardian and the mother becoming increasingly adversarial, Ms. Cloaninger instructed the mother to “have no contact with Kenyon until the court rules

otherwise.” CP 387. The guardian also threatened that she would seek a restraining order if her instructions were violated. CP 387. On January 27, 2012, Ms. Cloaninger filed her Initial Personal Care Plan (“IPCP”) for Ms. Cornelius. CP 339-349. In that IPCP, the guardian claimed that “Kenyon has an ongoing problematic relationship with her mother that affects her ability to cope with the requirements of daily life, requiring that her mother’s time and contact with Kenyon be limited.” CP 342.

On April 3, 2012, the new GAL filed his report.¹ CP 363-393. In the report, the GAL stated that Ms. Cornelius had expressed to him her desire to spend time with her mother, who she described as her “best friend.” CP 368. Ms. Cornelius also reported that she wished to have Ms. Cloaninger remain as her guardian, and specifically asked for permission to speak with the judge regarding the situation. CP 369-370. The GAL cited portions of the psychological evaluation of the mother, performed by Dr. Mary Dietzen pursuant to the MOA. CP 375; *see* Dr. Dietzen’s report at CP 429-438. The mother reported to the GAL that Dr. Dietzen did not accurately state Ms. Baldwin’s understanding of the purpose of the psychological evaluation, but the GAL apparently did not speak with Dr. Dietzen. CP 372, 375.

¹ Although the report is dated March 29, 2012, the document apparently was not filed with the court until April 3, 2012.

The GAL did have a conversation with Dr. Gloria Waterhouse, with whom the mother was engaged in counseling as recommended by Dr. Dietzen. CP 375-376. The GAL's report presented a summary of his understanding of Dr. Waterhouse's opinions regarding the mother, her ability to serve as guardian, and her relationship with Ms. Cornelius. CP 375; see Report of Dr. Waterhouse at CP 422-428. The GAL concluded that "[i]t does not appear that [the mother] has gained any insight to her issues through counseling with Dr. Waterhouse," and recommended that Ms. Cloaninger remain as the guardian of the person. CP 377. The GAL had not, however, reviewed Dr. Waterhouse's report. RP 112:23-114:11, 107:20-22

On April 9, 2012, the mother submitted a Response and Objections to Guardian's Petition to Approve Care Plan, Budget, and Disbursements, discussing in particular the guardian's restrictions of contact between the mother and Ms. Cornelius. CP 396. The mother noted that the MOA remains in effect and requires the guardian to "encourage a mother daughter relationship between Christina and Kenyon." CP 396. The mother also argued that the issue of whether the parents should be reinstated as co-guardians under the MOA was not ripe for review at the hearing set for the following day, April 10, 2012, because the MOA required that the parents receive the GAL's report 15 days prior to

hearing. CP 396-397. Furthermore, the mother noted that the guardian had been making disparaging remarks about the mother to third parties in violation of the MOA, and that the guardian had not been using the team approach contemplated by the MOA. CP 398-399. The mother reported that Ms. Cornelius had placed a number of phone calls to the mother following the guardian's instructions for no further contact, which the mother did not answer. CP 402. Finally, the mother indicated that neither Drs. Dietzen nor Waterhouse implicated the mother's "skills as a Mother to Kenyon as being potentially negative, destructive or harmful in any way." CP 403.

On April 10, 2012, the court held a hearing, at which the guardian, the GAL, the mother, and the father testified. RP 67-70. Ms. Cornelius was not present, having been advised not to attend by the guardian because "maybe [Ms. Cornelius] should just let the adults handle it. . . ." RP 71:16-20. As the court stated, the purpose of the hearing was to address the "guardian's motion to approve the personal care plan." RP 72:10-15. Counsel for the mother noted that "there are some issues in [the GAL's] report that we're going to need to respond to at an appropriate time." RP 82:9-10. Toward the end of the hearing, the GAL stated his opinion that the court should appoint Ms. Cloaninger as guardian on a permanent basis "rather than having to go through another one of these

hearings.” RP 209:16-20. Ultimately, the court made several oral rulings – that the MOA would be of no further effect (RP 218:2-4), that Ms. Cloaninger would be permanently appointed as guardian (RP 216:9-17), and that the guardian would be given “great latitude in handling the issues of restricting or limiting Ms. Baldwin’s contact with Kenyon” (RP 219:13-21).

