

FILED
Court of Appeals
Division III
State of Washington
9/2/2025 4:07 PM

FILED
SUPREME COURT
STATE OF WASHINGTON
9/3/2025
BY SARAH R. PENDLETON
CLERK

No.
Court of Appeals No. 40104-9-III Case #: 1045298

THE SUPREME COURT OF
THE STATE OF WASHINGTON

In re Guardianship of

BRYAN HERNANDEZ,

Petitioner.

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

Petition for Review

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TABLE OF CONTENTS

A. Identity of Party and Opinion Below	1
B. Issue Presented	1
C. Statement of the Case	2
D. Argument	4
1. The Court of Appeals's refusal to address Ms. Henderson's claim is an issue of substantial public interest	4
2. The trial court did not comply with the Guardianship Act's exacting standards governing guardianships and conservatorships	8
a. The plain language of the Guardianship Act prioritizes a person's autonomy and requires the court to follow specific guidelines before ordering a full guardianship or conservatorship	9
b. The trial court erred when it denied Ms. Henderson's request to terminate or modify and ordered the full guardianship and conservatorship to continue	14
c. The trial court erred when it ordered a new guardian and conservator	20
E. Conclusion	22

TABLE OF AUTHORITIES

Washington Constitution

<i>In re Detention of Schuoler</i> , 106 Wn.2d 500, 723 P.2d 1103 (1986).....	19
--	----

United States Constitution

<i>In re Guardianship of Beecher</i> , 130 Wn. App. 66, 121 P.3d 743 (2005).....	14
<i>In re Welfare of A.L.C.</i> , 8 Wn. App. 2d 864, 439 P.3d 694 (2019).....	14

Court Rules

RCW 11.130.001	13, 20
RCW 11.130.037	12
RCW 11.130.265	passim
RCW 11.130.295	20
RCW 11.130.310	12, 21
RCW 11.130.355	14, 15, 16, 17
RCW 11.130.360	passim
RCW 11.130.400	20
RCW 11.130.420	12, 21
RCW 11.130.570	14, 15, 16, 17

Other Authorities

Cheryl C. Mitchell, Ferd H. Mitchell, 26 Wash. Prac., Elder Law and Health Law Part One § 4:1 (2d ed.).. 9	Laws of 2016, ch. 209..... 10, 12
Laws of 2019, ch. 437	9
Laws of 2020, ch. 312	9

A. Identity of Party and Opinion Below

Selene Violet Henderson¹ sought termination of the full guardianship she has been subjected to since 2016. The trial court deny that motion ignoring the provisions Washington's Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act. The Court of Appeals in turn refused to address that failing, concluding the issue was never before the trial court, although the record makes clear it was. *In re Guardianship of Hernandez*, 40104-9-III.

B. Issue Presented

The Washington Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act, Ch. 11.130 RCW, prioritizes a person's liberty and autonomy. Consistent with those goals, the Guardianship Act provides exacting standards for guardianships and conservatorships. The statutes require the court to thoroughly explore the need for

¹ This petition refers to the petitioner using her chosen name and uses she/her pronouns to reflect her personal pronouns.

such protective measures and require the least restrictive measures whenever possible. Here, Ms. Henderson requested the court terminate or modify the full guardianship. But the court never evaluated the need for the guardianship according to the Guardianship Act's stringent requirements, and it never considered a narrower alternative. The order does not comport with the Guardianship Act, and this Court should reverse.

C. Statement of the Case

Ms. Henderson has been subject to a full guardianship of her person and estate since 2016. CP 9-18. When the guardian notified the court he no longer wished to act as guardian, he also alerted the court to another issue: "Another issue that – that the guardian has – has raised is that the individual no longer wants a guardianship at all[.]" CP 33; RP 5-6. The guardian requested the court appoint an attorney to represent Ms. Henderson on this issue. CP 45; RP 27.

In addition to the guardian's motion, Ms. Henderson also filed several documents requesting the court terminate or

modify the full guardianship. CP 25-26, 27-28, 29-30, 31-32.

The court appointed a court visitor for the specific purpose of determining, among other things, “whether the guardianship should be modified[.]” RP 31; CP 49. The court also appointed an attorney to represent Ms. Henderson. RP 24.

The court held a hearing on all of the issues related to the guardianship, including (1) whether the guardianship should continue, (2) whether the then-acting guardian should be discharged, and (3) the issue of appointing a successor guardian. CP 33-35. The court visitor recommended the full guardianship “should continue.” RP 31. Ms. Henderson’s attorney reiterated her position the court should terminate the guardianship: “[she] doesn’t want a guardian at all.” RP 34.

