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96535-8

Court of Appeals Cause No. 333566
COURT OF APPEALS, DIVISION 3
OF THE STATE OF WASHINGTON

IN RE: JUDITH HOLCOMB

PETITION FOR REVIEW

RAP 13.4

John Pierce
Attorney for Appellants

Law Office of John Pierce, P.S.
505 W Riverside Ave., Ste. 518
Spokane, WA 99201
Tel: (509)210-0845
WSBA #: 38722

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A. IDENTITY OF MOVING PARTY

LORI PETERSEN d.b.a. Empire Care Services, an individual; and, HALLMARK CARE SERVICES INC., a Washington Corporation, d/b/a Castlemark Guardianship and Trusts, d/b/a Empire Guardianship and Professional Services (hereinafter called "Hallmark") are the Appellants in the above-entitled action, and they ask this court to accept review of the Court of Appeals decision terminating review.

B. COURT OF APPEALS DECISION

Appellants, by and through their attorney, ask this court to review the Opinion of the Court of Appeals Division Three, filed on October 18, 2018 as an "UNPUBLISHED OPINION", Court of Appeals Cause No. 333566. The Appellants filed a Motion to Publish said opinion on November 6, 2018, Filing Id: 20181106113348D3027448.

A copy of the decision is attached hereto as Exhibit 1.

C. ISSUES PRESENTED FOR REVIEW

1. The Court of Appeals erred in its Commissioner's Ruling, filed on August 26, 2016, when it granted the Spokane County Prosecutor's Office "Special Amicus Status" on behalf of the Spokane County Guardianship Management Program and dismissed the Spokane County Superior Court as a party in the appellate proceedings.
2. The Court of Appeals erred in its Commissioner's Ruling, filed on August 26, 2016, wherein the commissioner found that the Superior Court's Order that removed Hallmark as guardian, substituted another guardian, and appointed a special master, was not, itself, an appealable matter, but determining that the consolidated cases did contain an issue that did give rise to a right to appeal in all of the consolidated cases.
3. The Court of Appeals erred when it granted the Amicus Motion to Strike Appellant's Opening Brief in its Ruling filed on January 23, 2017, in which it and ruled that, despite the consolidated cases being appealable as a right of law, that the Appellants were precluded from asserting errors that the August 26, 2016 Commissioner's Ruling had determined did not give rise to a right to appealability.

4. The Court of Appeals erred in its final Opinion entered on October 18, 2018 in which it declared that the Appellants "they are free to challenge the assessment of GAL fees (but not the orders removing them as guardians) on the basis that the replacement process followed by the court was not necessary."

D. STATEMENT OF THE CASE

The relevant procedural history of this matter starts on March 13, 2015, when the Supreme Court of Washington issued an Order *In Re: Lori A Petersen*, Supreme Court No. 91244-1, in which it affirmed the Certified Professional Guardian Board's ("CPG Board") sanctions against Ms. Petersen of a one year suspension CP 1880-1881.

On March 17, 2015, a Spokane County court commissioner wrote to Ms. Petersen directing her to inform the court in writing of her plans for successorship in 124 cases administered by she and Hallmark. Court of Appeals Opinion pg. 4. Ms. Petersen's lawyer responded to the court commissioner the next day, notifying her that, of the cases on the commissioner's list, only 37 were cases in which Ms. Petersen served as guardian in her own name or in her trade name, Empire, causing them to be directly affected by the suspension. *Id.* at 4. On April 7, 2015, a judge

of the Spokane County Superior Court wrote to Hallmark’s counsel and expressed disagreement with his view that only Ms. Petersen’s and Empire’s cases were affected by Ms. Petersen’s suspension. *Id.* at 7. The letter stated that the appointment of successor guardians was at issue in all of Hallmark’s cases as well. *Id.* at 7-8. On the same day that the superior court judge informed Hallmark’s counsel that all of its cases would be transitioned to a successor guardian, a second superior court judge signed an order appointing a special master “to oversee the transition to and appointment of successor guardians for incapacitated persons serviced by . . . Lori Petersen and the agencies of which she is a designated CPG or standby guardian.” *Id.* at 8.

On April 10, 2015, dozens of orders were entered appointing GALs and scheduling review hearings on an expedited basis for each guardianship in which Ms. Petersen, Empire, Castlemark, or Eagle served as guardian. *Id.* at 9. Each order was captioned with multiple case names and numbers; generally with four. *Id.* In each order, the court directed a given GAL to review court files and any other pertinent records and file a GAL report and successor guardian recommendation on the assigned cases with the court. *Id.* These hearings were scheduled from May 4, 2016 through the beginning of June 2015¹. *Id.*

¹ A handful of the hearing were held later in June as a result of the GAL's or court rescheduling.

Hallmark filed its first Notice of Appeal on May 13, 2018 for the court to review: 1. "Order Appointing Guardian" entered on May 7, 2015; and, 2 "General Order Appointing Special Master", entered on April 7, 2015. Hallmark filed its second Notice of Appeal appeal on June 4, 2015 in order to capture the cases that were not yet heard at the time of the first Notice of Appeal. Hallmark filed its third Notice of Appeal on June 5 to include the remaining cases that were not part of the first two appeals.

A week following the conclusion of the review hearings, and without further notice or proceedings, the commissioners began entering judgments assessing GAL fees against Hallmark or Lori Petersen/Empire in all of the cases in which the incapacitated person lacked assets to pay. Id. at 15. Hallmark filed a fourth Notice of Appeal for all actions upon receiving copies of these judgments by the court as evidence giving rise to an appeal by right pursuant to RAP 2.2.²

On June 3, 2015 the Spokane County Prosecutor, representing the Spokane County Superior Court, served a Subpoena Duces Tecum on Hallmark. Hallmark filed an Emergency Motion to Stay the subpoena with the court of Appeals under the caption *SUPERIOR COURT OF SPOKANE COUNTY v. LORI PETERSEN d.b.a. Empire Care Services*;

2 A fifth Notice of Appeal was filed in February, 2016 for an additional subset of cases for which the trial court entered punitive sanctions against Hallmark. These cases and judgments were all stayed pending the outcome of the original set of appeals.

and, HALLMARK CARE SERVICES INC., a Washington Corporation, d/b/a Castlemark Guardianship and Trusts, d/b/a Empire Guardianship and Professional Services. Motion for Stay (6-09-15) The Commissioners ruling on the motion stated that it was consolidating all of the appeals into a single action, Cause No. 33356-6. Ruling on Motions (6-15-15). From that point forward the multiple appeals and all cases appealed from the trial court were consolidated into a single appellate action.

On July 23, 2015 the appellate Court determined that the matters may not be appealable as a matter of right and set a motion to determine Appealability. Court's Mot to Determine Appealability (7-23-15). The new caption for the consolidated cases was *CASE # 333566, In re the Guardianship of: Judith Diane Holcomb SPOKANE COUNTY SUPERIOR COURT No. 4-104191*. *Id.* The Spokane County Prosecutor's Office (who had previously represented the Spokane County Superior Court), filed motions to identify and serve current guardians, motion permitting Steven Kinn special amicus status. Motion to Allow Amicus (7-07-15).

Hallmark objected to the motion permitting Steven Kinn special amicus status on the basis that the Spokane County Superior Court was the sole moving and adversarial party in all original actions against the

Appellants; that the Court was the responding party to these actions; and, that the "Guardian Monitoring Program" as propounded by the Respondents is a fictional entity that does not legally exist separate from the Spokane County Court. Response to motion (7-7-15).

On August 26, 2018, the appellate court entered a Commissioners' ruling that found that the actions, all of which were previously consolidated by the court of appeals, contained an order that was appealable by right. Ruling on Motions (8-26-15). The Commissioner's ruling also granted Steven Kinn the right to act as Amicus Curiae for the Spokane County Guardian Management Program, and found that Hallmark was not an aggrieved party giving rise to an appeal by right.³ Id. at 19-20. Hallmark herein asks this court to review this action asserting that the appellate court erred in these two findings.

On December 2, 2016 Hallmark filed its Appellant's Brief. (Citation stricken from record). The Amicus filed a motion to strike the appellants brief because it contained assignments of error that the previous commissioner's ruling had determined did not give rise to an appeal by right. Motion to Strike (12-19-16). The Commissioner agreed with the Amicus and ordered Hallmark to re-submit its brief striking the assertions

³ The actions remained consolidated and were appealable because of the judgments that were appealable by right.

of errors that it previously determined were not appeal able by right. Ruling on Motions (14-23-17). Hallmark asked the Supreme Court to review the appellate court's ruling to strike the asserted errors from the Appellants Brief. On June 22, 2017 the supreme court found that "[t]o obtain this court's review, Hallmark must show that the Court of Appeals committed obvious error that renders further proceedings useless, that it committed probable error that substantially alters the status quo or substantially limits the freedom of a party to act, or that it so far departed from the usual course of proceedings as to call for this court's review. RAP 13.5(b)." Supreme Court Ruling pgs. 2-3 a copy of which is attached hereto as Exhibit 2. The Supreme Court further stated that "regardless of whether Commissioner Wasson probably erred in her current ruling, Hallmark does not show that the commissioner's ruling substantially alters the status quo. Id. pg. 4. While the Supreme Court denied review of the issue at that time, it held "that does not preclude Hallmark from obtaining later review of the Court of Appeals decision or the issues pertaining to that decision." Id. Hallmark now asks the Supreme Court court to review this action asserting that the appellate court erred in this finding.

On October 18, 2018, the Court of Appeals filed its Unpublished Opinion in which it stated, in part, that Hallmark is "free to challenge the assessment of GAL fees (but not the orders removing them as guardians)

on the basis that the replacement process followed by the court was not necessary. Opinion, pg. 20. The Court of Appeals later stated that [e]vidence presented in future proceedings may or may not support the guardian replacement procedure followed by the court and an assessment of fees against Hallmark or Ms. Petersen. *We do not prejudge that issue*, but want to be clear that our commissioner's decision that the guardian replacement decisions were not before us on appeal does not foreclose Hallmark's challenge to fee assessments based on what it claims was an unnecessary guardian removal procedure." Id. pg. 24.

Hallmark hereby petitions the Supreme Court to review these issues from the lower court of appeals.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

A petition for review will be accepted by the Supreme Court: if the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; if the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; if a significant question of law under the Constitution of the State of Washington or of the United States is involved; or, if the petition involves an issue of substantial public interest that should be determined by the Supreme Court. RAP 13.4 (b).

The issues presented for review in this matter clearly conflict with a published decision of the Supreme Court, involve significant questions of law under the United States Constitution, and involve an issue of substantial public interest with respect to the breath of powers, and abuse thereof, by a trial court in the State of Washington.

First, the Court of Appeals erred in its Commissioner's Ruling, filed on August 26, 2016, when it granted the Spokane County Prosecutor's Office "Special Amicus Status" on behalf of the Spokane County Guardianship Management Program and dismissed the Spokane County Superior Court as a party in the appellate proceedings. This issue presented for review involves a substantial public interest regarding a trial court's self-presumed power to create an administrative entity, here an undefined "Guardianship Monitoring Program" without following any prescribed process for doing so. prescribed notice and comment.

