

FILED
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CLERK OF SUPREME COURT
STATE OF WASHINGTON

79506-1

NO. 79506-1

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

SUSAN E. RIVAS,
Petitioner,

vs.

OVERLAKE HOSPITAL MEDICAL CENTER; OVERLAKE INTERNAL
MEDICINE ASSOCIATES,

Defendants,

and

EASTSIDE RADIOLOGY ASSOCIATES; OVERLAKE IMAGING;
WASHINGTON IMAGING SERVICES,

Respondents,

and

ROBERT L. DAVIDSON, M.D., and JANE DOE DAVIDSON, his wife, and the
marital community thereto,

Defendants,

and

ALLAN MURAKI, M.D. and JANE DOE MURAKI, his wife, and the marital
community thereof,

Respondents.

CLERK

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APPEAL FROM KING COUNTY SUPERIOR COURT
Honorable Steven Scott, Judge

ANSWER TO PETITION FOR REVIEW

Address:
Two Union Square
601 Union Street, Suite 1500
Seattle, WA 98101-1363
(206) 292-4900

REED McCLURE
By Pamela A. Okano
Attorneys for Respondents

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I. NATURE OF THE CASE

This is an appeal by a plaintiff who commenced suit two days after the expiration of the limitations period applicable to her medical malpractice claim. Plaintiff failed to file her suit on time even though she had engaged her attorney two years earlier. The Court of Appeals unanimously ruled the suit was late, so defendants were entitled to dismissal as a matter of law. Now plaintiff seeks this Court's review by claiming the panel held something it did not.

II. ISSUES PRESENTED

Is there any reason for this Court to accept review when—

1. Plaintiff claims the panel held something it did not?
2. Plaintiff claims the tolling statute, RCW 4.16.190, which requires, among other things, "incompetency or disability as determined according to chapter 11.88 RCW", does not require RCW ch. 11.88 incompetency or disability?
3. The constitutional void for vagueness doctrine applies only to a type of statute not involved here—regulatory statutes prohibiting certain types of conduct and imposing sanctions for violations?
4. The panel's opinion is not inconsistent with *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 770 P.2d 182 (1989), since—

- the limitations period there was tolled by the claimant's minority under a totally different prong of RCW 4.16.190 that does not involve RCW ch. 11.88, and
- the panel here said the actual appointment of a guardian was unnecessary for tolling?

III. STATEMENT OF THE CASE

A. STATEMENT OF RELEVANT FACTS.

Plaintiff/petitioner Susan Rivas had severe renal vascular disease. On July 19, 1996, defendant/respondent Alan Muraki, M.D., performed a renal angiogram and angioplasty to see if the blood flow to her right kidney could be increased.¹ (CP 49, 654) Two days later, on July 21, the right kidney had to be removed because of complications that developed during the July 19 procedure. (CP 58) The trial court later ruled, "The loss of the kidney [became] inevitable as of July 20, 1996."² (CP 748)

Plaintiff was in intensive care from July 19 until July 23, 1996. She was discharged from the hospital on July 26, 1996. (CP 58, 109-10) Then she began investigating what had occurred.

¹ Defendants/respondents are referred to collectively as "Dr. Muraki" or "defendants" or "respondents."

² Defendants believe all of their alleged acts or omissions, if any, must have occurred on or before July 19. However, for the purposes of this appeal only, defendants will assume the July 20 date.

On October 14, 1996, three months after the angioplasty, plaintiff authorized release of her medical records. By July 1997 she had retained an attorney. He sent a medical release authorization to Overlake Hospital with a cover letter saying, "We are requesting these documents by July 16, and would appreciate whatever you can do to expedite." (CP 60-61, 78)

B. STATEMENT OF PROCEDURE.

Despite having retained an attorney more than two years earlier, plaintiff did not file suit until July 21, 1999, three years and two days after the angioplasty she claims was performed negligently. (CP 5-11, 60) The gravamen of her suit is the following:

[Dr.] Muraki failed to disclose to her the risks and complications associated with [the] angioplasty and failed to advise her fully about alternative forms of treatment. Plaintiff also asserts he failed to properly perform the angioplasty causing the right renal artery to dissect, and failed to respond properly to the dissection of her renal artery and waited too long before calling for a vascular consultation or a vascular intervention, which delay proximately caused the loss of Susan's right kidney.

