

Hearing Date is set

Date: May 5, 2017

Time: 1:30 PM

Judge Carol Murphy

## Superior Court of Washington- County of Thurston

|   |                                     |
|---|-------------------------------------|
| Jennifer E. Roach<br>_____<br>Plaintiff/Petitioner            | Case number: 16-2-02391-34          |
| vs.   | <b>Petition for Judicial Review</b> |
| <u>DSHS- APS</u> ,<br>Defendant/Respondent                    | <b>Petitioner's Reply Brief</b>     |
| <u>AG, Seth Dickey</u> ,<br>Attorney for Defendant/Respondent |                                     |

### Introduction:

Mr. Dickey is engaging in Abuse of Process just like DSHS employees: make the innocent person appear guilty by misquoting evidence and making misleading statements and ignoring pertinent laws. Mr Dickey's reply brief is misleading and offensive. It is slander and an attempt to further deny Ms. Roach her Constitutional rights. Has Mr. Dickey no integrity or decency? Why is Mr. Dickey supporting the abuse of a Vulnerable Adult by an APS agent? Mr. Dickey's statements against Ms. Roach are rude, offensive and out right mean. He has done no research into the case, but has repeated malicious statements that aren't even in agreement with the VAPO judge and are NOT based on any evidence.

### FACTS and Reply Argument:

The FACT remains that DSHS has **no jurisdiction over non-nursing home workers**. DSHS has no jurisdiction to place Ms. Roach on the ADS database. WAC 388-71-01202 supplies DSHS no authority to place even a convicted killer of vulnerable adults on their database, OR any person

giving any sort of aide **in the home** including an innocent person like Ms. Roach who has NEVER worked in a nursing facility. WAC 388-71-01202 only gives DSHS authority over: “an individual used by a nursing facility or skilled nursing facility to provide services to vulnerable adults.” That's IT.

The APS agent's lies to cover up her own abuse of the Vulnerable Adult, Larry, cannot be used against Ms. Roach to place her on their database. NO JURISDICTION. Mr. Dickey refuses to argue against that point as he knows it is true and he is trying to confuse the court in order to allow an APS agent to abuse a vulnerable adult and harass an innocent person. Legislators want to know why the AGs office is backing APS lies. Legislators want to know why an APS agent is allowed to lie and abuse a vulnerable adult. Why won't Dickey request an investigation of APS employees?

Basically what the Ass. A G, Seth Dickey, is trying to do is turn the Thurston County Superior Court into the laughing stock of the whole state if not the whole country. Stating things like; Collateral Estoppel can be used because: “It will not work an injustice to Ms. Roach” to put her on the DSHS database OR stating that Summary Judgment can be used when it is very clear that the OPPOSING parties were **not** in agreement. That is an insult to the court: any one with any legal background knows that “no genuine issue as to any material fact” (WAC 10-08-135) would obviously mean *opposing* parties. The same side is always going to be in agreement with their own side.

Statements like: \$2500 a month or \$100 a day is unreasonable amount of money to charge for 24 hour help is an insult to the intelligence of the court. Half minimum wage is only abusive to Ms. Roach not to Larry. Saying an innocent person, Ms. Roach, doesn't deserve a hearing and throwing out ALL evidence in her favor to make her look guilty is an insult to our forefathers who worked so hard to give us Constitutional Rights. Mr. Dickey should be embarrassed to support such statements.

BUT all this pretense that Ms. Roach is guilty of charging half minimum wage is just to confuse the issue. DSHS has ONLY jurisdiction over facilities which they license and specifically in this case ONLY has jurisdiction over those “USED BY NURSING FACILITIES:” WAC 388-71-01202 to WAC 388-71-01281. DSHS is violating state law by placing Ms. Roach on their ADS database as again, Ms. Roach has NEVER *used by* a nursing facility. Until Mr. Dickey comes up with evidence

that Ms. Roach HAS worked for a nursing facility he is being unethical and malicious continuing with this blatant Abuse of Process: persecution and attempted prosecution of Ms. Roach.

That DSHS legal rep. refused to tell Ms. Roach what law governed the “state wide abuse list” (He didn't know the name of the list either) is not enough to justify placing Ms. Roach on the ADS database. Withholding essential information and lying about the content of the law is unethical, a violating of Mr. Dickey's and the DSHS legal rep's BAR license and should be illegal if it isn't already. However, finding law that was intentionally concealed is not considered new evidence.

