

Dorothy Won't Surrender

Some Washington Judges Don't Care a Lot

by Thomas F. Coleman
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Last week I started to watch the movie *I Care a Lot*. This award-winning film depicts the way in which vulnerable adults are often targeted in guardianship scams orchestrated by unscrupulous fiduciaries who enlist the help of care providers, real estate agents, and attorneys – all of which is accomplished with a judicial nod and wink.

I was so upset just 15 minutes into the film that I stopped watching it. I plan to resume when I feel strong enough to endure the frightening scenarios it depicts.

Perhaps my hesitance was triggered by having seen too many vulnerable people traumatized. For several years, I have been researching a pattern of conservatorship abuses in California and guardianship abuses in other states. My heart breaks every time I see an elderly person with mental challenges or a young adult with developmental disabilities whose rights are violated or assets depleted by a tag team of perpetrators. My blood pressure rises each time I see judges allowing these injustices to occur – and I see that quite often.

Fast forward to today. I was contacted by the Law Offices of Dan R. Young. Dan is an attorney in Washington State whose client,

Dorothy, has been living in a legal nightmare.

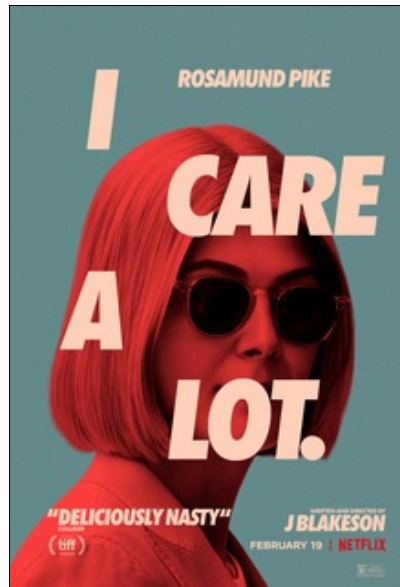
Dorothy first became entangled in an “I Care a Lot” web in December 2016 when she was living in a mental health care facility. The web was spun by a social worker who enlisted a professional fiduciary who then enlisted a real estate agent. Dorothy was not under an order of guardianship at the time and there-

fore she was presumed to have the capacity to handle her financial affairs.

Taking advantage of this presumed legal capacity, the health care facility required Dorothy to sign a financial power of attorney as a condition of leaving the facility – giving the fiduciary who she had never met the authority to handle all of her financial affairs. At the time, Dorothy owned two rental income properties. Otherwise she had less

than \$600 per month in social security income. The houses meant everything to Dorothy in terms of her financial future.

Without Dorothy's knowledge or consent, the fiduciary tried to sell the properties to a friend who was a real estate agent. He bought one of them and the other was sold by the firm where he worked at a private sale substantially below market value – without listing it on the open



market and without an appraisal.

Dorothy had two brothers who lived nearby, one of whom was willing to serve as an agent under the power of attorney. When the fiduciary discovered that Dorothy was planning to revoke the power of attorney, she filed a petition for a guardianship against Dorothy. She asked the judge for an emergency order to prevent Dorothy from revoking the power of attorney. Without any hearing and without Dorothy having the benefit of her own attorney to argue against this maneuver, the judge granted the request.

With the guardianship proceeding now in motion, the fiduciary asked the court to appoint a Guardian ad Litem (GAL). A GAL is supposed to function as an independent investigator for the court. A GAL is not supposed to be aligned with any party. In this case, the GAL stepped way over the line of objectivity by asking the court, unsuccessfully, to dismiss Dorothy's chosen attorney. She wanted the court to appoint an attorney who had a history of filing guardianship petitions for nursing homes and recommending the same fiduciary to be appointed as guardian – the woman who had taken control of Dorothy's assets.

The Yakima County Superior Court has a panel of individuals who are qualified to serve as a GAL. They should be appointed to cases in rotation. That did not happen in Dorothy's case. Rather, the fiduciary hand picked the GAL who she wanted on the case and asked the judge to depart from the customary rotation. The judge did as the fiduciary requested.

Research by Dorothy's attorney showed that the fiduciary on many occasions had this

particular GAL appointed out of rotation. This person must have been a favorite for a reason. Why the judge would allow such a deviation of protocol to occur on a regular basis is unknown.

Dorothy's attorney decided to file a separate lawsuit against the fiduciary for breaching her ethical duties by selling the properties well below market value. The suit was filed in another county – the location of the properties – which meant the guardianship judge would not hear the case. Perhaps Dorothy would get a fair hearing before a disinterested judge.



To counter this move, the fiduciary asked the guardianship judge to issue an order to forbid Dorothy from proceeding with the civil lawsuit. Mind you, Dorothy was not under an order of guardianship and so she was presumed competent to litigate and make all other decisions in her life. The judge summarily granted the order. The judge's order shielded the fiduciary from having to answer in the civil suit as to why she sold Dorothy's properties in such an underhanded manner.

Although the fiduciary had taken Dorothy's deposition in the guardianship proceeding in an attempt to prove that she was incompetent, that move backfired. Dorothy did quite well in the deposition.