(CP 522-23)

Under prior law, plaintiff's suit might arguably have been timely, because traditionally, the limitations period on a medical malpractice claim did not begin to run until the cause of action accrued, *i.e.*, when

injury was sustained.³ See *Gunnier v. Yakima Heart Center, Inc.*, 134 Wn.2d 854, 860, 953 P.2d 1162 (1998). However, in 1976, the Legislature amended RCW 4.16.350 to provide that the three-year medical malpractice limitations period begin to run from “the *act or omission* alleged to have caused the injury or condition.” RCW 4.16.350(3) (emphasis added).

Defendants moved for summary judgment on the ground the statute of limitations barred plaintiff’s suit. (CP 215-375) Citing RCW 4.16.190, plaintiff claimed the limitations period was tolled “during the period [from] July 19, 1996 through July 22, 1996”—*i.e.*, for four of the five days she was in the intensive care unit. (CP 524) RCW 4.16.190 provides:

[I]f a person entitled to bring an action . . . be at the time the cause of action accrued . . . incompetent or disabled to such a degree that he or she cannot understand the nature of the proceedings, *such incompetency or disability as determined according to chapter 11.88 RCW* . . . the time of such disability shall not be a part of the time limited for the commencement of action.

(Emphasis added.) RCW ch. 11.88 governs the appointment of guardians and states, among other things:

³ It was likely untimely even under prior law, because, as the trial court found, the loss of plaintiff’s kidney became inevitable on July 20, 1996. Plaintiff filed her complaint on July 21, 1999, one day after expiration of what would have been the limitations period before the 1976 amendment to RCW 4.16.350.

For purposes of the terms "incompetent," "disabled," or "not legally competent," as those terms are used in the Revised Code of Washington to apply to persons incapacitated under this chapter, those terms shall be interpreted to mean "incapacitated" persons for purposes of this chapter.

RCW 11.88.010(1)(f).

Defendants did not contend a guardian had to have been actually appointed. Instead, they reasoned that during her 4-day stay in intensive care, plaintiff could not have been incompetent or disabled "as determined according to chapter 11.88 RCW", since RCW 11.88.010(1)(c) provides:

A determination of incapacity is a legal not a medical decision, based upon a demonstration of management insufficiencies *over time* in the area of person or estate. . . .

(Emphasis added.) In other words, defendants' position was that to qualify for tolling, plaintiff's condition had to have qualified her for a guardian under RCW ch. 11.88, even if one had not been actually appointed. Since plaintiff had not demonstrated management insufficiencies "over time", as required by RCW 11.88.010(1)(c), defendants asserted she could not have been eligible for a guardian under RCW ch. 11.88—*i.e.*, she could not have been incompetent or disabled "as determined according to chapter 11.88 RCW", as a matter of law.

The trial court denied defendants' motion on the ground there were factual issues whether plaintiff was incapacitated. (CP 749) A Division I commissioner denied defendants' motion for discretionary review.

However, a panel granted defendants' motion to modify, accepting review. A different panel unanimously reversed⁴, ruling that defendants were entitled to dismissal as a matter of law.

IV. ARGUMENT

This Court will review only if one or more RAP 13.4(b) criteria exist. The petition cites only RAP 13.4(b)(4), requiring an issue of substantial public importance requiring this Court's review. In addition, the petition appears to claim a constitutional issue and a conflict with a decision of this Court. *See* RAP 13.4(b)(1), (3). There is no conflict, no constitutional issue, and no issue of substantial public importance this Court should review.

A brief review of the relevant statutes and the panel's decision is necessary to understand why none of the criteria for this Court's review exist. Copies of cited statutes are included in the Appendix.

