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TRANS

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EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

IN THE MATTER OF THE)
GUARDIANSHIP OF:) CASE NO. 05G028163
)
GUADALUPE OLVERA,) DEPT. GDN
)
Adult Ward.)
_____)

BEFORE THE HONORABLE JON NORHEIM,
DISTRICT COURT COMMISSIONER

TRANSCRIPT RE: HEARING

WEDNESDAY, SEPTEMBER 8, 2010

1 APPEARANCES:

2 The Co-Petitioner: JARED SHAFER
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2 PROCEEDINGS

3 (THE PROCEEDINGS BEGAN AT 9:51:08)

4
5 THE COURT: There's still an awful lot of people
6 here for not that many cases left.

7 MR. FREER: Good morning, Your Honor. Alan Freer,
8 for Mr. Shafer.

9 (Whispered conversation)

10 MR. MAYFIELD: Are we on record, Your Honor?

11 THE COURT: Yes.

12 MR. MAYFIELD: Good morning, Stephan Mayfield,
13 number 10138, on behalf of Becky Schultz.

14 MR. BOGGESS: Good morning, Your Honor, Brian
15 Boggess, bar number 4537, on behalf of Co-Petitioner, Ruth
16 Carney.

17 MR. MAYFIELD: And, Your Honor, Becky Schultz and
18 her father, Guadalupe Olvera, are in court this morning.

19 THE COURT: Okay. All right.

20 This is extremely well briefed. I'll let you make
21 any kind of argument you want today, put -- make whatever kind
22 of record you -- you want. I -- I -- but I -- I -- I have
23 read this very thoroughly, but I don't --

24 MR. MAYFIELD: Well -- well, to begin with, I guess

1 I would just like to mention when we were here last time in
2 May, one of the main --

3 THE COURT: Uh-huh (affirmative).

4 MR. MAYFIELD: -- issues that you brought to our
5 attention was if there was changed circumstances, if there is
6 a malfeasance, which is brought to your attention, that could
7 be a reason for removing Mr. Shafer as --

8 THE COURT: Yeah.

9 MR. MAYFIELD: -- guardian.

10 MR. FREER: And -- and -- and -- and --

11 THE COURT: When this went up on an objection new
12 issues were raised. Well, it was new counsel and new
13 issues --

14 MR. MAYFIELD: Yeah.

15 THE COURT: -- were raised that hadn't been raised
16 with me before, so --

17 MR. MAYFIELD: Correct, Your Honor.

18 THE COURT: -- the issues that came up before about
19 malfeasance had been handled in a report and recommendation
20 and were affirmed. However, there were -- the -- the NRS 160
21 stuff I hadn't seen before on -- and -- and so it needed to be
22 briefed.

23 MR. MAYFIELD: That's where we're ready to start.
24 I'm just going to turn it --

1 THE COURT: And -- and that's --
2 MR. MAYFIELD: -- over to --
3 THE COURT: -- basically --
4 MR. MAYFIELD: -- Mr. Boggess, he's ready to --
5 THE COURT: -- what we're here --
6 MR. MAYFIELD: -- argue those issues.
7 THE COURT: -- to talk about today. I have -- I

8 mean, I can point you in the direction of -- of concerns and
9 -- and -- and lesser concerns. I -- I -- I don't have as many
10 concerns about the lack of notice to the VA because I do
11 believe they had actual notice.

12 And I also believe that it's the VA that has the
13 right to come in and -- and -- and -- and make the argument
14 that they weren't served properly. I don't think that it
15 affects other -- other people.

16 But I -- I'm much more concerned about NRS 160.040
17 and -- and -- and whether or not that acts as an absolute
18 preclusion to Mr. Shafer serving in this case.

19 MR. BOGGESS: And -- and, Your Honor, you -- you
20 have read the briefs. I think it's very clear that that does
21 act as an absolute preclusion. From the moment that Mr.
22 Shafer recei -- accepted the appointment the language of the
23 statute itself talks in terms of it being unlawful for any
24 person to accept an appointment under those circumstances.

1 Now, if -- if this were a circumstance where Mr.
2 Shafer simply didn't know that -- that he was a veteran,
3 perhaps no harm, no foul, but there's billing that says he
4 talked with Mr. Olvera about World War II before he was
5 appointed as general successor guardian. The -- there --
6 there simply is based on the facts in the record there's no
7 reason to believe that this is anything other than a wrongful
8 guardianship at the time -- as of December 2nd, 2009.

9 THE COURT: And this is -- this is an incredibly
10 difficult case for me. And I spent a ton of time reading over
11 this and -- and -- and thinking through this. Because if you
12 look at it your argument looks great.

13 I mean, it looks -- you know, you read that and you
14 say, okay, that's the statute. But here's my problem.

15 My problem is that we have thousands of cases in
16 which -- in which this statute's been violated throughout the
17 state. If I -- if I -- if I accept it --

18 MR. MAYFIELD: Uh-huh (affirmative).

19 THE COURT: -- as -- as -- as you suggest it should
20 be accepted. The VA not only doesn't object, because all
21 these private guardians have more than five wards. You -- you
22 couldn't stay in business if you only had a couple of wards.
23 So all the private guardians have veterans and all the private
24 guardians have more than -- than five through -- throughout

1 the state. And the VA's been noticed of this hundreds if not
2 thousands of times and they've never come in to complain.