On June 15, 2012, the court entered an Order Appointing Successor Full Guardian of Person, noting that the Court “on its own motion, considered the issue of [the mother] being reappointed, as more than 8 months had passed, and it was in Kenyon Cornelius’s best interest to settle the matter of who would be Guardian of her Person.” CP 445. The court concluded that it was not in Ms. Cornelius’s best interests to have the mother appointed as guardian, and accordingly the court appointed Ms. Cloaninger. CP 447. It is this Order from which this appeal is taken. *See* Notice of Appeal at 1-2.

III. ARGUMENT

A. The trial court’s decision to enter a final order on the Petition sua sponte violated the mother’s right to procedural due process and RCW 11.88.040.

“Due process at a minimum requires notice and an opportunity to be heard.” *Soundgarden v. Eikenberry*, 123 Wn.2d 750, 768, 871 P.2d 1050, 1060 (1994). “An elementary and fundamental requirement of due

process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314-15, 70 S.Ct. 652, 657-58, 94 L.Ed. 865 (1950); see *State v. Hawkins*, 72 Wn.2d 565, 570, 434 P.2d 584, 587 (1967) (“It is the general rule that the trial court, when it proceeds sua sponte, must give notice and an opportunity to be heard to both parties.”). Furthermore, RCW 11.88.040 requires that notice must be given to a variety of parties, including “[a]ny other person who has been appointed as guardian,” at least ten days before the Court appoints a guardian. See *Matter of Guardianship of McGill*, 33 Wn.App. 265, 267, 654 P.2d 705, 707 (Wash. App. Div. 3 1982) (finding that, where the ten-day notice is not given, the court does not have jurisdiction to determine the guardianship).

In this case, the April 10, 2012 hearing was noticed only to address the guardian’s Petition for Approval of Budget, Disbursements and Initial Care Plan. See CP 445; CP 394; RP 72:12-13. Thus, the parties had no notice that the merits of the Petition would be considered, that the court would render a final decision on the permanent guardianship of Ms. Cornelius, or that the court would consider whether the mother had complied with the provisions of the MOA. Indeed, the focus of the

testimony and arguments at the hearing was on the terms of the IPCP – in particular the level and terms of contact between Ms. Cornelius and the mother, and the appropriate compensation for the guardian. *See, e.g.*, RP 74:14-77:23, 82:11-13, 92:7-20, 115:10-13; 203:11-204:6. Indeed, only at the end of the hearing, as the court was announcing its oral decision, did the judge inform the parties that he intended to address immediately the ultimate issue under the MOA as to whether the mother could be reinstated as guardian. RP 216:8-17; 217:21-218:4.

As a result of the court's decision to enter a final order on the Petition *sua sponte*, the mother was denied the opportunity to address the contention that she should not be returned to the position of guardian of her daughter. Had the mother known that the final disposition of the case was to be considered at the April 10, 2012, hearing, for example, the mother would have presented testimony and evidence from the psychologist with whom she had been working, Dr. Waterhouse. *See* RP 107:20-108:12, 144:18-145:16. Without an opportunity to prepare for and present argument and evidence regarding her efforts under the MOA and her ability to be reinstated as guardian, the mother was denied due process. The mother was also denied an opportunity to present significant evidence to rebut the recommendations of the GAL and the opinions of the guardian. *See In re Guardianship of Stamm v. Crowley*, 121 Wn.App.

830, 838-41, 91 P.3d 126, 130-32 (Wash. App. Div. 1 2004) (discussing the role of the GAL and noting the fact-finder should consider the credibility of the GAL's opinions). Thus, the court's decision to enter a final order *sua sponte* and without notice was in error and the mother suffered harm as a result.

B. The trial court erred in considering the merits of the Petition without sufficient time for the parties to respond to the GAL's report.