The trial court denied Ms. Henderson’s request, ordered the full guardianship to continue, and appointed a new guardian. CP 34. In reaching its decision, the court “considered the remarks of counsel” and “the case records on file.” CP 33. It also specifically noted certain documents in the record it

reviewed. CP 34. Before the court entered the order, Ms. Henderson's attorney again noted her objection to the guardianship, and the court noted that was "clear." RP 40.

Ms. Henderson appealed arguing (1) the trial court violated the plain language of the Guardianship Act when it ordered the full guardianship to continue and, alternatively, (2) Ms. Henderson's counsel rendered ineffective assistance. The respondent did not file a brief.

Despite the lack of any such argument, and without reaching the merits of the argument, the Court of Appeals concluded the issue of whether the guardianship should terminate or continue was not before the trial court and affirmed. Opinion 8-9, 11-12.

D. Argument

1. The Court of Appeals's refusal to address Ms. Henderson's claim is an issue of substantial public interest.

Termination of the full guardianship was squarely before the trial court. Yet the Court of Appeals concluded the question

was not put to the court. Opinion at 8. The Court based its decision on its conclusion that one of the documents Ms. Henderson filed requesting the court to terminate the guardianship may not have been formally noted and the court did not explicitly state that it considered that filing in issuing its order. Opinion at 8-9. This is wrong.

At the same time the prior guardian requested to be discharged, he also requested the court determine whether the guardianship should continue and appoint an attorney for Ms. Henderson regarding that issue. CP 34. The court appointed a court visitor to specifically address whether the guardianship should continue, as the guardian requested. RP 31; CP 49.

Then, the trial court ruled on this issue, ordering the full guardianship “shall remain in place.” CP 33. In reaching its decision, the court reviewed all filings in the record. CP 33. This includes Ms. Henderson’s numerous filings requesting the court terminate the guardianship. *See* CP 25-26, 27-28, 29-30, 31-32. This also includes Ms. Henderson’s counsel’s objection

to continuing the full guardianship, which the court explicitly acknowledged at the hearing. *See* RP 40.

Moreover, the court explicitly stated it reviewed (1) the guardian's motion to appoint counsel for Ms. Henderson regarding her request to terminate the guardianship, (2) the court visitor's report concluding the full guardianship should continue, and (3) Ms. Henderson's position statement explicitly requesting the court terminate the guardianship. CP 34 (*see* CP 31-32, 47-84). All of these documents unmistakably raised and addressed Ms. Henderson's argument that the court should terminate the guardianship.

Despite this record, the opinion narrowly focuses on just one of Ms. Henderson's filings to conclude the issue was not before the trial court. Opinion at 8-9. But the trial court *did* review that filing, as well as other many other filings by Ms. Henderson, the guardian, and the court visitor that specifically raised and addressed whether to terminate the guardianship. CP 33-34. And the trial court explicitly ordered the full

guardianship to continue, over Ms. Henderson's objection. CP 34; RP 40.

The record clearly demonstrates the court addressed Ms. Henderson's request to terminate the guardianship. It is contrary to the record and disingenuous to conclude otherwise.

To be clear, the issue on appeal is not that the court did not address Ms. Henderson's argument. The issue is that the court did not apply the law when it denied her request, and that her counsel rendered ineffective assistance when he failed to argue the applicable law. *See* Amend. Br. of Appellant, 7-25.

In addition, the respondent never opposed Ms. Henderson's arguments on appeal. The respondent never argued the issue was not before the trial court. By not presenting any argument, the respondent concedes this point. *In re Det. of Cross*, 99 Wn.2d 373, 379, 662 P.2d 828 (1983). This Court's decisions must be based "only on the basis of issues set forth by the parties in their briefs." RAP 12.1(a).

In sum, the propriety of the full guardianship over Ms. Henderson's person and estate was squarely before the trial court. A court's refusal to address the question squarely before it is an issue of substantial public interest. This Court should accept review under RAP 13.4.

2. The trial court did not comply with the Guardianship Act's exacting standards governing guardianships and conservatorships.

In 2016, the court imposed a full guardianship over Ms. Henderson's person and estate under the prior guardianship statutes. CP 9-18.

After the Guardianship Act was enacted, Ms. Henderson asked the court to terminate the guardianship, and the guardian asked to resign. But the court did not make any inquiry into the basis for the arrangement or any alternatives as now required by the Guardianship Act. The court's does not comply with the Guardianship Act's exacting requirements that prioritize a person's rights and autonomy.

a. The plain language of the Guardianship Act prioritizes a person’s autonomy and requires the court to follow specific guidelines before ordering a full guardianship or conservatorship.