3 To make it even worse, the VA has people they like
4 to use when they've been heavily involved in a -- in a
5 veteran's case and often they come in to tell me I -- we want
6 to use either this private guardian or this private guardian
7 because we have a relationship with them and -- and what
8 they're suggesting, I mean, those are private guardians that
9 have more than five wards. So the VA itself comes in and
10 interprets this differently. This is my problem.

11 MR. BOGGESS: Okay.

12 THE COURT: Because the practice throughout the
13 state of Nevada for at least the five and a half years I've
14 been doing guardianship is that no one has interpreted NRS
15 160.040 to be this sort of preclusion, whether that's for one
16 of the reasons that -- that Mr. Freer suggests in his brief,
17 or whether that's just been the practice in Nevada no one has
18 brought it to the Court's attention before, that's why I'm
19 struggling. Because if -- if this were first day on the bench
20 I would say, oh, yeah, that's what the statute says and -- and
21 -- and clearly, you know, there's no need to interpret it,
22 it's nice and clear.

23 But I can -- there's got to be something going on
24 here because the Veterans Administration itself doesn't

1 interpret it this way. That's my problem.

2 MR. BOGGESS: And -- and, Your Honor, I'll -- I'll
3 address that on several levels. First off, those would all be
4 good arguments to a legislative committee being asked to amend
5 the statute or repeal it entirely.

6 THE COURT: Sure.

7 MR. BOGGESS: And -- and -- and, you know, how I
8 would argue in front of that committee might be very different
9 than how I'm arguing today, but the statute as written does
10 seem to be very clear, just like -- like you mentioned, on its
11 face. I would argue further that that makes the citation and
12 the notice of the appointment of the guardianship so vitally
13 important -- it's so important that you do notify the VA,
14 which -- which in -- in the normal case maybe this isn't --
15 maybe this is just a clerical error on -- in this case, but --
16 but given the fact that -- that that citation was not served,
17 that the VA --

18 THE COURT: But -- but we --

19 MR. BOGGESS: -- was not served --

20 THE COURT: -- do always check. I mean, I --

21 MR. BOGGESS: Uh-huh (affirmative).

22 THE COURT: -- if -- if I see evidence in a petition
23 of -- of someone being a veteran, I always write in my notes,
24 you know, check for service on the VA.

1 MR. BOGGESS: Sure.

2 THE COURT: So I -- I am cognizant of -- and we do
3 serve the VA in -- in almost all these cases. I send someone
4 -- every couple of weeks I send someone back out and say I
5 can't finish your guardianship today because I see that this
6 person is a veteran and I don't see notice to the Veterans
7 Administration.

8 MR. BOGGESS: Right.

9 THE COURT: So -- so I -- I -- I -- that part of it
10 gets done.

11 MR. BOGGESS: Uh-huh (affirmative). And -- and then
12 I guess my -- my primary argument, Your Honor, is a ruling in
13 this case at -- at your level does not necessarily mean that
14 the entire practice and -- and scope of what's happened in --
15 in southern Nevada over -- over these many years necessarily
16 means a change.

17 THE COURT: It's -- and I do -- and -- and I know
18 very well that this doesn't end here today, for sure.
19 Regardless of how this comes out, it may not even end the next
20 level up. I mean, it'll go from here to -- to Judge Hoskin
21 and -- and -- and he'll take a look at it. Because this is
22 really difficult because if you just look at the statute it
23 appears to be a problem, but, again, I -- I keep cutting you
24 off, I apologize.

1 MR. BOGGESS: That's all right.

2 THE COURT: I'll let you finish and then I'll --

3 MR. BOGGESS: It's obvious --

4 THE COURT: -- let Mr. Freer --

5 MR. BOGGESS: -- that you have read the briefs, and

6 so I -- I -- I very much appreciate that. There are some

7 things -- you -- you mentioned earlier in some of your other

8 cases that it's the facts that matter in this case.

9 THE COURT: Yeah.

10 MR. BOGGESS: It -- it's very clear we -- we alleged

11 in our opening briefs and it wasn't refuted in their

12 opposition it is clear that Mr. Shafer has far more than five

13 wards, and -- and had so on December 2nd, 2009.

14 Again, I -- I --

15 THE COURT: I'm sure that's true.

16 MR. BOGGESS: I -- I -- I would argue even -- even

17 with your consternation and wondering how this affects the

18 broader context of -- of guardianships in general, in this

19 specific case, the statute is clear, and -- and I would -- I

20 would ask that you simply follow the statute in this case.

21 And -- and if they choose to appeal it and make it -- make

22 it --

23 THE COURT: Well --

24 MR. BOGGESS: -- wider law, we can certainly do

1 that.

2 THE COURT: Although -- although factually in this
3 case we -- we -- this -- this case has -- has a couple of
4 things that -- that would differentiate it from just the case
5 at large.

6 MR. BOGGESS: Okay.

7 THE COURT: First, is that I -- there -- there has
8 been a determination that -- that Mr. Shafer is doing a good
9 job as a -- and -- and taking care of the ward, and that --
10 that he's acting appropriately for the ward, and the ward
11 wants him to continue.