In the trial court proceedings the court itself confirmed that the Spokane County Superior Court, itself, was the original moving party in these actions, and was acting in the capacity of a "super guardian." Appellants Response to Motion for Special Amicus Status⁴, pg. 7. (7-17-15). The Spokane County Prosecutor's Office, in its motion to be granted Special Amicus Status, argued that the superior court requested him to

4 "Special Amicus Status" is a term that is undefined and nowhere to be found in the court rules.

intervene as amicus , and, further declared that the "The Spokane County Superior Court Administrator's Office monitors guardianships via the Spokane County Guardianship Monitoring Program." Motion for Special Amicus Status, pg. 3-4, (7-7-15) But, the "Guardianship Monitoring Program" (the "GMP") does not legally exist nor is it referenced as part of the Administrator's Office. See "Administrator's Office | Spokane County, WA." Spokane County, Washington, www.spokanecounty.org/1621/Administrators-Office. There is no enabling statute, no rule, no process, nor any record of proceedings in the Spokane County Superior Court granting it existence nor defining its powers and liabilities. It has been used as a straw man in these proceedings despite the fact that it is only referenced in the local court rules as a judicial assistant for guardianship proceedings. See *Spokane LSPR 98.18, 98.20, 98.22*.

Hallmarks counsel argued before both the trial court and the court of appeals that the GMP had no parameters of existence, but that argument was glossed over or simply ignored by the courts. It is a question of Washington Constitutional law, of federal due process, and of substantial public interest that the existence, powers, liabilities, and purpose of the GMP be addressed by the Supreme Court.

The Court of Appeals erred in its Commissioner's Ruling, filed on August 26, 2016, wherein the commissioner found that the Superior Court's Order that removed Hallmark as guardian, substituted another guardian, and appointed a special master, was not, itself, an appealable matter, but determining that the consolidated cases did contain an issue that did give rise to a right to appeal in all of the consolidated cases.

In her ruling, the Commissioner wrongly agreed with the Spokane County Assistant Prosecutor, a.k.a. the "Special Amicus", that Hallmark was not an "aggrieved party" and that there was no issue giving rise to an appeal by right as Hallmark's substantial rights were not affected.⁵ See *COA Ruling 1/20/2017, pgs. 21-22*. This issue and ruling directly conflicted with the Supreme Court's ruling *In re Disciplinary Proceedings Against Petersen*, and is entitled to be accepted for review under RAP 13.4(b)(1). *In re Disciplinary Proceedings Against Petersen*, 180 Wn. 2d 768 (2014).

The Washington Supreme Courts ruling in *Disciplinary Proceedings Against Petersen* clearly illustrates that the Washington courts and the CPG Board are required to provide due process to professional guardians unlike the actions of the defendant Spokane County

5 The consolidated cases were still found to be appealable on a separate issue leaving the entire matter to proceed on appeal. As the threshold of "appealability" was met for the matter overall, this was a harmless error as it did not prevent the Appellants from continuing their appeal.

Superior Court. *Id.* at 774 (2014).

In re Disciplinary Proceedings Against Petersen summarizes the due process **guaranteed** to a guardian in a disciplinary proceeding. *Id.* at 789-790. One thing is crystal clear: Certified Professional Guardians (CPGs) have an empirical right to be availed to a legitimate judicial process; to have the protections of the procedures prescribed by state statutes; and, to have the protections of the State Certified Professional Guardianship Standard Operating Procedures.

This is the Process that is Due to a CPG **before** punitive actions are ordered (or a guardian is removed for cause).

The due process procedures, protocols, and protections outlined in *Disciplinary Proceedings Against Petersen* are severely contrasted with the actions of the Spokane County Superior Court taken against Ms. Petersen and legally separate entities that were not subject to the suspension issued against Ms. Petersen. The findings of fact by the Court of Appeals in its opinion clearly illustrates the acts of the Spokane County Superior Court in this action demonstrated its blatant disregard for the due process, for the laws and rules of the State of Washington, and for the rights of Ms. Petersen and Hallmark.

In the action leading to this Appeal, the Spokane County Superior

Court, through its judges and commissioners, prevented the Plaintiffs/Appellants - all Certified Professional Guardians - from being availed to these procedures, protocols, processes, and protections outlined in the *Disciplinary Proceedings Against Petersen* case. These omissions are a patent violation of a CPG's due process rights as afforded under the 14th Amendment of the U.S. Constitution that clearly proscribes any state from depriving any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. U.S. Const., 14th Amendment. This is mirrored under our Section 3 of our Washington State Constitution.

Appellants ask this Court to review its decision from *In re Disciplinary Proceedings Against Petersen* , and to contrast and compare those processes with the star chamber drumhead conducted by the Spokane County Superior Court in the action.

Because this issue involves a direct conflict with a previous ruling by the Supreme Court; and significant issues under the U.S. Constitution and Washington State Constitution; and substantial public interest with respect to the unconstitutional conduct of the Spokane County Superior Court, Appellants respectfully ask that this matter be reviewed by the Supreme Court pursuant to RAP 13.4 (b).

The Court of Appeals erred when it granted the Amicus Motion to Strike Appellant's Opening Brief in its Ruling filed on January 23, 2017, in which it and ruled that, despite the consolidated cases being appealable as a right of law, that the Appellants were precluded from asserting errors that the August 26, 2016 Commissioner's Ruling had determined did not give rise to a right to appealability.

As discussed in the previous section, this matter was found to be appealable by right despite the Commissioners error in ruling that the trial court's removal of Hallmark as guardian was not appealable on its own.,

These cases and all Notices of Appeals were consolidated into a single matter - meaning the trial court action overall was subject to the Appellants assertion of errors through out the process.⁶

In an appeal, and appellant has the right to make an Assignment of Error - "[a] separate concise statement of each error a party contends was made by the trial court, together with the issues pertaining to the assignments of error." RAP 10.3(4). The appellant then has the right to argue those issues arising from the assignments of error - "[T]he argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record." RAP

6 To analogize this issue, this would be like the court of appeals barring the assertion of error of a trial court's grant of a Motion in Limine because, since that issue was discretionary for the trial court it was not on its own appealable by right. That is wrong.

10.3(6).

These consolidated matters were found to be appealable by right, and the Appellant's brief should not have been limited by the Commissioner's ruling as that specifically pertained to whether or not the action was appealable overall.

The Court of Appeals erred when it granted the Amicus Motion to Strike Appellant's Opening Brief in its Ruling filed on January 23, 2017, in which it ruled that, despite the consolidated cases being appealable as a right of law, that the Appellants were precluded from asserting errors that the August 26, 2016 Commissioner's Ruling had determined did not give rise to a right to appealability.

A ruling by a commissioner or clerk of the Court of Appeals is not subject to review by the Supreme Court. RAP 13.3(e). Because the commissioner's ruling was not appealable to the Supreme Court, because it affects a significant constitutional right of the Appellants, and because the Supreme Court itself explicitly stated Hallmark was not precluded from obtaining later review of the Court of Appeals decision or the issues pertaining to that decision, Hallmark respectfully asks the Supreme Court to review this issue.

Lastly, the Court of Appeals erred in its final Opinion entered on October 18, 2018 in which it declared that the Appellants "they are free to

challenge the assessment of GAL fees (but not the orders removing them as guardians) on the basis that the replacement process followed by the court was not necessary."

The appellants have never been afforded the right or opportunity to argue that the orders removing them as guardians were wrong, were unconstitutional, and were unlawful. As discussed in above, Certified Professional Guardians (CPGs) have an empirical right to be availed to a legitimate judicial process; to have the protections of the procedures prescribed by state statutes; and, to have the protections of the State Certified Professional Guardianship Standard Operating Procedures.

This is an issue that was completely ignored by the trial court, and wrongly barred by the appellate court for review. The appellate court in its opinion made several findings of wrongful and unconstitutional behavior:

- "costs were assessed without due process, including without affording the CPGA an opportunity to challenge facts outside the record on which assessment decisions were based" Opinion, pg. 3;
- "None of the GALs sought appointment of a successor CPG because of a concern that Ms. Petersen might exercise control over Castlemark or Eagle or benefit financially from its operations during the period of her suspension. None contended that she had been insufficiently forthcoming about her role at Hallmark or that Hallmark was in chaos." Id. pg. 13;
- "A written order denying the motion for reconsideration was later entered and identified only the respects in which the motion was granted and denied, without making findings or stating reasons."

Id. pg. 12;

- Hallmark's lawyer never received copies of litigation materials from the GALs; Id.;
- "It appears to be the case that in taking action in proceedings below some, and perhaps all, of the judicial officers involved were privy to information obtained ex parte from persons associated with the GM Program." Id. pg. 20,
- "Nothing in GR 23 suggests that in addition to suffering the suspension, a CPG should lose her entire investment in a CPGA or that the CPG's coworkers should all be thrown out of work." Id. pgs. 22-23; "the court always has power, under proper circumstances, to remove a guardian, but it may not act arbitrarily." Id. pg. 21, and,
- "The Supreme Court's order in Ms. Petersen's case provides only that "Lori A. Petersen is suspended for a period of one year," ... [i]t does not state or imply that anyone affiliated with Ms. Petersen must suffer suspension with her. Id. pg. 24.

There is no question that the Appellants were not afforded due process to any extent in the trial court proceedings. And there is no doubt that the Appellants suffered severe and irreparable damages because of the trial courts actions. The ruling by the appellate court clearly illustrates the improper acts of the trial court and even admits that the Appellants were not availed to due process, but at the same time it seems to wrongfully bar Hallmark from seeking redress from the damages that the appellate court admits, and even argues, that it suffered at the hands of the trial court. *See specifically* Opinion pg. 3 "nothing in GR 23 suggests that in addition to suffering the suspension, a CPG should lose her entire investment in a

CPGA or that the CPG's coworkers should all be thrown out of work....

[The order] does not state or imply that anyone affiliated with Ms.

Petersen must suffer suspension with her."

Because Hallmark has been denied its right to due process on this issue under both the U.S. Constitution and the Washington Constitution, the Supreme Court should take this matter and these errors under consideration.

F. CONCLUSION AND PRAYER FOR RELIEF

The court of appeals made a clear finding and ruling that Hallmark had been denied due processes in the lower court proceedings, but wrongfully limited Hallmarks rights to redress by barring it from arguing that the trial court's removal of the Appellants as guardians was improper. The appellatnes seeks their right to redress, and to seek fair compensation for the damages that they incurred as a result of these wrongful acts.

As a result of the actions of the Spokane County Superior Court, the Appellants have incurred substantial damages. Furthermore, the appellants have also been forced to pay extensive and unnecessary costs in fighting the injustice of these actions directly resulting form the Amicus's unnecessary demands of the Appellants to provide and pay for a multi-thousand page records, and transcriptions of all individual hearings. The

Appellants respectfully request that the Supreme Court

1. Strike the language from the Opinion limiting the Appellants from challenging the orders removing them as guardians (pg. 20);
2. Remand all issues back to the trial court where "evidence presented in future proceedings may or may not support the guardian replacement procedure followed by the court and an assessment of fees against Hallmark or Ms. Petersen." *See* Opinion pg. 24.
3. Order further proceedings to determine the damages and costs incurred by the Appellants including all attorney fees and trial costs to date;
4. To directly assess the attorney fees and trial costs to the Amicus who demanded them; and,
5. Authorize joinder of other necessary parties pursuant to the Tort Claim Form, timely filed by Hallmark pursuant to RCW 4.92 on April 6, 2017.

Respectfully Submitted this 19th day of November, 2018.

By: s/John Pierce/
John Pierce, WSBA # 38722
Attorney for Appellants
Law Office of John Pierce, P.S.
505 W Riverside Ave., Ste 518
Spokane, WA 99201
Tel: (509)210-0845

POSTSCRIPT

As counsel for Hallmark, I have had in my possession the cremains of thee wards of the state who passed away immediately preceding the acts of the trial court that are the subject of this appeal. As stated to the appellate court, the trial court has refused to accept the cremains of wards all of whose cases were before the Spokane County Superior Court.

I contacted the Mother Theresa Program and spoke with a representative. They were not aware of the appellate court's referral, and have, thus far, been unresponsive and unwilling to take the deceased wards.