RCW 34.05.554 doesn't apply because a law isn't an *issue*. The law isn't being disputed, but just ignored. Black's Law Dictionary: Issue= A point in dispute between two or more parties. **The law is NOT considered an issue.** Example: If a man gets a 10 year jail sentence for parking in front of a mailbox and then a year later finds out that it is not illegal to park in front of mail boxes, he has the right to get that sentence changed. It is not the responsibility of every day citizens to have full knowledge of the law. BUT, It is the responsibility of those who have a Bar license NOT to lie about legal issues and the law.

Lying about the law and getting away with it doesn't make that lie valid. Lying about the law makes for law suits against the state and this DSHS database being used against non-nursing home employees will be the biggest against DSHS ever. This case will have very high exposure and those involved in prosecuting innocent people like Ms. Roach will have their names all over the papers and be investigated by Federal agencies. There must be thousands who have been illegally placed on it (because of DSHS employee lies) and have lost jobs and homes because of it.

Michael Edward's and Seth Dickey's names will be a big deal in the papers shortly along with the OAH judge who believed Mr. Edwards and the abusive APS agent. Who in their right mind with any reasonable knowledge of the law could believe that the state would approve a law which could put ANY person any where on a state wide abuse list just because an APS agent (social worker) makes a statement that they *think* that person is abusive? No one. The state legislators want to know that they are funding an agency which lies about the law. They want places to save money and DSHS costs them a lot of money on law suits annually.

The “Unpublished Opinion” (which is on the web) is slander and Does NOT agree with the VAPO judge nor are the “FACTS” in that “OPINION” based on any evidence. It WILL be investigated as the DSHS legal representative used to work for that Appeal office and there is reason to believe that he was given a favor by the clerk who wrote the document. He abused Ms. Roach's rights to make himself look good and has caused the largest lawsuit against DSHS ever. DSHS regularly places persons who have never worked in or with a nursing facility on their nursing facility data base (WAC 388-71-01202) by withholding the important FACT that DSHS is outside it's jurisdiction.

Mr. Dickey obviously doesn't know anything about Appellant Court, as the Appellant court has no authority to judge on the “facts,” real or make believe in a civil case. It only has authority to force a case to be reheard based on violations of judicial procedure or law. Ms. Roach's lawyer argued that the VAPO judge did not produce a written “Finding of Facts and Conclusion of Law” but the Appeal court claimed that the VAPO judge did; by saying the words “I Find that...” even though her “findings” were grossly erroneous. Ms. Roach has a VAPO on her for: charging the exorbitant rate of \$100 a day for car-giving (half minimum wage), denying him a Flomax prescription which didn't exist (no evidence that it did exist was submitted) and being such a sexual attractive floozy that “any man would appear to get better being around a younger woman.” This is particularly laughable about a woman with a 39A, 45, 40 measurement who wears her skirts below her knees.

I tell my Parkinson's students, “if anyone thinks that their Parkinson's symptoms can be reversed just by being near me, I want more money.” I charge them less than \$5 an hour for exercise class which they enjoy immensely along with other seniors who want to join. My Parkinson's classes are the only thing that has keep me alive and functioning these past 4 1/2 years. The depression and anxiety caused by this DSHS attack on my reputation has been debilitating. My love for people and my desire to serve this under-served population is the only thing that keeps me alive. For Mr. Dickey and the DSHS legal rep. to say that placing me on the DSHS database won't hurt me just to justify their own paycheck is distasteful, incomprehensibly inaccurate and disgusting: sickening. It is a vengeful and hateful nature that I have never before been associated with and such inaccurate and harmful statements should not be uttered in a civilized nation. It shows brute disregard for human rights and a disregard and hatred of the Constitution.

These kinds of acts by DSHS employees are being uncovered throughout the country. DSHS “agents” exploit their position to make themselves seem bigger by destroying innocent people. It appears that this claim can also be true for some of the Attorney General's staff. I find Mr. Dickey's Reply brief Offensive and Misleading. Acts like his will destroy the nature of our Country and will place us back under authoritarian rule where the elite squash defenseless people.

DSHS motto: “Transforming lives.” Obviously for the worse.

OAC e-mails state:

*...the moral test of government is how that government treats those who are in the dawn of life, the children; those who are in the twilight of life, the elderly; those who are in the shadows of life; the sick, the needy and the handicapped.* -[Hubert Humphrey](#), *from his last speech, Washington, D.C.*

### **Deceitful Omissions in Ass. A G's brief:**

I- No jurisdiction: RCW 34.05.570 (3)(b). WAC 388-71-01202 which governs the use of the ADS database doesn't apply to Ms. Roach. Why is Mr. Dockey ignoring the law?

