SUPREME COURT NO.

NO. 85974-9-I

SUPREME COURT OF THE STATE OF WASHINGTON

In re the Guardianship of R.C., a Minor Child

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

The Honorable Matthew Lapin, Judge

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER/COURT OF APPEALS DECISION

R.C. asks this Court to grant review of the unpublished decision in In the Matter of the Guardianship of R.C., No. 85974-9-I, (May 5, 2025) (Appendix).

B. ISSUES PRESENTED FOR REVIEW

1. Is review warranted under RAP 13.4(b)(1) – (b)(3) to determine whether due process requires a parent suffering from an untreated mental health condition impacting his ability to function to be appointed a guardian ad litem (GAL) before his child can be removed from his care pursuant to a guardianship order?

2. Is review warranted under RAP 13.4(b)(3) to determine whether the Strickland[1] standard for ineffective assistance of counsel applies in the minor guardianship context and whether counsel's failure to renew the request for appointment of a GAL constitutes ineffective assistance?

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[1] Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

3. Is review warranted under RAP 13.4(b)(3) and (b)(4) to determine the scope of visitation a parent is entitled to have with their child under Washington's new guardianship law, chapter 11.130 RCW?

C. STATEMENT OF THE CASE

1. Evidence.

R.C. is the father of R.X.C.[2] CP 103. When R.X.C was about one month old, her mother asked Celestine Collins to care for her. RP 197. R.X.C.'s mother never returned, and she has been absent from her life since. RP 181, 197. R.X.C. stayed with Celestine Collins for the first 10 months of her life, at which point R.C. took custody of her. RP 190.

R.X.C resided with R.C. until she was about three years old. RP 181-82, 190. R.C. then asked Collins to come get R.X.C. RP 191. R.X.C. lived with Collins until the age of seven. RP 181-82. Collins enrolled R.X.C. in school and

[2] "X" is inserted to differentiate between R.C. and his daughter who share the same initials.

managed her daily care and medical appointments. RP 192-93, 219. R.C. occasionally took possession of R.X.C. to access public assistance programs but would return her to Collins. RP 181-82, 192, 194, 220-21.

In 2021 Collins traveled to California. RP 199. Not wanting to interrupt R.X.C.'s schooling, she returned her to R.C. RP 198. In October 2021, R.C. approached neighbors, Cassondra Arambula and Cheyne Young, and left R.X.C. in their custody. RP 206, 208, 211-12. Arambula and Young had previously seen R.X.C. running along the street unaccompanied. RP 206, 213. They never saw R.C. and R.X.C. interact and R.C. often provided explanations for why he could not take custody of R.X.C. RP 215, 218.

Collins had also left R.X.C. with Arambula and Young for two weeks while she traveled to California. RP 213. When they returned R.X.C. to Collins, she returned R.X.C. to R.C. RP 214. This prompted Arambula and Young to file a minor guardianship petition under RCW 11.130.190. CP 1-12; RP

214, 217. Collins subsequently filed her own minor guardianship petition. CP 149-60.

Collins, Arambula, and Young did not believe that R.C. could care for R.X.C. RP 194, 220, 222. R.X.C. explained she did not want to live with R.C. and that he often became angry. RP 193, 195, 206. At one point, Arambula and Young had obtained a protection order against R.C. due to repeated death threats. That protection order, however, expired in January 2023. RP 208-09.

Lindsay Appleton was appointed as GAL for R.X.C. in September 2022. CP 65-69. She filed several reports. See Exs. 202-03; RP 172-73. Appleton supported Collins' appointment as guardian of R.X.C. CP 177. R.X.C. confirmed that she did not want to live with R.C. and that he often became angry with people. RP 172-74, 183. Appleton expressed concerns about R.X.C. being returned to R.C.'s care, doubting that he could perform necessary parenting functions. RP 174-75. Appleton noted that it was difficult having coherent conversations with R.C., explaining that he was often preoccupied with perceived

conspiracies against him. RP 175, 184, 184-85; Exs. 202-03. Much of Appleton's communication with R.C. was when he was detained at Fairfax Hospital for mental health treatment. RP 183. Appleton had never been to R.C.'s residence or observed any interactions between him and R.X.C. RP 177-78.

R.C. denied giving R.X.C. to Collins, Arambula, or Young. RP 225. He explained he would never leave his daughter unattended with anyone. RP 225, 230. R.C. opined he was able to provide safe and stable housing for R.X.C. and denied that he ever yelled or screamed at R.X.C. RP 225, 229, 233.

2. Mental health issues.

The trial court was presented with a plethora of information from multiple sources that R.C. had a serious untreated mental health issue. The original declaration explaining the reasons why a minor guardianship petition was filed, stated that "[R.C.] clearly has an undiagnosed mental impairment that is not being treated. He can act delusional and often plugs everyone around him into false scenarios, allegations,

and plots[.]" CP 14. The trial court was also alerted to the fact that R.C. was hospitalized "pending possible commitment for involuntary treatment." CP 140-41; RP 52-53, 64-65.