12 MR. BOGGESS: That's not --

13 MR. MAYFIELD: That is an issue of the --

14 MR. BOGGESS: -- actually accurate.

15 MR. MAYFIELD: -- changed circumstance, Your Honor.
16 And that has come before Your Honor immediately because we
17 have -- first of all, he's here to make those statements who
18 he wants to be his guardian. Second of all --

19 THE COURT: I -- I --

20 MR. MAYFIELD: -- he prepared a written statement --

21 THE COURT: I -- I know --

22 MR. MAYFIELD: -- who he wants his guardian --

23 THE COURT: -- but to avoid --

24 MR. MAYFIELD: -- to be.

1 THE COURT: -- pressure situations, we don't bring
2 the ward in with family and put them under the --

3 MR. MAYFIELD: Well --

4 THE COURT: -- court pressure. I -- I'm sure that
5 in front of his daughter he's going to say the appropriate
6 things. This is why we did an interview at his -- at his
7 residence --

8 MR. MAYFIELD: Cer -- certainly, Your Honor.

9 THE COURT: -- without anyone else around by -- by
10 experienced lawyer and social workers that -- that know what
11 they're doing, that do this for a living and -- and do it very
12 well. So -- so --

13 MR. MAYFIELD: Yes, but circumstances have changed.
14 He now recognizes that his estate is being charged more money
15 that it can stand and he wants to have his daughter be his
16 guardian and he's now thinking actually seriously moving to
17 California. That was the specific issue that she raised last
18 time that if he changes his mind and wants to move to
19 California to be with his grandchildren, which he's
20 articulated to his daughter, and in writing --

21 THE COURT: And -- and -- and -- and that's --

22 MR. FREER: Your Honor, this isn't really before the
23 Court.

24 THE COURT: -- that isn't before me --

1 MR. FREER: -- right now.

2 THE COURT: -- today, but -- but if you want to file
3 an appropriate motion, believe that that's the case, then
4 we'll talk about sending Ms. Kingman and Ms. Arnold back out
5 to do another --

6 MR. MAYFIELD: Well, we think a formal --

7 MS. SCHULTZ: Absolutely.

8 MR. MAYFIELD: -- investigation would be more
9 appropriate, Your Honor.

10 THE COURT: Do a what?

11 MR. MAYFIELD: A formal investigation. I mean, my
12 -- my client has less -- I mean, I believe that the -- the --

13 THE COURT: What you're -- what you're -- what
14 basically you're arguing that he's now changed his mind.

15 MR. MAYFIELD: Yes.

16 THE COURT: And a lot of what -- and I don't need to
17 do a full investigation to find out whether he's changed his
18 mind, I mean, I -- a lot of -- I mean, not a lot -- the
19 primary reason that we were continuing with Mr. Shafer was
20 that that's what the client had continuously -- or the Board,
21 I'm sorry, he had continuously expressed his desire to be,
22 didn't want to move to California, wanted to be here with --
23 with the friends and -- and the facility that he's in because
24 he developed bonds there, and had no interest in going to

1 California.

2 MR. MAYFIELD: But that --

3 THE COURT: And -- and -- and --

4 MR. MAYFIELD: -- has changed now.

5 THE COURT: -- and I was trying to do what he
6 wanted. I -- I believe that's what Mr. Shafer --

7 MS. SCHULTZ: Ask him.

8 THE COURT: -- even said in his brief that, hey, you
9 know, I'm only hanging out here and doing this because this is
10 what he continuously expresses to me and Ms. Bristol. So I --

11 MR. BOGCESS: Your Honor, we do have him here. That
12 -- we --

13 THE COURT: Again, I'm really --

14 MR. BOGCESS: -- we will --

15 MR. MAYFIELD: We're requesting --

16 THE COURT: -- uncomfortable --

17 MR. MAYFIELD: -- you ask him.

18 THE COURT: -- given his cognitive level of -- of
19 putting him under that kind of pressure and -- and -- and
20 doing this when he's here with --

21 MR. BOGCESS: And --

22 THE COURT: -- his daughter.

23 MR. BOGCESS: And I ver much --

24 THE COURT: I don't --

1 MR. BOGGESS: -- appreciate that --

2 THE COURT: -- I don't ever --

3 MR. BOGGESS: -- sensitivity.

4 THE COURT: -- want to ask someone --

5 MR. BOGGESS: Uh-huh (affirmative).

6 THE COURT: -- to say something bad about a family

7 member in their --

8 MR. BOGGESS: But this is --

9 THE COURT: -- presence.

10 MR. BOGGESS: This is the third time he's come to
11 court hoping to be able to say something.

12 THE COURT: Okay.

13 MR. BOGGESS: He -- he -- he -- he wanted to come
14 was it the May 18th hearing --

15 MR. MAYFIELD: Exactly.

16 MR. BOGGESS: -- he wanted to come, was precluded by
17 Mr. Shafer, he gave an order that he shouldn't come. He was
18 prepared to come, wanted to come. He came with a -- the
19 objection hearing in front of Judge Hoskin. He was
20 prepared --

21 THE COURT: Well, I said --

22 MR. BOGGESS: -- to come several weeks ago --

23 THE COURT: -- I -- if -- if he wants to -- to make
24 a statement today, that's -- that's perfectly okay.

1 MR. BOGGESS: I think he would --

2 THE COURT: But --

3 MR. BOGGESS: -- like to.

4 THE COURT: But Mr. Freer's right in that that's not
5 actually in front of me today and -- and -- and -- but I -- I,
6 you know, I'll -- he's here, I'm -- I'm happy to -- to listen
7 to him. The -- the other thing that differentiates this case
8 from -- from other cases at large is that the VA money
9 actually isn't in Mr. Shafer's control.

10 We have a bank, Wells Fargo, they have a statutory
11 exemption under NRS 160.04 -- 40. Here's bottom line what
12 you're probably going to get out of me today. And, again, I
13 recognize that this -- the main argument needs to be in front
14 of Judge Hoskin.

