

No. 86433-5

COURT OF APPEALS
DIVISION I
OF THE STATE OF WASHINGTON

LEIGH BENNETT, Respondent,

v.

BRIAN MALNES obo HAROLD MALNES.

BRIEF OF APPELLANT

Brian Malnes, *pro se*

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I. ASSIGNMENT OF ERROR

i. Assignment of Error

1. No. 1 “Insufficient evidence to support a petition .”
2. No. 2 “Mr. Bennett did not personally exploit or harass Mr. Harold Malnes or exert undue influence over him.”
3. No. 3 “The Petitioner’s motion for contempt is denied.”
4. No. 4. Commissioner should have found the Leigh, and his attorney Randy Boyer violated Brian, Harold Malnes, and another person’s privacy by submitting (CP#20, pg. 137-138). RCW 9.73.030(1)(a-b). Additionally, *Declaration of Jennifer Jones* (CP#20, pg. 137-138) directly violates section 8.C. of the TPO (CP#5, 296-305), signed 10/24/2023.

5. No. 5. Commissioner should have found Randy Boyer in violation of RCW 2.24.050, by making materially false statements to the Commissioner while she discharged her official duties.
6. No 6. A *Motion for Revision of Commissioner's Order* (CP#73, 364-368) was dismissed (CP# 81, pg. 362) in violation of RCW 7.105.205(5)(a), as Brian was not given directions to access the hearing for a civil protection order remotely.

ii. Issues Pertaining to Assignments of Error

1. No. 1. Does Leigh, an attorney have to abide by a POA for a client he had fired? Can that attorney then use subterfuge, and coercion to get Harold, an ex-client to sign a new POA? Further, can an attorney choose for himself who is best suited to be agent for a client he had fired? All of these questions are based on the facts of the case, yet the Commissioner found that Leigh had not displayed any behavior that constituted the need for the Vulnerable Adult Protection Order (Assignment of Error 1).
2. No. 2. Is coercion, in the form of a conditional demand, abuse under Washington State law? Can an attorney for an ex-client use a POA he created out of whole cloth, naming an agent who did not know he was being made agent? Does

this isolate Harold, the vulnerable adult from the Appellant who handles his day-to-day care as described in RCW 74.34.025(12)? Are the actions of the Respondent legal in accordance with Washington State law? (Assignment of Error 2).

3. No. 3. Is Leigh, as an attorney, immune from the temporary VAPOs (*CP#5, pg. 296-305; CP#28, pg. 130-133; and CP#65, 54-57*) he was served with? Can the Respondent harass or threaten the vulnerable adult? As an attorney is Leigh free of liability for his violations of the duty to care he owed his former client? Does Leigh need to obey RCW 9A.42.100? (Assignment of Error 3).
4. No. 4. The VAPO served upon Leigh clearly states: “Do not use electronic means to record.” Does the filing of a recording that violate RCW 9.73.030(1)(a-b) constitute contempt? Is it not against rule for this recording to have be filed in accordance with RCW 9.73.060? Is it a gross misdemeanor under RCW 9.73.080 to violate the privacy of the Appellant, Harold, and another person? (Assignment of Error 4).
5. No. 5. Can an attorney make materially false statements during a hearing in Superior Court? Is making those false statements a violation of RCW 2.24.050?

6. No. 6. Is the Superior Court of Snohomish County compelled by rule to assure participants in civil protection hearing have all the information to attend hearing remotely as stated in RCW 7.105.205(5)(a)? (Assignment of Error 6).

II. STATEMENT OF THE CASE

- Brian believed on, or around, the first of October, 2023 that his brother David, co-Agent for Harold Malnes at the time had, through his wife Lori (not a part of the arrangement for the care of Harold) had stolen the identity of Harold by creating digital accounts at DRS, and the SSA. Evidence of the “work around,” by Lori is found in her own words given on 8/2/2022, which had been re-read after Brian’s first interaction with DRS.
- On 10/11/2023 and 10/13/2023, Brian e-mailed Leigh Bennet to inform him of his concern David, co-POA for Harold, was potentially financially exploiting our father. “Harry needs personal items now. David has withheld refunding money for days at a time. This constitutes ‘financial exploitation’ (*CP#1, pg. 701*). Brian informed Leigh that he would seek a new POA on 10/13/2023, “I was going to look into POA forms in accordance with RCW 11.125.050” (*CP#1, pg. 701*).
- “[Brian] warned [Leigh] that [David] was violating Harold Malnes’ rights. This is the reason the [Brian] and Harold Malnes decided