RCW 11.88.090(5) sets forth the duties of a GAL. One of those duties is to "provide the court with a written report" addressing a variety of topics. RCW 11.88.090(5)(f). The report is to be provided to certain persons, including those with a significant interest in the welfare of the alleged incapacitated person, at least 15 days before the hearing on the merits of the Petition. *Id.* In the event the GAL's report is not provided at least 15 days before the hearing, "the hearing shall be continued to give the court and the parties at least fifteen days before the hearing to review the report." RCW 11.88.090(7).

Here, the GAL's report was filed April 3, 2012, just seven days before the April 10, 2012 hearing. *See* CP 363-393; *see also* footnote 1, *supra*. Because the report was not timely provided, the court was obligated under RCW 11.88.090(7) not to consider the merits of the Petition until at least April 18, 2012. Nevertheless, as discussed above,

the court considered the merits of the Petition *sua sponte* during the April 10, 2012 hearing and entered a final order terminating the MOA, appointing Ms. Cloaninger guardian, and determining that the mother could not be appointed guardian because she had not complied with the MOA. The court's actions prejudiced the mother, as discussed above, by denying her an adequate opportunity to prepare and present evidence and argument to respond to the GAL's report, and to show the court that she in fact should be reappointed guardian. Moreover, the mother was denied the opportunity to file a response to the GAL report as authorized under RCW 11.88.090(7). The court's decision in this regard was in error.

C. The court erred in determining that the MOA, which had been continued by agreement of the parties, was no longer in effect.

The MOA was signed by all relevant parties and was reached only after extensive mediation and negotiation. Notably, the MOA stated that the guardian "shall encourage a mother daughter relationship between Christina and Kenyon." CP 266. Under the terms of the MOA, this particular provision does not expire. Although the MOA did set an expiration date of May 1, 2011 for the mother and father to reestablish guardianship, the only information before the court as of the April 10, 2012 hearing was that the parties had stipulated to extend that deadline.

See CP 306. Indeed, the new GAL, contemplated by the MOA, wasn't appointed by the court until January 11, 2012. CP 305-309.

At the April 10, 2012 hearing, the GAL stated that he didn't believe the MOA addressed what was in Ms. Cornelius's best interests. RP 97:5-19. However, implicit in the MOA was the belief by all parties that the MOA *was* in the best interests of Ms. Cornelius. *See, e.g.*, RP 252:6-14. Indeed, given that the matter arose because the State sought to replace the parents as co-guardians, the fact that the State was a signatory to the MOA indicates that the MOA adequately addressed the State's concerns regarding the best interests of Ms. Cornelius. (Notably, the State's original concern that prompted the filing of the Petition – that the mother was abusing Ms. Cornelius – was never substantiated in any way.)

Nevertheless, without the benefit of argument from the parties, or any further evidence regarding the status of the MOA between the parties, the court *sua sponte* determined that the MOA would no longer have any force or effect. RP 217:21-218:4. The court took this action, apparently because the court was losing patience with the process identified in that MOA. *Id.* As discussed above, the court's decision to do so without notice prevented the parties from presenting evidence as to whether the MOA was in Ms. Cornelius's best interests, including testimony and

opinions from Drs. Waterhouse (the mother's psychologist) and Summerson (Ms. Cornelius's counselor).²

D. The trial court's decision to remove the mother as guardian, to appoint Ms. Cloaninger guardian, and to give her "great latitude" to limit contact between Ms. Cornelius and her mother was not supported by the evidence and was erroneous.

RCW 11.88.120 provides that "[a]t any time after establishment or appointment of a guardian, the court may, upon the death of the guardian or limited guardian, or, for other good reason, modify or terminate the guardianship or replace the guardian or limited guardian." RCW 11.88.120(1). The statute further provides that, "[i]n a hearing on an application to modify or terminate a guardianship, or to replace a guardian or limited guardian, the court may grant such relief as it deems just and in the best interest of the incapacitated person." RCW 11.88.120(4). "[A] court may not arbitrarily remove a guardian and appoint someone else in his stead." *Guardianship of Robinson*, 9 Wn.2d 525, 534, 115 P.2d 734, 739 (Wash. 1941); see *In re Guardianship of Spiecker*, 69 Wn.2d 32, 33, 416 P.2d 465, 467 (Wash. 1966) (finding the evidence "fell far short" of establishing that the guardian should be removed and replaced). Instead, the court must find "good reason" to replace the guardian, and must only do so if replacement is in the best interest of the incapacitated person.