R.C.'s counsel requested a GAL be appointed for R.C. because it was "needed and helpful in order to move forward." CP 142-45. As counsel explained, "[t]here is a concern that the client cannot adequately assist the undersigned counsel in order to adequately prepare for trial" and "[i]t is important that [R.C.] be given the necessary tools to litigate this matter if he continues to need such." Id. The trial court denied counsel's request for appointment of a GAL, without prejudice, reasoning that "[t]he court requires more information regarding the capacity of the respondent and more information regarding the respondent's financial situation." CP 146-48. Defense counsel later moved to withdraw, explaining "the issues that he wants to discuss are not the issues that I think need to be discussed" "[a]nd the issues that I do think need to be discussed, I'm not able to get a response on those issues." RP 137.

Appleton, also detailed her contact with R.C., describing his communication as "erratic," "disjointed," and "unintelligible." Ex. 203 at 10-11. Her report included documentation demonstrating R.C.'s conspiratorial beliefs and showing that his criminal cases "were being dismissed as he was found to be incompetent to proceed with criminal prosecution." Ex. 203 at 11, 34.

R.C.'s own conduct at the fact-finding hearing further evidenced a severe untreated mental health issue. As the trial court recognized, R.C. in response to one question during cross examination,

> [G]ave a 23-minute interrupted answer that was rambling in nature; that contradicted itself; that indicates, for example, that he is either making a lot of money or is unemployed and not getting his benefits; that he has some relationship with the mayor of Renton; that he at some point worked for The Kracken, which is a hockey team here in Seattle, and he also worked for the Kings and the Seahawks.

RP 263; see also RP 237-50. As the trial court noted, "if the Court probably hadn't intervened, he [R.C.] would still be

talking." RP 264. The trial court's written findings and conclusions further recognized R.C.'s behavior and statements evidenced severe mental health issues:

> In addition, the father has demonstrated a mental health issue that has resulted in being referred for a civil commitment and having criminal charge dropped against him due to being found incompetent. He has demonstrated delusional thinking and has endorsed conspiracy theories that are not based in reality. He has also shown a concerning temper and the evidence before the Court indicates that the child is scared of him.
>
> The father's testimony confirmed he is suffering from mental health issues.

CP 106 (finding 9).

3. Findings and appeal.

The trial court appointed Collins the full guardian of R.X.C. CP 103-112; RP 264. The trial court concluded that R.C. suffered from unresolved mental health issues, which affected his ability to perform parenting functions CP 106; RP 262-63, 265-67. The trial court also prohibited all contact between R.C. and R.X.C., citing concerns about his unresolved mental health issues and temper. CP 106-07, 109.

R.C. appealed arguing that he was denied due process when the court failed to hold a competency hearing or appoint a requested GAL under RCW 4.08.060, that he received ineffective

assistance of counsel when counsel failed to renew his prior request for appointment of a GAL, and that the trial court erred in prohibiting all contact between R.C. and his daughter. The Court of Appeals recognized "there was information in the record based on which the trial could reasonably have inquired further into the father's competency," but nonetheless concluded the trial court did not abuse its discretion in denying R.C.'s request for appointment of GAL or holding a hearing on whether to do so. App. 3-4. The Court of Appeals "assum[ed] without deciding that *Strickland* applies in the minor guardianship context," but concluded that counsel may have had legitimate strategic reasons for not renewing the request for a GAL. App. 3, 7. Finally, the Court of Appeals concluded the trial court did not err in prohibiting all contact between R.C. and his daughter because even though R.C.'s erratic behavior and yelling were directed at people other than R.X.C., such behavior scared R.X.C. App. 7-9.

R.C. now seeks review.

D. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

1. Due process requires the appointment of a GAL for a parent suffering from undisputed untreated mental health conditions before his child can be removed from his care pursuant to a guardianship order.

Parents enjoy a fundamental constitutional right to the care, custody, and companionship of their children. In re Dependency of K.N.J., 171 Wn.2d 568, 574, 257 P.3d 522 (2011). This fundamental right endures even if the parents "have not been model parents." Santosky v. Kramer, 455 U.S. 745, 753, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982). Consequently, a parent's right to custody of his children may not be interfered with without the complete protection of due process safeguards. Halsted v. Sallee, 31 Wn. App. 193, 639 P.2d 877 (1982).

The appointment of a GAL charged with representing the best interests of a mentally incompetent party is critical to ensuring that person receives due process. In re Welfare of H.Q., 182 Wn. App. 541, 549-50, 330 P.3d 195 (2014); see

also, In re Det. of Morgan, 180 Wn.2d 312, 321-22, 330 P.3d 774 (2014) (considering the constitutional necessity of such an appointment in the RCW 71.09 context). The Washington Legislature has provided that a person who is mentally incompetent may appear in court only by a GAL or regularly appointed guardian.

> When an incapacitated person is a party to an action in the superior courts he or she shall appear by guardian, or if he or she has no guardian ... the court shall appoint one to act as guardian ad litem.