II- No where in Mr. Dockey's brief does he indicate the relevant WAC for the state wide abuse list now called the ADS database. He also does not state that DSHS would not tell Ms. Roach of the WAC covering the database or even the name of the database, thus withholding essential law.

III- Standard of Review: Three pages of Ms. Roach's brief show that RCW 34.05.570 a-i all apply. Mr. Dockey is again being deceitful when he states that section (e) doesn't apply and ignores the other 8 points. No one can argue that section (3)(a), (3)(b), (3)(c), (3)(d) DO APPLY.

IV- Deceitful Omissions of the law ALWAYS allow for judicial review. RCW 34.05.570 (3)(a-d)

### **Errors in Mr. Dockey's Reply brief:**

Blatant examples of misleading info that was disproved in the OAH hearing that was thrown out.

I- Mr. Dockey's Case references are irrelevant and misleading. His references to the Appeal records do not prove his points. His brief contains no relevant FACTS, but a third generation of retelling of lies which do NOT even agree with the VAPO false accusations.

## **II- Blatant misstatements about Ms. Roach.**

Page 2 line 16: This kind of seemingly innocent misstatement in the precise word used in testimony is a great example of how innocent people get prosecuted incorrectly. Mr. Cook, in a letter to the court (which he was required to write by his father-in-law, Sutherland, who abused Larry and then asked for the VAPO on Ms. Roach,) wrote: “I think I heard a PUNCH.” That's a lot different than a *slap* because this isn't BAT MAN. You can't hear a punch. He was wrong.

What he probably heard was Ms. Roach accidentally backing into the bathroom door in that extremely small bathroom at the Sutherland's. It was Ms. Sutherland's job to take care of Larry's bathroom needs. Ms. Roach had been told by the Sutherland's that they would be Larry's care-givers while Larry was recovering from hydrocephalus surgery and they lied. They made Ms. Roach take care of Larry except for food: exhausted her to get rid of her, so they could steal Larry's money. Ms. Roach asked Mr. Sutherland to pay for a care-giver and he refused and Ms. Roach did her best to help Larry, having to be up all night and help him with his doctor's prescribed exercises in the day.

Page 7: Supposed Neglect:

-->The box (video tape) on the staircase that was planted by Mr. Sutherland (see JR Brief attachment D pages 29-32): it was proved to be impossible to have had any effect on Larry's ability to walk up the stairs, *Ib* Page 31, but proves that Larry didn't even make it on to the first step.

-->The medications “withheld” were proved in testimony to be a blatant misrepresentation of the meaning of the doctor's note while Larry was under orders to receive NO medication (see JR Brief attachment D Pages 33-35.) The other was a nurse wrongly attempting to administer day time medication at night without doctor's approval, *Id.* Page 35-36. DSHS dropped the Flomax accusation as all evidence showed that there was no Flomax prescription during the period of time that Ms. Roach helped Larry and Edwards couldn't find even documents he could twist to fake it.

-->The term “over-exercising” was never defined. All the doctor's testimony proved Larry had doctor's prescribed exercises and Ms. Roach was doing exactly those exercises. (see JR Brief attachment D Pages 40-43.) Therefore Dickey's Page 2 “Larry was hospitalized again [because of] exhaustion from over exercise” is a lie. NO records state that, *Ib* Page 42. Mr Sutherland invented

that lie and others just repeated it. Just like the non-existent Flomax prescription; No matter how many times you repeat a lie it doesn't make it true.

Page 8: Supposed Mental Abuse:

Mr. Dickey purposely misleads us, but the old law states AND. In order for yelling to be mental abuse it must be coercion or harassment also. Mr. Dickey's definition perfectly describes what Mr. Sutherland did, not Ms. Roach. Mr. Sutherland refused to let anyone speak above a whisper in his house. Larry is hard of hearing. During the testimony (OAH hearing which was thrown out) only Ms. Sutherland stated that she actually heard Ms. Roach yell at Larry and no one said that Larry perceived the “yelling” as threatening, coercion or harassment. Testimony by the Sutherland's son-in-law was that even being within 20 feet of Larry at the time of accused “yelling” that he could not hear what Ms. Roach said or even identify if it was indeed Ms. Roach. (It could have been Ms. Sutherland.) He said he saw no one, but was told that it was Ms. Roach who had “yelled” at Larry.