² The Court should note that although Mr. Monson, counsel for Ms. Cornelius, was present at the April 10, 2012 hearing, he did not ask any questions of the witnesses, not did he give input to the Court regarding Ms. Cornelius's best interests.

RCW 11.88.120. In this case, the court failed to recognize that RCW 11.88.120 provided the standard for considering replacement of the mother by Ms. Cloaninger, and failed to make a finding of “good reason.” For these reasons alone, the court’s decision should be reversed. Moreover, the evidence presented at the hearing does not support a finding that replacement of the mother as guardian was appropriate or in the best interests of Ms. Cornelius.

On January 26, 2012, in violation of the MOA, which was then in effect as an order of the court, the guardian unilaterally decided to prohibit any further contact between Ms. Cornelius and her mother. At the April 10, 2012 hearing, the parties presented significant evidence that Ms. Cornelius should have an ongoing relationship with her mother. The GAL testified that Ms. Cornelius “does have a really clear desire to have her mom – to be close to her mom, to talk to her mom, and see her mom, but she just wants her to be mom.” RP 99:21-25. He further testified that it would be difficult to “micromanage” the relationship between mother and daughter, but that the mother should focus on being a supportive mother. RP 103:9-25. The GAL could not identify any specific concern regarding Ms. Cornelius having some contact with her mother. RP 112:23-114:11. Although the GAL did mention his concern that the mother did not seem to have insight into her role in the conflict surrounding Ms. Cornelius, he

conceded that he had not reviewed Dr. Waterhouse's report. RP 112:23-114:11, 107:20-22.

The guardian, in addressing her concerns regarding the mother/daughter relationship, gave her opinion that "Ms. Baldwin says and does things with Kenyon that are harmful to her." RP 116:2-3. As an example, the guardian testified regarding an incident in November 2011, when the guardian visited Ms. Cornelius and found her suffering from an upset stomach. RP 116:11-15. Ms. Cornelius requested a hug from the guardian and the guardian told her "I'm not hugging you, Kenyon, you've got germs, and that was very upsetting to her." RP 116:16-18. The guardian left Ms. Cornelius to go to the store and, while she was there, ran into some friends and had a lengthy conversation with them. RP 117:2-5. While she was alone, Ms. Cornelius "called her mom screaming, and her mom went from Viola to Pullman and picked Kenyon up and was taking her to the emergency room when she called me, and I met them up at the emergency room." RP 117:5-9.

The guardian explained her objection to the mother's dealing with Ms. Cornelius at the emergency room as follows: "Ms. Baldwin was stroking Kenyon's back and speaking to her in cooing tones and basically treating Kenyon like she was five years old and in an emergency room." RP 117:13-16. The guardian went on to describe how Ms. Cornelius was

“writhing and in so much pain” and that her mother continued to press to have testing done to make sure Ms. Cornelius was not having any serious problems. RP 117:18-24. The guardian explained that the doctors did not find anything wrong with Ms. Cornelius, and discharged her. RP 118:1-5.

The guardian concluded the example as follows:

You know, so, you know, somehow Kenyon has gotten this idea that she needs to over emphasize different aspects of her life. And we’re trying – I’ve been trying very hard to get Kenyon to act as an adult and not as a child. And every time Ms. Baldwin treats her like she’s five years old it’s like we lose any progress that we’ve made.

RP 118:5-11.

Regarding this same incident, the mother testified as follows:

Kenyon called about 5:30 screaming, took a minute for Michael and me to figure out she was in pain. She couldn’t articulate. She was just screaming. We left immediately. I called Leslie in route. There was no answer. I left a message. I called Mary and Phil. They’re Kenyon’s back-up guardians. There was no answer. By the way, Scott was out of the country so I didn’t call him. I called Kelly Miot, who is – Kenyon’s known her since she was approximately seven. Kelly has known her since Kenyon was six months old. So I called Kelly Miot who went over immediately. She lived a few blocks away. Kenyon was sobbing when she arrived. We took her to the hospital.