RCW 4.08.060. The statute is mandatory. In re Dill, 60 Wn. 2d 148, 150, 372 P.2d 541 (1962). It is mandatory regardless of whether the party is represented by an attorney. Id. It is mandatory regardless of whether the case is litigating the best interests of a child. Id.; In re Dependency of P.H.V.S., 186 Wn. App. 167, 181, 339 P.3d 225 (2014).

Washington caselaw also dictates the trial court "has the inherent power and duty to make a determination as to [a party

litigant's] mental competency by conducting a hearing."[3] Vo v. Pham, 81 Wn. App. 781, 786, 916 P.2d 462 (1996). Notwithstanding the usual presumption of competency, the trial court "has a duty to protect the rights of a litigant who appears to be incompetent." Id. A litigant's prior adjudication of incompetence creates a rebuttable presumption of continuing incapacitation, thus obligating the trial court to provide an opportunity to defend against the allegation. Shelley v. Elfstrom, 13 Wn. App. 887, 889, 538 P.2d 149 (1975).

The trial court must ensure that each party is able to "comprehend the significance of the legal proceedings and the effect and relationship of such proceedings in terms of the best interest of such party litigant." Graham v. Graham, 40 Wn.2d 64, 67, 240 P.2d 564 (1952). A GAL is properly appointed where a parent is not capable of weighing the merits of various

[3] No hearing is required if the party does not object to the court's appointment of a GAL under RCW 4.08.060. In re Marriage of Blakely, 111 Wn. App. 351, 360, 44 P.3d 924 (2002).

legal options involved in the case beyond stating he wants the child returned home. P.H.V.S., 186 Wn. App. at 173.

The Court of Appeals reasons the trial court did not abuse its discretion in denying the request for a GAL because counsel only articulated a "concern" R.C. could not adequately assist in preparing for trial. App. 4. But whenever there is a reason for a trial court to question a party's mental competence, the trial court must appoint a GAL or conduct a hearing to determine whether the party is mentally competent or requires a GAL. Vo, Wn. App. at 786; RCW 4.08.060. Ultimately, it is within the trial court's discretion whether the parent is incapacitated for purposes of RCW 4.08.060. Id. at 784. But a court abuses its discretion if the record gives reason to question a party's incompetence, but the court fails to conduct a competency hearing and/or appoint a GAL. Compare, H.Q., 182 Wn. App. at 547, 549-50 (court abused its discretion because the trial court failed to conduct a hearing or appoint a GAL); Vo, 81 Wn. App. at 791 (same), with, Blakely, 111 Wn.

App. at 359 (court did not abuse discretion by appointing GAL where record raised reasonable questions of the party's competency).

"[C]onsiderable weight should be given to the attorney's opinion regarding his client's competency and ability to assist the defense." State v. Lord, 117 Wn.2d 829, 901, 822 P.2d 177 (1991), abrogated on other grounds by State v. Schierman, 192 Wn.2d 577, 438 P.3d 1063 (2018). Nonetheless, the trial court's duty to appoint a GAL or hold a competency hearing is not necessarily triggered by motion of a party. This duty may be triggered by the court's observation of the party's behavior at trial. Vo, 81 Wn. App. at 785-90. It also may be triggered by the combined allegations of a party's compromised mental health and expert testimony during the trial suggesting the party's mental health impairs her ability to function in her own best interests as to the proceedings. Graham, 40 Wn.2d at 66. Regardless of how the issue comes to light, once the trial court has reason to question a party's competency, it "has a duty to

act to protect the rights of a litigant who appears to be incompetent."[4] Vo, 81 Wn. App. at 785.

Given this standard, the Court of Appeals attempt to distinguish Vo on the factual basis that unlike Vo, R.C. was represented by counsel is untenable. App. 4-5. The law is clear: whenever a party's mental competency for purposes of RCW 4.08.060 is debatable, the trial court must hold a hearing and adjudicate the matter. Graham, 40 Wn.2d at 69; Vo, 81 Wn. App. 790-91

In determining mental incompetency for purposes of RCW 4.08.060, the trial court considers whether, under the totality of circumstances, there is reason to doubt a parent's ability to comprehend the significance of the legal proceedings or the effect and relationship of such proceedings in terms of

[4] An "investigative" GAL may be appointed for the limited scope of investigating the alleged mental incompetency. See, P.H.V.S., 186 Wn. App. at 173 (utilization of this procedure led to the trial court's ultimate appointment of a GAL following investigation); GALR 2(j) (court may limit the scope of GAL duties).

the party's best interest. Vo, 81 Wn. App. at 786-90. The court considers the party's appearance, conduct, personal history, past behavior, medical and psychiatric reports, and the statements of counsel. In re Fleming, 142 Wn.2d 853, 863, 16 P.3d 610, 615 (2001). It also looks at the ability of the party to recall past events relevant to his case and his ability to articulate those in support of his defense. State v. Lawrence, 108 Wn. App. 226, 233, 31 P.3d 1198 (2001). In the context of parental deprivation hearings, it also considers whether the parent is capable of weighing the merits of the various legal options involved in the case. P.H.V.S., 186 Wn. App. at 173.