I am not a guardian but I have held on to these cremains solely because I believe that all lives should be treated respectfully - even in death. I strongly believe the "super-guardian" needs to place their wards in whatever final resting place is done in these predicaments.

I am respectfully requesting that the Supreme Court, which has a direct connection to the Certified Professional Guardian Program and the Administrative Office of the Courts, to assist in finding a solution to this issue.

Respectfully,

s/John Pierce/

EXHIBIT 1. COURT OF APPEALS OPINION

EXHIBIT 2. SUPREME COURT RULING

CERTIFICATE OF SERVICE

I certify a copy of the foregoing Appellants' Petition for Review was served by the method below, and addressed to the following:

Steve Kinn [x] First Class Mail, Postage Pre-
Spokane County Prosecutor's Office paid
Civil Department
1115 W. Broadway Ave.
Spokane, WA 99260

Betty Brinkerhoff [x] First Class Mail, Postage Pre-
415 N. 3836 E paid
Rigby, ID 83442

Amanda Witthauer [x] First Class Mail, Postage Pre-
PO Box 1625 paid
Veradale, WA 99037

Anita M. Byrd [x] First Class Mail, Postage Pre-
PO Box 407 paid
Colfax, WA 99111

Constance O'Hara [x] First Class Mail, Postage Pre-
816 W. Francis Ave., #382 paid
Spokane, WA 99205

David Beseler [x] First Class Mail, Postage Pre-
1312 N. Monroe Suite 121 paid
Spokane, WA 99201

James Spurgetis [x] First Class Mail, Postage Pre-
422 W. Riverside Ave., Suite 620 paid
Spokane, WA 99201

Jana Worthington [x] First Class Mail, Postage Pre-
9119 N. Dusk Court paid
Spokane, WA 99208

Janelle Lakman [x] First Class Mail, Postage Pre-
4668 Price Road paid
Clayton, WA 99110

Janice Burke
PO Box 3384
Yakima, WA 98903

[x] First Class Mail, Postage Pre-
paid

Jody Schierman
PO Box 11501
Spokane Valley, WA 99211

[x] First Class Mail, Postage Pre-
paid

Kelly B. Moore
5008 N. Lee Street
Spokane, WA 99207

[x] First Class Mail, Postage Pre-
paid

Kristi Kilbourne
8611 E. Sprague Ave.
Spokane Valley, WA 99212

[x] First Class Mail, Postage Pre-
paid

Lin O'Dell
PO Box 9898
Spokane, WA 99209

[x] First Class Mail, Postage Pre-
paid

Peggy Bureta
3012 W. Fairview
Spokane, WA 99205

[x] First Class Mail, Postage Pre-
paid

Safe Haven Guardianship Serv LLC
921 W. Broadway Ave., Suite 301
Spokane, WA 99201

[x] First Class Mail, Postage Pre-
paid

Theodore A. Skomo
1314 S. Grand # 2 PMB 278
Spokane, WA 99202

[x] First Class Mail, Postage Pre-
paid

Winston Cook
520 N. Grant Ave.
Medical Lake, WA 99022

[x] First Class Mail, Postage Pre-
paid

DATED, this 19th day of November, 2018.

By: _____
JOHN PIERCE, WSBA # 38722
LAW OFFICE OF JOHN PIERCE, P.S.
Attorney for Appellants

*Renee S. Townsley
Clerk/Administrator*

*(509) 456-3082
TDD #1-800-833-6388*

*The Court of Appeals
of the
State of Washington
Division III*



October 18, 2018

*500 N Cedar ST
Spokane, WA 99201-1905*

*Fax (509) 456-4288
<http://www.courts.wa.gov/courts>*

John Pierce
Law Office of John Pierce, PS
505 W Riverside Ave Ste 518
Spokane, WA 99201-0500
john@lawps.com

Janelle Lakman
Guardian
4668 Price Rd
Clayton, WA 99110

Safe Haven Guardianship Agency
Guardian
921 W Broadway Ave, Suite 301
Spokane, WA 99201

Winston Cook
Guardian
520 N. Grant Ave
Medical Lake, WA 99022

Theodore A. Skomo
Guardian
1314 S. Grand #2 PMB 278
Spokane, WA 99202

Amanda Witthauer
Guardian
PO Box 1625
Veradale, WA 99037

Betty Brinkerhoff
Guardian
415 N. 3836 E.
Rigby, ID 83442

Jana Worhtington
Guardian
9119 N. Dusk Ct.
Spokane, WA 99208

Kristi Kilbourne
Guardian
8611 E. Sprague Ave
Spokane, WA 99212

Steven J. Kinn
Spokane County Prosecutors Office
1115 W Broadway Ave
Spokane, WA 99260-2051
skinn@spokanecounty.org

David Beseler
Guardian
1312 N. Mondroe, Ste 121
Spokane, WA 99201

Anita M. Byrd
Guardian
PO Box 407, 307 E. Fleming Ct.
Colfax, WA 99111

Constance O'Hara
Guardian
816 W. Francis Ave., #382
Spokane, WA 99205

Janice Burke
Guardian
PO Box 3384
Yakima, WA 98903

Jody Schierman
Guardian
PO Box 11501
Spokane Valley, WA 99211

Lin D. O'Dell
Guardian
PO Box 9898
Spokane, WA 99209

Peggy Bureta
Guardian
3012 W. Fairview
Spokane, WA 99205

James P. Spurgetis
Guardian
422 W Riverside Ave, Ste 620
Spokane, WA 99201

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CASE # 333566

In re the Guardianship of: Judith Diane Holcomb
SPOKANE COUNTY SUPERIOR COURT No. 4-104191

Consolidated with

CASE # 333574

In re the Guardianship of: Joseph Dean St. Peter
SPOKANE COUNTY SUPERIOR COURT No. 4-104950

CASE # 333582

In re the Guardianship of: Sharon Wiegele aka Wheeler
SPOKANE COUNTY SUPERIOR COURT No. 4-105225

CASE # 333591

In re the Guardianship of: Kenneth Lee Daniel
SPOKANE COUNTY SUPERIOR COURT No. 4-106179

CASE # 333604

In re the Guardianship of: Russell Adams
SPOKANE COUNTY SUPERIOR COURT No. 4-106185

CASE # 333621

In re the Estate of: Rex Lee Hartley
SPOKANE COUNTY SUPERIOR COURT No. 014008210

CASE # 333639

In re the Guardianship of: Jeffrey Ard
SPOKANE COUNTY SUPERIOR COURT No. 014008368

CASE # 333647

In re the Guardianship of: Mary E. Wright
SPOKANE COUNTY SUPERIOR COURT No. 024003160

CASE # 333655

In re the Guardianship of: Marlene Friesen
SPOKANE COUNTY SUPERIOR COURT No. 024003844

CASE # 333663

In re the Guardianship of: Angelo Reed
SPOKANE COUNTY SUPERIOR COURT No. 024005634

CASE # 333671

In re the Guardianship of: Richard E. Bowers
SPOKANE COUNTY SUPERIOR COURT No. 024009893

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CASE # 333680

In re the Special Needs Trust of: Jessica Harmon
SPOKANE COUNTY SUPERIOR COURT No. 034007643

CASE # 333698

In re the Guardianship of: Carisa M. Cornelius
SPOKANE COUNTY SUPERIOR COURT No. 054005485

CASE # 333701

In re the Guardianship of: Cammian Mateer
SPOKANE COUNTY SUPERIOR COURT No. 054012627

CASE # 333710

In re the Guardianship of: Robert D. Harris
SPOKANE COUNTY SUPERIOR COURT No. 054013844

CASE # 333728

In the Trust of: Portia Elvidge
SPOKANE COUNTY SUPERIOR COURT No. 064001020

CASE # 333736

In re the Guardianship of: Dorothy Fulton
SPOKANE COUNTY SUPERIOR COURT No. 064003553

CASE # 333744

In re the Guardianship of: Linda Zauner
SPOKANE COUNTY SUPERIOR COURT No. 064010185

CASE # 333752

In re the Guardianship of: Helen Martin
SPOKANE COUNTY SUPERIOR COURT No. 064012609

CASE # 333761

In re the Guardianship of: Kayla M. Mateer
SPOKANE COUNTY SUPERIOR COURT No. 074003306

CASE # 333779

In re the Guardianship of: Anna Carey
SPOKANE COUNTY SUPERIOR COURT No. 084006656

CASE # 333787

In re the Guardianship of: Diana J. Olson
SPOKANE COUNTY SUPERIOR COURT No. 094002934

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CASE # 333795

In re the Guardianship of: Clayton Nalley
SPOKANE COUNTY SUPERIOR COURT No. 094008207

CASE # 333809

In re the Guardianship of: Louise L. Nichols
SPOKANE COUNTY SUPERIOR COURT No. 094011101

CASE # 333817

In re the Guardianship of: Judd Smelcer
SPOKANE COUNTY SUPERIOR COURT No. 094014533

CASE # 333825

In re the Guardianship of: H. Kurt Olson
SPOKANE COUNTY SUPERIOR COURT No. 104005139

CASE # 333833

In re the Guardianship of: Lynn Fairbanks
SPOKANE COUNTY SUPERIOR COURT No. 104005317

CASE # 333841

In re the Guardianship of: Jared Collier
SPOKANE COUNTY SUPERIOR COURT No. 104010132

CASE # 333850

In re the Guardianship of: Krista L. Blair
SPOKANE COUNTY SUPERIOR COURT No. 104012356

CASE # 333868

In re the Guardianship of: Donna Vogel
SPOKANE COUNTY SUPERIOR COURT No. 104014375

CASE # 333876

In re the Guardianship of: David P. Campbell
SPOKANE COUNTY SUPERIOR COURT No. 114000445

CASE # 333884

In re the Guardianship of: Michael Fenske
SPOKANE COUNTY SUPERIOR COURT No. 114015566

CASE # 333892

In re the Guardianship of: Margaret L. Sullivan
SPOKANE COUNTY SUPERIOR COURT No. 124001814

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In re the Guardianship of: Teresa C. Higgins
SPOKANE COUNTY SUPERIOR COURT No. 124002501

CASE # 333914

In re the Guardianship of: Robert W. Tuckerman
SPOKANE COUNTY SUPERIOR COURT No. 124003116

CASE # 333922

In re the Guardianship of: Marian L. Wharton
SPOKANE COUNTY SUPERIOR COURT No. 124004121

CASE # 333931

In re the Guardianship of: Cody Weiland
SPOKANE COUNTY SUPERIOR COURT No. 124004961

CASE # 333949

In re the Guardianship of: Betty Vingo
SPOKANE COUNTY SUPERIOR COURT No. 124005950

CASE # 333957

In re the Guardianship of: Ruth Morales
SPOKANE COUNTY SUPERIOR COURT No. 124006107

CASE # 333965

In re the Guardianship of: Gustavo Morales
SPOKANE COUNTY SUPERIOR COURT No. 124014592

CASE # 333973

In re the Guardianship of: Sharon Westerman Moore
SPOKANE COUNTY SUPERIOR COURT No. 144009501

CASE # 333981

In re the Guardianship of: Leslie Stanich
SPOKANE COUNTY SUPERIOR COURT No. 124003817

CASE # 333990

In re the Guardianship of: Marjorie K. Hopper
SPOKANE COUNTY SUPERIOR COURT No. 124005119

CASE # 334007

In re the Guardianship of: Sandra Taylor
SPOKANE COUNTY SUPERIOR COURT No. 004002094

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In re the Guardianship of: Roy William Rosser
SPOKANE COUNTY SUPERIOR COURT No. 994000538

CASE # 334023

In re the Guardianship of: Michael Reinhardt
SPOKANE COUNTY SUPERIOR COURT No. 974013048