The limitations period is tolled under RCW 4.16.190 "[i]f a person entitled to bring an action . . . be at the time the cause of action accrued . . . incompetent or disabled to such a degree that he or she cannot understand the nature of the proceedings, *such incompetency or disability as*

⁴ Judge Agid concurred, saying, "While I agree with the majority opinion, I write separately to emphasize the guardianship statute's requirement that incapacity be 'based upon a demonstration of management insufficiencies *over time* in the area of person or estate.'" (citing RCW 11.88.010(1)(c)) (emphasis in original).

determined according to chapter 11.88 RCW.” (Emphasis added.) RCW 11.88.010(1)(f) confirms that RCW 4.16.190’s reference to “incompetency or disability as determined according to chapter 11.88 RCW” means incapacity as determined according to RCW ch. 11.88:

For purposes of the terms "incompetent," "disabled," or "not legally competent," as those terms are used in the Revised Code of Washington to apply to persons incapacitated under this chapter, those terms shall be interpreted to mean "incapacitated" persons for purposes of this chapter.

RCW 11.88.010(1)(c) provides how, in part, incompetency or disability is determined under chapter 11.88 RCW:

A determination of incapacity is a legal not a medical decision, based upon a demonstration of management insufficiencies over time in the area of person or estate. . . .

(Emphases added.)

Thus, to qualify for tolling under RCW 4.16.190, a plaintiff must show that—

(1) he or she was incompetent or disabled—*i.e.*, incapacitated— “as determined according to chapter 11.88 RCW” and

(2) that such incompetency or disability rendered him or her unable to understand the nature of proceedings at the time his or her cause of action accrued. If either of these criteria is not met, tolling will not occur.

The panel ruled that plaintiff here had failed to meet criterion (1) as a matter of law. While the three judges agreed a guardian need not

have been actually appointed when her cause of action accrued, they held that “plaintiff must show that a guardianship would have been appropriate had one been sought when the cause of action accrued.” (Slip op. at 7)

In addition, the panel ruled that as a matter of law plaintiff could not have been incompetent or disabled “as determined according to chapter 11.88 RCW.” This was because the panel concluded by requiring management insufficiencies “over time” in RCW 11.88.010(1)(c), the Legislature could not have meant merely four days. (Slip op. at 7-9) *The petition for review does not dispute that if the tolling statute’s reference to RCW ch. 11.88 includes the requirement that plaintiff demonstrate management insufficiencies over time, as required by RCW 11.88.010(1)(c), the panel’s decision was correct.*

A. THERE IS NO ISSUE OF SUBSTANTIAL PUBLIC IMPORTANCE THIS COURT SHOULD REVIEW.

Instead, plaintiff claims the panel allegedly “impermissibly add[ed] terms to the tolling statute” and “forc[ed] even a hypothetical guardianship procedure on a litigant who may never have wanted nor needed a guardianship”. (Petition 7) Based on these assertions, plaintiff argues that thereby the panel’s decision raises issues of substantial public importance this Court should decide. But the panel did not do what plaintiff claims it did, and there is no issue of substantial public importance.

1. Plaintiff, Not the Panel, Has Changed the Language of the Tolling Statute.

Despite the fact that the tolling statute says that the inability to understand the nature of the proceedings must be due to “incompetency or disability as determined according to chapter 11.88 RCW”, plaintiff claims that all she had to show was that she could not understand the nature of the proceedings when her cause of action accrued. (Petition 8) Plaintiff claims that the tolling statute’s reference to RCW ch. 11.88 does not include that chapter’s incompetency/disability requirement, *i.e.*, RCW 11.88.010(1)’s requirement of management insufficiencies over time. Rather, she claims it refers only to the procedural safeguards set forth in RCW 11.88.010(1)(a)-(b) and RCW 11.88.045, such as the right to have the decision made in superior court, right to counsel, right to a jury trial, and standard of proof.