The Guardianship Act² completely replaced the prior guardianship statutes and established new standards, procedures, and requirements before the court can order protective arrangements for adults who cannot take care of themselves or manage their property.

Unlike the previous statutes, the current Act now provides separate statutes governing the guardianship of a minor person (ch. 11.130 RCW art. 3, RCW 11.130.185-.260), guardianship of an adult person (ch. 11.130 RCW art. 4, RCW

² The legislature first passed SB 5604 (Laws of 2019, ch. 437), which created the Guardianship Act and went into effect January 1, 2021. But this version of the new law received “widespread criticisms and complaints by individuals and advocacy groups . . . that the rights of individuals with impairments were not being adequately protected.” Cheryl C. Mitchell, Ferd H. Mitchell, 26 Wash. Prac., Elder Law and Health Law Part One § 4:1 (2d ed.). The legislature then passed SB 6287 (Laws of 2020, ch. 312), enacting further revisions that were “strongly reshaped by public concerns and feedback,” and which went into effect January 1, 2022. *Id.*

11.130.265-.355), and conservator of a person's estate (ch. 11.130 RCW art. 5, RCW 11.130.360-.575). In contrast, the previous statutes applied the same criteria to all three situations.

The statutes now also require separate bases for a guardianship or conservatorship. While the prior law required the court to find a person "incapacitated," the new standards are more rigorous and much more nuanced. *See* Former RCW 11.88.010(1) (Laws of 2016, ch. 209, § 403).

Under the current Act to impose a guardianship, the court must find "by clear and convincing evidence":

(i) The respondent lacks the ability to meet essential requirements for physical health, safety, or self-care because the respondent is unable to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance, or supported decision making;

(ii) Appointment is necessary to prevent significant risk of harm to the adult respondent's physical health, safety, or self-care; and

(iii) The respondent's identified needs cannot be met by a protective arrangement instead of guardianship or other less restrictive alternative." RCW 11.130.265(1)(a).

RCW 11.130.265(1)(a)

For a conservatorship, the court must find “by clear and convincing evidence”:

(a) The adult is unable to manage property or financial affairs because:

(i) Of a limitation in the adult’s ability to receive and evaluate information or make or communicate decisions, even with the use of appropriate supportive services, technological assistance, or supported decision making; or

(ii) The adult is missing, detained, or unable to return to the United States;

(b) Appointment is necessary to:

(i) Avoid harm to the adult or significant dissipation of the property of the adult; or

(ii) Obtain or provide funds or other property needed for the support, care, education, health, or welfare of the adult or of an individual entitled to the adult’s support; and

(c) The adult’s identified needs cannot be met by a protective arrangement instead of conservatorship or other less restrictive alternatives.

RCW 11.130.360(2).

Only after this specific “basis” is met can a court order a protective arrangement. Then, the statutes require the arrangement be as narrow as possible, based on the person’s individual abilities and needs. The court can grant a guardian or

a conservator “only those powers necessitated by the demonstrated needs and limitations of the respondent,” and it must “issue orders that will encourage development of the respondent’s maximum self-determination and independence.” RCW 11.130.265(2), .360(3). The court is bound to impose the least restrictive arrangement possible. RCW 11.130.265(2), .360(3). Any order appointing a guardian or a conservator must include specific findings and justifications for the arrangement. RCW 11.130.310(1) & (3), .420(3)(a) & (4).

More broadly, the Act explicitly prioritizes a person’s liberty and autonomy throughout proceedings. For example, it states, “an adult is presumed to have legal capacity.” RCW 11.130.037. This was not the standard under the previous statutes. Former RCW 11.88.010(2) (Laws of 2016, ch. 209, § 403. The Act also creates a strong presumption favoring less restrictive arrangements throughout its provisions.

These goals are reflected in the Guardianship Act’s statement of legislative intent:

It is the intent of the legislature to protect the liberty and autonomy of all people of this state, and to enable them to exercise their rights under the law to the maximum extent, consistent with the capacity of each person. The legislature recognizes that people with incapacities have unique abilities and needs, and that some people with incapacities cannot exercise their rights or provide for their basic needs without the help of a guardian. However, their liberty and autonomy should be restricted through guardianship, conservatorship, emergency guardianship, emergency conservatorship, and other protective arrangements only to the minimum extent necessary to adequately provide for their own health or safety, or to adequately manage their financial affairs.

RCW 11.130.001.

In 2016, when the court ordered a full guardianship over both Ms. Henderson's person and estate, the law at the time did not require any of this.

But the Act is the law that applied at the court's hearing in 2023. The court did not apply the current law. Rather than examine these arrangements separately and determine whether they were necessary based on Ms. Henderson's abilities and

needs, the trial court simply ordered a full guardianship and conservatorship with no inquiry at all.