The totality of the circumstances in this case establishes sufficient indicia of R.C.'s mental incompetence to have triggered the trial court's mandatory duty to appoint a GAL. As the Court of Appeals acknowledged, "there was information in the record based on which the trial could reasonably have inquired further into the father's competency." App. 3. But the Court of Appeals concluded the trial court neither abused its

discretion in denying the request for appointment of a GAL for R.C., nor holding a hearing on whether to do so. App. 3-6. Contrary to the Court of Appeal's opinion, this Court has made clear that due process requires the trial court to hold a hearing and adjudicate a party's mental competency when such competency is debatable. Graham, 40 Wn.2d at 66-68. Graham is not distinguishable.

In Graham, a father sued to eliminate the mother's visitation rights, alleging the mother's deteriorating mental health made visitation upsetting to the children. Id. at 65-66. At trial, a psychiatrist testified that the mother suffered from paranoid schizophrenia. Id. at 66. The trial court recognized that this testimony established a prima facie case of incompetency and therefore was compelled to protect the mother's interest by appointing a GAL. Id.

On appeal, this Court concluded that, under these circumstances, the trial court had inherent authority to sua sponte appoint a GAL. Id. at 66-69. It concluded this is the

"proper and desirable" course of action when there is reason to doubt a party can comprehend the significance of the legal proceedings in terms of his or her best interests. Id. at 66. However, this Court also instructed that if a party objects, he or she is entitled to a full hearing on the matter. The court remanded for such a hearing, explicitly refraining from making the ultimate determination as to whether a GAL was required and leaving that within the proper discretion of the trial court. Id. at 69.

As in Graham, the allegations and evidence presented here raised serious doubt as to whether R.C. could comprehend the significance of the legal proceedings in terms of his best interests, thus triggering RCW's 4.08.060's mandatory directives. R.C. had previously been deemed incompetent for purposes of legal proceedings, defense counsel opined a GAL was needed, R.C.'s testimony was rambling and contradictory, and substantial evidence established R.C.'s untreated mental health impacted his reasoning and judgment.

Under Vo and Graham it was unreasonable for the trial court not to appoint a GAL, or at least conduct a competency hearing to adjudicate the matter. Because the Court of Appeals opinion conflicts with this authority, review is appropriate to determine whether R.C.'s due process rights were violated when a guardianship order restricting his parental rights was entered without first appointing a GAL under RCW 4.08.060. See, Dill, 60 Wn.2d at 151 (reversing a termination order where no GAL was appointed under RCW 4.08.060).

2. The *Strickland* standard applies in minor guardianship cases and counsel's failure to renew the request for a GAL constitutes ineffective assistance in this case.

The right to counsel logically includes the right to effective assistance of counsel. Strickland, 466 U.S. at 668; In re Welfare of J.M., 130 Wn. App. 912, 922, 125 P.3d 245 (2005). Under the Sixth Amendment, the test for determining whether counsel provided effective assistance is found in Strickland. 466 U.S. at 687-88; State v. Thomas, 109 Wn.2d

222, 225-26, 743 P.2d 816 (1987). Under Strickland, a defendant is denied his or her right to a new trial when the attorney's conduct: (1) falls below a minimum objective standard of reasonable attorney conduct, and (2) this prejudices the outcome. Strickland, 466 U.S. at 694.

Many states use the Strickland test for analyzing ineffective assistance of counsel in parental rights cases as well. Susan Calkins, Ineffective Assistance of Counsel in Parental-Rights Termination Cases: The Challenge for Appellate Courts, 6 J. App. Prac. & Process 179, 214 (2004); see, Jones v. Dep't of Human Servs., 361 Ark. 164, 189-91, 205 S.W.3d 778 (Ark. 2005) (and cases cited therein). The Court of Appeals has also applied Strickland in parental rights cases. See e.g., C.T. v. State, 190 Wn. App. 1021, 2015 WL 5690616 at *7 (Sept. 28, 2015) (to determine whether counsel was effective in a termination proceeding, "we apply the same test articulated in

Strickland"); In re Matter of Parental Rights to M.S., 197 Wn. App. 1025, 2017 WL 35451 at *1 (January 3, 2017).[5]

Here, the Court of Appeals "assum[ed] without deciding that Strickland applies in the minor guardianship context," but nonetheless concluded reversal was not warranted because "[t]he record does not reveal what counsel knew about the father's competency at the time of trial, and on the record presented, we cannot rule out that counsel had legitimate strategic reasons for not renewing the request for a litigation GAL the." App. 3-4. Review is appropriate not only to clarify that the Strickland standard applies in the minor guardianship context, but also because both prongs of the Strickland test are satisfied here.