15 I -- I -- my recommendation today is -- is going to
16 be go ahead and -- and -- and -- and continue with Mr. Shafer
17 as -- as guardian and find that the -- basically that -- that
18 he's using Wells Fargo to come under an exemption, and -- and
19 I'll -- and I'll shoehorn that in. That may not fly at a
20 level above me.

21 And -- and, again, I'm -- I'm trying to do what's
22 right for the ward. I'm trying to perform equity here.

23 MR. BOGGESS: And -- and if he --

24 THE COURT: If it turns out that the ward really

1 does want to go to California and really does want to -- to --
2 to --

3 MS. SCHULTZ: Ask him.

4 MR. MAYFIELD: We're simply ask -- request that you
5 ask him, Your Honor.

6 THE COURT: And -- and -- and I'm going to let him
7 talk. We can -- we can talk about that and then I can, you
8 know, I can -- I can do that if it turns out that's in the
9 best interest of the ward.

10 MR. MAYFIELD: Okay.

11 MR. FREER: At minimum, Your Honor, I think we allow
12 Ms. Arnold to talk to him as opposed to being pressured in
13 front of the family members and -- or be coached.

14 THE COURT: I can take him into the hallway and talk
15 to him.

16 MR. FREER: Or --

17 THE COURT: I mean, I'll certainly let him talk.
18 He's here. He wants --

19 MR. FREER: -- within the next --

20 THE COURT: -- to talk.

21 MR. FREER: -- week --

22 THE COURT: -- I'll let him --

23 MR. MAYFIELD: He does.

24 MR. FREER: He can talk --

1 THE COURT: -- talk.

2 MR. FREER: -- but, I mean, we've got issues where,
3 you know, this is new --

4 THE COURT: But --

5 MR. FREER: -- information, this isn't in front of
6 the Court --

7 MS. SCHULTZ: It's not new.

8 THE COURT: But -- but I'm going to tell you that I
9 won't make the change today based on what he says when he
10 comes to court. I need him interviewed in a -- at home in a
11 comfortable situation where there's no potential influence or
12 pressure being put on him. Because I -- I tell you that I get
13 different stories from people all the time when they're in
14 front of their family members I get a different story than
15 when they're not in front of their family members. And -- and
16 -- and I -- I -- I --

17 MR. BOGGESS: And -- and I would simply ask that --
18 that -- that you allow Counsel from each side to -- to witness
19 that interview is all.

20 MR. FREER: And I would actually oppose that. I
21 mean, go back to McCloud, Your Honor. We got affidavits from
22 the ward from two different sides saying they want to be with
23 each side. It just depends on who gets to him and how it's
24 discussed. Just let Ms. Arnold go in in a nonthreatening

1 environment and go and talk to him.

2 (Whispered conversation)

3 THE COURT: Yeah, I -- I don't like the idea of
4 having Counsel there to pressure. Even if you don't think
5 you're pressuring, even if you're not pressuring, it's still
6 affects the ward's ability to speak freely.

7 MR. FREER: And --

8 MR. BOGCESS: Well, let's -- let's at least let him
9 talk today since this is --

10 THE COURT: Absolutely.

11 MR. BOGCESS: -- the third time he's come and wanted
12 to --

13 THE COURT: Again, I have no problem --

14 MR. BOGCESS: -- to be here --

15 THE COURT: -- he -- he -- he's, you know, it's --
16 it's his life we're talking about.

17 MR. MAYFIELD: Exactly.

18 THE COURT: I -- I -- Mr. Freer, I haven't let you
19 talk at all, though, so, I'm sorry.

20 MR. FREER: Well, I -- you know, I don't want to
21 snatch defeat from the jaws of victory based on the way Your
22 Honor's ruling. The one thing I would like to point out
23 though is I don't think it's a close call or a situation. If
24 you look at NRS 160.030, it says the applicability of Chapter

1 160 is based solely upon when the secretary of the VA requires
2 the appointment of a guardian under that chapter.

3 THE COURT: And -- and I think that that's --

4 MR. FREER: It's basically a gatekeeping chapter.
5 The only time that chapter comes into play is when the VA
6 comes in and wants it.

7 THE COURT: And I believe that that's the VA's
8 interpretation of that. Otherwise I can't explain their
9 actions in these cases for the last five and a half years.

10 MR. FREER: And -- and it's basically the
11 interpretation of everybody else in -- you know, this is a
12 uniform statute, you got 160 what is it 190 basically where
13 the legislature says we want this interpreted uniformly, we've
14 provided other jurisdictions that are interpreting it that
15 way. For one -- you know, Your Honor only needs to look at
16 one instance if we're required to do everything under 160, why
17 does 159 have the notice to the VA requirements?

18 (Whispered conversation)

19 THE COURT: Yeah.

20 MR. FREER: You also have all these other statutes,
21 you know, other cases that basically say 160 applies solely if
22 it all to VA benefits. And where there's -- when there are
23 assets outside of the B -- VA, you've got to go in under 159,
24 a general guardianship. The only reason the statute was there

1 in the beginning was in 1929 under federal law it required a
2 state court appointed guardian before the VA could give
3 benefits. That was repealed in 1974. This is basically an
4 old vestige to the body of law. It's like an appendix. I
5 mean, it was useful at one point, it's -- it's really not
6 useful. That's why California and everybody else are actually
7 taking 160 out.