A court reviews whether a trial court complied with statutory requirements *de novo*. *In re Welfare of A.L.C.*, 8 Wn. Opinion at 2d 864, 876, 439 P.3d 694 (2019). A court also reviews issues of statutory interpretation *de novo*, beginning with the plain language. *In re Guardianship of Beecher*, 130 Wn. App. 66, 70, 121 P.3d 743 (2005).

b. The trial court erred when it denied Ms. Henderson's request to terminate or modify and ordered the full guardianship and conservatorship to continue.

The Guardianship Act provides specific guidance to courts where a person requests to terminate or modify an existing guardianship or conservatorship. But here, the trial court completely ignored Ms. Henderson's request.

A person subject to a guardianship or a conservatorship can ask the court to terminate or modify the arrangement. RCW 11.130.355(1), .570(3). The court is required to hold a hearing regarding the request. RCW 11.130.355(2), .570(4). At the

hearing, the court must consider any information “which supports a reasonable belief that termination or modification of the [guardianship or conservatorship] may be appropriate.” RCW 11.130.355(2)(b), .570(4)(b).

Consistent with the Act’s goals and presumption of competency, the statutes regarding termination or modification also prioritize the person’s autonomy. The statutes presumptively require the court to terminate a guardianship or conservatorship if there is “prima facie evidence” supporting termination. RCW 11.130.355(4), .570(6). This presumption is overcome only if the court finds the basis for appointment of a guardian or conservator is met. RCW 11.130.355(4), .570(6); *see* RCW 11.130.265, .360.

If the court concludes termination is not appropriate, the statutes require the court to modify the scope of the guardianship or conservatorship “if the powers are excessive or inadequate due to a change in the abilities or limitations of the

[person,] the [person's] supports, or other circumstances.”

RCW 11.130.355(5), .570(7).

Ms. Henderson repeatedly moved to terminate or modify the guardianship. CP 25-26, 27-28, 29-30, 31-32, 34. Her father, as guardian, also notified the court of Ms. Henderson's request and asked the court to appoint an attorney for her. CP 34. The court did not appoint an attorney until several months later. RP 26.

In her filings, Ms. Henderson stated the guardianship should be terminated because she “can take [c]are of [her] own personal and financial matters.” CP 31. She explained she has a relationship with a local bank and could open her own accounts. CP 26. She also explained she has people to support her. CP 26. In addition, she stated, “I am advocating for myself very effectively” and pointed out she is handling her legal matters on his own. CP 26. The court was required to assume these allegations are true, and they presumptively support termination. *See* RCW 11.130.355(4), .570(6).

In the alternative, Ms. Henderson asked the court to order the guardianship/conservatorship be “the least restrictive possible to allow [Ms. Henderson] some freedom to be able to conduct and oversee his personal affairs.” CP 31. The facts above demonstrate a full guardianship or conservatorship is not appropriate because Ms. Henderson is able to manage her personal and financial affairs, and they presumptively support modification. *See* RCW 11.130.355(5), .570(7).

But the court ignored this information and did not consider Ms. Henderson’s request. While it appointed a court visitor to address this issue and considered the court visitor’s report, the report also failed to comply with the Guardianship Act’s exacting requirements.

The Act imposes specific duties on the court visitor to investigate whether a guardianship or conservatorship is necessary. RCW 11.130.280(5), .380(6). Regarding a guardianship, the court visitor must provide the court with “[a] summary of self-care and independent living tasks the

respondent can manage without assistance or with existing supports, could manage with the assistance of appropriate supportive services, technological assistance, or supported decision making, and cannot manage.” RCW 11.130.280(6)(a).

The court visitor’s report must also include “[a] recommendation regarding the appropriateness of guardianship, including whether a protective arrangement instead of guardianship or other less restrictive alternative for meeting the respondent’s needs is available.” RCW 11.130.280(6)(b). The same detailed recommendation is required for a conservatorship. RCW 11.130.380(7)(a)(i).

The court visitor complied with none of these requirements. He recommended continuation of the full guardianship and conservatorship and cited Ms. Henderson’s medical diagnoses. RP 31-32. But those diagnoses alone do not warrant a guardianship or conservatorship. RCW 11.130.265(3), .360(4); *see* RCW 11.130.280(7), .380(8). The court visitor also relied on a finding of incompetency from a

separate case. RP 32. But again, that finding alone does not warrant a guardianship or conservatorship. *In re Detention of Schuoler*, 106 Wn.2d 500, 504, 723 P.2d 1103 (1986) (“[T]he guardianship statutes and the involuntary commitment statutes . . . operate independently to achieve different purposes.”); see RCW 11.130.265(1)(a), .360(2).