RP 156:6-20. The mother further explained the need for the trip to the hospital, as follows:

I took her to the hospital because Kenyon wanted to vomit, and she has a fundoplasty, which means that part of her stomach, the fundus is wrapped around her esophagus and tied in five places to her diaphragm and her stomach, and

she physically cannot vomit. If she vomits she risks exploding this suture, and Dr. Jeff Jones has said that no delay, get her there.

RP 156:21-157:2. The guardian arrived at the hospital almost an hour after Ms. Cornelius and her mother arrived. RP 157:5-6. Ultimately, the doctors could not determine anything conclusive, but suspected a gallbladder attack, given that Ms. Cornelius has family history of gallbladder disease. RP 157:12-15. Apparently, the guardian was unconcerned about Ms. Cornelius's fundoplasty and the doctor's orders to get Ms. Cornelius to an emergency room if she might vomit, or the guardian simply could not be bothered to comply with those orders. In any event, the incident actually supported a finding that the *mother* was the appropriate person to serve as guardian for Ms. Cornelius, rather than the guardian appointed by the court.

When asked about the allegations that the mother treated Ms. Cornelius as a "five year old," the mother responded that "I treated her as I would treat another person in the hospital or in great pain." RP 158:13-14. The mother went on to testify that she worked on an ambulance for 13 years, during which she learned the importance of comforting a patient through physical contact. RP 158:14-20. She further testified that she was rubbing Ms. Cornelius's back to help make her more comfortable, because

Ms. Cornelius suffers from significant back pain due to her having broken her hips and her neck in two places each. RP 158:24-159:6.

This example illustrates the misguided opinions of the guardian that the mother should not have contact with Ms. Cornelius. The guardian faulted the mother for treating Ms. Cornelius like a child, but the guardian's criticism is hypocritical in this regard. The guardian evidenced her own views that Ms. Cornelius is child-like when she related to the Court the reason Ms. Cornelius would not be present at the hearing:

Your Honor, she's ill, and she kept asking me if I thought she should come, and I told her a number of times that I thought it would just be very upsetting to her *and that maybe she should let the adults handle it*, and she finally agreed.

RP 71:16-20 (emphasis added). (The Court should recall that Ms. Cornelius is 41 years of age.) In a situation that could potentially have been life-threatening, the guardian left Ms. Cornelius severely upset, engaged herself in a conversation with friends at the grocery store, ignored a phone call from the mother, and was generally nonchalant and uncaring toward Ms. Cornelius. In stark contrast, the mother correctly recognized the potential severity of the situation, immediately sought a medical evaluation for Ms. Cornelius in accordance with doctor's orders, and was supportive and comforting to an otherwise hysterical mentally-disabled person.

This example illustrates that the mother responds to and treats Ms. Cornelius as would many mothers with their adult children, *whether or not* disabled. When the adult child needed help, comfort, and support in dealing with a potentially serious medical condition, her mother was there to provide that help, comfort, and support. The mother should not be criticized for doing so, and the guardian's opinion that such behavior is somehow detrimental to Ms. Cornelius is unsupported by any evidence. Indeed, Ms. Cloaninger's adamant unwillingness to recognize that at least some adult children (whether or not disabled) validly crave normal human interactions, physical contact, and exchange of signs of affection, indicates that she is not an appropriate guardian for Ms. Cornelius. Isolating and alienating Ms. Cornelius physically, emotionally, and mentally from her "best friend," mother, and companion of 40 years, as Ms. Cloaninger has done with the trial court's blessing, is most certainly not in Ms. Cornelius's best interests. The guardian's actions in ignoring Ms. Cornelius's potentially life-threatening medical situation so that the guardian could engage in a conversation with friends at the grocery store is also not in Ms. Cornelius's best interests.

