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No. 64224-3-I

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

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**In Re the Guardianship of Christine W. Savadkin,**

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**BRIEF OF RESPONDENT FRONTIER BANK**

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4211 Alderwood Mall Blvd.  
Suite 202  
Lynnwood, WA 98036  
(425) 744-5658

William S. Hickman, WSBA #17181  
Hickman Menashe, P.S.  
Attorney for Respondent Frontier  
Bank

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**I. RESPONSES TO THE ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR**

A. Given that this is a guardianship proceeding, it is not a matter that is resolved by the court issuing a final order after a trial. Accordingly, the Commissioner's Judgment of attorney fees was not premature. (Response to Error I(A))

B. After carefully scrutinizing the fees of the guardian ad litem and counsel and considering the posture of the case and the manner in which the guardianship had been conducted by all parties, the court did not abuse its discretion in awarding a judgment for attorney fees in favor of Frontier Bank, the guardian of the estate, against Ian Lane individually. (Response to Error I(B))

C. To the extent the judgment is not supported by findings of fact and conclusions of law, the proper remedy is a remand of the matter, not reversal. (Response to Error I(C)).

**II. RESPONDENT'S STATEMENT OF THE CASE**

This statement of the case supplements Mr. Lane's statement of the case.

On May 11, 2006, Lawrence Savadkin, acting on his own behalf, and as agent for his wife, Christine Savadkin, under a Power of Attorney she signed in 1997, executed a Declaration of Trust (an inter vivos revocable trust) known as the 2006 Savadkin Trust (hereinafter "the 2006

Savadkin Trust”). Ian Lane was appointed Trustee of the 2006 Savadkin Trust.

Lawrence Savadkin died on April 1, 2007, leaving Christine Savadkin as the trust’s sole remaining grantor and income beneficiary.

In October 2007, Mr. Lane petitioned to be appointed Limited Guardian of Christine Savadkin. He later amended the petition to seek full guardianship. Mrs. Savadkin’s relatives, Bernice Zacher and Karen Laubacher, represented by Larry Jelsing, contested the petition. On May 29, 2008, Court Commissioner Susan C. Gaer, appointed Mr. Lane as Guardian of the Person and Frontier Bank as Guardian of the Estate. CP 52.

The May 29, 2008 Order Appointing Full Guardian of the Person and Estate ordered Mr. Lane to “turn over the control of all assets formerly held by him under the Savadkin Trust (the 2006 Trust) to Frontier Bank” and to provide an accounting of all financial accounts under the Savadkin 2006 Trust within 60 days. CP 52.

On or about June 5, 2008, Mr. Lane filed a Motion for Revision of the May 29, 2008 Order Appointing Full Guardian of Person and Estate. He sought, in part, revision of that part of the Order directing him to turn

over all assets of the 2006 Savadkin Trust to Frontier Bank. CP 56. On June 24, 2008, the motion for revision was denied. CP 60.

Following the court's June 24, 2008 order, one bank account titled in the name of the 2006 Savadkin Trust was turned over to Frontier Bank. However, Mr. Lane refused to turn over the remaining assets and failed to provide an accounting, as ordered.

On March 5, 2009 Ms. Zacher and Ms. Laubacher filed a Petition for an Order to Require Compliance with Order to Provide Accounting. CP 87. On March 12, 2009 Frontier Bank filed a Motion to Compel Mr. Lane to provide the accounting ordered by the court on May 29, 2008 and to turn over trust assets to the guardian of the estate. CP 92. On April 21, 2009 Mr. Lane filed a document entitled "Trustee's Preliminary Accounting." CP 116.

These motions were heard on May 7, 2009 and the Court found that Ian Lane had failed to turn over trust assets to the guardian of the estate, failed to abide by the Court's May 29, 2008 Order, and failed to adequately explain and justify expenditures disclosed in a preliminary accounting he had submitted. Based upon these findings the Court removed Mr. Lane as guardian of the person, ordered him to "provide an appropriate accounting" and to "transfer all assets in the 2006 Savadkin

Trust to Frontier Bank, as guardian of the estate, within 15 days.” In addition, the Court set a review hearing for June 25, 2009. CP 140.

Mr. Lane subsequently filed a Motion for Revision of the Court’s May 7, 2009 Order, seeking a revision of only that part of the order requiring him to transfer trust assets to Frontier Bank as the guardian of the estate. CP 146. On June 9, 2009, the motion for revision was denied. CP 159.

On June 24, 2009, the day before the court-established review hearing, Mr. Lane filed a declaration stating that he had resigned as Trustee of the 2006 Savadkin Trust and completed all the necessary paperwork to turn over trust assets to Barbara Lane, the successor Trustee. CP 180.

At the review hearing on June 25, 2009, the Court, on its own motion, suspended the resignation of Ian Lane as Trustee and the transfer of trust assets to Barbara Lane. The court again ordered Mr. Lane to turn over trust assets to the guardian of the estate no later than July 16, 2009. And, the court ordered Mr. Lane to pay attorney fees to petitioners Laubacher and Zacher of \$24,579.55, to Frontier Bank of \$9,212.50 and to the Guardian ad Litem of \$6,314. CP 183.