it was the best course to sign a new POA. The signing of the POA on 10/16/2023 was done in the UPS store at 19410 Hwy 99, Lynnwood, WA. 98036. Harold Malnes, always interactive spoke at length with the Notary about the document he was signing. The Petitioner asked Harold Malnes aloud before each initial he made. He then signed the POA. We went from there next door for groceries. The difference between the [signing] of 10/16 and 10/23, is the conversations, hours long, prior to the decision. The plan was to get the POA signed on 10/16/2023, and then meet with Leigh... E-mail sent to [Leigh] on 10/16/2023 was cordial as all communication to that point were. ‘Mr. Bennett, you wrote me and I never received a reply. Are you still representing my parents? If so I would like to schedule an appoint with my father in your office at the earliest opportunity.’ It is very obvious that the [Brian] wanted to work with [Leigh], who claims he has represented Harold and Carolyn for many decades, however, Leigh states: ‘In 2017...consulted with their family attorney Pete Bennett.’” (*CP#17 pg. 705*).

- Leigh Bennett fired Harold Malnes as a client on 10/16/2023 via several e-mails to both David and Brian. “I am withdrawing as legal counsel, which is totally my choice as to whom I wish to represent. As such, your parents are now free to obtain other legal counsel going forward” (*CP#1, pg. 705*). And in a further e-mail that same day, “No explanation is necessary, as I can withdraw as legal counsel whenever I deem appropriate” (*CP#1, pg. 706*).

- Leigh Bennett refused to give Brian (Agent) Harold and Carolyn's files after he had fired them as clients. "As for picking up the file, I first need to talk with your father (my client) to confirm that I can provide you with their file. So if you can please provide me with Harold's telephone number..." (*CP#1, pg. 707*). On 10/16/2023, Leigh acknowledges Brian is sole POA for Harold as he states, "since David is still the Attorney-in-Fact for Carolyn" (*CP#1, pg. 709*).
- On 10/17/2023, David e-mailed Brian and said: "Leigh Bennett's legal representation of our parents has been disappointing at best. He dropped the ball providing legal opinions for consideration – and that did not happen. Lori is in the process of transferring funds. She will be providing a Word document by the end of today that outlines all the actions you will need as sole POA to take on the bill paying" (*No. 86434-3, CP#21, pg. 249*).
- On 10/19/2023 Brian e-mailed his brother David and stated: "We are looking to sell here, and use proceeds to buy home that dad can live with us. A place you and your family are welcome." David simply replied he had received the e-mail (*No. 86434-3, CP#24, pg. 219*).
- Leigh Bennett did not contact Harold, his ex-client, at all. But instead, Leigh communicated with David, on several occasions prior to 10/20/2023. The first is a phone conversation that Leigh and David had on 10/10/2023 as Leigh states: "My first significant contact I had ...came from a recent telephone call I received from Harold's son, David Malnes,

on October 10, 2023, wherein David expressed his concern that his father, Harold Malnes, was in danger of being financially exploited by his brother, Brian Malnes” (*CP#51, pg. 436-437*). Leigh goes on to outline a number of topics discussed with David. It seems to have covered quite a bit and concerned Leigh enough to e-mail right away. Leigh has stated: “Again, I am the attorney for your parents and not the attorney for either of you individually or as Power of Attorney Agents” (*CP#1 pg. 699*).

- On 10/20/2023, Leigh Bennett attempted to call Harold at the phone number provided by Brian at 8:55 am (*CP#15, pg. 544*), he then signed the visitor’s log at Pacifica Senior Living at 9:10 am (*CP#1, pg. 711*), and met with Harold in his room for approximately 30 minutes. He then e-mailed Brian and David at 10:18 am. on 10/20/2023, after Leigh had met with Harold where he had him sign a revocation of a POA and then a POA listing David as sole agent. Leigh’s e-mail, however, states he had not yet met with Harold, “I plan to visit Harold at his Pacifica residence...” (*CP#15, pg. 543*). Leigh admits to this deception, “He purposely did not inform Brian because Leigh knew that Brian would interfere” (*CP#68, pg. 366*). “Without notifying Brian for concerns that he would try to prevent me from meeting with Harold privately” (*CP#51, pg. 438*).

- One of the reasons given for visiting Harold on 10/20/2023 by Leigh, through his attorney Randy was: “Brian has already stated he wants ‘to pool’ Harold’s money with the sale from his wife’s home...” (*CP#68,*

pg. 393). The exact quote comes from an e-mail conversation on 10/11/2023 to both David and Leigh was: “Perhaps it means Laura and I sell our home in Edmonds and pool funds to buy a home that would suit all of our needs” (CP#1, pg. 702). Undoubtedly David communicated Brian’s message of 10/19/2023, where he mentions buying a home, but not pooling anything but the funds of both Brian and Laura. But at any rate, there is no emergency as home loans take time. From the communication between David and Brian on 10/19/2023 until 10/20/2023 when Leigh walked into Pacifica with forms filled out in David’s name the two must have communicated.