Deficient performance occurs when counsel's conduct falls below an objective standard of reasonableness. State v. Stenson, 132 Wn.2d 668, 705, 940 P.2d 1239 (1997). "Counsel ... has a

[5] These unpublished, non-binding decisions are cited under GR 14.1(a) for whatever persuasive authority this Court deems appropriate.

duty to bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process." Strickland, 466 U.S. at 688. Counsel fails to render constitutionally required effective assistance when he does not exercise the customary skills and diligence that a reasonably competent attorney would perform under similar circumstances. Hawkman v. Parratt, 661 F.2d 1161 (8th Cir.1981).

Trial counsel clearly understood that R.C. was suffering from mental illness which impacted his ability to assist counsel in preparing for trial. Counsel timely requested appointment of a GAL to assist R.C. When that request was denied without prejudice, however, counsel failed to renew the motion. As the case progressed and the link between R.C.'s mental illness and his ability to assist counsel continued, defense counsel had an obligation to renew the request for appointment of a GAL or a competency hearing. Counsel's failure to do so was objectively unreasonable.

Contrary to the Court of Appeals reasoning, whether an incapacitated party litigant should be appointed a GAL falls outside the realm of tactical decisions left to counsel. In the criminal context, "[w]hen defense counsel knows or has reason to know of a defendant's incompetency, tactics cannot excuse failure to raise competency at any time 'so long as such incapacity continues.'" Fleming, 142 Wn.2d at 867; RCW 10.77.050 (reversing a conviction where counsel unreasonably failed to request a competency hearing). The same applies in the civil context – an incapacitated party litigant cannot proceed without an appointed GAL regardless of what tactical advantages might be gained from doing so. See, RCW 4.08.060; see also, Dill, 60 Wn.2d at 150 (explaining once an attorney knows about a party's mental disability, he or she must apprise the court of this fact).

Not only does the record show counsel's deficient performance, but it also establishes prejudice. Under Strickland, prejudice is established if there is a reasonable probability that

the outcome would have been different but for the attorney's conduct. Strickland, 466 U.S. at 693. Importantly, the defendant need not show that counsel's deficient conduct "more likely than not" altered the outcome. Id. at 693. A reasonable probability exists if counsel's deficient performance merely undermines confidence in the outcome. Id. at 634.

Given the record here, had the trial court held a hearing as to R.C.'s competency, he would have been entitled to the appointment of a GAL because he had untreated mental health issues, which were shaping his view of the legal proceedings and impacting his ability to assist counsel. Given this, it is reasonably probable that – had defense counsel renewed the issue of competency – the trial court would have appointed a GAL under RCW 4.08.060 to protect R.C.'s best interests. R.C. was prejudiced by counsel's deficient performance and denied effective assistance of counsel. J.M., 130 Wn. App. at 925. Review is appropriate under RAP 13.4(b)(3).

3. A parent is entitled to have visitation with their child under Washington's guardianship law, chapter 11.130 RCW.

The law of minor guardianship was substantially overhauled, effective January 1, 2021. See In re Custody of S.M., 9 Wn. App. 2d 325, 332, 444 P.3d 637 (2019) ("2SSB 5604 repeals chapter 26.10 RCW in its entirety and substantially changes the procedure by which a nonparent may assume guardianship of a child."). A court may appoint a guardian for a minor child without parental consent only if there is "clear and convincing evidence that no parent of the minor is willing or able to exercise parenting functions as defined in RCW 26.09.004." RCW 11.130.185 (2)(c). Unless limited by court order, the guardian has all the powers a parent would otherwise have. RCW 11.130.235.

Despite the transfer of most parenting powers to the guardian, a guardianship does not extinguish or terminate parental rights. See RCW 11.130.185 (guardianship may be established by parental consent, termination of parental rights, or

if the court finds the parent unable to exercise parenting functions). "Visitation is an important right that distinguishes a guardianship from termination." In re Welfare of A.W., 182 Wn.2d 689, 705, 344 P.3d 1186 (2015).

Thus, in the interest of maintaining or encouraging involvement by a parent in the minor's life, a guardianship order "shall preserve the parent-child relationship through an order for parent-child visitation and other contact" unless the court finds the relationship should be limited under RCW 26.09.191. RCW 11.130.215 (4). Under that statute, the court may limit a parent's contact with the child or decision-making authority if certain conditions exist, including "a parent's neglect or substantial nonperformance of parenting functions" and/or if the parent suffers from "long-term emotional or physical impairment which interference with the parent's performance of parenting functions as defined in RCW 26.09.004." RCW 26.09.191 (3)(a)-(b).

The court may impose restrictions only where substantial evidence shows the existence of a danger of damage. In re

Marriage of Chandola, 180 Wn.2d 632, 645, 327 P.3d 644 (2014). Any restrictions must be reasonably calculated to prevent the kind of harm involved. Id. at 653. Restrictions are reviewed for abuse of discretion. Id. at 642-43. Moreover, a finding under RCW 26.09.191 (3) must be supported by substantial evidence that the parent's "involvement or conduct" caused the restricting factor. In re Marriage of Watson, 132 Wn. App. 222, 233, 130 P.3d 915 (2006). "'Substantial evidence' is evidence sufficient to persuade a fair-minded person of the truth of the matter asserted." Chandola, 180 Wn.2d at 642.