8 THE COURT: I haven't had anyone cite 160 to me
9 until --

10 MR. FREER: And --

11 THE COURT: -- this case. It just doesn't come up.
12 And -- and, again, it was shocking because I had looked at
13 that and I go, oh, my gosh --

14 MR. BOGGESS: Now, Your Honor, a couple of things.
15 And I -- I appreciate where -- where you seem to be leaning,
16 but -- but let me consider -- have you consider a couple of
17 things.

18 One of the -- perhaps the strongest argument that --
19 that Mr. Shafer's Counsel raised was this issue of VA
20 benefits, and the definition of -- of estate including VA
21 benefits. But the language says, let's say, estate income
22 include only money received by the guardian from the
23 Department of Veterans Affairs and all earnings, interest and
24 profits derived therefrom. Mr. Olvera's how old, 91 --

1 MS. SCHULTZ: 91.

2 MR. BOGGESS: -- 91, there's -- there's 30 or 40
3 years of receiving VA benefits. The vast majority of his
4 estate is VA benefits. So -- so if -- if part of Your Honor's
5 decision making is, well, we're only talking about a little
6 monthly check, no, that -- that doesn't -- that doesn't take
7 into account the whole totality of -- of -- of the estate that
8 Mr. Shafer is --

9 (Whispered conversation)

10 MR. BOGGESS: -- is administering right now. Again

11
12 MR. FREER: Well, and with respect to that it's all
13 in the trust. They -- and Wells Fargo's the trustee.

14 MR. BOGGESS: But the VA checks were not at the time
15 that Mr. Shafer was appointed. And that's why the language of
16 040 is so important because it's the acceptance of the
17 appointment that's a wrongful act. If he engaged knowingly in
18 a wrongful act, Mr. Shafer should be disqualified from -- from
19 serving as guardian in this case.

20 THE COURT: I -- I totally follow your logic. Your
21 argument is -- is -- is -- is terrific. I'm -- I'm not
22 willing to take that step today. Maybe -- you know, part of
23 it is because of the -- the equity concerns I have about this
24 particular case. Part of it is that I have thousands of cases

1 that haven't accepted that interpretation, although I'll tell
2 you --

3 MR. BOGCESS: But none have been raised.

4 THE COURT: -- it sounds -- it sounds --

5 MR. BOGCESS: Right.

6 THE COURT: -- fant -- they've never been raised.

7 Right. Right.

8 MR. FREER: Can I just address the factual -- the
9 wrongful acts, you know, notices were issued on November 16th
10 both for the temp and the guardian and the general. At that
11 time as put forth we didn't know what the extent of the assets
12 were.

13 THE COURT: Uh-huh (affirmative). That's typical.

14 MR. FREER: It came in, it was an emergency
15 situation.

16 THE COURT: Right.

17 MR. FREER: You know, the evidence that they keep
18 drumming is November 25th is a World War II conversation
19 showing up on Mr. Shafer's billing statement. Okay.

20 That's -- that's a Wednesday before Thanksgiving.
21 On the Monday after Thanksgiving that's when Ms. Bristol calls
22 the VA and says, you know, we've got this issue, why you
23 shouldn't -- what do you want? She said, bring me letters.

24 You know, we do our thing. We do the VA's thing

1 under the VA's guidelines, we don't care about state court
2 orders, you got to qualify with us --

3 THE COURT: Uh-huh (affirmative).

4 MR. FREER: -- come talk to us at that point. So
5 where is the wrongful act of providing notices at the time --
6 at the outset --

7 THE COURT: Well, he's not getting to the notice
8 part.

9 MR. FREER: No.

10 THE COURT: He's getting to the accepting it as a --
11 as a guardian. So I --

12 MR. FREER: And we've got the affidavit of Eve Mills
13 saying, you know --

14 THE COURT: If -- if -- if -- if his interpretation
15 of the statute is correct, then -- then all of this does
16 follow. I just --

17 MR. FREER: But it's a big if --

18 THE COURT: -- am not willing to -- to -- to make
19 that jump today. Again, at my pay grade that's a major
20 upsetting of the apple cart. You -- you, again, may have
21 greater luck at a -- at a higher level than -- than me.

22 MR. BOGGESS: Well, we -- we do have Mr. Olvera here
23 if you'd like to simply --

24 THE COURT: Mr. Olvera, how you doing today?

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MR. OLVERA: I'm all right.

THE COURT: Did you want to say anything to me today? Did you want to ask any questions?

MS. SCHULTZ: Talk loud.
MR. OLVERA: Well, I -- I --

THE COURT: Did -- did you want --
MR. OLVERA: -- want to --

THE COURT: -- the headphones?
MR. OLVERA: -- who's that guy on that other end?

THE COURT: Did you want the headphones?
MR. OLVERA: That one that was talking a minute ago?

THE COURT: Mr. Freer?
MR. OLVERA: Yeah. Who is he?

THE COURT: He is Mr. Shafer attorney.
MR. OLVERA: I -- I'd like to know why they don't want to do what this two gentlemen over here are saying.

THE COURT: They're looking out for you. They're trying to -- to -- to do what you want.

MR. OLVERA: That -- the man -- I wanted to know who is he.

MR. FREER: My name's Alan Freer, sir.
MR. OLVERA: Huh?

MR. FREER: Alan Freer.
MS. SCHULTZ: He works for Shafer.

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MR. OLVERA: For who?

THE COURT: He works for Mr. Shafer. He's Mr. Shafer's attorney.

MR. BOGGESS: Mr. Olvera, where would you like to live?

MR. OLVERA: Huh?

MR. BOGGESS: Where would you like to --

MR. FREER: Are we going to have --

MR. BOGGESS: -- live?