CASE # 334031

In re the Guardianship of: Duane Fry
SPOKANE COUNTY SUPERIOR COURT No. 954005847

CASE # 334040

In re the Guardianship of: Lorraine Janet Scottee Edgar aka Lorraine Hill
SPOKANE COUNTY SUPERIOR COURT No. 944000693

CASE # 334058

In re the Guardianship of: Sharon Louise Pitner
SPOKANE COUNTY SUPERIOR COURT No. 884010121

CASE # 334066

In re the Guardianship of: Russell Baker
SPOKANE COUNTY SUPERIOR COURT No. 884009165

CASE # 334074

In re the Guardianship of: Jeffrey R. Williams
SPOKANE COUNTY SUPERIOR COURT No. 884004872

CASE # 334082

In re the Guardianship of: Robin Wells
SPOKANE COUNTY SUPERIOR COURT No. 884000940

CASE # 334091

In re the Guardianship of: Heidi Alden
SPOKANE COUNTY SUPERIOR COURT No. 864011813

CASE # 334104

In re the Guardianship of: Karen Ann Stephens
SPOKANE COUNTY SUPERIOR COURT No. 844009138

CASE # 334112

In re the Guardianship of: Patricia A. Torpey
SPOKANE COUNTY SUPERIOR COURT No. 814003461

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In re the Guardianship of: Ron Gehring
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CASE # 334449

In re the Guardianship of: Linda S. Brangwin
SPOKANE COUNTY SUPERIOR COURT No. 4-94376

CASE # 334457

In re the Guardianship of: Jackie Anderson
SPOKANE COUNTY SUPERIOR COURT No. 874001808

CASE # 334465

In re the Guardianship of: Kristina J. Anderson
SPOKANE COUNTY SUPERIOR COURT No. 064000210

CASE # 334473

In re the Guardianship of: Nathan Baldwin
SPOKANE COUNTY SUPERIOR COURT No. 114009434

CASE # 334481

In re the Guardianship of: Tiffany Baldwin
SPOKANE COUNTY SUPERIOR COURT No. 114009442

CASE # 334490

In re the Guardianship of: Joshua Blair-Robbins
SPOKANE COUNTY SUPERIOR COURT No. 114007202

CASE # 334503

In re the Guardianship of: John S. Bloyed
SPOKANE COUNTY SUPERIOR COURT No. 114009451

CASE # 334511

In re the Guardianship of: Mackenzie Brady
SPOKANE COUNTY SUPERIOR COURT No. 054000131

CASE # 334520

In re the Guardianship of: Ernest Bowen
SPOKANE COUNTY SUPERIOR COURT No. 974009679

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In re the Guardianship of: Donald E. Claycomb
SPOKANE COUNTY SUPERIOR COURT No. 794013716

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In re the Guardianship of: Donna Dahl
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In re the Guardianship of: Marie Ann Delorenzo
SPOKANE COUNTY SUPERIOR COURT No. 4-97171

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In re the Guardianship of: Sarah Demary
SPOKANE COUNTY SUPERIOR COURT No. 084016457

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In re the Guardianship of: Catherine Desjardins
SPOKANE COUNTY SUPERIOR COURT No. 104007271

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In re the Guardianship of: Steven Eberhart
SPOKANE COUNTY SUPERIOR COURT No. 124005101

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In re the Guardianship of: Aaron Cory Eisenman
SPOKANE COUNTY SUPERIOR COURT No. 074002938

CASE # 334601

In re the Guardianship of: Marlo Foster
SPOKANE COUNTY SUPERIOR COURT No. 954014129

CASE # 334619

In re the Guardianship of: Steven John Futo
SPOKANE COUNTY SUPERIOR COURT No. 794013911

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In re the Guardianship of: Alejandro Garcia
SPOKANE COUNTY SUPERIOR COURT No. 114003002

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In re the Guardianship of: Kane H. Haliwell
SPOKANE COUNTY SUPERIOR COURT No. 124006557

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In re the Guardianship of: Bart Harrington
SPOKANE COUNTY SUPERIOR COURT No. 134002681

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In re the Guardianship of: Katrina D. Hinds
SPOKANE COUNTY SUPERIOR COURT No. 024006151

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In re the Guardianship of: Connie L. House
SPOKANE COUNTY SUPERIOR COURT No. 124010040

CASE # 334678

In re the Guardianship of: Elizabeth Howard
SPOKANE COUNTY SUPERIOR COURT No. 884011739

CASE # 334686

In re the Guardianship of: Bertha L. Jenkins
SPOKANE COUNTY SUPERIOR COURT No. 124006905

CASE # 334694

In re the Guardianship of: George Scott Laird
SPOKANE COUNTY SUPERIOR COURT No. 124006662

CASE # 334708

In re the Guardianship of: Judy Lee
SPOKANE COUNTY SUPERIOR COURT No. 4-106174

CASE # 334716

In re the Guardianship of: Robert Loss
SPOKANE COUNTY SUPERIOR COURT No. 024012011

CASE # 334724

In re the Guardianship of: June I. Love
SPOKANE COUNTY SUPERIOR COURT No. 944000227

CASE # 334732

In re the Guardianship of: Bella Mally
SPOKANE COUNTY SUPERIOR COURT No. 084009680

CASE # 334741

In re the Guardianship of: Leslie May
SPOKANE COUNTY SUPERIOR COURT No. 124014088

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In re the Guardianship of: Pauline McKinsey
SPOKANE COUNTY SUPERIOR COURT No. 854002719

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In re the Guardianship of: Malcolm D. McLellan
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In re the Guardianship of: Carl McMorris
SPOKANE COUNTY SUPERIOR COURT No. 124010058

CASE # 334783

In re the Guardianship of: Patrick Melendrez
SPOKANE COUNTY SUPERIOR COURT No. 024011227

CASE # 334791

In re the Guardianship of: Bernetta E. Melton
SPOKANE COUNTY SUPERIOR COURT No. 974012394

CASE # 334805

In re the Guardianship of: Thomas Miller, Jr.
SPOKANE COUNTY SUPERIOR COURT No. 054012261

CASE # 334813

In re the Guardianship of: Lloyd Raleigh Milton
SPOKANE COUNTY SUPERIOR COURT No. 974009687

CASE # 334821

In re the Guardianship of: Donald Raymond Mitchell
SPOKANE COUNTY SUPERIOR COURT No. 4-98734

CASE # 334830

In re the Guardianship of: Rosalind Elena Morris
SPOKANE COUNTY SUPERIOR COURT No. 074009444

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In re the Guardianship of: Joseph H. Naylor
SPOKANE COUNTY SUPERIOR COURT No. 124006778

CASE # 334856

In re the Guardianship of: Barbara A. Oppengaard
SPOKANE COUNTY SUPERIOR COURT No. 034012205

CASE # 334864

In re the Guardianship of: Lewis Palmer
SPOKANE COUNTY SUPERIOR COURT No. 084000984

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CASE # 334872

In re the Guardianship of: Laura D. Rice
SPOKANE COUNTY SUPERIOR COURT No. 094011968

CASE # 334881

In re the Guardianship of: Lucas F. Rivero
SPOKANE COUNTY SUPERIOR COURT No. 074013573

CASE # 334899

In re the Guardianship of: Kenneth Leroy Roberts
SPOKANE COUNTY SUPERIOR COURT No. 124014584

CASE # 334902

In re the Guardianship of: Patricia Ann Seeman
SPOKANE COUNTY SUPERIOR COURT No. 4-106900

CASE # 334911

In re the Guardianship of: Janet Lynn Shaw
SPOKANE COUNTY SUPERIOR COURT No. 964013783

CASE # 334929

In re the Guardianship of: Nehemiah Daniel Slater
SPOKANE COUNTY SUPERIOR COURT No. 024011553

CASE # 334937

In re the Guardianship of: Joan S. Smith
SPOKANE COUNTY SUPERIOR COURT No. 124009980

CASE # 334945

In re the Guardianship of: Cleora K. Boyd
SPOKANE COUNTY SUPERIOR COURT No. 124013278

CASE # 334953

In re the Guardianship of: Darlene Stephenson
SPOKANE COUNTY SUPERIOR COURT No. 844009146

CASE # 334961

In re the Guardianship of: Kirsten Patrice Sternberg
SPOKANE COUNTY SUPERIOR COURT No. 124014151

CASE # 334970

In re the Guardianship of: Nanci Jo Stocker
SPOKANE COUNTY SUPERIOR COURT No. 074007565

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CASE # 334988

In re the Guardianship of: Elvella Storrud
SPOKANE COUNTY SUPERIOR COURT No. 064012269

CASE # 334996

In re the Guardianship of: Leah Tiffany
SPOKANE COUNTY SUPERIOR COURT No. 004009749

CASE # 335003

In re the Guardianship of: Arthur Underwood
SPOKANE COUNTY SUPERIOR COURT No. 984003903

CASE # 335011

In re the Guardianship of: Ralph Carl White
SPOKANE COUNTY SUPERIOR COURT No. 094002829

CASE # 335020

In re the Guardianship of: Walter L. Withers
SPOKANE COUNTY SUPERIOR COURT No. 044002747

CASE # 335038

In re the Guardianship of: Colleen Baker
SPOKANE COUNTY SUPERIOR COURT No. 934004780

CASE # 335046

In re the Guardianship of: Murphy McCoy
SPOKANE COUNTY SUPERIOR COURT No. 124004058

CASE # 335054

In re the Guardianship of: Margaret M. McDirmid
SPOKANE COUNTY SUPERIOR COURT No. 124009645

CASE # 335062

In re the Guardianship of: Jared Trimble
SPOKANE COUNTY SUPERIOR COURT No. 124005097

CASE # 335071

In re the Guardianship of: James Zingale
SPOKANE COUNTY SUPERIOR COURT No. 094007049

CASE # 335089

In re the Trust of: Tammy Leach
SPOKANE COUNTY SUPERIOR COURT No. 984006651

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CASE # 336018
In re the Guardianship of: Thomas Getchell
SPOKANE COUNTY SUPERIOR COURT No. 014013426

Dear Counsel:

Enclosed please find a copy of the opinion filed by the Court today.

A party need not file a motion for reconsideration as a prerequisite to discretionary review by the Supreme Court. RAP 13.3(b); 13.4(a). If a motion for reconsideration is filed, it should state with particularity the points of law or fact which the moving party contends the court has overlooked or misapprehended, together with a brief argument on the points raised. RAP 12.4(c). Motions for reconsideration which merely reargue the case should not be filed.

Motions for reconsideration, if any, must be filed within twenty (20) days after the filing of the opinion. Please file the motion electronically through the court's e-filing portal or if in paper format, only the original motion need be filed. If no motion for reconsideration is filed, any petition for review to the Supreme Court must be filed in this court within thirty (30) days after the filing of this opinion (may be filed by electronic facsimile transmission). The motion for reconsideration and petition for review must be received (not mailed) on or before the dates they are due. RAP 18.5(c).

The panel declined to address an issue of cremains raised in the appellant's reply brief as not properly an issue on appeal. A member of court staff identified some information on the disposition of cremains, however, and at the panel's request, I am passing it along.

Sincerely,



Renee S. Townsley
Clerk/Administrator

RST:jab
Enclosures

c: **E-mail**—Hon. Michael P. Price, Presiding Judge
E-mail—Hon. Tami M. Chavez

No. 33356-6-III

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See RCW 36.39.030—Disposal of remains of indigent persons.

The board of county commissioners of any county shall provide for the disposition of the remains of any indigent person including a recipient of public assistance who dies within the county and whose body is unclaimed by relatives or church organization.

Catholic Cemeteries of Spokane has the Mother Teresa Program, a flyer for which is attached.

MOTHER TERESA PROGRAM

Cemetery Assistance Program that serves families in need in our community.