Pages 2,3, 8 Supposed Financial exploitation:

\$2000 for back pay for several months of work is not exploitation. NO one asked Ms. Roach about that money until 2015: OR 3 years after being accused of stealing Larry's money. It was proved that even at \$100 a day (half minimum wage) Ms. Roach was not paid all her wages. That's why Mr. Sutherland gave her a check for \$4506 *after* the VAPO was placed on her. (Exhibit H Page 1 of OAH hearing.) Ms. Roach has repeatedly proved that she actually saved Larry money (Judicial Review Brief Attachment D Page 57-58)

## **Conclusion:**

WAC 388-71-01202 only applies to: “an individual used by a nursing facility or skilled nursing facility to provide services to vulnerable adults.” There is no other regulation implying anything about Substantiated findings or other authorization of a state wide abuse ADS database. If Mr. Dickey insists that DSHS CAN place Ms. Roach on their State wide ADS database, he needs to come up with the regulation or law which states so. Otherwise he is harassing Ms. Roach, being unethical and malicious and practicing in Abuse of Process and perjury. DSHS has NO authority to place Ms. Roach on their ADS database. Period.

Thank you,

Completed and accurate to the best of my ability this 15<sup>th</sup> day of April, 2017

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Jennifer E. Roach

**Some Exerts from the 50 Testimonies in favor of Ms. Roach** -All dated Nov 2012

All thrown out by VAPO judge, APS, OAH and DSHS review judge. All statements are about the time period prior to the APS agent helping abuse Larry.

From Exhibits C, G and L of OAH hearing .

\_\_\_Ali\_J\_Naini\_M.D. I am the neurosurgeon who attended the case of Larry [REDACTED] from 9/24/2012 to 10/3/2012 at Evergreen hospital. He had a small compression fracture for which I ordered one day of bed rest and hydrocephalus. I informed patient and health care DPOA, Jennifer Roach, that I could preform the hydrocephalus surgery on the following Friday, 9/28/2012 if they chose for him to be admitted or he could return home.

The expectations were that the patient would, after hydrocephalus surgery, have improved memory, better walking and decreased urinary urgency. The surgery went well.

\_\_\_Margarita Andrijic\_\_\_ declares as follows:

Parkinson's. Jenny cannot be thanked enough for being aware of Larry's needs and knowledge about Parkinson's.

\_\_\_Bob Bakke\_\_\_ declares as follows:

He has been with Jennifer for about two years. He has become more mobile by exercising and walking. He had been in a good environment during that time and Jennifer is responsible for the improvement.

\_\_\_Kenneth A Bartanen\_\_\_ declares as follows:

I would like to stand up for Jennifer Roach's character. She has spent the last couple years devoting her time and energy to helping Larry [REDACTED]. She has tirelessly worked for him to regain his health while he developed debilitating symptoms of Parkinson's disease.



\_\_\_\_\_Dean Blacketer\_\_\_\_\_ declares as follows:

Over the time Jennifer has been with Larry, I personally saw Larry get better. He was able to walk greater distances with better mobility. His attitude was positive, and his mental sharpness was improving.

\_\_\_\_\_Patricia Blacketer\_\_\_\_\_ declares as follows:

walks and working out at the YMCA on a regular basis. His health improved gradually and dramatically. When I would talk to Larry he now talked of being able to go dancing again, sailing and even skiing. He took an extended trip out of the country. Parkinsons is a disease that conforms to the adage "Use it or lose it". Regular rigorous exercise is a key component to maintaining an active lifestyle. Jennifer is a devoted and knowledgeable

\_\_\_\_\_Geoffrey Cahoon\_\_\_\_\_ declares as follows:

At no time did I see a hint of avarice, or cavalier treatment of Larry's belongings, or financial resources. Her reward seemed to be in the achievement of increased well-being for Larry, in having a stable living arrangement at low cost, and in being employed in a kind of work that seemed worthy to her, that was doing something beneficial for somebody else.

\_\_\_\_\_Robert A. Carpenter\_\_\_\_\_ declares as follows:

I do not know the Sutherlands, or their rationale for keeping her away from Larry with a restraining order. My opinion is that Larry would not have survived his medical emergencies if Jennifer had not been involved.