MR. FREER: -- a cross examination of the --

MR. OLVERA: California.

MR. FREER: -- witness at this point, Your Honor?

MR. SHAFER: I want it on the record.

MR. BOGGESS: He's --

(Simultaneous conversation)

MR. OLVERA: I'd like to live in California because I've got, oh, hundreds and hundreds of grandchildren.

MR. FREER: Hundreds and hundreds?

MR. OLVERA: I was boys and -- born and raised in -- in the state of Texas. I went to the war to fight for this country --

THE COURT: Yeah.

MR. OLVERA: -- nobody realize, nobody understand that.

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THE COURT: Oh, no, no, I -- absolutely --

MR. OLVERA: Why don't --

THE COURT: -- we all understand --

MR. OLVERA: -- they --

THE COURT: -- that.

MR. OLVERA: -- give -- give me a chance --

THE COURT: Well, we're -- we're trying to do what
you --

MR. OLVERA: -- to do --

THE COURT: -- want. Trying to put you in the place
you want.

MR. OLVERA: Why is everybody so against that?

THE COURT: No. No one's against that. Everyone --

MR. OLVERA: Yeah. Well --

THE COURT: -- everyone here --

MR. OLVERA: -- they don't --

THE COURT: -- is trying to do what you want.

MR. OLVERA: -- I don't understand the -- the --
they don't want to do that.

THE COURT: Okay.

MR. OLVERA: I'm going to go to California, I don't
-- I don't -- no -- no matter what. I'm not going to live
here.

THE COURT: Okay.

1 MR. OLVERA: I don't need that man either.

2 THE COURT: Okay.

3 MR. OLVERA: I don't need Jared.

4 THE COURT: Okay. Do you want me to have Ms.
5 Kingman and Ms. Arnold go out and see him?

6 MR. FREER: Yeah. Probably within about a week or
7 so.

8 MS. SCHULTZ: Yes, Your Honor.

9 THE COURT: Yeah. They knew this was coming.

10 MS. SCHULTZ: Yes, Your Honor.

11 THE COURT: You want it back on in --

12 (Whispered conversation)

13 THE COURT: -- two weeks, three weeks? What time --

14 (Whispered conversation)

15 MR. MAYFIELD: Your Honor, I think actually we would
16 prefer a separate or a different Guardian ad Litem with the
17 evaluation.

18 MS. SCHULTZ: Yes.

19 THE COURT: I don't have anybody else to do it for
20 free. Plus, I don't have anybody else with the social worker
21 background in order to be able to -- I mean -- I -- I mean,
22 somebody like -- somebody like --

23 (Whispered conversation)

24 THE COURT: -- Denise Camastro (ph) would work

1 beautifully but I -- I -- she doesn't work off of grant. The
2 Senior Citizen's Law Project works off a grant, so --

3 MR. MAYFIELD: Right.

4 THE COURT: -- I -- I -- I --

5 MR. MAYFIELD: Well, that is a major --

6 (Whispered conversation)

7 MR. MAYFIELD: -- that is minimizing the --

8 THE COURT: Uh-huh (affirmative).

9 MR. MAYFIELD: -- assets -- protecting the assets of
10 his estate, and I recognize that.

11 THE COURT: Yeah. I mean, that's -- I mean, if --
12 if --

13 MS. CAMASTRO: Judge?

14 THE COURT: Yes.

15 MS. CAMASTRO: I'd be more than happy to do it --

16 THE COURT: I -- I -- I'm -- I'm not --

17 MS. CAMASTRO: -- and --

18 THE COURT: -- asking --

19 MS. CAMASTRO: -- I really --

20 THE COURT: -- for freebies.

21 MS. CAMASTRO: To have the independent third party
22 evaluation, I'd be more than honored to --

23 MS. SCHULTZ: Yes.

24 MS. CAMASTRO: -- give my time to this cause.

1 THE COURT: I --

2 MR. BOGGESS: We'd be happy to do that, even if we
3 ended up having to split the costs or something. I -- I think
4 it's important in this case that it be an independent third
5 party.

6 MS. SCHULTZ: Yes. Yes.

7 THE COURT: I wasn't looking --

8 MR. MAYFIELD: She's willing --

9 THE COURT: -- to try to drag you --

10 MR. MAYFIELD: -- (indiscernible), Judge.

11 THE COURT: -- into this. I really wasn't.

12 MS. CAMASTRO: It really would be my honor to do so.

13 THE COURT: All right. Is it -- do you have a
14 problem with Ms. Camastro --

15 MR. FREER: I have no problem. The only thing I
16 would like is basically a 48 hour no contact by family or Mr.
17 Shafer just so we don't get the ward worked up.

18 THE COURT: Seems reasonable.

19 MR. MAYFIELD: That includes -- that includes
20 Patience Bristol so she will not be visiting either.

21 MR. FREER: It will just be the care giver --

22 THE COURT: Sounds good.

23 MR. FREER: -- and the ward and -- and Ms. Camastro
24 when the time comes.

1 THE COURT: Sounds good. If you want to get
2 information and -- and then -- and then do you want me to
3 bring you back in a couple of weeks? Basically I just want to
4 know what Mr. Olvera wants.

5 MS. SCHULTZ: Absolutely.

6 THE COURT: Because he's been consistently telling
7 Mr. Shafer and -- and Ms. Bristol that --

8 (Whispered conversation)

9 THE COURT: -- he doesn't want to move to
10 California, likes the place he's living, likes the social
11 environment there. When he was not with his family he was
12 telling that to Ms. Kingman and Ms. Arnold. But I -- I -- I
13 fully believe that he tells his daughter a different story.