Dorothy's attorney, knowing that the guardianship judge was acting like a rubber stamp to grant the fiduciary's every request, demanded a jury trial. The courthouse was abuzz. Jury trials in guardianship proceedings, although a right, were virtually unheard of in this county. Targets of guardianship usually surrendered. But not Dorothy.

Fortunately, Dorothy found an out-of-county attorney who would vigorously defend her rights and provide her with zealous advocacy. Dan Young had a reputation in this county as the only attorney who had ever demanded a jury trial in a guardianship case. And he won. His former client walked out of the courtroom as a free person, with the judge and the petitioner looking perplexed and frustrated.

The fiduciary knew at this point that Dorothy only had enough assets left to pay for the fees of the fiduciary, her attorney, and the GAL. Since the fiduciary and her attorney were not willing to work for free, she filed a motion to dismiss the guardianship petition. This was inconsistent with her persistent argument that Dorothy needed a guardianship. Now that there would be no money, suddenly the guardianship was unnecessary. How strange. How suspicious.

But before the guardianship petition would be dismissed, the fiduciary wanted the judge to order her fees and those of her attorney and the GAL to be taken from Dorothy's remaining assets. To rub salt into the wound, she asked the judge to issue a judgment against Dorothy for some \$50,000 for the deficiency.

Dorothy's attorney opposed the petition for fees. He wanted a hearing into the matter, arguing that the services that had been done by the fiduciary and her attorney were not done in good faith. If evidence showed a lack of good faith, the judge could not legally award the fees.

Dorothy's attorney asked to take the

fiduciary's deposition to inquire into this matter. The judge blocked the deposition and granted the fee order, and the additional judgment of \$50,000 without affording Dorothy an evidentiary hearing on the matter. The judge stated that probing into the matter would be "a waste of time." Since when is due process a waste of time?

Although the petition for guardianship was dismissed and Dorothy walked away with her personal freedom, she also walked away with zero assets, a \$50,000 judgment against her, her dignity in shatters, and her belief in the fairness of the judicial system totally destroyed.



Dorothy's attorney was determined not to allow the local guardianship clique to beat up on a vulnerable person like this without being held accountable. He filed a notice of appeal. Surely an appellate panel of three disinterested judges would see that the guardianship judge had allowed himself to be used

as a tool to protect a neat little network of profiteers.

Unfortunately, perhaps because there have been so few appeals to expose such injustices in guardianship proceedings, the "me too" guardianship reform movement has not yet gotten the attention of the appellate courts of Washington State. Writing a nonsensical opinion that avoided any mention of the many inconvenient truths in the record from the trial court, three judges unanimously upheld the orders of the lower court. They had the chutzpah to imply that Dorothy's attorney was himself to blame for the fees incurred by the fiduciary and her attorney – fees that were

higher because he had provided Dorothy with a vigorous defense. Reading between the lines of the opinion, the judges were implying that the fees would have been lower if Dorothy had surrendered.

Perhaps to soothe their consciences a bit, the judges lightly slapped the fiduciary on the wrist by referring to some “missteps” she committed. This term conveniently glossed over the manipulative actions of the fiduciary that were improperly approved by the trial court judge with a rubber stamp that a forensic examination would likely show had the virtual fingerprints of the fiduciary all over it.

But guess what? Dorothy won’t surrender. Thanks to the competency, high ethics, and tenacity of her attorney, the war for justice for Dorothy is not over. Several battles have been lost, but until “the supremes” sing out, the pursuit of justice continues. Dan has filed a petition for review with the Washington Supreme Court – a petition in which he asks the court to set standards governing “good faith” for fee claims by fiduciaries.

The pending petition provides a teachable moment for the residents of Washington State, including the legislators who created the guardianship system and the judiciary that operates it. Spectrum Institute plans to do a lot of teaching in the coming months, whether or not the Supreme Court grants the petition and sets this case for a hearing and another round of briefs.

We plan to send emails, write letters, appear on talk radio shows, give interviews to the media, and distribute this commentary. After explaining about the injustices she experienced and how this is happening to hundreds of thousands of others throughout the nation, we want everyone to know one important

truth: **Dorothy won’t surrender.**

With more networking and educational outreach, we hope that everyone who is targeted by guardianship or conservatorship proceedings will be inspired by the story of Dorothy Helm O’Dell and refuse to surrender.



Thomas F. Coleman is the legal director of Spectrum Institute, a nonprofit organization promoting justice and equal rights for people with disabilities, including and especially for seniors and other adults with cog-

nitive disabilities in guardianship and conservatorship proceedings. Coleman was recently a featured guest on a British podcast produced by Defiance News that examined the California conservatorship of Britney Spears in particular and the dysfunctional California probate conservatorship system in general.

Spectrum Institute is no stranger to the guardianship system in Washington. It filed [The Justice Gap](#) report with the Supreme Court in 2016. It also filed a formal [ADA complaint](#) with that Court in 2017, alleging that the guardianship system was not in compliance with the requirements of federal law.

A strange twist. The fiduciary, Kristyan Calhoun, has moved from Washington to Ecuador. However, the civil suit against her for breach of fiduciary duties continues, with a lien placed on property she owns in Washington.

AMICUS CURIAE BRIEF

To have your organization join an amicus curiae brief in the Supreme Court, contact Dan Young: dan@truthandjustice.legal

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