The guardian also found fault with the mother's desire to educate herself regarding Ms. Cornelius's various medical conditions, including her Down's Syndrome. RP 120:2-8. The guardian offered her

(unsupported) perspective that “Kenyon seems to be mom’s ticket to being an expert, and mom is more concerned about being perceived as an expert than she is about just being Kenyon’s mom.” RP 119:20-23. The guardian claimed that if the mother doesn’t like the opinion of one medical provider, then she seeks another opinion. RP 120:6-15. In contrast to the guardian’s assertions, however, this behavior by the mother should be seen as laudable, zealous advocacy on behalf of her disabled daughter – not as somehow objectionable. The guardian takes the viewpoint that the mother should blindly accept the first practitioner’s opinion on a topic, even if that opinion conflicts with the mother’s research, knowledge, and instincts about her daughter. *See* RP 122:14-20 (“I learned a long time ago that I’m supposed to rely on the doctors to make those decisions, and I’m not supposed to interject my own judgment into it unless there’s something that’s just totally wrong.”). That viewpoint is completely unsupported, other than by the guardian’s own personal opinions – the viewpoint is certainly not conclusive as to what is in Ms. Cornelius’s best interests. Indeed, contrary to her assertions, the guardian has shown an unwillingness to comply with the recommendations of Ms. Cornelius’s providers. Dr. Jennifer Van Wey recommended that Ms. Cornelius work with a behavioral psychologist to explore the actual causes of her

behaviors. CP 406-407; CP 41. The guardian has chosen to ignore this advice and blame Ms. Baldwin.

The guardian further blamed the mother for a variety of Ms. Cornelius's inappropriate behaviors, ostensibly because the mother "shower[s] Kenyon with attention and hugs and loves and all of that kind of stuff. . . ." RP 122:25-123:1. The guardian claims that Ms. Cornelius's inappropriate, childish behaviors are tied to her visits with her mother, even though the guardian could not point to any specific conduct by the mother that would lead to such behaviors. RP 50:8-15; 123:3-5. However, the guardian's own testimony illustrates the fallacy of her logic: Ms. Cornelius engages in childish behavior *regardless* of her interactions with her mother, apparently because Ms. Cornelius thinks those behaviors are funny, likely due at least in part to her traumatic brain injury. Specifically, the guardian gave several examples of childish behaviors that have happened during the time that Ms. Cornelius has had *no* contact with her mother:

Last week I took Kenyon to the doctor, and she had a cold. . . . The doctor wanted to look down Kenyon's throat, and he put the tongue depressor on Kenyon's tongue and started look [*sic*] down her throat, and she coughed right in his face, and there was sputum all over the doctor's face, and she thought it was funny. You know, it's like there is no understanding of what appropriate behavior is and what is inappropriate for a 40-year-old person. And a couple weeks before that Anita had taken – my assistant Anita had

taken Kenyon to the doctor. And she had – you know, I think the doctor asked her something along the line of are you congested, and to prove she was congested Kenyon, you know, blew her nose all over her clothes and everything, and it was dripping down her face and stuff, and she thought it was funny. It was funny. You know, and I don't know how it got developed like that.

RP 123:10-124:4. Apparently, the guardian assumes without any support that the mother is to blame for Ms. Cornelius's childish behaviors, rather than the fact that Ms. Cornelius suffers from Down's Syndrome and that Ms. Cornelius suffered a traumatic frontal lobe injury, which affects her behavior. *See* RP 169:9-19. In contrast to the mother's efforts to educate herself about her daughter's various medical conditions, the guardian seems to not have even a basic understanding of the effect of Ms. Cornelius's frontal lobe injury on her behavior.

For her part, the mother testified about the strain that the guardian's restrictions have placed on her relationship with her daughter. She testified that the guardian has interfered with her ability to satisfy the MOA and to have a normal mother-daughter relationship with Ms. Cornelius. RP 146:6-16. She testified that many of her emails to the guardian, whether regarding mother/daughter issues or the mother's role as guardian of the estate, were unanswered by Ms. Cloaninger. RP 147:11-148:13. She also testified that Ms. Cornelius has repeatedly left messages for her mother during their period of forced alienation, stating

“Mom, I don’t want you to answer the phone. I just want you to know that I love you and you’re my best friend. . . .” RP 149:4-6. Because of the guardian’s prohibition of any contact between mother and daughter, the mother cannot return her daughter’s expressions of affection.