Plaintiff wants this Court to read the tolling statute’s proviso—“such incompetency or disability as determined according to chapter 11.88 RCW”—to refer to just those portions of chapter 11.88 RCW most favorable to her. She never explains how—by referring to “chapter 11.88 RCW”—the Legislature must have really meant just a few portions of that chapter, namely RCW 11.88.045 and subsections (a)-(b) of RCW 11.88.010(1), but not subsections (c)-(f).

In other words, plaintiff wants this Court to read RCW 4.16.190 as if that statute read:

If a person entitled to bring an action . . . be at the time the cause of action accrued . . . ~~incompetent or disabled to such a degree that he or she~~ cannot understand the nature of the proceedings, such ~~incompetency or disability~~ inability as determined according to the procedures set forth in RCW 11.88.010(1)(a)-(b) and RCW 11.88.045 ~~chapter 11.88 RCW~~ . . . the time of such ~~disability~~ inability shall not be a part of the time limited for the commencement of action.

But as this Court has said, “[t]he court will not read into a statute matters which are not there nor modify a statute by construction.” *In re Estate of Hansen*, 128 Wn.2d 605, 610, 910 P.2d 1281 (1996) (quoting *King County v. City of Seattle*, 70 Wn.2d 988, 991, 425 P.2d 887 (1967)).

Plaintiff’s contention that the Legislature would have enacted the tolling statute to read “incompetency or disability as defined in ch. 11.88 RCW” or something similar if it had intended the “management insufficiencies over time” requirement to apply to the tolling statute must fail. By broadly requiring “such incompetency or disability as determined according to chapter 11.88 RCW,” the Legislature not only intended to include the procedural safeguards plaintiff concedes but also the “management insufficiencies over time” requirement of RCW 11.88.010(1)(c).

Thus, it is plaintiff, not the panel, who is changing the language of the tolling statute, contrary to well-established rules of statutory construction. Consequently, there is no issue of substantial public importance this Court should decide.

2. The Panel Did Not Do What Plaintiff Claims It Did.

Plaintiff's contention that the panel held that she had to go through an "entire hypothetical guardianship process" is *not* true. (Petition 15) No one, least of all the panel, claimed that plaintiff here had to have a guardian ad litem appointed, for example, as would be required in a real guardianship proceeding.

What the panel did was to examine the guardianship statute, RCW ch. 11.88, to determine what the Legislature meant when it required management insufficiencies "over time", as required by RCW 11.88.010(1)(c). This was perfectly appropriate: "In order to interpret a statute, each of its provisions 'should be read in relation to the other provisions, and the statute should be construed as a whole.'" *In re Detention of Williams*, 147 Wn.2d 476, 490, 55 P.3d 597 (2002) (quoting *Weyerhaeuser Co. v. Tri*, 117 Wn.2d 128, 133, 814 P.2d 629 (1991)). Given the lengthy and expensive process the Legislature deemed necessary for appointment of a guardian, the Legislature could not have intended "over time" to include either a period shorter than the time

required to appoint a guardian or a period so short the guardianship would have essentially been meaningless.

Accordingly, the panel noted that under RCW 11.88.040, appointment of a guardian typically requires 10 days' notice of hearing, which can be shortened to 3 days for good cause shown. It observed that pursuant to RCW 11.88.045(1)(a), the putative ward has the right to consult with counsel and that a period of less than three weeks is presumed to be inadequate time for the attorney to consult and prepare for the guardianship petition hearing. The panel also pointed out that the court must appoint a guardian ad litem, who must file a report at least 15 days before the hearing on the guardianship petition. RCW 11.88.090(3), (5)(f). From these time periods, the panel decided that the Legislature could not have intended that management insufficiencies "over time" included management insufficiencies for only 4 days. (Slip op at 8-9) Plaintiff's petition does not dispute that if the management insufficiencies over time requirement of RCW 11.88.010(1)(c) applies, this decision was correct.

The Legislature intended that the guardianship process be lengthy to minimize the opportunities to abuse guardianships. Accordingly, this Court has aptly observed that "[a]ppointment of a guardian is a time-consuming process." *In re Schuoler*, 106 Wn.2d 500, 505-06, 723 P.2d

1103 (1986). The panel's decision not only acknowledges this, but is consistent with it.