- Leigh Bennett used coercion to convince Harold to sign papers that were not in his best interest. “I told him that I would remain his legal counsel provided that he designate David as his sole POA Agent, as David had done an exemplary job managing his assets to date and that I was concerned over having Brian in a position of authority over his assets. So based on my advice, as his legal counsel, Harold signed a new Durable Power of Attorney designating David in that position (which I brought with me to that meeting if Harold so chose)” (CP#51, pg. 68).
- Harold Malnes, in his *Declaration* (CP#10, pg. 653), “Without doubt, or reservation that I have never wanted my son Brian Malnes to ever stop caring for me as POA.” This declaration was signed on 11/31/2023, eleven days after Leigh visited Harold. The *Declaration* continues: “1. Leigh Bennett had stop representing me prior to seeing me

at Pacifica...5. Leigh Bennett got me to sign papers I did not understand...I cannot state clearly enough that I did not intend, nor want my son Brian to be discontinued...Please do not take my son Brian away from me.”

- Leigh Bennett through his attorney Randy Boyer states: “As shown by the Declaration of Grant Cummings witnessing Brian place a Declaration of Harold in front of him and told him to sign it as his own free will. Harold did not have the time to review it before signing it” (CP#68, pg. 395). This statement is not supported by any evidence produced. The Declaration of Grant Cummings (No. 86434-3, CP#14, pg. 270) states: “6. I handed the papers to Harold Malnes, Brian appeared to be highly agitated and stated to me ‘we did not welcome you into this room and am not acknowledging you were ever here.’ At the same time, I observed Brian handing papers to Harold Malnes and witnessed him stating ‘Dad, sign these papers and you are signing these papers of your own free will’ and then handed him a pen.” This is another example of pure testimony by Randy, on behalf of Leigh. Grant Cummings did not, nor could he, declare what the paper was, or even if the paper was signed.
- In his *Reply to Declaration of Grant Cummings*, Brian states: “In fact, the Declarant himself demonstrated how he did not follow, ‘Instruction for Process Server: *Service of the Notice to the Vulnerable Adult*,’ Vai-1.021 (Exhibit 1). As a registered process server in Washington, the Declarant should be very familiar with these instructions.

Nowhere in his 'Declaration,' does he identify any of the prescribed methods of service. Instead, he states: 'Upon arriving at the location, I checked in with the office and was met by Executive Director. She reviewed the papers to be served and then escorted me to the residence building.' The Declarant does not state that the Executive Director, Tammy Ray (Ray), was dressed as the green Teletubbies, 'Dipsy,' as it was Halloween. The Declarant describes a scene that does not correspond to what Ray, and Jake Call (Call), Ray's supervisor at Pacifica Senior Living have stated in writing via e-mail. Call states: 'While I am not able to obtain the documentation you referred to regarding the statement of process server Grant Cummings, we disagree with the comments that Tammy Ray reviewed papers to be served. We have witness statements to the same effect that state Tammy escorted the individual to apartment and nothing more.'" (No. 86434-3, CP#19, 262-263).

- Laura Mangarella, in her *Declaration of Laura Mangarella* (CP#19, pg. 499), states: "19. I was a part of conversations where Harry told us everything in his Declaration." Laura's signed *Declaration* continues: "21. When Brian talks with Harry he takes a long time with him, he wants his dad to know what is going on."
- In her signed *Declaration of Bertella Hansen* (CP#52, pg. 434), she states: "I see no reason why David should take control. He doesn't live

there. He lives far away. Brian has been doing the job very well and should continue to be their legal representative.”

- Leigh, through his attorney Randy states: “The only one coercing Harold to sign documents was Brian having Harold sign a document without the chance to review it?” (*CP#68, pg. 396*). There is no evidence in the record to support this statement by the Respondent.
- Leigh states that three days after he visited Harold on 10/20/2023: “Shortly thereafter, on October 23, 2023, I e-mailed both David and Brian to let them know that I had visited Harold privately, that Harold wanted me not to withdraw and continue as his attorney, and based on my advice, that he had signed a new Durable Power of Attorney designating David as POA Agent” (*CP#51, pg. 439*). Leigh is seemingly stating that the first David received, or knew about his new job as sole POA was on 10.23.2024. “On the same day (October 23, 2023) I then received an email from Julia Lindeman (David Malnes’s attorney) informing me that Brian saw his father later that day and Had Harold sign a revocation” (*CP#51, pg. 439-440*).
- On 10/23/2023, at 2:00 in the afternoon, Julia e-mailed Brian: “I represent David Malnes as Attorney-in-Fact for your father, Harry Malnes” (*No. 86434-3, CP#5, pg. 349*).
- However, Harold raised concerns about what he’d signed with Leigh. So, on Monday, 10/23/2023 Harry, Laura, and Brian went to a UPS store and Harry corrected his mistake, putting back in place his initial

decision to sign the POA of 10/16/2023, by signing a new *Revocation of DPOA* for David and a new DPOA assigning Brian as his sole Agent (*No. 86434-3, CP#5, pg. 338*).