Mother Teresa firmly believed that love begins at home and that we should reach out to those in need in our family first, then our community, our country and our world. It is in this spirit that CFCS created the Mother Teresa Program that allows the poor and destitute in our community to receive sacred and dignified cemetery services.

“Love Begins at Home”

Mother Teresa proclaimed “I want you to find the poor here, right in your own home... love begins at home.” [Over 14%* of people in Spokane County live below the poverty line. * US Census 2010]

Serving Our Community

With the Mother Teresa Program, Catholic Funeral & Cemetery Services (CFCS) of Spokane is able to give back to the community by ensuring that those in need in our community receive sacred and dignified cemetery services.

Living Our Mission

As a charitable organization, CFCS assists families in sharing this most meaningful experience with family and friends.



Living Our Mission

CATHOLIC FUNERAL & CEMETERY SERVICES
A MINISTRY SERVING THE DIOCESE OF SPOKANE



WHO THE PROGRAM SUPPORTS

- Families in Need
- Catholic Charities

MAIN BENEFITS

- Support our community
- In need? Apply for assistance

HOW TO HELP

- Make a donation
- Visit any CFCS location
- Visit cfcsSpokane.org

Call (509) 467-5496
to speak with a qualified,
caring advisor or visit us at:
cfcsSpokane.org

*God still loves the world and
He sends you and me to be His love
and His compassion to the poor.*

— MOTHER TERESA

Mother Teresa was a luminous messenger of God's love who is well noted for her charity, compassion and courage. Everyday she went into her community to find and serve Him in the "unwanted, the unloved and the uncared for." She founded the Missionaries of Charity, which continue to meet the physical and spiritual needs of the poor and ensure that her charitable spirit lives on.

Frequently Asked Questions:

What is the program used for?

The program is used to provide cemetery assistance to individuals in our community who would otherwise be unable to afford proper services.

Who does the program serve?

The program was established to serve individuals in need in our community, including the poor and destitute, as well as victims of violent crimes. We also assist special organizations in our community.

What level of assistance is available?

CFCS offers two levels of assistance for cemetery services, indigent and financial assistance. Indigent services are for individuals who are unable to make any payment. We provide these individuals with complete burial or inurnment services in accordance with the Order of Christian Funerals. Financial assistance is for individuals who need extended terms. The program allows them to have the dignified services that they would be otherwise unable to pay for.

How can I help?

Donations are readily accepted at all of our CFCS locations. To learn more please call us at any of our locations.

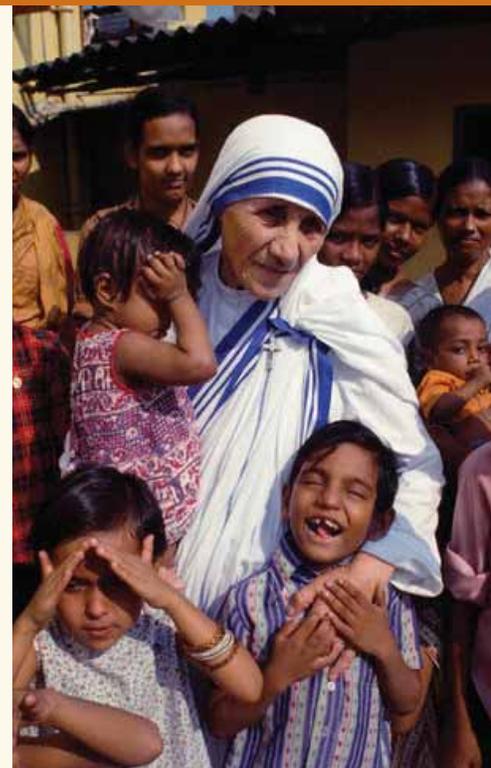
Do I have to be Catholic to receive aid?

No. The program serves all those in need in our community regardless of religious affiliation.

Where is this program available?

The Mother Teresa Program is available at:

- Holy Cross Cemetery & Funeral Center
- Queen of Peace Cemetery & Funeral Center
- St. Joseph Cemetery & Funeral Center



THE CFCS ADVANTAGE

As a resource you can trust today and tomorrow, we guide our families to make educated decisions about end-of-life services.

- Flexible and Affordable
- Welcoming Staff
- Convenient Locations
- People You Can Trust
- Open Source of Information
- Complete Resource for Funeral, Cremation and Cemetery Services



Living Our Mission

CATHOLIC FUNERAL & CEMETERY SERVICES
A MINISTRY SERVING THE DIOCESE OF SPOKANE

Call (509) 467-5496
to speak with a qualified,
caring advisor or visit us at:
cfcsSpokane.org

FILED

OCTOBER 18, 2018

**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. 33356-6-III
JUDITH D. HOLCOMB,)	
)	
and)	
)	UNPUBLISHED OPINION
OTHER SIMILAR CASES)	
CONSOLIDATED ON APPEAL.†)	

† No. 33357-4-III, *In re Guardianship of St. Peter*; No. 33358-2-III, *In re Guardianship of Wiegele*; No. 33359-1-III, *In re Guardianship of Daniel*; No. 33360-4-III, *In re Guardianship of Adams*; No. 33362-1-III, *In re Trust of Hartley*; No. 33363-9-III, *In re Guardianship of Ard*; No. 33364-7-III, *In re Guardianship of Wright*; No. 33365-5-III, *In re Guardianship of Friesen*; No. 33366-3-III, *In re Guardianship of Reed*; No. 33367-1-III, *In re Guardianship of Bowers*; No. 33368-0-III, *In re Special Needs Trust of Harmon*; No. 33369-8-III, *In re Guardianship of Cornelius*; No. 33370-1-III, *In re Guardianship of Mateer*; No. 33371-0-III, *In re Guardianship of Harris*; No. 33372-8-III, *In re Trust of Elvidge*; No. 33373-6-III, *In re Guardianship of Fulton*; No. 33374-4-III, *In re Guardianship of Zauner*; No. 33375-2-III, *In re Guardianship of Martin*; No. 33376-1-III, *In re Guardianship of Mateer*; No. 33377-9-III, *In re Guardianship of Carey*; No. 33378-7-III, *In re Guardianship of Olson*; No. 33379-5-III, *In re Guardianship of Nalley*; No. 33380-9-III, *In re Guardianship of Nichols*; No. 33381-7-III, *In re Guardianship of Smelcer*; No. 33382-5-III, *In re Guardianship of Olson*; No. 33383-3-III, *In re Guardianship of Fairbanks*; No. 33384-1-III, *In re Guardianship of Collier*; No. 33385-0-III, *In re Guardianship of Blair*; No. 33386-8-III, *In re Guardianship of Vogel*; No. 33387-6-III, *In re Guardianship of Campbell*; No. 33388-4-III, *In re Guardianship of Fenske*; No. 33389-2-III, *In re Guardianship of Sullivan*; No. 33390-6-III, *In re Guardianship of Higgins*; No. 33391-4-III, *In re Guardianship of Tuckerman*; No. 33392-2-III, *In re Guardianship of Wharton*; No. 33393-1-III, *In re Guardianship of Weiland*; No. 33394-9-III, *In re Guardianship of Vingo*; No. 33395-7-III, *In re Guardianship of Morales*; No. 33396-5-III, *In re Guardianship of Morales*; No. 33397-3-III, *In re Guardianship of Moore*; No. 33398-1-III, *In re Guardianship of*

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Stanich; No. 33399-0-III, *In re Guardianship of Hopper*; No. 33400-7-III, *In re Guardianship of Taylor*; No. 33401-5-III, *In re Guardianship of Rosser*; No. 33402-3-III, *In re Guardianship of Reinhardt*; No. 33403-1-III, *In re Guardianship of Fry*; No. 33404-0-III, *In re Guardianship of Edgar*; No. 33405-8-III, *In re Guardianship of Pitner*; No. 33406-6-III, *In re Guardianship of Baker*; No. 33407-4-III, *In re Guardianship of Williams*; No. 33408-2-III, *In re Guardianship of Wells*; No. 33409-1-III, *In re Guardianship of Alden*; No. 33410-4-III, *In re Guardianship of Stephens*; No. 33411-2-III, *In re Guardianship of Torpey*; No. 33414-7-III, *In re Guardianship of Gehring*; No. 33444-9-III, *In re Guardianship of Brangwin*; No. 33445-7-III, *In re Guardianship of Anderson*; No. 33446-5-III, *In re Guardianship of Anderson*; No. 33447-3-III, *In re Guardianship of Baldwin*; No. 33448-1-III, *In re Guardianship of Baldwin*; No. 33449-0-III, *In re Guardianship of Blair-Robbins*; No. 33450-3-III, *In re Guardianship of Bloyed*; No. 33451-1-III, *In re Guardianship of Brady*; No. 33452-0-III, *In re Guardianship of Bowen*; No. 33453-8-III, *In re Guardianship of Claycomb*; No. 33454-6-III, *In re Guardianship of Dahl*; No. 33455-4-III, *In re Guardianship of Delorenzo*; No. 33456-2-III, *In re Guardianship of Demary*; No. 33457-1-III, *In re Guardianship of Desjardins*; No. 33458-9-III, *In re Guardianship of Eberhart*; No. 33459-7-III, *In re Guardianship of Eisenman*; No. 33460-1-III, *In re Guardianship of Foster*; No. 33461-9-III, *In re Guardianship of Futo*; No. 33462-7-III, *In re Guardianship of Garcia*; No. 33463-5-III, *In re Guardianship of Haliwell*; No. 33464-3-III, *In re Guardianship of Harrington*; No. 33465-1-III, *In re Guardianship of Hinds*; No. 33466-0-III, *In re Guardianship of House*; No. 33467-8-III, *In re Guardianship of Howard*; No. 33468-6-III, *In re Guardianship of Jenkins*; No. 33469-4-III, *In re Guardianship of Laird*; No. 33470-8-III, *In re Guardianship of Lee*; No. 33471-6-III, *In re Guardianship of Loss*; No. 33472-4-III, *In re Guardianship of Love*; No. 33473-2-III, *In re Guardianship of Mally*; No. 33474-1-III, *In re Guardianship of May*; No. 33475-9-III, *In re Guardianship of McKinsey*; No. 33476-7-III, *In re Guardianship of McLellan*; No. 33477-5-III, *In re Guardianship of McMorris*; No. 33478-3-III, *In re Guardianship of Melendrez*; No. 33479-1-III, *In re Guardianship of Melton*; No. 33480-5-III, *In re Guardianship of Miller*; No. 33481-3-III, *In re Guardianship of Milton*; No. 33482-1-III, *In re Guardianship of Mitchell*; No. 33483-0-III, *In re Guardianship of Morris*; No. 33484-8-III, *In re Guardianship of Naylor*; No. 33485-6-III, *In re Guardianship of Oppengaard*; No. 33486-4-III, *In re Guardianship of Palmer*; No. 33487-2-III, *In re Guardianship of Rice*; No. 33488-1-III, *In re Guardianship of Rivero*; No. 33489-9-III, *In re Guardianship of Roberts*; No. 33490-2-III, *In re Guardianship of Seeman*; No. 33491-1-III, *In re Guardianship of Shaw*; No. 33492-9-III, *In re Guardianship of Slater*; No. 33493-7-III, *In re Guardianship of Smith*; No. 33494-5-III, *In re Guardianship of Boyd*; No. 33495-3-III, *In re Guardianship of Stephenson*; No.

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SIDDOWAY, J. — After Lori Petersen, a certified professional guardian (CPG), received a one-year disciplinary suspension, the Spokane County Superior Court undertook judicial review not only of cases in which she served as guardian, but of cases assigned to a CPG agency (CPGA) with which she was associated. Following costly proceedings in which replacement guardians were appointed in every case, the court assessed costs of the procedure against her and the corporate operator of the agencies.