There is nothing absurd about the panel's decision. As discussed *supra*, plaintiff distorts the panel's decision by claiming that the court required her to through an "entire hypothetical guardianship process." Moreover, plaintiff is simply wrong when she claims there will be a "problem" if a plaintiff claiming tolling has to prove both that he/she was incompetent or disabled under RCW ch. 11.88 and was unable to understand the nature of the proceedings. (Petition at 15) There is no problem. The plaintiff must show that he/she was, at the time the cause of action accrued, (1) suffering from management insufficiencies over time and (2) that this caused him/her to be unable to understand the nature of the proceedings.

The panel did not, as plaintiff claims, hold that a court could "[u]s[e] the results of an RCW 11.88 guardianship to conclusively prove the requirements of RCW 4.16.190 were met." (Petition 15) Rather, as discussed *supra*, because tolling requires a showing of both (1) incompetency or disability as determined under RCW ch. 11.88 and (2) that such incompetency or disability rendered the plaintiff unable to understand the proceedings, a finding that (1) does not exist as a matter of

law renders (2) a moot issue. If plaintiff had shown (1), then she would be entitled to attempt to show (2).

Plaintiff also seems to argue that this Court should review because of the uncertainty she claims arises because of the panel's refusal to fashion a bright line rule defining "over time." But, as this Court has recognized many times, bright line rules are not always desirable. *See, e.g., Benjamin v. Washington State Bar Association*, 138 Wn.2d 506, 517, 980 P.2d 742 (1999) (no bright line rule on what constitutes protected speech by public employees); *In re Discipline of Turco*, 137 Wn.2d 227, 240, 970 P.2d 731 (1999) (rejecting bright line rule between extrajudicial criminal conduct and extrajudicial noncriminal conduct); *State v. Chrisman*, 100 Wn.2d 814, 820, 676 P.2d 419 (1984) (refusing to adopt bright line rule in search and seizure cases).

Moreover, plaintiff concedes that to toll the limitations period, she must show she was unable to understand the nature of the proceedings. This determination hardly presents a "bright line" determination. Thus, this case is unlike *Stikes Woods Neighborhood Association v. City of Lacey*, 124 Wn.2d 459, 880 P.2d 25 (1994), where the issue was a purely computational one, namely, "whether final Saturdays should be excluded in computing statutes of limitations periods." *Id.* at 462. And in any event, a plaintiff can avoid any statute of limitations problems simply by

not waiting until the last minute to file suit. That is what plaintiff here should have done.

Because the panel did not do what plaintiff claimed it did, there is no reason for this Court to review.

3. Plaintiff's Remaining Arguments Are Meritless.

Plaintiff makes other arguments without even claiming they qualify this case for review under RAP 13.4(b). This is not surprising because the arguments do not demonstrate any need for this Court's review.

For example, plaintiff argues the panel failed to construe "determine", as used in the tolling statute, properly. (Petition at 10-11) This is meritless. If anything, the Legislature's use of the word "determined" in RCW 4.16.190 supports the panel's decision, not plaintiff's petition.

This is because the Legislature chose to use variations of the word "determine" in both the tolling statute and RCW 11.88.010. RCW 4.16.190 requires that the plaintiff have suffered from "incompetency or disability as *determined* according to chapter 11.88 RCW" (emphasis added). RCW 11.88.010(1)(c) explains how to "determine" incompetency or disability:

A determination of incapacity is a legal not a medical decision, based upon a *demonstration of management insufficiencies over time* in the area of person or estate. . . .

(Emphases added.) Nothing in either statute supports plaintiff's position that the word "determine" somehow means that a court determining incompetency or disability under RCW 4.16.190 should not consider RCW 11.88.010(1)(c).

Plaintiff claims the panel ignored that a finder of fact would still have to find whether plaintiff understood the nature of the proceedings. (Petition 15) But the "problem" plaintiff posits is no problem at all. As discussed *supra*, the limitations period is tolled only, if at the time her cause of action accrued, (1) plaintiff was incompetent or disabled as determined according to chapter 11.88 RCW *and* (2) as result, she was unable to understand the nature of the proceedings. Since the panel found that criterion (1) does not exist, whether criterion (2) exists is irrelevant.