The court visitor did not examine or explain the tasks Ms. Henderson can do on her own. He also did not explain why other arrangements would not meet Ms. Henderson’s needs. The court merely adopted the court visitor’s recommendation with no further inquiry and ordered a full guardianship and conservatorship. RP 40; CP 33-35.

And while the court held a hearing, it did not address whether to terminate or modify the current arrangement. The court gave the matter no more attention than it would a basic clerical or administrative matter. It simply ordered the full guardianship and conservatorship to continue and appointed a new guardian and conservator. Indeed, the transcript for the

hearing is barely three pages long, and the order barely two pages. RP 38-41; CP 33-35.

The court also held the hearing without Ms. Henderson present. But the Act provides Ms. Henderson with a right to be present, present evidence, and participate in the hearing. RCW 11.130.295(1) & (5), .400(1) & (5).

The court's order denying Ms. Henderson's request to terminate or modify and ordering the full guardianship and conservatorship to continue fails the Guardianship Act's clear statutory requirements. It also contravenes the legislative intent to allow Ms. Henderson the freedom to act for herself "to the maximum extent." RCW 11.130.001. This Court should reverse.

c. The trial court erred when it ordered a new guardian and conservator.

The Guardianship Act also provides specific guidance to courts before it can issue an order to appoint a guardian or a

conservator. Again, the trial court here failed to comply with the Act.

Any order appointing a guardian or a conservator requires the court to make specific findings supported by the record. For example, the court must make “a specific finding that clear and convincing evidence established that the identified needs of the respondent cannot be met” under any other arrangement. RCW 11.130.310(1)(a), .420(3)(a). Any order appointing a full guardian or conservator “must state the basis for granting a full [guardianship or conservatorship] and include specific findings to support the conclusion that a limited [guardianship or conservatorship] would not meet the functional needs of the adult.” RCW 11.130.310(3), .420(4). The order must also include other specific information such as the person’s rights and the guardian or conservator’s authority. RCW 11.130.310, .420.

Again, the court simply adopted the court visitor’s recommendation to appoint a professional guardian as Ms.

Henderson's guardian and conservator. It did so without thoroughly exploring Ms. Henderson's individual abilities or needs or considering any alternatives, and without making any findings. Moreover, since the guardianship was first established in 2016, the legislature has significantly changed the law governing the justification for a guardianship or conservatorship. *See supra*, Sec. E.1.a. The court is not permitted to order the prior arrangement to continue without evaluating its legality under the current law.

The legislature has substantially amended to the Guardianship Act to ensure the dignity and personal decisions of those subject to it. The court's order ignores the clear statutory standards under contravenes its clear purpose. The Court of Appeals likewise ignored the Act's requirements and the trial wholesale disregard of them. This judicial disregard of Act is an issue of substantial public interest warranting this Court's review. RAP 13.4.

E. Conclusion

Both the trial court and the Court of Appeals ignored the provisions of the Guardianship Act. This Court should grant review pursuant to RAP 13.4.

This petition contains 3,513 words, and complies with RAP 18.17.

Submitted this 2nd day of September 2025.

A handwritten signature in black ink, appearing to read "Gregory C. Link". The signature is fluid and cursive, with the first name "Gregory" being more prominent.

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FILED
JULY 31, 2025
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

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

In the Matter of the Guardianship of:)	
)	No. 40104-9-III
BRYAN HERNANDEZ.)	
)	ORDER: (1) DENYING MOTION
)	FOR RECONSIDERATION,
)	AND (2) AMENDING OPINION
)	

THE COURT has considered the motion for reconsideration of our June 3, 2025, opinion filed by appellant Bryan Hernandez, now known as Selene Henderson; and the record and file herein.

IT IS ORDERED that the appellant's motion for reconsideration is denied.

IT IS FURTHER ORDERED that this court's June 3, 2025, opinion is amended as follows:

The first sentence in the first full paragraph on page 5 is stricken and replaced with the following:

Both Paul Hernandez and Selene Henderson appeared remotely at the status hearing held on June 14, 2023.

The second sentence in the last paragraph on page 9 is stricken and replaced with the following:

Henderson is correct that our legislature repealed the statute under which the guardianship over her person and estate had been established in 2016.

No. 40104-9-III


In re Guardianship of Hernandez

The last two full sentences at the bottom of page 10 are stricken and replaced with the following:

On December 7, 2022, Paul Hernandez filed a notice of intent to resign as guardian of the person and estate of Selene Henderson. On March 20, 2023, Hernandez filed a motion requesting the court consider appointing (1) a successor from the OPG, and (2) counsel for Henderson.