R.C. requested "relatively limited and modest contact" with R.X.C. two months before the guardianship fact finding hearing. RP 113. R.C. proposed contact with R.X.C. by telephone or Zoom. RP 113. R.X.C. did not want visitation with R.C., but Appleton opined "visitation could be attempted. It has been a long time. I think that it would be something that should start out slowly and then be observed by a supervisor." RP 115, 118; CP 80-90, 94. Still, the trial court entered a blanket prohibition on

contact, expressing concerns about R.C.'s mental health and how his behavior could be traumatizing for R.X.C. RP 121-23; CP 95-96.

R.C. again requested some form of visitation with R.X.C. at the conclusion of the guardianship fact finding hearing, noting that R.C. wanted a relationship with R.X.C. and that visitation was the first step toward accomplishing that goal. RP 258-59. This time Appleton recommended against visitation because R.C.'s "behavior and language toward the parties in this matter has been erratic. There is concern of the effect on this on [R.X.C.]". Ex. 203 at 9. The trial court again prohibited all forms of visitation, concluding that R.C.'s mental health issues would influence his interactions with R.X.C. RP 266-67; CP 105, 109.

The Court of Appeals affirmed this conclusion reasoning that it was not an abuse of discretion to prohibit visitation between R.C. and R.X.C. because "if such visitation was permitted, R.C., would already have been exposed to her father's behavior, which 'scared' her, even when it was not directed at

her." App. 8. But substantial evidence does not show the existence of a danger of damage to R.X.C. were some forms of contact to occur between her and R.C.

The trial court cited Appleton's recommendation as a basis for denying contact between R.C. and R.X.C. RP 266. But Appleton's recommendation was clearly based on R.C.'s "erratic" "*behavior and language toward the parties*[,]" not toward R.X.C. specifically. Ex. 203 at 9 (emphasis added); CP 80-81; RP 173-74. Appleton never even observed any interaction between R.C. and R.X.C. RP 178.

Moreover, R.C.'s conduct during trial demonstrated only that his behavior was directed toward people other than R.X.C. While R.C. was observed "yelling" on his screen during testimony, he denied any such behavior occurred between him and his daughter. RP 176, 222-23, 233, 264. As defense counsel noted, R.C.'s own testimony demonstrated that he was able to control himself. RP 257. He did not yell during his testimony. RP 257, 264.

Given this evidence, a blanket prohibition on all contact between R.C. and R.X.C. is neither reasonably calculated to prevent harm to R.X.C. nor supported by substantial evidence. Given the recently revised guardianship statute, the question of what is required to prohibit all parent-child contact pursuant to RCW 26.09.191 (3)(a)-(b), is an issue for which lower courts need guidance. Here, for example, supervised electronic communication would ensure a safe environment for R.X.C. and minimize opportunities for R.C. to engage in the alleged behavior which the trial court found problematic. If a supervisor found R.C.'s behavior problematic during such a visit, the electronic communication could simply be ended. The complete prohibition on contact between R.C. and R.X.C. should be reversed. Review is appropriate under RAP 13.4(b)(3) and (b)(4).

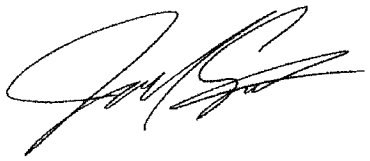
E. CONCLUSION

This Court should grant review and reverse the Court of Appeals.

I certify this document contains 4,949 words, excluding those portions exempt under RAP 18.17.

DATED this 4th day of June, 2025.

Respectfully submitted,
NIELSEN KOCH & GRANNIS, PLLC



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State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Guardianship of: R.C., a Minor Child.	No. 85974-9-I DIVISION ONE UNPUBLISHED OPINION

DÍAZ, J. — The superior court granted a full guardianship over R.C. The father of R.C. argues that the trial court erred by neither appointing a litigation guardian ad litem (GAL) for him nor holding a hearing on whether to appoint one; that his counsel was ineffective for not renewing an earlier motion to appoint a litigation GAL; and that the trial court erred by prohibiting visitation between him and R.C. Because the father fails to establish reversible error, we affirm.

I. BACKROUND

In February 2022, Cassondra Arambula and her spouse, Cheyne Young, petitioned the court to be appointed guardians for R.C. They alleged that the father—who at the time lived across the street from them—was not able or willing to care for R.C., had left her unattended on multiple occasions, clearly suffered from a mental impairment, and had people staying at his house doing drugs. Later, Celestine Collins, who identified herself as R.C.'s godmother, also filed a guardianship petition.