Finally, plaintiff cites legislative history, claiming that "nothing" therein supports the panel's construction. (Petition 18) But nothing plaintiff has submitted negates the panel's construction either. And in any event, plaintiff ignores the most important factor in statutory construction—the language the Legislature chose to use in the statute. As this Court as said:

Statutory construction begins by reading the text of the statute or statutes involved. If the language is unambiguous, a reviewing court is to rely solely on the statutory language.

State v. Roggenkamp, 153 Wn.2d 614, 621, 106 P.3d 196 (2005). The statutory language here is clear and unambiguous. There is no need to look to legislative history.

B. THE PANEL'S DECISION DOES NOT CONFLICT WITH *YOUNG V. KEY PHARMACEUTICALS*.

The panel did not hold that a guardian actually had to have been appointed for plaintiff while she was in the hospital for tolling to occur. (Slip op. at 6) Rather, the panel ruled that because the tolling statutes requires "incompetency or disability as determined according to chapter 11.88 RCW", plaintiff's condition would have had to qualify her for a guardian had the appointment of one been sought. (Slip op. at 7)

Plaintiff claims that the panel's ruling conflicts with this Court's decision in *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 770 P.2d 182 (1989). Wrong. In *Young* a minor suffered permanent brain damage that would likely require him to have custodial care for the rest of his life. The issue was whether the actual appointment of a guardian for him stopped the tolling of the limitations period under RCW 4.16.190, which

also provides for tolling due to the claimant's minority.⁵ This Court ruled that actually appointing a guardian did not preclude tolling, explaining that the tolling statute "was intended to operate regardless of the guardian's presence." *Id.* at 221.

Young simply did not deal with the issue here—whether plaintiff suffered "incompetency or disability as determined according to chapter 11.88 RCW". Rather, the plaintiff there was a minor, which in and of itself triggers tolling under RCW 4.16.190, without any RCW ch. 11.88 determination. And in any event, the panel's decision here is consistent with *Young* since the panel said that tolling did not require actual appointment of a guardian.

C. THERE IS NO CONSTITUTIONAL ISSUE.

Plaintiff also claims the panel's decision violates due process. While it is true RAP 13.4(b)(3) allows this Court to review when a significant question of law under the federal or state constitutions is presented, no such question exists here.

⁵ RCW 4.16.190(1) provides, insofar as minors are concerned, as follows:

[I]f a person entitled to bring an action mentioned in this chapter, . . . be at the time the cause of action accrued . . . under the age of eighteen years, . . . the time of such disability shall not be a part of the time limited for the commencement of action.

Plaintiff claims the panel's decision has left the tolling statute unconstitutionally vague. But, the void-for-vagueness doctrine (which is rooted in due process) applies only to regulatory statutes prohibiting certain types of conduct and imposing sanctions for violation of those standards. See *Hi-Starr, Inc. v. Washington State Liquor Control Board*, 106 Wn.2d 455, 465, 722 P.2d 808 (1986); *State v. Lake Lawrence Public Lands Protection Association*, 92 Wn.2d 656, 667, 601 P.2d 494 (1979), *cert. denied*, 449 U.S. 830 (1980). The tolling statute is not such a statute.

Plaintiff's claim that the panel violated due process by allegedly adding terms to the tolling statute and supposedly "taking away from her the very right the tolling statutes [sic] was to confer" is baseless. (Petition 7-8) Plaintiff has cited no authority beyond making bald assertions of due process violations. For this reason alone, there should be no review under RAP 13.4(b)(3): "naked castings into the constitutional sea are not sufficient to command judicial consideration and discussion." *Association of Washington Business v. State*, 155 Wn.2d 430, 450, 120 P.3d 46 (2005) (quoting *In re Disciplinary Proceeding Against Schafer*, 149 Wn.2d 148, 168, 66 P.3d 1036 (2003)).