\_\_\_\_\_Ronald J. Dartnall\_\_\_\_\_ declares as follows:

and will help anyone in need of assistance. She takes very good care of Larry in every way. I've been to Larry's house and observed this. She has an exceptionally good outlook

My name is Brigit Dixon and I live in Snohomish, WA. I met Jennifer Roach and Larry [REDACTED] at the Mill Creek YMCA over the past year while working out. One day I felt led to approach them to tell them how nice it was to see them there working hard to get Larry back up to par. I introduced myself to them and I asked if Jennifer was a family member because she took such good care of Larry and really cared for his well being.

\_\_\_ Bud Elde \_\_\_ declares as follows:

He became ill with Parkinson's and then Jennifer came into his life. What a blessing she has been. She got him on his feet and he could hardly walk, but she prevailed. He has improved and is now doing quite well. She rested him regularly and is so patient and kind to him.

\_\_\_ Marlene Gaw \_\_\_ declares as follows:

Larry began to get stronger and all we ladies who danced with him through those "improving" months noticed the difference in his strength and balance as well as the smoother movements. The Parkinson experts stress keeping moving and we saw proof that it helps. Thank you Jennifer.

\_\_\_ Gaylord Lenker \_\_\_ declares as follows:

██████████. I saw loving, attentive, compassionate care. Jennifer took Larry to dances and he rejuvenated. I asked Larry about the "deal" and he said; "I pay \$100/ day and living expenses". I said, "You're a business man."

\_\_\_ Karen Hebert \_\_\_ declares as follows:

disease. My mother, an RN, voiced concern over his condition. Over time, we watched with amazement as, under Jennifer's care, Larry improved and grew stronger, much more self-sufficient, and more cognizant. Occasionally, Jennifer brought him to dances or

\_\_\_ Kathryn Little \_\_\_ declares as follows:

The next time I saw Larry was several months later at the Mill Creek YMCA. I had just finished giving a talk to their Board of Directors when the head of the wellness program asked me to wait a minute because someone was coming who I would probably like to see. I turned around and saw Larry and Jennifer walking through the door of the YMCA. Larry was walking unassisted with a nearly stable gait and a giant smile on his face. He walked right over and gave me a bear hug. As with my own experience, I really couldn't believe my eyes. Jennifer explained enthusiastically all the types of exercise that Larry had been doing with her assistance. When they ran into a barrier, she figured out a way to get around that barrier. Her dedication to him and her joy at his progress was clear for anyone to see. He was proud and happy. It was truly like looking at a brand-new person.

Yvonne R. Mansson

University in Copenhagen, Denmark and from University of Washington. I have worked for 33 years with orthopedic and neurological patients in Denmark and in Seattle.

When Jennifer Roach started to care for Larry with a consistent program of strengthening exercises, balancing exercises and coordination exercises, I noted a remarkable improvement to the point where he became the " leader " again when we danced together. Larry's spirit improved. His mind got sharper. In other words he became the old Larry we all enjoyed. If Jennifer had not taken care of him he would have been wheelchair bound years ago.

My name is Patricia McLain. I have been a friend of Larry [REDACTED] and his late wife, Pearl, for 35 years. We shared a love of roller skating artistic dancing and ballroom

Jennifer helped him in all ways. She drove him to the dances, skating events, and even to the mountains to ski! (Larry and Jennifer both said they had a good time.) They went on a road trip. Jennifer had him enjoying life to the best of his abilities. As far as I'm concerned, Jennifer is helping Larry live- not die away. Larry was happy.

Barbara O'Conner declares as follows:

home that he loves. She has done a great job! I have witnessed the progress of Larry as it has happened through these last three years. I know Larry really enjoys living in his home and for him to recover from this recent illness he needs to be back in his own home where Jennifer can, once again, nurture him back to health!

Carol Robertson declares as follows:

Jennifer is a supportive, positive and loving companion.  
She only looks after Larry's best well being and encourages his independence.  
We should all be blessed to have someone like Jennifer in the later years of our life.

Karen P. Schaefer declares as follows:

Most impressive was his new command of his walking. He NOW did not freeze with oncoming pedestrian traffic and through narrow spaces. Jennifer had set up a program of daily outside home walks and had a chair available for him to rest along the way, and at the post box to gain stamina. He had learned to use other parts of his brain to overcome the "stutter" step. She was very patient with him and he was feeling better about himself.

Joyce Sorenson declares as follows:

From what I have seen, Jennifer is always encouraging and helpful and has been a very bright spot in Larry's life. In fact, I don't know what he would have done without her.

Michael R. Turner declares as follow:

It is my sincere opinion that Jennifer is good for Larry.