On August 11, 2009, the Guardian ad Litem filed a Motion for Contempt against Mr. Lane for his continued refusal to turn over assets to Frontier Bank. CP 197. On September 11, Ms. Laubacher petitioned for entry of a judgment against Mr. Lane from the June 25, 2009 Order on fees. CP 212. On September 22, 2009 the Commissioner entered a judgment against Mr. Lane (CP 231) and an Order of Contempt, which remains in effect as of the date of this brief. CP 228.

On October 26, 2009, Frontier Bank filed a Motion to Amend the Commissioner's June 25, 2009 Order Regarding Award of Attorney Fees, the purpose of which was to supplement the order with findings of fact and conclusions of law regarding the award of attorney fees. CP 245. The motion was denied on the basis that it was untimely.

### **III. RESPONSE ARGUMENT**

#### **A. The Award of Fees Was Not Premature**

In a guardianship proceeding, there is no final order in the case until the incapacitated person dies or is found to be no longer incapacitated and the guardianship is terminated. Depending on the age and health of the incapacitated person, a guardianship proceeding may be active for many, many years. In these circumstances it is not reasonable or necessary to wait for a final order in order to enter judgment on some

portion of the proceedings. Nothing in CR 54 prohibited the Commissioner from entering judgment in this matter. The judgment on the award of fees was not premature.

**B. Response Argument Regarding Fees Awarded to Ms. Zacher and Ms. Laubacher and to Frontier Bank**

**1. Response to Award of Fees and Costs to Ms. Zacher and Ms. Laubacher.**

In his brief Ian Lane does not ask this Court to take any action, by way of reversal, or otherwise, as to that portion of the Commissioner's June 25, 2009 Order awarding fees and costs to Ms. Zacher and Ms. Laubacher. Frontier Bank, therefore, will not respond herein to any of Mr. Lane's arguments regarding the time entries of their counsel, Larry Jelsing, their requests for costs or their motives for being involved in this guardianship proceeding.

On page 3 of his brief, Mr. Lane quotes the portion of the Commissioner's June 25, 2009 Order that he seeks to have overturned. It is that specific portion of the order awarding the fees requested by Frontier Bank in the amount of \$9,212.50 and the fees requested by the guardian ad litem in the amount of \$6,314. In his Conclusion, on page 17 of his brief, Mr. Lane reiterates his request that this Court reverse that portion of the Commissioner's Order entered June 25, 2009, which provides:

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 [sic] 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.

The Commissioner's order of June 25, 2009 also awarded attorney fees and costs requested by Ms. Zacher and Ms. Laubacher in the amount of \$24,579.55. Nowhere in his brief does Mr. Lane request that this award for fees and costs be overturned.

Frontier Bank respectfully requests that all of Mr. Lane's arguments relating to the attorney fees and costs awarded to Ms. Zacher and Ms. Laubacher be disregarded. Mr. Lane has not asked this court to reverse that portion of the Commissioner's June 25, 2009 order. Therefore, his arguments regarding the award are irrelevant.

**2. Award of Fees to Frontier Bank.**

While Mr. Lane, in his brief asks this Court to reverse that portion of the Commissioner's order of June 25, 2009 awarding attorney fees to Frontier Bank in the amount of \$9,212.50, nowhere in his brief does he argue that the time incurred by Frontier Bank's counsel was unnecessary, unreasonable or of no benefit to the guardianship estate. He does not question the time entries of Frontier Bank's counsel. He does not argue that counsel's efforts were duplicative or wasteful. In short, his request is

nothing more than a bare assertion for which he has offered no legal or factual support. For these reasons, Frontier Bank suggests that this portion of Mr. Lane's appeal must fail. He has presented no justification for overturning the Commissioner's June 25, 2009 Order awarding attorney fees to Frontier Bank.

**C. The Commissioner's June 25, 2009 Order Did Not Specifically Limit the Award of Attorney Fees Solely to Fees Incurred to Force Mr. Lane to Comply With Prior Court Orders.**

Having addressed Mr. Lane's arguments as they relate to the fees awarded to Ms. Zacher and Ms. Laubacher, and to Frontier Bank, the remainder of this brief will address Mr. Lane's arguments regarding the fees awarded to the guardian ad litem.

Mr. Lane argues, in part, that the fee of the guardian ad litem in the amount of \$6,314 should be reversed because it included charges for performing routine duties or other matters unrelated to Mr. Lane's refusal to comply with previous court orders.

While Mr. Lane's recalcitrance with respect to prior court orders was the primary focus of the Commissioner's June 25, 2009 Order, nowhere did the Commissioner state that she was awarding attorney fees solely for services related to that issue.

RCW 11.96A.150, which, by its terms, specifically applies in guardianship proceedings, allows the Court, in its discretion, to award attorney fees to any party and against any other party in the proceedings in such amount as the court determines to be equitable. Moreover, RCW 11.88.090(10) authorizes the court to charge the fee of the guardian ad litem to “the alleged incapacitated person, or any person who has appeared in the action. . . .” Pursuant to these two statutes, the Commissioner had full legal authority to order that Ian Lane pay all of the fees requested by the guardian ad litem.