The court appointed Lindsay Appleton as GAL for R.C. Appleton later

testified that R.C. was born in California, and her mother had been "out of the picture" since she "gave" R.C. to Collins when R.C. was an infant. Some time before R.C. turned two, the father took R.C. from Collins, who subsequently relocated from California to Washington. When R.C. was approximately three, the father asked Collins to come back to California to get R.C., which Collins did, and she brought R.C. to Washington with her. The father eventually followed and, from the time R.C. was about three until she was about seven, she lived with Collins but would at times stay with the father. Collins later left R.C. in Arambula and Young's care when she had to go back to California to visit her ill mother. The father then "became involved," which prompted Arambula and Young to file their guardianship petition.

Appleton initially recommended that the court appoint Arambula and Young as guardians for R.C. But after Arambula and Young indicated they no longer sought guardianship and agreed that Collins should be R.C.'s guardian, Appleton recommended that the court appoint Collins.

About eight months before trial, on January 18, 2023, the father's counsel moved to appoint a litigation GAL for him. The trial court denied the motion without prejudice and counsel did not renew it.[1]

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[1] Shortly before trial, the father's counsel moved, not for a GAL, but to withdraw based on a "somewhat equivocal" request from the father, and counsel indicated that he had not had a lot of contact with the father. The court denied the request without prejudice, and counsel later renewed it, stating that "the issues that I do think need to be discussed, I'm not able to get a response [from the father] on those issues." The court deferred the matter until trial and, when it reminded the father's attorney of the request to withdraw at the outset of trial, counsel did not renew the motion.

Appleton, Arambula, Young, Collins, and the father testified at trial, after which the court appointed Collins as R.C.'s full guardian. The court also ordered that there be no visitation between the father and R.C. The father appeals.

II. ANALYSIS

A. Failure to Appoint Litigation GAL

The father argues that reversal is required because the trial court erred by not appointing a litigation GAL for him or, at least, holding a hearing on whether to appoint one. We disagree.

"When an incapacitated person is a party to an action in the superior courts he or she shall appear by guardian, or if he or she has no guardian, . . . the court shall appoint one to act as [GAL]." RCW 4.08.060. A court properly appoints a litigation GAL for a party "when reasonably convinced that [the] party . . . is not competent, understandingly and intelligently, to comprehend the significance of the legal proceedings and the effect and relationship of such proceedings in terms of the best interests of such party." *Graham v. Graham*, 40 Wn.2d 64, 66-67, 240 P.2d 564 (1952). We review a trial court's determination of the need for a GAL for an abuse of discretion. *Vo v. Pham*, 81 Wn. App. 781, 784, 916 P.2d 462 (1996). A trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds or reasons. *In re Marriage of Kovacs*, 121 Wn.2d 795, 801, 854 P.2d 629 (1993).

Here, it is true that there was information in the record based on which the trial court could reasonably have inquired further into the father's competency. For example, Arambula and Young stated in their guardianship petition that the father

"clearly has an undiagnosed mental impa[ir]ment that is not being treated" and "can act delusional." Additionally, R.C.'s GAL indicated at a hearing that the father had been committed to Fairfax Hospital.

Nevertheless, the trial court did not abuse its discretion by denying the father's request for a litigation GAL. The court did so because it "require[d] more information regarding the capacity of the [father]." This finding was not manifestly unreasonable. In support of the father's motion, counsel stated only that a litigation GAL "would be needed and helpful in order to move forward" and that "[t]here is *concern* that the client cannot adequately assist the undersigned counsel in order to adequately prepare for trial." But counsel did not address the *Graham* standard, much less provide any supporting facts related to that standard. Furthermore, the denial was without prejudice, so the father was not prevented from re-raising the issue with more evidence. Because he did not do so, we have no further decision on the matter to review. *Cf.* RAP 2.1(a) ("decision" under review "refers to rulings, orders, and judgments of the trial court").

To that end, the father also argues that the trial court abused its discretion by not appointing *sua sponte* a GAL later in the proceedings or holding a hearing on whether to do so. Citing *Vo*, the father contends that the trial court was required to do so *sua sponte* based on the evidence adduced at trial and the nature of the father's testimony. But *Vo* is distinguishable.

There, the suspected incompetent party, Susan Partridge, was representing herself *pro se*, even though the trial court later found that she "was not qualified to do so." *Vo*, 81 Wn. App. at 789. Partridge exhibited "bizarre" behavior, including

by testifying through her "second personality, a little girl named 'Barbara,' who controlled Partridge at times." *Id.* at 787. "Barbara" would even interrupt as if she was a third person addressing Partridge as "Susan." *Id.* at 789. And the trial court found that Partridge spoke rationally and intelligently and understood the significance of the proceedings only "[a]t times during the trial." *Id.*

Here, by contrast, the father was represented by counsel. And although the trial court found that the father was suffering from mental health issues and cited his "delusional thinking," conspiracy theories, and temper, the court's findings did not imply—as they did in *Vo*—that the father was not competent or could not understand the significance of the legal proceedings. Indeed, counsel confirmed at the outset of trial that the father understood the trial was about whether Collins should be appointed guardian over R.C., and that he was still objecting. Counsel also stated that the father believed his home would accommodate R.C. and he was capable of taking care of her and providing for her material needs.