Finally, the mother testified regarding the difficulties Ms. Cornelius has had in understanding the divisions of “duties” regarding the care of Ms. Cornelius (such as taking her to the doctor), the difficulties that have arisen due to the guardian’s imposition of restrictions on their topics of conversation, and Ms. Cornelius’s fear of loss of her relationship with her mother and other family members. RP 150:4-153:3; 160:12-162:4; 172:14-173:21; 176:17-177:24; 181:8-182:4. Unknowingly foreshadowing what was to come, the mother testified that her relationship with her daughter appears to “be at the whim of the guardian if she’s appointed,” and that she feared that the guardian will permanently prevent her from having any contact with Ms. Cornelius. RP 191:1-192:9. That fear has in large part been realized.

The father testified regarding the assertion by the guardian that Ms. Cornelius’s behavior at work has been declining, rejecting that assertion and stating that Ms. Cornelius has had the same issues with work for the last 20 years. RP 196:20-25. In this regard, the mother testified that the primary job-related behavior issue for Ms. Cornelius is her tendency to

become infatuated with her male coworkers. RP 170:5-21. In one event, Ms. Cornelius developed an “obsession” with a male coworker, who ultimately applied for and received a restraining order against Ms. Cornelius, ultimately resulting in the termination of her employment. RP 170:5-21. Nevertheless, with the parents as co-guardians, Ms. Cornelius was able to remain competitively employed throughout much of her adulthood; under Ms. Cloaninger’s guardianship, however, Ms. Cornelius was withdrawn from competitive employment and has been unemployed or placed in a sheltered workshop. RP 189:20-24; 196:22-24.

Also before the court for its consideration was the report of Dr. Waterhouse. CP 422-428. Dr. Waterhouse reported that “Ms. Baldwin has been a creative, supportive and loving mother to Kenyon,” and that much of the “success in developing [Ms. Cornelius’s] life skills has been attributable to Ms. Baldwin’s efforts.” CP 427. Dr. Waterhouse recognized that the mother’s approach “may not be to the liking of some,” but stated that “Ms. Baldwin has been very successful in meeting her daughter’s needs and furthering Kenyon’s life potential.” CP 427. Specifically regarding her relationship with her daughter, Dr. Waterhouse reported as follows:

While there appears to be general agreement regarding the recommendation that Ms. Baldwin have more “play and fun” with Kenyon, there does seem to be a disconnect here.

If Christina Baldwin is not reinstated as co-guardian to the person of Kenyon Cornelius, she will be forever at the whim of any third party appointed guardian. For the most recent example, Ms. Baldwin has been forbidden to have contact with her daughter since January 26, 2012. And there was the suggestion that Kenyon only be allowed to have “supervised” visits with her mother. The recommendation provided that Mr. Cornelius serve as this supervisor seems ill-advised and untenable for all concerned.

CP 428.

The court in its oral decision mentioned Dr. Waterhouse’s report. RP 213:6-18. However, despite Dr. Waterhouse’s warning regarding the perils of the mother being at the whim of the guardian, the court erroneously stated that Dr. Waterhouse “recommends . . . structure and limitations on your contact and involvement with Kenyon. . . .” RP 213:18-20.

In fact, everyone who rendered an opinion on contact between Ms. Cornelius and her mother gave the opinion that the mother/daughter relationship should be supported and encouraged. Even the guardian and the GAL requested that the court order some sort of structure for that contact to occur. *See* RP 75:2-15, 204:3-6. Dr. Waterhouse and the mother noted that leaving the relationship to the “whim” of the guardian was fraught with the potential for abuse, as evidenced most plainly by the

guardian's (ongoing) decision to completely ban any mother/daughter contact.

Nevertheless, the court declined the invitation from the parties to provide guidance to the guardian regarding contact between Ms. Cornelius and her mother, and instead gave the guardian *carte blanche* to prohibit or restrict the relationship as she sees fit. RP 219:13-220:25. As a result of this order, Dr. Waterhouse and the mother's fears of the relationship being at the whim of the guardian have been fully realized, and the guardian continues to prohibit contact between mother and daughter. The record makes apparent that at the June 18, 2010 hearing at which the Court initially appointed Ms. Cloaninger, the Court determined that Ms. Baldwin was "the problem." CP 252-253. The Court held fast to this opinion, despite the passage of time and the efforts of the mother to change her behavior, throughout the pendency of this case. The court's order in this regard was not supported by the evidence and was erroneous.