Mr. Lane further contends that once a guardian of the estate was appointed, the guardian ad litem had no role in seeking Mr. Lane’s compliance with court orders requiring him to account and to turn over assets and, therefore, no right to be compensated for his efforts. While Mr. Lane would like to assign clear, distinct roles to each party, that is not how the case was, in fact, litigated. For example, the guardian ad litem was the party who, on August 11, 2009, brought a motion for contempt against Mr. Lane for his continued failure to turn over assets to Frontier Bank. CP 197. Mr. Lane did not object, at the time of the hearing on that motion, that the guardian ad litem was the moving party rather than Frontier Bank.

In his capacity as guardian ad litem, Mr. Cooper had an ongoing responsibility to see that court orders were followed and that the incapacitated person was protected. That is, in part, why he was not discharged at the time of the initial appointment of the guardian of the person and estate on May 29, 2008. It was perfectly logical and appropriate for him to be involved in proceedings to get Mr. Lane to comply with previous court orders requiring an accounting and the transfer of assets to the guardian of the estate. His efforts were not entirely duplicative of those of Frontier Bank. Moreover, because of his involvement in the case from its inception, he provided valuable context to the proceedings. The Commissioner did not error in approving the guardian ad litem's fees or in requiring Mr. Lane to pay those fees.

**D. The Fee Award to the Guardian Ad Litem, When Viewed in the Context of the Entire History of the Guardianship Proceeding, Was Reasonable.**

The fees requested by the guardian ad litem were awarded by the Commissioner at the June 25, 2009 review hearing. CP 183. This was the same hearing at which Mr. Lane's attorney announced to the court that his client could not comply with the court's four previous orders requiring him to provide an accounting and turn over assets to the guardian of the estate because his client had, the day before the hearing, resigned as trustee and transferred all assets to the successor trustee. CP 180.

In reaching its decision, the court had before it Mr. Lane's eleventh hour resignation announcement together with the entire history of the case chronicling Mr. Lane's recalcitrance in failing to comply with the court's earlier orders and his responses thereto. Having considered all of this information, having before it a declaration from the guardian ad litem detailing his time and expenses incurred, and having reviewed and considered Mr. Lane's arguments regarding duplication of effort, the court exercised the discretion granted to it by RCW 11.96A.150, awarded the fees, and, as requested, ordered that they be paid by Mr. Lane. CP 183.

The ability of the court to apportion fees and costs is well grounded in law. The Commissioner's fee award to the guardian ad litem was not an abuse of discretion and certainly not a rush to judgment or an afterthought made at the conclusion of litigation. The award ruling came only after careful consideration of not only how the guardianship was being conducted by all the parties, but with the benefit of having become extremely familiar with the parties' dispute.

**E. To the Extent the Commissioner's June 25, 2009 Order and September 22, 2009 Judgment Are Not Supported by Findings of Fact and Conclusions of Law, the Proper Remedy is a Remand of the Matter For Entry of Findings and Conclusions.**

Mr. Lane contends, and Frontier Bank does not dispute, that the Commissioner's June 25, 2009 Order and the September 22, 2009 Judgment lack findings of fact and conclusions of law supporting the

award of attorney fees. Recognizing this issue, Frontier Bank attempted to develop the necessary record to support the attorney fee award when it moved to amend the Commissioner's June 25, 2009 Order. CP 245. Had the motion been approved, it may have obviated this appeal

In cases such as this, where the trial court's fee award lacks findings of fact and conclusions of law to support it, the remedy is to remand the matter to the trial court to develop such a record. *Mahler v. Szucs*, 135 Wn.2d 398, 435, 957 P.2d 632 (1998) (Washington courts have repeatedly held that the absence of an adequate record upon which to review a fee award will result in a remand of the award to the trial court to develop such a record.)

In every case cited in Mr. Lane's brief, where the trial court awarded attorney fees and the award was appealed, the remedy was a remand to the trial court for further proceedings consistent with the appellate decision. Accordingly, the relief that should be granted here, if any, is a remand of this case in order for the Commissioner to enter findings of fact and conclusions of law supporting the award of fees to the guardian ad litem.

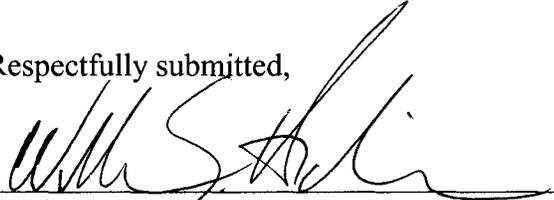
#### IV. CONCLUSION

This Court should

1. Affirm the Commissioner's June 25, 2009 Order and September 22, 2009 Judgment of the fee awards to Ms. Zacher and Ms. Laubacher and to Frontier Bank; and
2. Remand that portion of the Commissioner's June 25, 2009 Order awarding fees to the guardian ad litem for the entry of findings of fact and conclusions of law.

DATED this 10<sup>th</sup> day of March, 2010.

Respectfully submitted,



William S. Hickman  
Attorney for Respondent, Frontier Bank  
WSBA #17181