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IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

In Re the Guardianship of Christine W. Savadkin

REPLY BRIEF OF APPELLANT IAN LANE

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I. ARGUMENT

A. Lane's typographical error is no reason to ignore his argument that Zacher and Laubacher's fees should be reversed.

Frontier correctly points out that Appellant's Brief at pages 3 and 17 misquotes Paragraph 3 of the Commissioner's June 25, 2009 Order to omit reference to the award of \$24,579.55 to Laubacher and Zacher. The Brief quoted Paragraph 3 as:

3. Attorney fees Re: Ian Lane's Failure to Provide Accounting and Turn Over Assets. The court awards the attorneys' fees requested by requested by Frontier Bank in the amount of \$9,212.50; and the fees of the guardian ad litem in the amount of \$6,314 and all such fees shall be paid by Ian Lane individually.

Appellant's Brief at p. 3 and 17.

The actual Paragraph 3 reads:

3. Attorney Fees Re: Ian Lanes' Failure to Provide Accounting and Turn Over Assets. The Court awards the attorneys' fees requested by petitioners Laubacher and Zacher in the amount of \$24,579.55; the fees requested by Frontier Bank in the amount of \$9,212.50; and the fees of the Guardian ad litem in the amount of \$6,314 and all such fees shall be paid by Ian Lane individually.

CP 183, p. 2-3.

However, this misquote is no reason for this Court ignore Lane's arguments regarding the award of fees to Zacher and Laubacher, as Frontier urges it to do.

Frontier is and was aware that Lane seeks reversal of the entirety of Paragraph 3 of the June 25, 2009 Order. Lane's Notice of Appeal stated that he sought review of Paragraph 3, and quoted it correctly. Lane's Brief argues at length that the June 25, 2009 Order's award of fees to Zacher and Laubacher was duplicative, wasteful, and unsupported. Further, Lane seeks to vacate the entire September 22, 2009 judgment, nearly half of which is based on the fees awarded to Zacher and Laubacher in the June 25, 2009 Order. The typographical error did not actually confuse Frontier as to the relief that Lane seeks in his appeal, and it should not bar the relief he seeks.

B. Frontier offered no argument why Zacher and Laubacher's fees were not duplicative and wasteful.

The Commissioner awarded fees of \$24,579.55 to Zacher and Laubacher for seeking the same relief that Frontier sought. The June 25 Order and September 22 Judgment offer no statement that the fee award was proper, or that the Court even considered that those fees were duplicative and wasteful. The award of fees to Zacher and Laubacher should be reversed.

C. Nothing in RCW 11.96A.150 or 11.88.090(10) relieves the Commissioner in this Guardianship action from taking an active role in assessing the reasonableness of fee awards.

RCW 11.96A.150 states “The court may order the costs, including reasonable attorneys' fees, to be paid in such amount and in such manner as the court determines to be equitable.” Under RCW 11.96A.150 “equity requires some finding of fault that in fairness requires a party to pay.” *In re Guardianship of McKean*, 136 Wn. App. 906, 920, 151 P.3d 223, 229 (2007). The *McKean* court stated that fees under RCW 11.96A.150 can be awarded only when a party's actions necessitated those fees:

Here, the trial court should have considered allocating fees amongst those who created the need for the guardianship. *See, e.g., In re Estate of Jones*, 152 Wn.2d 1, 20-21, 93 P.3d 147 (2004) (personal representative/beneficiary of a will ordered to pay other beneficiaries' attorney fees personally “because the litigation was necessitated by his multiple breaches of fiduciary duty” to those beneficiaries); *see also Gillespie v. Seattle-First Nat'l Bank*, 70 Wn. App. 150, 177-78, 855 P.2d 680 (1993) (even absent bad faith or self-dealing, attorney fees equitably assessed against the trustee where, but for its breach of fiduciary duty, the beneficiaries would not have needed to incur the fees).

McKean, 136 Wn. App. at 920. The Commissioner found that a narrow portion of the total fees in the Guardianship was attributable to and the fault of Ian Lane.

The Commissioner specifically stated that the reason that she was awarding fees against Mr. Lane was because his actions caused the other parties to the Guardianship action to incur fees:

I am going to award the fees requested by Mr. Hickman, Mr. Jelsing and Mr. Cooper to Mr. Lane. But for his not following Court orders, and now it's been four of them, we wouldn't have incurred those fees.

RP I (June 25, 2009), 27/12 27/15.

Lane does not dispute that this is a basis on which a court can award fees against a party in a guardianship proceeding. However, having found fault as a basis for a fee award, the Commissioner must also take care to award only fees actually incurred on that basis, and to ensure that the fees are reasonable. This is where the Commissioner failed, and where Lane assigns error. Awarding duplicative fees, wasteful fees, fees for routine duties unrelated to Lane's actions, and fees for work done in pursuit of a parties' separate TEDRA action was neither reasonable nor equitable because they were not related to the Commissioner's finding of fault.

Frontier claims that the Commissioner's fee award came after she "reviewed and considered Mr. Lane's arguments regarding duplication of effort" and made an award "only after careful consideration."

Respondents' Brief at p. 10. Yet no support for these statements exists

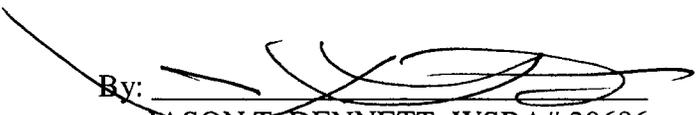
anywhere in the record. Nor could the Commissioner have reviewed the fee petitions submitted by Frontier, Zacher and Laubacher, and the Guardian ad Litem without concluding that they contained duplicative effort and work unrelated to Mr. Lane's actions. Even Frontier admits in its Brief at page 10 that Cooper's work was duplicative. ("His efforts were *not entirely* duplicative of those of Frontier.").

D. A simple remand for findings and conclusions is not the correct remedy.

The Commissioner abused her discretion in failing to award equitable, reasonable fees incurred as the result of Lane's actions. Remanding back to her for justification of her actions is insufficient. Only Frontier's fees were reasonably related to the fault of Ian Lane identified by the Commissioner. Zacher/Laubacher's fees and the Guardian ad Litem Cooper's fees should not have been assigned to Lane and the award of those fees should be reversed.

Dated: April 12, 2010

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By: 

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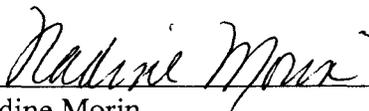
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I declare under penalty of perjury that on the 12th day of April,
2010, I mailed copies of the Reply Brief of Appellant Ian Lane via U.S.
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DATED this 12 day of April, 2010.



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