In any case, there can be no due process violation because it is plaintiff, not the panel, who seeks to add (and subtract) terms from the statute, as discussed *supra*. The panel was simply enforcing the specific

requirement of the tolling statute that “such incompetency or disability as determined according to chapter 11.88 RCW.”

V. CONCLUSION

Plaintiff here was late in filing her lawsuit. She was late not because of “incompetency or disability as determined according to chapter 11.88 RCW.” Rather, she was late because—for whatever reason— she failed to file her complaint on time, despite having retained her attorney two years earlier.

Unlike plaintiff, the panel did not add or subtract language from RCW 4.16.190. It did not “forc[e] even a hypothetical guardianship procedure on a litigant who may never have wanted nor needed a guardianship.” (Petition 7) It did not ignore RCW 11.88.010(1)(f). The panel simply read RCW 4.16.190 as enacted.

There is no reason for this Court to review. The petition should be denied.

DATED this ^{7th} 14 day of January 2007.

REED McCLURE

By Pamela A. Okano
Pamela A. Okano WSBA #7718
Attorneys for Respondents

RCW 4.16.190
Statute tolled by personal disability.

(1) Unless otherwise provided in this section, if a person entitled to bring an action mentioned in this chapter, except for a penalty or forfeiture, or against a sheriff or other officer, for an escape, be at the time the cause of action accrued either under the age of eighteen years, or incompetent or disabled to such a degree that he or she cannot understand the nature of the proceedings, such incompetency or disability as determined according to chapter 11.88 RCW, or imprisoned on a criminal charge prior to sentencing, the time of such disability shall not be a part of the time limited for the commencement of action.

(2) Subsection (1) of this section with respect to a person under the age of eighteen years does not apply to the time limited for the commencement of an action under RCW 4.16.350.

[2006 c 8 § 303; 1993 c 232 § 1; 1977 ex.s. c 80 § 2; 1971 ex.s. c 292 § 74; Code 1881 § 37; 1877 p 9 § 38; 1869 p 10 § 38; 1861 p 61 § 1; 1854 p 364 § 11; RRS § 169.]

Notes:

Findings -- Intent -- Part headings and subheadings not law -- Severability -- 2006 c 8: See notes following RCW 5.64.010.

Purpose -- Intent -- 1977 ex.s. c 80: "It is the purpose of the legislature in enacting this 1977 amendatory act to provide for a comprehensive revision of out-dated and offensive language, procedures and assumptions that have previously been used to identify and categorize mentally, physically, and sensory handicapped citizens. It is legislative intent that language references such as idiots, imbeciles, feeble-minded or defective persons be deleted and replaced with more appropriate references to reflect current statute law more recently enacted by the federal government and this legislature. It is legislative belief that use of the undefined term "insanity" be avoided in preference to the use of a process for defining incompetency or disability as fully set forth in chapter 11.88 RCW; that language that has allowed or implied a presumption of incompetency or disability on the basis of an apparent condition or appearance be deleted in favor of a reference to necessary due process allowing a judicial determination of the existence or lack of existence of such incompetency or disability." [1977 ex.s. c 80 § 1.]

Severability -- 1977 ex.s. c 80: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 80 § 76.]

Severability -- 1971 ex.s. c 292: See note following RCW 26.28.010.

Adverse possession, personal disability, limitation tolled: RCW 7.28.090.

APPENDIX A

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

(1) The superior court of each county shall have power to appoint guardians for the persons and/or estates of incapacitated persons, and guardians for the estates of nonresidents of the state who have property in the county needing care and attention.

(a) For purposes of this chapter, a person may be deemed incapacitated as to person when the superior court determines the individual has a significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety.

(b) For purposes of this chapter, a person may be deemed incapacitated as to the person's estate when the superior court determines the individual is at significant risk of financial harm based upon a demonstrated inability to adequately manage property or financial affairs.