PANEL: Judges Murphy, Staab, and Cooney

FOR THE COURT:


ROBERT LAWRENCE BERREY
Chief Judge

FILED
JUNE 3, 2025
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

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

In the Matter of the Guardianship of:)	No. 40104-9-III
)	
BRYAN HERNANDEZ.)	UNPUBLISHED OPINION
)	
)	

MURPHY, J. — Paul Hernandez petitioned to be removed as guardian of his adult child, Selene Violet Henderson.¹ Henderson did not oppose Hernandez’s removal as guardian but requested emancipation and termination of the guardianship. Upon verifying the availability of a successor guardian, the superior court discharged Paul Hernandez and appointed a successor guardian/conservator. Henderson appeals, arguing (1) the superior court erred when it denied her request to modify or terminate the guardianship, and (2) she was deprived of effective assistance of counsel. Finding no error, we affirm.

FACTS

In 2016, the superior court appointed Paul Hernandez as the full guardian of the person and estate of his adult child, Selene Violet Henderson. On December 7, 2022,

¹ Henderson’s legal name is Bryan Paul Hernandez. We refer to Selene Violet Henderson by her chosen name and chosen pronouns of “she/her.” *See* Amended Br. of Appellant at 1 n.1.

Paul Hernandez filed a notice of intent to resign.²

During March 2023, Paul Hernandez filed a final report on the guardianship and a motion requesting that the court consider appointing (1) a conservator from the office of public guardianship (OPG), and (2) an attorney to represent Selene Henderson as she no longer wanted to be subject to a guardianship or conservatorship. At a hearing on April 5, the attorney for Paul Hernandez provided information to the court on the status of locating a successor guardian.³ It was reported that since Paul Hernandez was appointed as guardian, Henderson had been involuntarily hospitalized a minimum of six times and that Henderson was currently an inpatient at Eastern State Hospital, through a transfer from the Benton County jail, where Henderson had been held on criminal charges involving an alleged assault of a family member. The court was told that Paul Hernandez

² The notice of intent to resign as guardian is not part of the record on review. The notice is listed in the order appointing successor guardian as one of the documents from the court file that the superior court specifically considered prior to arriving at its decision. Other documents listed in the order that are not part of our record include: (1) a motion filed by Hernandez in March 2023 requesting the court consider appointment of a conservator from the office of public guardianship as well as appointment of an attorney to represent Henderson, (2) Hernandez's March 2023 final reporting as guardian, (3) Hernandez's petition for discharge as guardian filed June 7, 2023, and (4) a June 10, 2023, order appointing a court visitor. Two documents listed in the order are part of the appellate record: (1) the court visitor's report dated August 1, 2023, and (2) a position statement filed by Henderson on November 9, 2023.

³ Suzanne Tosten, also known as Suzanne Hernandez, stepmother to Henderson, had been the designated standby guardian. As a result of an alleged assault by Henderson, Tosten was unwilling to serve as a successor guardian.

was unwilling to continue in the role of guardian, reporting requirements for the guardianship monitoring program had been satisfied, but there was an issue with who could step in to be successor guardian. Informal steps had been taken to locate a certified professional guardian in eastern Washington through a March 30 LISTSERV query by the OPG, but up to that point, finding a willing guardian had been unsuccessful. It was also brought to the court's attention that Henderson no longer wanted to be subject to any guardianship and there was a discussion on whether a court visitor should be appointed. The court was further advised that with Henderson currently in a most restrictive setting at Eastern State Hospital, there would not be anything for a successor guardian to immediately do or action to be taken. Based on the circumstances, the hearing was continued to allow more time to locate a certified professional guardian, including pursuing a formal application process with OPG should the preliminary LISTSERV query ultimately prove unsuccessful.

A status report was offered at a hearing on May 3, 2023, that included the representation that the initial OPG LISTSERV query did not result in any potential successor guardian candidates. Counsel indicated that they had now taken steps to submit a formal OPG application. Counsel indicated there were two continuing barriers to finding a successor guardian: (1) there was no way to predict where Henderson would be living after a discharge from Eastern State Hospital, and (2) the pending criminal charges

against Henderson. Counsel had spoken to the prosecutor in Henderson's criminal case and a hearing scheduled for May 4 was just continued four weeks because Eastern State Hospital had yet to complete their competency evaluation of Henderson. The hearing in the guardianship case was then also continued another four weeks.