14 (Whispered conversation)

15 MS. CAMASTRO: I'd be more than happy and I can be
16 readily accessible. I could do it by mid next week and be
17 back in two weeks.

18 THE COURT: Okay. I appreciate it.

19 MR. FREER: If we could just have her contact --

20 MS. CAMASTRO: No problem.

21 MR. FREER: -- whenever she's ready to come out,
22 give us about 48 hours advance notice --

23 THE COURT: Okay.

24 MR. FREER: -- to everybody.

1 THE COURT: Yeah.

2 MR. MAYFIELD: Your Honor, there is one additional
3 issue we need to bring to your attention. You'll probably
4 require me to brief this for future hearing, but it's come to
5 our attention that the original guardianship of Mr. Olvera was
6 for his person only. The order states he was -- there was a
7 guardianship, his -- his wife, Carmela, was his guardian for
8 his person only --

9 THE COURT: Okay.

10 MR. MAYFIELD: -- and not for his estate, so the
11 original order with respect to Mr. Shafer as guardian of the
12 estate as well as person was I think deficient because he was
13 not -- because Mr. Sh -- Mr. Olvera was never ordered here to
14 make his -- to receive --

15 THE COURT: I think we --

16 MR. MAYFIELD: -- (indiscernible).

17 THE COURT: -- added Mr. Shafer because of
18 exploitation issues.

19 MR. FREER: Right.

20 MR. MAYFIELD: Well, that is -- that is --

21 THE COURT: And -- and -- and -- I mean, his
22 primary --

23 MR. MAYFIELD: -- correct, Your Honor, but --

24 THE COURT: -- job coming in the door was to handle

1 the estate problems that were --

2 MR. MAYFIELD: But that -- that -- that's not the
3 issue, Your Honor. The issue was that the statutory
4 requirements that he -- Mr. Olvera be here, he was required to
5 be here before that order could be issued. So I think -- I
6 think due process was not followed which --

7 THE COURT: You -- oh, what you're --

8 MR. MAYFIELD: -- required him --

9 THE COURT: -- arguing is that --

10 MR. MAYFIELD: -- to be here.

11 THE COURT: -- is that we needed a second appearance
12 when we converted to estate --

13 MR. MAYFIELD: Yes, Your Honor.

14 THE COURT: -- as well? I --

15 MR. FREER: Your Honor --

16 MR. MAYFIELD: I mean, it creates a situation where

17 --

18 MR. FREER: -- we're talking waiver --

19 MR. MAYFIELD: -- if that --

20 MR. FREER: -- here. This is back in -- a year ago.

21 THE COURT: I --

22 MR. FREER: They should have raised these ar --

23 their arguments then.

24 MR. MAYFIELD: Your Honor, I don't think so.

1 Because I think if the deficiency is there, the guardianship
2 order is -- is invalid. If it's invalid, I think you can't
3 have two guardians. If Mr. -- if --

4 THE COURT: Well, it -- it --

5 MR. MAYFIELD: -- this goes forward --

6 THE COURT: -- the -- the --

7 MR. MAYFIELD: -- and we have --

8 THE COURT: The question -- the question is does NRs
9 159 require a second appearance when you are changing a
10 guardianship from person only to person and estate. And,
11 again, I don't --

12 MR. MAYFIELD: I think it does. I would argue it --

13 THE COURT: I'm --

14 MR. MAYFIELD: -- does --

15 THE COURT: -- I'm reasonably --

16 MR. MAYFIELD: -- obviously.

17 THE COURT: -- sure there's no case law, in fact,

18 I'm --

19 MR. MAYFIELD: Yeah.

20 THE COURT: -- positive there's no case law on that.

21 There may be similar case law from -- from other states. I'm

22 -- I'm sure that a lot of states have -- have an appearance

23 requirement built into their guardianship statute so you may

24 be able to find something on --

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MR. MAYFIELD: Well, I just --

THE COURT: -- that.

MR. MAYFIELD: -- know --

THE COURT: If you want to brief --

MR. MAYFIELD: -- for --

THE COURT: -- that, that's -- that's fine. It's --
it's not in front of me today. Obviously, Mr. Freer's going
to want to respond.

MR. MAYFIELD: Certainly. I -- I just -- I made
this Court -- (indiscernible) talk about the importance of
having the ward --

THE COURT: I --

MR. MAYFIELD: -- here for the (indiscernible).

THE COURT: Well, it's --

MR. MAYFIELD: -- (indiscernible) issues.

THE COURT: -- it's a statutory requirement.

MR. MAYFIELD: Exactly, Your Honor. So that -- if
that statutory requirement is not met, there's also a
situation where that order I think (indiscernible) to question
its validity. Because that -- that requirement was not met.
But I understand the --

THE COURT: Well, and -- and, you know, and -- and
-- and a lot of it's going to come down to the -- the -- the
reason why the ward is to be here --

1 MR. MAYFIELD: Well --

2 THE COURT: -- there's a couple -- a couple of
3 reasons. One of the reasons if you look back at the
4 legislative history is to make sure they're -- they're
5 actually here --

6 MR. MAYFIELD: Yeah.

7 THE COURT: -- because we don't want situations in
8 which we are doing a guardianship and it turns out this person
9 is, you know, not even a Nevada resident. So part of it --
10 and -- and -- and especially with regard to like the
11 requirement for children is mostly to make sure really have
12 them here, but it's also -- and it -- it's become particularly
13 clear after the last legislative session that the other thing
14 is this -- this admonishment, this --

15 MR. MAYFIELD: Yeah.

16 THE COURT: -- that -- that we -- we need them here
17 because we want to make sure that they're aware of their
18 rights and aware that -- that they can object, that they can
19 hire an attorney, that they can have input into the process.