(c) A determination of incapacity is a legal not a medical decision, based upon a demonstration of management insufficiencies over time in the area of person or estate. Age, eccentricity, poverty, or medical diagnosis alone shall not be sufficient to justify a finding of incapacity.

(d) A person may also be determined incapacitated if he or she is under the age of majority as defined in RCW 26.28.010.

(e) For purposes of giving informed consent for health care pursuant to RCW 7.70.050 and 7.70.065, an "incompetent" person is any person who is (i) incompetent by reason of mental illness, developmental disability, senility, habitual drunkenness, excessive use of drugs, or other mental incapacity, of either managing his or her property or caring for himself or herself, or both, or (ii) incapacitated as defined in (a), (b), or (d) of this subsection.

(f) For purposes of the terms "incompetent," "disabled," or "not legally competent," as those terms are used in the Revised Code of Washington to apply to persons incapacitated under this chapter, those terms shall be interpreted to mean "incapacitated" persons for purposes of this chapter.

(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.

(3) Venue for petitions for guardianship or limited guardianship shall lie in the county wherein the alleged incapacitated person is domiciled, or if such person resides in a facility supported in whole or in part by local, state, or federal funding sources, in either the county where the facility is located, the county of domicile prior to residence in the supported facility, or the county where a parent or spouse of the alleged incapacitated person is domiciled.

If the alleged incapacitated person's residency has changed within one year of the filing of the petition, any interested person may move for a change of venue for any proceedings seeking the appointment of a guardian or a limited guardian under this chapter to the county of the alleged incapacitated person's last place of residence of one year or more. The motion shall be granted when it appears to the court that such venue would be in the best interests of the alleged incapacitated person and would promote more complete consideration of all relevant matters.

(4) Under RCW 11.94.010, a principal may nominate, by a durable power of attorney, the guardian or limited guardian of his or her estate or person for consideration by the court if guardianship proceedings for the principal's person or estate are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification.

(5) Imposition of a guardianship for an incapacitated person shall not result in the loss of the right to vote unless the court determines that the person is incompetent for purposes of rationally exercising the franchise in that the individual lacks the capacity to understand the nature and effect of voting such that she or he cannot make an individual choice. The court order establishing guardianship shall specify whether or not the individual retains voting rights. When a court determines that the person is incompetent for the purpose of rationally exercising the right to vote, the court shall notify

APPENDIX B

the appropriate county auditor.

[2005 c 236 § 3; (2005 c 236 § 2 expired January 1, 2006); 2004 c 267 § 139; 1991 c 289 § 1; 1990 c 122 § 2; 1984 c 149 § 176; 1977 ex.s. c 309 § 2; 1975 1st ex.s. c 95 § 2; 1965 c 145 § 11.88.010. Prior: 1917 c 156 § 195; RRS § 1565; prior: Code 1881 § 1604; 1873 p 314 § 299; 1855 p 15 § 1.]

Notes:

Effective date -- 2005 c 236 § 3: "Section 3 of this act takes effect January 1, 2006." [2005 c 236 § 5.]

Expiration date -- 2005 c 236 § 2: "Section 2 of this act expires January 1, 2006." [2005 c 236 § 4.]

Findings -- 2005 c 236: "The legislature finds that the right to vote is a fundamental liberty and that this liberty should not be confiscated without due process. When the state chooses to use guardianship proceedings as the basis for the denial of a fundamental liberty, an individual is entitled to basic procedural protections that will ensure fundamental fairness. These basic procedural protections should include clear notice and a meaningful opportunity to be heard. The legislature further finds that the state has a compelling interest in ensuring that those who cast a ballot understand the nature and effect of voting is an individual decision, and that any restriction of voting rights imposed through guardianship proceedings should be narrowly tailored to meet this compelling interest." [2005 c 236 § 1.]

Effective dates -- 2004 c 267: See note following RCW 29A.08.651.

Effective date -- 1990 c 122: See note following RCW 11.88.005.

Severability -- Effective dates -- 1984 c 149: See notes following RCW 11.02.005.

Severability -- 1977 ex.s. c 309: See note following RCW 11.88.005.