Consistently with those representations, the gist of the father's own testimony was clear: he has stable housing, and is in high demand for employment, Collins and Arambula were lying about his treatment of R.C., and he was perfectly capable of caring for her, even if his testimony was rambling, self-aggrandizing, and often tangential. In short, while the father may have had mental health issues which affected his ability to care for R.C. and to present well at trial, the father fails to show that the trial court abused its discretion by not *sua sponte* finding him *incompetent* at the time of trial.

The father disagrees and relies on *Graham* for the proposition that

"[e]vidence establishing a parent suffers from an untreated mental health condition which impacts his ability to function, is sufficient to trigger an inquiry into whether a GAL need be appointed." In *Graham*, the trial court *sua sponte* appointed a GAL for the mother in a proceeding to determine whether to eliminate her visitation. 40 Wn.2d at 66. The mother opposed the appointment and applied to the Washington Supreme Court for a writ of prohibition. *Id.* The only issue before that court was whether it was within the superior court's authority to appoint a GAL *sua sponte*. *Id.* The court confirmed that it was but that the mother was entitled to a hearing to defend her competency. *Id.* at 68. Although the court stated it was "proper and desirable" for courts to appoint a GAL for a party when the court is reasonably convinced the party is not competent, *id.* at 66, the court did not hold, as the father suggests, that it would have been an abuse of discretion for the trial court *not* to hold a hearing on whether to appoint a GAL. Therefore, we are not persuaded that *Graham* requires reversal.

B. Ineffective Assistance of Counsel

The father next argues that counsel was ineffective under *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), for not renewing the request for a litigation GAL. Even assuming without deciding that *Strickland* applies in the minor guardianship context, we disagree.

Strickland established the standard for evaluating claims that a criminal defendant's counsel was so ineffective as to deprive the defendant of the Sixth Amendment right to counsel under the United States Constitution. *See id.* at 687-88. To prevail on such a claim, the defendant must show both that (1) counsel's

performance was deficient and (2) the deficient performance prejudiced the defense. "Failure to make the required showing of *either* deficient performance or sufficient prejudice defeats the ineffectiveness claim." *Id.* at 700 (emphasis added). Furthermore, to establish deficient performance, "the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" *Id.* at 689 (quoting *Michel v. Louisiana*, 350 U.S. 91, 76 S. Ct. 158, 100 L. Ed. 83 (1955)).

The father fails to overcome this presumption. As noted, counsel conferred with the father at the outset of the trial moved to appoint a litigation GAL, but then represented that the father understood the nature of the proceedings and still objected to guardianship. His counsel had, thus, put forth his client's position and preserved all objections. The record does not reveal what counsel knew about the father's competency at the time of trial, and on the record presented, we cannot rule out that counsel had legitimate strategic reasons for not renewing the request for a litigation GAL then. Accordingly, the father does not show that reversal is warranted. *Cf. id.* at 689 ("A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, *and to evaluate the conduct from counsel's perspective at the time*." (emphasis added)).

C. Prohibition on Visitation

Finally, the father argues that the trial court erred by prohibiting visitation between him and R.C. Again, we disagree.

We review a minor guardianship order for abuse of discretion. *In re*

Guardianship of L.C., 28 Wn. App. 2d 766, 772, 538 P.3d 309 (2023). "The court, as part of an order appointing a guardian for a minor, shall state rights retained by any parent of the minor, which shall preserve the parent-child relationship through an order for parent-child visitation and other contact, *unless the court finds the relationship should be limited or restricted under RCW 26.09.191.*" RCW 11.130.215(4) (emphasis added).

Here, the trial court prohibited visitation after finding that the father "neglected [his] parental duties" and "has a long-term emotional or physical problem that gets in the way of [his] ability to parent." *Cf.* RCW 26.09.191(3)(a)-(b) (authorizing limitation of parent-child relationship based on "[a] parent's neglect or substantial nonperformance of parenting functions" and "[a] long-term emotional or physical impairment which interferes with the parent's performance of parenting functions"). The father asserts that the record does not support these findings because his erratic behavior and yelling were directed only at people *other than* his daughter. Accordingly, the father argues, he should be entitled to at least supervised virtual visitation and, "[i]f a supervisor found [his] behavior problematic during such a visit, the electronic communication could simply be ended."

We cannot say the court abused its discretion by rejecting such an argument. As the court held, if such visitation was permitted, R.C. would already have been exposed to her father's behavior, which "scared" her, even when it was not directed at her. Appleton testified that R.C. reported that her father "yells a lot, yells at people and sometimes just yells" and that, every time Appleton brought up residing with the father, "R.C.'s body language . . . would be very closed off and

fearful," so Appleton "did not push her too hard due to how affected . . . [R.C.] became." The father does not show that it was manifestly unreasonable under these circumstances to prohibit all forms of visitation.

III. CONCLUSION

We affirm.

Díaz, J.

WE CONCUR:

Mann, J.

NIELSEN KOCH & GRANNIS P.L.L.C.

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