At a May 31 hearing, after reminding the court that Paul Hernandez's notice of intent to resign as guardian had been filed nearly six months ago, counsel provided an update on the efforts to locate a successor guardian. The court was informed that the OPG had arranged for a certified professional guardian to conduct an initial assessment, that the individual met with Henderson on May 17, and Henderson had expressed a willingness for the professional guardian to succeed Hernandez. The professional guardian did, however, want to first review Henderson's competency evaluation report before making a firm commitment to serve. Counsel also reported to the court that Eastern State Hospital recently found Henderson not competent to stand trial and unlikely to regain competency in the foreseeable future. The pending felony criminal charges against Henderson were dismissed without prejudice and Henderson was referred by the court to Eastern State Hospital for a civil commitment evaluation. Until that evaluation was complete, it was not known whether Henderson would remain at Eastern or if a support plan would be developed for Henderson to be in a community-based living situation. After reporting on efforts to obtain prior evaluation reports for Henderson,

counsel for Paul Hernandez proposed a three-week continuance in the hopes that the current civil commitment evaluation report would be made available during that timeframe. Counsel believed that at that time it would be appropriate for the court to appoint a court visitor to take over the investigation of what Henderson needed in order to relieve Paul Hernandez of his responsibilities as guardian. The court granted a two-week continuance to allow for more information to develop.

Both Paul Hernandez and Serene Henderson appeared remotely at a status hearing held on June 14, 2023. Before addressing any issue, the court stated that it determined it was now appropriate for an attorney to be appointed for Henderson, with the mechanism for that appointment to be accomplished through the appointment of a court visitor, who could then assist the court in identifying an appropriate attorney for Henderson. The court then set the matter over for an additional two weeks.

On June 28, 2023, the appointed court visitor informed the court of the identification of appropriate counsel for Henderson. The court clarified the basis for the appointment of the court visitor and what the court requested of the court visitor in an anticipated report. The court acknowledged Paul Hernandez's wish to have his intent to resign addressed, but set the matter over in light of the appointment of counsel and an August 2 deadline for a report from the court visitor. The court issued an order appointing an attorney for Henderson, noting that one of the reasons for the appointment was that

Henderson’s “rights cannot otherwise be adequately protected and represented.” Clerk’s Papers (CP) at 20.

The court visitor filed their report on August 1, 2023. Henderson’s counsel filed a position statement on August 15, stating that Henderson had been advised of the contents of the court visitor report and disagreed with the determination that continuation of the guardianship was necessary. Henderson asked the court not to appoint a guardian to oversee her estate or person, and further stated that her father, mother, or stepmother were not desired appointees. It was stated that “[i]f the Court deems it necessary to appoint a Guardian for [Henderson’s] estate and person, it appears to be in the best interest of all parties involved to have this person be a third party, not related to [Henderson].” CP at 28.

The next scheduled hearing on August 16, 2023, began with the court visitor addressing the report he was directed to prepare on three issues: (1) should the guardianship should be modified, (2) did Paul Hernandez act appropriately as guardian, and (3) should a successor guardian be appointed. The court visitor found that the guardianship should continue and that Paul Hernandez had acted appropriately as the guardian. As to the issue of a successor guardian, the court visitor agreed a successor guardian should be appointed, but a willing person to serve had not yet been found. In response to inquiries from the court, Henderson’s appointed counsel made the court

aware of upcoming deadlines in the guardianship, as well as deadlines related to Henderson's civil commitment at Eastern State Hospital. Further, Henderson's attorney reiterated his client's position that a guardian was not wanted, but if there was one certainly no family member should serve as guardian. Henderson's attorney further noted that a better time to determine the appointment of a successor guardian was when Henderson's 180-day hold concluded in January 2024. After a discussion as to whether a status hearing in January would be too far out, the court scheduled the next status hearing for November 15.

Henderson, personally and not through counsel, filed a motion on September 19, 2023, seeking to close the guardianship/conservatorship. The motion was not noted for a hearing.

Counsel for Henderson filed a second position statement of Henderson on November 9, 2023. Henderson maintained her objection to the appointment of any guardian and asked the court to terminate the guardianship. If, however, the court determined it was necessary to appoint a guardian, it was Henderson's position that a successor guardian should not be any family member.

The November 15, 2023, hearing began with the court visitor reporting that a certified professional guardian had been located, and they had met with Henderson and were willing to serve as successor guardian. The proposed successor guardian was

present in court and confirmed on the record that they were a certified professional guardian and their agreement to serve. The court visitor presented to the court what was represented to be “essentially an agreed order” with it noted that Henderson’s counsel “signed but only as approved to form” because of Henderson’s ongoing objection to the appointment of any guardian. Rep. of Proc. (Nov. 15, 2023) at 39. With the appointment of a successor, Paul Hernandez was discharged and released from any further responsibility as guardian.

Henderson timely appeared from the order appointing the successor guardian.