The court further exhibited its inappropriate prejudice against the mother in considering payment for the fees of the second GAL, which was appointed as part of the MOA entered into by all the parties. The State argued that "all parties have benefited" from the resolution of the guardianship issues, and that it would be "unfair" to apportion the costs only to the mother. RP 246:22-248:6. Indeed, only Ms. Cloaninger

suggested that the court might require the mother to pay all of the second GAL's fees. RP 243:21-244-16. Nevertheless, the court decided (without any appropriate support) that it was the mother who somehow put all the parties in the position of having to agree to the MOA and to obtain a second GAL, and the court apportioned those costs entirely to the mother. RP 254:25-255:12. This decision was in error, and illustrates that the Court has "bought into" the guardians inappropriate blame of the mother.

In considering the best interests of Ms. Cornelius, the court, in its rush to judge the mother without adequate evidence or argument, placed significant weight on the mistaken interpretation that "all the experts" believe that guardianship by Ms. Cloaninger was in Ms. Cornelius's best interests. RP 216:9-17. In fact, the only "experts" that expressed such an opinion were the GAL (placing heavy reliance on Ms. Cloaninger) and Ms. Cloaninger herself.³ None of Drs. Waterhouse, Dietzen, or Summerson expressed the opinion that guardianship by Ms. Cloaninger was in Ms. Cornelius's best interests. Ms. Cornelius's attorney did not take that position either. The evidence provided by Ms. Cloaninger regarding the mother's interactions with her daughter was equivocal and in several ways supported the idea that it was in Ms. Cornelius's best

³ This Court should recall that Ms. Cloaninger profits from her service as guardian of Ms. Cornelius, earning \$25 per hour up to \$1000 per month. CP 448. In addition to her active legal practice, Ms. Cloaninger is the guardian of 20 wards. RP 115:14-17.

interests for *the mother* to serve as guardian. As shown above, Ms. Cloaninger's testimony made the following clear:

- that Ms. Cloaninger is not sensitive to Ms. Cornelius's desire to have supportive physical contact with her family;
- that she is unconcerned with the orders of Ms. Cornelius's doctors;
- that she treats Ms. Cornelius in a cold and uncaring fashion;
- that she holds significant animosity toward the mother;
- that she blames the mother for many of Ms. Cornelius's behaviors despite significant evidence to the contrary; and
- that she refuses to recognize that Ms. Cornelius's "childish" behaviors may in fact be symptoms of her medical conditions, rather than due to anything the mother did or did not do.

The trial court failed to provide an opportunity for any argument or presentation by the parties regarding these issues, as discussed above. Moreover, the court's decision failed to consider the significant, contradictory evidence that *was* presented at the hearing. The court's decision to replace the mother as guardian and to give that guardian the authority to entirely prevent future contact between mother and daughter was not in the best interests of Ms. Cornelius.

IV. CONCLUSION

The court's order is flawed for several reasons, both procedural and substantive. The court's decision to consider the merits of the Petition, *sua sponte*, without notice to the parties, and without adequate time to consider the report of the GAL, violated fundamental principles of due process as well as RCW 11.88.040 and 11.88.090. Moreover, the court's decision to allow the guardian great latitude in permitting or prohibiting the relationship between mother and daughter was unsupported by the evidence and was erroneous. The court's decision in this matter should be reversed and the case should be remanded for further proceedings. The MOA should be reinstated and the mother should be given a fair opportunity to reestablish her guardianship over Ms. Cornelius. In the meantime, the current guardian should be ordered to reestablish the mother/daughter relationship that Ms. Cornelius and her mother both crave.

Respectfully submitted this 25th day of January, 2013.


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DECLARATION OF SERVICE

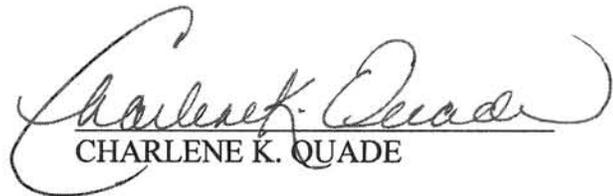
I, the undersigned, hereby declare that on the 25th of January, 2013, I caused to be served a true and correct copy of Appellant's Brief upon the following parties in interest by depositing them in the U.S. Mail, first-class, postage pre-paid, addressed as follows:

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