The costs were assessed without due process, including without affording the CPGA an opportunity to challenge facts outside the record on which assessment decisions were based. We reverse the money judgments only, and remand for further proceedings consistent with this opinion. We retain jurisdiction for one reason only: the administrative inconvenience to the courts and the parties that would be presented should the conduct of further hearings result in over 120 new appeals. Our retention of jurisdiction should not be viewed as reflecting any view of the merits or any belief that a further appeal is expected.

33496-1-III, *In re Guardianship of Sternberg*; No. 33497-0-III, *In re Guardianship of Stocker*; No. 33498-8-III, *In re Guardianship of Storrud*; No. 33499-6-III, *In re Guardianship of Tiffany*; No. 33500-3-III, *In re Guardianship of Underwood*; No. 33501-1-III, *In re Guardianship of White*; No. 33502-0-III, *In Guardianship of Withers*; No. 33503-8-III, *In re Guardianship of Baker*; No. 33504-6-III, *In re Guardianship of McCoy*; No. 33505-4-III, *In re Guardianship of McDirmid*; No. 33506-2-III, *In re Guardianship of Trimble*; No. 33507-1-III, *In re Guardianship of Zingale*; No. 33508-9-III, *In re Guardianship of Leach*; No. 33601-8-III, *In re Guardianship of Getchell*.

BACKGROUND OF PROCEEDINGS

Lori Petersen became a CPG in 2001. *See In re Disciplinary Proceeding Against Petersen*, 180 Wn.2d 768, 773, 329 P.3d 853 (2014). In April 2012, the Certified Professional Guardian Board served her with a complaint charging her with violating standards of practice. *Id.* at 774-75. The charges and Ms. Petersen's defense were presented to a hearing officer in October 2012. *Id.* at 775. He entered findings, conclusions, and a recommendation that Ms. Petersen be suspended from serving as a CPG for 1 year and monitored for 24 months thereafter. *Id.* at 779. The Board adopted the hearing officer's recommendations but reduced the costs he had recommended be imposed. *Id.*

The record and recommendation were submitted to the Washington Supreme Court for review. It questioned only the proportionality of the costs imposed by the Board. *Id.* After a remand in which the Board made a further substantial reduction in the costs imposed to \$7,500.00, the court affirmed and adopted the Board's recommendation in an order dated March 13, 2015. During the almost three years of proceedings leading up to the March 2015 order, the Board did not impose an interim suspension on Ms. Petersen, which it was authorized to do if there was a substantial risk of injury to the

public. *Petersen*, 180 Wn.2d at 789 (citing former DR¹ 519).

The Supreme Court's order directed that Ms. Petersen's suspension become effective on March 20, 2015. In response to a motion to stay the suspension filed with the Supreme Court by Ms. Petersen on March 18, the court granted a stay to April 27, 2015, to allow her "to work with the Certified Professional Guardian Board to ensure proper representation of her clients and the transition of the representation of her clients to successor certified professional guardians." Clerk's Papers (CP) at 67.

At the time of the Supreme Court's order, Ms. Petersen operated as a CPG doing business as Empire Care Services or Empire Care and Guardianship (Empire). The Supreme Court's July 2014 decision characterized Empire as an agency that Ms. Petersen "owns and operates" and described it as "serv[ing] over 60 wards." *Petersen*, 180 Wn.2d at 773. By Ms. Petersen's count at the time, 37 of the wards she served were subject to guardianships ordered and being supervised by the Spokane County Superior Court.

At the time of the Supreme Court's order affirming her suspension, Ms. Petersen was also an employee of Hallmark Care Services, Inc. and served as a designated CPG for two CPGAs operated by Hallmark: Castlemark Guardianship and Trust (Castlemark),

¹ The Board's disciplinary rules (DR) are contained within the Certified Professional Guardianship Board's Program Regulations, available at https://www.courts.wa.gov/programs_orgs/guardian/?fa=guardian.display&fileName=rulesindex. In the regulations presently appearing on the website, the Board's authority to impose an interim suspension where a respondent's continued practice as a CPG poses a substantial threat of serious harm to the public appears at DR 509.6.1.A.

and Eagle Guardianship and Professional Services (Eagle). If she were not replaced, Ms. Petersen's suspension as a CPG would cause Hallmark to be out of compliance with a Board regulation requiring CPGAs to have two designated CPGs.

On March 17, 2015, a Spokane County court commissioner wrote to Ms. Petersen at two business locations—one, Hallmark's; the other, Empire's—directing her to inform the court in writing of her plans for her caseload, given the impending March 20 effective date of her suspension. She was asked to deliver her answer by no later than 4:00 p.m. on March 19. An attachment to the letter listed well over 120 pending guardianships by case name, incapacitated person name, guardian, and standby guardian. Empire was the assigned guardian in 32 of the cases and Ms. Petersen was the assigned guardian in 5. In all of the other cases, the assigned guardian was Castlemark, Eagle, or Hallmark.

Ms. Petersen's lawyer responded to the court commissioner the next day, notifying her that a motion had been made to stay the Supreme Court's order to allow Ms. Petersen time to transition her clients. He pointed out that of the cases on the commissioner's list, only 37 were cases in which Ms. Petersen served as guardian in her own name or in her trade name, Empire, causing them to be directly affected by the suspension. As for the Castlemark and Eagle cases, he informed the commissioner that Ms. Petersen would cease working for Hallmark during the period of her suspension and that Hallmark was working to identify a new designated CPG to replace Ms. Petersen. He stated that he had

notified the Board of the change in agency status in light of Ms. Petersen's suspension and that Hallmark had 60 days to find a new CPG, citing Board DR 706.3.

Ms. Petersen's lawyer later filed a notice of appearance for Hallmark. Given the predominance of his advocacy for Hallmark in matters relevant to this appeal, we refer to him hereafter as Hallmark's lawyer, although he continues to represent Ms. Petersen.

According to a declaration Hallmark's lawyer later filed with the court, corporate actions were taken on April 1, 2015, by Hallmark's shareholder, directors and officers to address Ms. Petersen's impending suspension. Reportedly, Keri Sandifer was elected the sole director and officer of Hallmark and two individual CPGs in good standing, James Whiteley and Joan Shoemaker, provided written acceptances of their appointment as Hallmark's two designated CPGs on that date. The lawyer's declaration states, "After April 1, 2015, Hallmark Care Services, Inc. had on its board, an individual qualified pursuant to RCW 11.88.020, and had two designated CPGs, both in good standing with the CPG Board, making the Agency compliant pursuant to GR 23(d)(2)." CP at 105.²

On April 7, 2015, a judge of the Spokane County Superior Court wrote to Hallmark's counsel and expressed disagreement with his view that only Ms. Petersen's and Empire's cases were affected by Ms. Petersen's suspension. The letter stated that the

² The declaration also states that Ms. Sandifer was given a proxy by the company's sole shareholder, PJLA, Inc., but as discussed hereafter, rules adopted by the Washington Supreme Court do not treat ownership of the capital stock of a CPGA as relevant to certification.

appointment of successor guardians was at issue in all of Hallmark's cases as well, explaining:

Specifically, Hallmark/Castlemark/Eagle's ownership is in question. Despite inquiries by the Court on multiple occasions, ownership has always been stated as "confidential." The choice to leave this inquiry unanswered puts Ms. Petersen's association with any of those agencies into question. The Court will not appoint as a successor guardian any certified professional guardian associated with Hallmark or with entities falling under the Hallmark umbrella.

CP at 56.

PROCEEDINGS

On the same day that the superior court judge informed Hallmark's counsel that all of its cases would be transitioned to a successor guardian, a second superior court judge signed an order appointing a special master "to oversee the transition to and appointment of successor guardians for incapacitated persons serviced by . . . Lori Petersen and the agencies of which she is a designated CPG or standby guardian." CP at 94. The order was uncaptioned other than to say, "In the Guardianship of: ____ An Incapacitated Person" and bore no case number. A copy of the order was mailed to Hallmark's lawyer.

In a contemporaneous letter, the first superior court judge wrote to persons serving as guardians ad litem (GAL) in Spokane County that the suspension of Ms. Petersen "affects 125 cases in Spokane County," causing it to appoint a special master "to oversee the transition of the 125 cases currently assigned to Ms. Petersen and/or agencies with which she is involved." CP at 58. It explained:

The court will assign Guardians ad Litem to each case to investigate the appointment of a guardian, successor guardian and/or standby guardian. Of the 125 cases seven are already assigned to Mr. William Dodge to investigate specific complaints

. . . Ms. Ana Kemmerer^[3] will assign a group of cases to each of you so the work can begin. If you have a conflict in a particular case please file a motion and the Special Master will review it. If the Special Master concurs, Ms. Kemmerer will arrange a trade between two Guardians ad Litem to eliminate the conflict and keep the caseload balanced.

Ms. Kemmerer cannot review each case to determine if it is county or private pay. At a minimum your reasonable fees will be covered at the county pay rate. Because generally the only issue in these cases will be appointment of a successor guardian and/or standby guardian, the maximum fee will be \$500.00 without further court approval.

CP at 58-59.

On April 10, 2015, dozens of orders were entered appointing GALs and scheduling review hearings on an expedited basis for each guardianship in which Ms. Petersen, Empire, Castlemark, or Eagle served as guardian. Each order was captioned with multiple case names and numbers; generally with four. In each order, the court directed a given GAL to review court files and any other pertinent records and file a GAL report and successor guardian recommendation on the assigned cases with the court. Each order found good cause to shorten the period for filing the GAL reports from 15 days to 5 days before the scheduled hearing date. The order did not direct the GAL to

³ Ms. Kemmerer served as Guardianship Monitoring Program Coordinator within the Spokane County Court Administrator's Office.

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provide a copy of his or her report and recommendation to Ms. Petersen, Hallmark, or their lawyer.

Each order reiterated that the GAL was appointed initially at public expense and that Spokane County would not pay more than \$500 in GAL fees without further court approval. Each contained the following additional language:

Upon the hearing to appoint a successor guardian and/or standby guardian, the Court may assess all Guardian ad Litem fees as costs against Certified Professional Guardian, Lori Petersen, CPG #9713.

See CP at 178-647. The orders were e-mailed to Hallmark's lawyer on April 10 and were mailed to him on the following Monday, April 13.

On April 16, Ms. Kemmerer forwarded a follow-up letter to the GALs from the second superior court judge. It informed the GALs that:

No certified Professional Guardian or agency affiliated with Ms. Lori Petersen should be appointed as Guardian or Standby Guardian. That therefore excludes any CPG affiliated with the Hallmark, Castlemark, and Eagle agencies, including but not limited to Joan Shoemaker and James Whiteley, from being appointed.

CP at 76. On April 19, Ms. Shoemaker resigned as a designated CPG for Hallmark, reportedly because she received a telephone call from an employee of the Administrative Office of the Courts informing her that if she continued as a CPG for Hallmark, she would lose all her guardianship cases. Hallmark's lawyer later represented to the court that Mr. Whiteley had received a similar call.

On April 17, 2015, Hallmark's lawyer filed a motion for reconsideration of the order appointing the special master, specifically challenging its directive to transition guardianship cases to guardians other than Hallmark dba Castlemark and Eagle.

Hallmark posed a number of questions about events leading to the court's order and challenged the court's jurisdiction to take actions against Hallmark that it characterized as disciplinary, and therefore the exclusive province of the Board.

The court heard argument of the motion for reconsideration on May 15, 2015, and announced its decision a couple of days later. In orally announcing its decision, the court stated that in appointing the special master it had relied on its authority under RCW 11.88.120(1) and (4) and that the order appointing the special master did only two things: appointed a special master and ordered Ms. Petersen to post a surety bond (the court granted Ms. Petersen's challenge to the surety bond requirement). The court stated, "The order that I signed does not remove Hallmark from any case nor does it order the appointment of a guardian in any case." Report of Proceedings (RP) (May 18, 2015) at 4.