20 MR. MAYFIELD: And that's the major concern --

21 THE COURT: And those are things --

22 MR. MAYFIELD: -- he was never --

23 THE COURT: -- that --

24 MR. MAYFIELD: -- granted that opportunity to --

1 THE COURT: And -- and --

2 MR. MAYFIELD: -- have his own --

3 THE COURT: And, you know, and -- and I don't know

4 what kind of admonishments and things like that were made at

5 the first go-round without --

6 MR. MAYFIELD: Well --

7 THE COURT: -- pulling the record --

8 MR. MAYFIELD: -- I would say probably --

9 THE COURT: -- if -- if --

10 MR. MAYFIELD: -- none because --

11 THE COURT: -- if he's --

12 MR. MAYFIELD: -- as far as I --

13 THE COURT: -- if he's --

14 MR. MAYFIELD: -- could -- it doesn't --

15 THE COURT: -- if he went through --

16 MR. MAYFIELD: -- (indiscernible).

17 THE COURT: -- this and was completely admonished

18 the first time around, then it lessens the argument as to why

19 he needed to be here the second time around. So I -- but,

20 again, I -- I'd have to look at the facts of this case and to

21 see what happened.

22 But the presumption is, again, I don't have the

23 file, I only pulled the briefs from today, but the presumption

24 is that he was here for the original guardianship, I -- I --

1 he certainly doesn't look like he would be able to get a
2 doctor's excuse. But, I -- again, I don't know. This --
3 this, you know, predates Mr. Shafer so I doubt he knows
4 either.

5 But, again, I -- I'm happy to take a look at that.

6 MR. MAYFIELD: Okay.

7 THE COURT: But we'll -- we'll see what Ms. Camastro
8 has to say about what the ward's desires are. But, again, a
9 -- a lot of why we did this last time was I was trying to do
10 what he wanted me to do.

11 MR. BOGGESS: Yeah. And, obviously, our position is
12 as communicated by -- by others.

13 THE COURT: I understand. And -- and --

14 MR. BOGGESS: Yeah.

15 THE COURT: But -- but for me, the -- the -- the
16 most reliable evidence of what the ward wants is what the
17 social workers who work for the court and the attorneys who
18 work for the court say when they've met with him apart from
19 any influences and -- and -- and -- and so that's what I best
20 rely on, and that's what I did rely on in this particular
21 case.

22 MR. BOGGESS: Okay.

23 THE COURT: I have an enormous amount of faith in
24 Ms. Kingman and Ms. Arnold and I have enormous amount of faith

1 in Ms. Camastro, so I -- I -- but I'll -- I'll see you guys
2 again in -- in two weeks.

3 MR. BOGGESS: Two weeks.

4 THE COURT: I will -- I will need a report and
5 recommendation drafted up today. It needs to be fairly
6 thorough because it needs to go through all of the various
7 reasons that are set forth in -- in your brief so that Judge
8 Hoskin can have a complete understanding of what the rationale
9 was and -- and --

10 MR. BOGGESS: And I'd like --

11 MR. FREER: I'll run that --

12 MR. BOGGESS: -- the chance to take a look at that
13 as well --

14 THE COURT: Absolutely.

15 MR. BOGGESS: -- if that's all right?

16 MR. FREER: Not a problem, Your Honor.

17 THE COURT: We didn't get to absolutely everything
18 that was -- was in all this stuff, but I -- I -- I -- you
19 know, again --

20 MR. FREER: If we want to spend --

21 THE COURT: -- I'm --

22 MR. FREER: -- another hour we can --

23 MR. MAYFIELD: Yeah, we can over some things. But
24 that's a major issue is really finding out what he wants and

1 we're confident that when the report of any investigation is
2 done he will express himself with the indication that he wants
3 to be in California with his daughter, so actually that --

4 THE COURT: Okay.

5 MR. MAYFIELD: -- (indiscernible).

6 THE COURT: All right.

7 THE CLERK: September 22nd, 9:00 a.m.

8 MR. FREER: What was that date?

9 THE CLERK: September 22nd, 9:00 a.m.

10 MR. FREER: Your Honor?

11 THE COURT: Yes.

12 MR. FREER: I think Dudeck's (ph) on that day also.

13 MR. BOGESS: Oh, that'll be fun.

14 MR. FREER: Do you want them both?

15 THE COURT: Sure.

16 MR. FREER: Okay.

17 THE COURT: This isn't going to take long. This --

18 this return isn't going to take long on -- I -- I -- this

19 isn't a complicated investigation. This is a going out and

20 finding out what he wants. And if it's dramatically changed,

21 then -- then, you know, we'll have to look at whether or not

22 it's in the ward's best interest to let him move to California

23 if that's what he truly wants to do.

24 MR. FREER: Thank you, Your Honor.

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MR. BOGGESS: Thank you, Your Honor.

MR. MAYFIELD: Thank you, Your Honor.

(THE PROCEEDINGS CONCLUDED AT 10:20:20)

* * * * *

ATTEST: I do hereby certify that I have truly and
correctly transcribed the digital proceedings in the
above-entitled case to the best of my ability.



Janet L. Jirak