ANALYSIS

Henderson makes two assignments of error: (1) the superior court erred in denying her request to terminate or modify the guardianship, including appointment of a successor guardian and conservator, and (2) Henderson’s counsel was ineffective in failing to argue for application of Washington’s uniform guardianship, conservatorship, and other protective arrangements act (WGCPAA), chapter 11.130 RCW. The issues Henderson claim as error were not before the superior court on November 15, 2023, the date that it entered the order appointing a successor guardian/conservator.

Request to terminate or modify guardianship

On September 19, 2023, Henderson filed a pro se motion for order closing the guardianship/conservatorship and discharging the guardian. At the November 15 hearing,

the superior court did not address Henderson's pro se motion, as it had never been noted for hearing. Likewise, the motion was not listed as a document specifically reviewed by the court prior to entering its order appointing the successor guardian. *See* CP at 33-34. As no ruling has ever been made on the motion to close the guardianship, Henderson's recourse is to note the motion for hearing with the superior court or to file a formal petition to end the guardianship.

WGCPAA

Henderson also asserts her trial court counsel was ineffective in failing to argue for application of the WGCPAA and, because the guardianship and conservatorship implicates her fundamental rights and due process, that we should apply the standards established in *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d (1984). Even if we were to assume that these standards should apply to the circumstances of this case, Henderson fails to establish either deficient performance or prejudice as required by *Strickland*.

Henderson argues that at the November 15 hearing the trial court "failed to apply the WGCPAA" and "simply ordered a full guardianship and conservatorship [of Henderson] with no inquiry." Br. of Appellant at 12-13. Henderson is correct that our legislature repealed the statute under which the guardianship over the person and estate of Serene Henderson had been established in 2016. *See* LAWS ●F 2020, ch. 312, § 904.

Henderson’s guardianship was established under the former guardianship statute, chapter 11.88 RCW. While the former guardianship statute was repealed, guardianships established under the former statute were not invalidated by enactment of the WGCPAA. See RCW 11.130.040 (“This chapter does not affect the validity of letters of office issued under *chapter 11.88 RCW prior to January 1, 2022.”). But the proceedings held on November 15 were not to evaluate the need for and order a guardianship, they were simply to appoint a successor guardian in an existing guardianship. No guardianship was commenced at the November 15 hearing. *See* RCW 11.130.910 (“This chapter applies to: (1) A proceeding for appointment of a guardian or conservator or for a protective arrangement instead of a guardianship or conservatorship *commenced* after January 1, 2022.”) (emphasis added).

Under RCW 11.130.055, the judicial appointment of a successor guardian or successor conservator in an existing action is to occur as follows:

- (1) The court at any time may appoint a successor guardian or successor conservator to serve immediately or when a designated event occurs.

On December 7, 2022, Paul Hernandez filed a notice of intent to resign as guardian of the person and estate of Serene Henderson. On March 20, 2023, Henderson filed a motion requesting that the court consider appointing (1) a successor from the OPG, and (2) counsel for Henderson. On June 7, 2023, Hernandez filed a formal petition to

be discharged as guardian. A court visitor was appointed on June 10, with the visitor's report filed on August 1. Six hearings were held between April 5 and the November 15 hearing, all of which were related to Hernandez's request to be discharged as guardian and the efforts to locate a successor guardian. The court visitor represented to the court at the November 15 hearing that a certified professional guardian had been located, they had met with Henderson, and the proposed successor guardian was willing to serve. At this hearing, counsel for Paul Hernandez presented to the court an uncontested order appointing the certified professional guardian as the successor guardian/conservator. Henderson's counsel approved of the form of the order but not its content. As no motion to close the guardianship was before the court on November 15, Henderson's counsel reiterated for the record Henderson's objection to continuation of the guardianship and, if the guardianship were to continue, an objection to any family member being appointed as successor guardian. This was a reasonable strategy for Henderson's counsel to pursue given the context of the November 15 hearing.

There was no error in the court appointing a successor guardian/conservator, and this decision did occur in the context of the WGCPAA. *See* RCW 11.130.055(1) ("The court at any time may appoint a successor guardian or successor conservator to serve immediately or when a designated event occurs."). As with Henderson's first

No. 40104-9-III
In re Guardianship of Hernandez


assignment of error, her recourse is to note for hearing the September 19, 2023, pro se motion to close the guardianship or to file a formal petition to terminate the guardianship.

CONCLUSION


The superior court's order appointing successor guardian/conservator in an existing guardianship/conservatorship is affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.


WE CONCUR:



Staab, A.C.J.



Murphy, J.



Cooney, J.

WASHINGTON APPELLATE PROJECT

September 02, 2025 - 4:07 PM

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