Later, however, the court stated:

Ms. Petersen is not now listed as a director or officer of the agency but there are concerns about ownership or other positions within the agency. This is important and necessary information because clearly the CPG Board and Supreme Court did not want Ms. Petersen, who has been found to have committed professional misconduct, involved in any guardianship actions.

[Hallmark's lawyer] at argument noted there had been a change in directors and officers of the agency and said there was quote, no possibility

of outside influence in the matter, closed quote. That's the heart of the issue in these cases completely. While Ms. Petersen may no longer be employed as a CPG with Hallmark or serving as an officer or director, there is a very valid concern based upon past history and lack of full disclosure, that she continues to be connected in some other way and still has access to and involvement with these vulnerable IPs. Having not received, even to this day, some positive affirmation from Hallmark that Ms. Petersen is no longer involved in any way or benefiting financially at all from any guardianship matters, this Court is not inclined to allow those agencies to be considered as guardian or standby guardian in these matters.

Id. at 8-9. A written order denying the motion for reconsideration was later entered and identified only the respects in which the motion was granted and denied, without making findings or stating reasons.

Meanwhile, the review hearings had begun on May 4, 2015, and they continued through June 4, 2015, before two superior court commissioners. Counsel for Hallmark was present for each of the review hearings. At one of the initial hearings, he challenged the superior court's jurisdiction, its authority to remove Hallmark, and the process it had used and was using to remove Hallmark and Ms. Petersen. Hallmark also filed a response and objection to the order appointing the guardian ad litem in three of the cause numbers, and it renewed that objection by reference at most of the hearings.

At each hearing, the GAL summarized his or her report and recommended a successor GAL. At the first hearing on May 4, Hallmark's lawyer indicated he had not yet received copies of any GAL reports. The court responded that it would have the GALs provide a copy of the reports as they went through the process. At oral argument

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of this appeal, Hallmark's lawyer stated that he never received copies of the GAL reports in advance of the subject hearings, but he was sometimes provided with a copy of the report at the hearing itself. *See* Wash. Ct. App. oral argument, *In re Guardianship of Holcomb*, No. 33356-6-III (May 3, 2018) at 6 min., 41 sec. through 7 min., 17 sec. (available at http://www.courts.wa.gov/appellate_trial_courts/appellateDockets/index.cfm?fa=appellateDockets.showDateList&courtId=a03&archive=y).

Although some of the GALs did not report any concerns about the care provided by Ms. Petersen, Empire, Castlemark, or Eagle, a number did. Among concerns expressed in individual cases were

- mismanagement of trust funds;
- charging excessive or improper guardianship fees for clients with limited funds;
- providing insufficient personal allowance to the incapacitated person;
- failure to perform visits of the incapacitated person;
- failure to file periodic care plans or status reports;
- filing falsified or improper periodic care plan reports;
- failing to list a current address for the incapacitated person in the guardianship file;
- improper care; and
- complaints from caregivers concerning lack of communications from the guardian.

Some of these concerns were raised by the court and the GALs' review of the guardianship files, and some were raised by the caretakers or family members of the incapacitated person.

None of the GALs sought appointment of a successor CPG because of a concern that Ms. Petersen might exercise control over Castlemark or Eagle or benefit financially from its operations during the period of her suspension. None contended that she had been insufficiently forthcoming about her role at Hallmark or that Hallmark was in chaos. The commissioners sometimes explained their appointment decisions or responded to Hallmark's procedural objections by referring to these matters, but it was not based on any evidence presented by GALs during the review hearings.⁴

The amount of requested GAL fees was discussed on the record at some of the hearings, but there were many hearings where the amount of fees requested was never discussed. While both court commissioners allowed GALs to present fee requests at the review hearings, both stated at various times that the court was not signing on the fees at that time. *See* RP (May 7, 2015) at 49-50, 82; RP Supp. (May 4, 2015) at 13-14, (May 14, 2015) at 250. Instead, the commissioners repeatedly stated during review hearings that they were reserving the issue of reimbursement to Spokane County for the approved GAL fees pending further court review. Each order appointing a successor guardian also

⁴ A declaration of Ms. Kemmerer containing some of this information had been filed in opposition to Hallmark's and Ms. Peterson's motion for reconsideration of the order appointing a special master but it was not a part of the evidence presented in the review hearings.

stated that the court was reserving the issue of reimbursement pending further court review.⁵

A week following the conclusion of the review hearings, and without further notice or proceedings, the commissioners began entering judgments assessing GAL fees against Hallmark or Lori Petersen/Empire in all of the cases in which the incapacitated person lacked assets to pay. Each judgment indicated that the court found that the GAL fees incurred were reasonable and that “[t]he GAL investigation was necessitated by the suspension of Lori Petersen as a CPG in this matter and her association with related agencies.” CP at 3175-4364. On the second page of each judgment entered against Hallmark, the court further found that:

[A]lthough the agency in this case is not one in which Lori Peterson is the designated CPG, it has failed to disclose the interest that Ms. Peterson has in the agency and the degree of control that she has over the agency despite the requests of the court. Ms. Peterson has also served as the designated CPG for this agency and her activities were not overseen by the agency appropriately and as a result she was suspended. Furthermore, the agency has been in chaos with rapidly changing CPG designations. There have been numerous complaints from IPs, caregivers and others about lack of contact, lack of response to concerns raised about care and in some cases complaints about financial improprieties. The court has seen many instances of inaccurate and outdated information provided to it in annual reports. These acts and/or omissions have resulted in breaches of the fiduciary duty that the guardian owes to its IPs. Effective May 18, 2015, the agency, because of the recent resignation of one of the designated CPGs

⁵ In some cases this language was included in a separate addendum order entered at the same time as the order appointing guardian, rather than in the order appointing guardian.

will not have the requisite two CPGs to conduct business and effective June 30, 2015, the resignation of the other CPG will mean that it will have no CPGs to conduct business and thus it does not appear that the agency can provide the assurance of viability beyond that date. For all these reasons, and based upon additional findings of the court as articulated on the record in these related proceedings and incorporated by reference herein, the CPG agency is presently unsuitable to be appointed as a successor guardian and that has necessitated the need of the court to appoint a GAL to investigate and recommend a successor guardian to insure continuity of care for the incapacitated persons under its jurisdiction.

Id. at 4140. Upon entry, copies of the money judgments were served on Hallmark's attorney. Hallmark and Ms. Petersen appeal.

ANALYSIS

Issues on appeal and motion to strike

Hallmark and Ms. Petersen initially appealed three orders in each of more than 120 guardianship cases: the order appointing the special master; the order removing appellants as guardians and appointing a successor guardian; and the judgment assessing GAL fees against one of them. We consolidated the cases for appeal. The Spokane County Guardianship Monitoring Program (GM Program), a program within the county's superior court administrator's office, sought and was granted special amicus status to respond to Hallmark's pleadings on appeal.

In response to this court's motion to determine appealability, the parties briefed and our court commissioner heard argument on whether Ms. Petersen and Hallmark had standing to appeal their removal as guardians. Finding that Ms. Petersen and Hallmark

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were not aggrieved parties with respect to the orders appointing a special master and removing them as guardians, our commissioner dismissed the appeal of those categories of orders, leaving the judgments assessing GAL fees as the sole subject matter of this appeal. Commissioner's Ruling, *In re Guardianship of Holcomb*, No. 33356-6-III (Wash. Ct. App. Aug. 26, 2015) at 22-23. Hallmark and Ms. Petersen did not move to modify the commissioner's ruling.

As a threshold matter, the GM Program asks us to strike portions of Hallmark's and Ms. Petersen's opening brief,⁶ which it contends violates our commissioner's prior orders as well as provisions of the Rules on Appeal. The opening brief does include material that our commissioner deemed relevant only to dismissed matters, but with the benefit of hindsight, background on Hallmark's and Ms. Petersen's objections to the procedure followed in the superior court proves to be relevant. Hallmark and Ms. Petersen evidently foresaw that the superior court's authority to assess GAL fees against them would be defended on the basis that all actions taken in response to Ms. Petersen's suspension were an "emergent necessity," as the GM Program argues on appeal. Br. of Amicus Curiae at 12. Hallmark's and Ms. Petersen's objections to the procedure in the trial court calls into question that defense of the process.

⁶ Hallmark's and Ms. Petersen's operative opening brief is their second. They were ordered by our court commissioner to remove portions of their first opening brief related to matters that were dismissed.

The GM Program's argument that Hallmark and Ms. Petersen violated the Rules of Appellate Procedure by failing to cite to all relevant portions of the record supporting their assertions of fact is also true. But the same can be said for some statements of fact in the GM Program's brief. We recognize that an appeal that involves separate submissions and proceedings in over 120 cases makes complete compliance with RAP 10.3(a)(5) and 10.4(f) onerous and perhaps prohibitively expensive. Both parties did a sufficient job of providing record citations for important and contested matters. Neither parties' briefing has hampered the work of the court.

We turn to the dispositive issue that remains before us following our commissioner's unappealed order as to the scope of the appeal: Whether the superior court violated CR 54(f)(2) and Hallmark's and Ms. Petersen's due process rights when it filed judgments requiring Ms. Petersen and Hallmark to reimburse Spokane County for the GAL fees incurred in each of the cases.

Violation of CR 54(f)(2) and denial of due process

Hallmark and Ms. Petersen argue that the money judgments entered against them violated CR 54(f)(2), which requires five days' notice of presentation of a judgment. They also allege a violation of due process, where the court commissioners consistently represented that the issue of assessment of the fees against Ms. Petersen was being reserved, and Hallmark never received notice that assessment of fees against it was even

being considered. At oral argument of the appeal, the GM Program characterized repeated statements by the commissioners that the cost assessment issue was being reserved as equivalent to the court taking a disputed matter under advisement. We disagree. The implication of the commissioners' statements was that an assessment of fees against Ms. Petersen, if it were to be considered at all, would be the subject matter of a future hearing. She and Hallmark understandably did not address the issue of fee assessment at the review hearings.

Under RAP 2.5(a), a party may raise a claim of “manifest error affecting a constitutional right” for the first time on appeal. “It is consistent with RAP 2.5(a) for a party to raise the issue of denial of procedural due process in a civil case at the appellate level for the first time.” *Conner v. Universal Utils.*, 105 Wn.2d 168, 171, 712 P.2d 849 (1986) (citing *Esmieu v. Schrag*, 88 Wn.2d 490, 497, 563 P.2d 203 (1977)). The due process challenge is properly before us.

A party is also able to challenge a judgment entered in violation of CR 54(f)(2) for the first time on appeal. Failure to comply with the notice requirements of CR 54(f)(2) generally renders the trial court's entry of judgment void; while the judgment will not be found invalid if the complaining party is not prejudiced, a party *is* prejudiced if it is not allowed to appeal. *See Burton v. Ascol*, 105 Wn.2d 344, 352, 715 P.2d 110 (1986) (no prejudice shown when party was allowed to appeal).

The GM Program argues that the superior court was not required to comply with CR 54(f)(2) because guardianships are special proceedings for purposes of CR 81(a). Assuming (though not deciding) that this is so, CR 81(a) provides that statutes applicable to special proceedings supersede the civil rules only where they provide for inconsistent procedure. Statutes governing guardianship proceedings do not dictate a procedure for entering a money judgment imposing fees that is inconsistent with the procedure required by CR 54(f)(2).

Because entry of the money judgments violated both CR 54(f)(2) and Ms. Petersen's and Hallmark's right to due process, they are reversed.

Procedure on remand

Because our commissioner has dismissed Ms. Petersen's and Hallmark's challenges to the orders removing her and Hallmark's agencies as guardians, we write further to make clear that in any future proceedings, they are free to challenge the assessment of GAL fees (but not the orders removing them as guardians) on the basis that the replacement process followed by the court was not necessary.

It appears to be the case that in taking action in proceedings below some, and perhaps all, of the judicial officers involved were privy to information obtained ex parte from persons associated with the GM Program. As explained in *Sherman v. State*, 128

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Wn.2d 164, 204-05, 905 P.2d 355 (1995), reliance on ex parte information, however well intentioned, is improper:

Canon 3 of the CJC, which requires judges to perform the duties of their offices impartially and diligently, provides in relevant part:

Judges should accord to every person who is legally interested in a proceeding, or that person's lawyer, full right to be heard according to law, and, except as authorized by law, neither *initiate* nor consider *ex parte* or other communications concerning a pending or impending proceeding. . . .

CJC Canon 3(A)(4) (1994) (emphasis added). As the comment to Canon 3 explains, this prohibition against ex parte communications includes contacting neutral third parties about a pending case:

The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and *other persons who are not participants in the proceeding*, except to the limited extent permitted. . . .

CJC Canon 3(A)(4) cmt. (1994) (emphasis added).

Id.

It appears that some of the information obtained ex parte led to the conclusion by the judicial officers that no CPG or CPGA affiliated with Ms. Petersen or Hallmark could be appointed to serve as guardian. The Supreme Court's order and its rules do not support that conclusion.

RCW 11.88.120(1) addresses a court's authority to make changes to a guardianship after it is established, and includes the court's authority to replace a guardian, on the court's own motion, "upon the death of the guardian . . . or for other good reason." Washington cases hold that under a similarly-worded former law, "the

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court always has power, under proper circumstances, to remove a guardian, but it may not act arbitrarily.” *In re Guardianship of Hemrich*, 187 Wash. 21, 26, 59 P.2d 748 (1936) (applying Rem. Rev. Stat. § 1579 (1932), which empowered courts to remove guardians “for good and sufficient reasons”) (citing *In re Estate of Shapiro*, 131 Wash. 653, 230 P. 627 (1924); *In re Guardianship of Dodson*, 135 Wash. 625, 238 P. 610 (1925)).

Under RCW 11.88.090(10), the fees of a GAL “shall be charged to the incapacitated person unless the court finds that such payment would result in substantial hardship upon such person, in which case the county shall be responsible for such costs.” This charging language is subject to the proviso that “the court may charge such fee to the petitioner, the alleged incapacitated person, or any person who has appeared in the action; or may allocate the fee, as it deems just.” *Id.*

Guardianships are equitable creations of the courts and it is the Washington Supreme Court that holds the authority to regulate the certification of professional guardians. *Petersen*, 180 Wn.2d at 781-82. It has done so in GR 23, establishing the framework and delegating some regulatory and rulemaking tasks to the Board. *Id.* at 782. Relevant here, the Supreme Court has established the requirements that individuals and agencies must meet to apply to serve as CPGs or CPGAs. GR 23(d). Although the

Board processes applications for certification and makes recommendations to the Supreme Court, it is ultimately the court that orders certification. GR 23(c)(2)(i), (v).

The Supreme Court's requirements for an agency wishing to be certified as a CPGA include a requirement that its officers and directors all meet the qualifications of RCW 11.88.020 for guardians, that it have two designated CPGs, and that it provide proof of its financial responsibility. GR 23(d)(2), (5). No requirement limits who can own the capital stock of a CPGA and the rule does not identify any ramification to an agency if one of its CPGs is suspended, other than the requirement that it have two CPGs in place. Board DR 706.3 provides that "[i]f a change in circumstances results in an agency having only one designated guardian, the agency shall notify the Board within five (5) calendar days of the change in circumstances" and "shall have sixty (60) calendar days from the date the agency is no longer in compliance with GR 23 to add a designated guardian to the agency."

The fact that the Supreme Court has not required that the capital stock of a CPGA be owned by only CPGs in good standing makes sense. CPGs may have a significant capital investment in a CPGA through which they operate, and may have coworkers who depend on the business's continued operation for their livelihood. Even if a CPG facing suspension does not have a large sunk investment in a CPGA's assets, she may be individually responsible, as a guarantor or otherwise, for ongoing real estate, equipment,

and loan obligations. Obviously she must scrupulously abide by an order suspending her, and the suspension alone will likely have significant financial ramifications. But nothing in GR 23 suggests that in addition to suffering the suspension, a CPG should lose her entire investment in a CPGA or that the CPG's coworkers should all be thrown out of work.

The Supreme Court's order in Ms. Petersen's case provides only that "Lori A. Petersen is suspended for a period of one year," that "[f]ollowing the end of the one year suspension, she shall be monitored for a 24 month period," that "[t]he monitoring shall be at Lori A. Petersen's expense," and that "Lori A. Petersen shall pay costs to the Board in the amount of \$7,500.00." CP at 1881. It does not state or imply that anyone affiliated with Ms. Petersen must suffer suspension with her.

Evidence presented in future proceedings may or may not support the guardian replacement procedure followed by the court and an assessment of fees against Hallmark or Ms. Petersen. We do not prejudge that issue, but want to be clear that our commissioner's decision that the guardian replacement decisions were not before us on appeal does not foreclose Hallmark's challenge to fee assessments based on what it claims was an unnecessary guardian removal procedure.

We reverse the money judgments only, and remand for further proceedings consistent with this opinion. We retain jurisdiction to avoid the administrative

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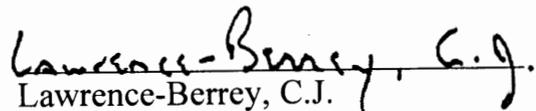
In re Guardianship of Holcomb, et al.

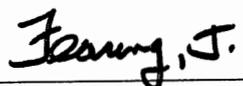
inconvenience to the courts and the parties that would be presented should the conduct of further hearings result in over 120 new appeals.

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.


Siddoway, J.

WE CONCUR:


Lawrence-Berrey, C.J.


Fearing, J.

FILED *C*
JUN 22 2017
WASHINGTON STATE
SUPREME COURT *byh*

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re the Guardianship of:
JUDITH DIANE HOLCOMB

NO. 94454-7
RULING DENYING REVIEW

Lori Petersen; Hallmark Care Services, Inc. d.b.a Castlemark Guardianship and Trusts; and Hallmark Care Services, Inc. d.b.a. Eagle Guardianship and Professional Services (collectively Hallmark) seek this court's discretionary review of a ruling of Division Three of the Court of Appeals granting a motion to strike Hallmark's opening brief in an appeal from the removal of Hallmark as guardian in over 100 guardianships after the suspension of Ms. Peterson's license as a certified public guardian. For reasons discussed below, the motion for discretionary review is denied.

This case involves three consolidated appeals, one from an order appointing successor guardians, one from an order appointing a special master, and one from an order imposing on Hallmark guardian ad litem fees. Because most of the guardianship estates in this case involve incapacitated persons who lack the ability to pay for legal counsel, the Spokane County Prosecuting Attorney's Office filed a motion in the Court of Appeals seeking permission for the Spokane County Guardianship Monitoring Program, an arm of the Spokane County Superior Court Administrator's

Office, to appear in the appeal as special amicus represented by Deputy Prosecutor Steven Kim, with authority to respond as necessary to Hallmark's pleadings. The Court of Appeals set that motion for consideration along with a court's motion to determine appealability and other motions. In a ruling issued on August 26, 2015, Commissioner Wasson granted the motion for the Guardianship Monitoring Program to appear as special amicus. As to appealability, the commissioner ruled that Hallmark is not an aggrieved party as to the orders removing it as guardian and appointing substitute guardians and the order appointing a special master, but it is aggrieved as to the order assessing it for guardian ad litem fees. The commissioner therefore dismissed the appeal as to all matters except the guardian ad litem fees, and she ordered the setting of a perfection schedule. Hallmark did not move to modify the commissioner's ruling.

After Hallmark filed its opening brief in December 2016, amicus moved to strike the brief on the basis that Hallmark asserted assignments of error challenging the validity of the removal orders and the order appointing a special master. Commissioner Wasson ruled that only the argument addressing guardian ad litem fees was properly included in the brief. She therefore granted the motion to strike and directed Hallmark to file an opening brief conforming to her earlier ruling that Hallmark was aggrieved only as to the fees. She also directed that the statement of facts include only facts relevant to that issue, and that Hallmark comply with the rules requiring factual statements to be supported by references to the record. A panel of judges denied Hallmark's motion to modify the commissioner's ruling. Hallmark now seeks this court's discretionary review.

To obtain this court's review, Hallmark must show that the Court of Appeals committed obvious error that renders further proceedings useless, that it committed probable error that substantially alters the status quo or substantially limits the

freedom of a party to act, or that it so far departed from the usual course of proceedings as to call for this court's review. RAP 13.5(b).

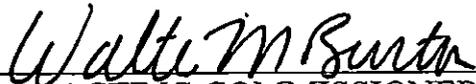
Hallmark argues that the Court of Appeals committed probable error. First, it urges that amicus had no standing to move to strike the opening brief because it is not a party and is not a legal entity. Besides citing no authority, Hallmark overlooks two important points. Commissioner Wasson granted amicus special status in the appeal, including the authority to respond to Hallmark's pleadings. Hallmark did not move to modify the commissioner's ruling on this point, and thus it may not now challenge that ruling. *See* RAP 17.7 (party may challenge commissioner's ruling only by motion to modify). Second, in her current ruling, Commissioner Wasson noted that even if there was a question as to the standing of amicus, the Court of Appeals on its own motion may strike a brief and order its replacement when it does not comply with the rules of appellate procedure. RAP 10.7.

Second, Hallmark contends that in appealing a final judgment, it may assign error to all of the orders that led up to the judgment, reasoning that assignment of error in the orders culminating in a judgment is a separate issue from the appealability of the judgment. But Hallmark does not adequately explain how this reasoning allows it, for example, to assert as an assignment of error in its opening brief that the trial court "erred when it removed the appellants, as guardians in 124 cases, without legal authority, without due process, and pursuant to a General Order that 'order only did two things—appointed special master and set bond.'" Brief of Appellant at 5. It was precisely this issue that Commissioner Wasson determined Hallmark could not appeal. This has nothing to do with whether the trial court's order of removal was appealable but rather with Hallmark's standing to challenge that order as an "aggrieved party." RAP 3.1. Commissioner Wasson previously ruled Hallmark was

not aggrieved as to that issue, and as indicated, Hallmark did not move to modify that ruling.

But regardless of whether Commissioner Wasson probably erred in her current ruling, Hallmark does not show that the commissioner's ruling substantially alters the status quo. The status quo was established by the commissioner's unchallenged ruling limiting the issue on which Hallmark was aggrieved. The commissioner's current ruling simply upholds that limitation. Nor does the commissioner's ruling substantially limit Hallmark's freedom to act within the meaning of RAP 13.5(b)(2). That criterion is not satisfied where the ruling being challenged merely limits the freedom of a party to act in the conduct of the litigation. *State v. Howland*, 180 Wn. App. 196, 207, 321 P.3d 303 (2014), *review denied*, 182 Wn.2d 1008 (2015). Hallmark does not show that the commissioner's ruling does anything but limit its freedom to act in the conduct of the appeal. Denial of discretionary review at this point does not preclude Hallmark from obtaining later review of the Court of Appeals decision or the issues pertaining to that decision. RAP 13.5(d).

The motion for discretionary review is denied.



ACTING COMMISSIONER

June 22, 2017

LAW OFFICE OF JOHN PIERCE, PS

November 19, 2018 - 1:24 PM

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