- On 10/23/2023, at 3:30 p.m., Brian responded to Julia with a copy of the *Revocation of DPOA* from her client David (*No. 86434-3, CP#5, pg. 351*).
- Because of the incredible circumstances surrounding Leigh's visit to Harold and the unravelling set of facts, Brian petitioned for, and received a Vulnerable Adult Protection Order against Leigh Bennett that was signed by the Commissioner Kim on 10/23/2023 (*CP#1, pg. 666-711*).
- On 10/24/2023, Randy, Leigh's attorney, sent a seven-word e-mail to Brian that said: "Maybe a referral to APS is warranted" (*CP#57, pg. 421-422*).
- On 10/27/2023, David signed a *Petition for Guardianship* (Snohomish County Superior Court Case #23-4-02071-31, several *Orders* in that case are under review with this Court *No. 86687-7*), that was also signed by attorney's Julia Lindeman and Christopher Lee, who have stopped representing David as Agent for his father, and now are attempting to get a Guardianship for Harold.
- Having attempted many times to work out a resolution with David through his attorneys Julia and Chris, and Brian fearing that Leigh and David would again try something nefarious, filed for a VAPO for David

on 10/31/2023. At the time he filed, Brian was unaware that a Guardianship had been petitioned for and granted by Commissioner Kim on the same day, while the VAPO Brian petitioned for was denied by the same Commissioner Solomon Kim on 10/312/2023 (*CP#5, pg.655-664*).

- The Court Visitor appointed in the guardianship proceedings for Harold Malnes (Snohomish County Superior Court Case #23-4-02071-31), Shannon Marsh states: “On November 1, 2023, this Court Visitor met with Respondent, Harold Malnes, at his residence in Lynnwood. That same day, a teleconference with Mr. Malnes’ preferred attorney for guardianship proceedings, Leigh Bennett, took place” (*CP#49, pg. 484*).

- On 11/6/2023 at 6:30 p.m. in the evening, Brian received an e-mail from Randy that included a recording along with the message, “Attached is a voice mail we found on Leigh Bennett phone and a translation we made.” The attachment was *Declaration of Jennifer Jones* (*CP#20, pg. 496-497*).

- The *Declaration of Jennifer Jones*, clearly states, “recording of a conversation between Brian Malnes, Harold Malnes, and unknown party” (*CP#20, Pg. 496-497*). Of the three persons identified in the recorded conversation, no one gave consent to be recorded.

- Brian attempted to file a *Motion to Show Cause*, to bring a charge of contempt against Leigh Bennett on 11/7/2023. Due to contradictory information from the Snohomish County Superior Court, it took several filings, and the use of certain forms in order to have a Commissioner sign

the *Order to Show Cause* on 11/28/2023, which was then served on Leigh (CP#59, pg. 418).

- On 1/4/2024, Randy Boyer signed and filed his *Memorandum in Response...* in which he states: “Under Washington law a felony barred Brian from serving in a fiduciary capacity (See In re Guardianship of Black, 7 Wn. App. 2d 1077 (2019))” (CP#68, pg. 392-393). A footnote to the citation explains that it is an unpublished opinion, and that consideration may be granted via GR 14.1. Randy also states: “Brian’s previous convictions of a felony (crimes based upon the taking of another’s money by lethal force)” (CP#68, pg. 392). A copy of Brian’s FBI file can be found at (CP#15, pg. 543).

- On 1/11/2024 the Motion Hearing for both cases were heard together. Commissioner Lisa Micheli stated: “I don’t know if attorneys are intending to offer testimony or not, but on the off chance that you are, I’m going to swear all the parties in...You do have the ability to offer testimony because these are special proceedings” (RT pg.7). During the presentation of Brian’s argument by his appointed attorney Natalie Findley-Wolf, the Commissioner asked, “Wasn’t it a voicemail that was left on Mr. Bennett’s phone? Isn’t that how it came to be recorded?” (RT pg. 16).

- During the Motion Hearing on 1/11/2024, Randy Boyer testified: “[D]eclarations, one of which was witnessed by the process server” (RT pg. 20). Randy continues: “So clearly Mr. Bennett wanted to know what

his client, Harold, really wanted...met with him, had a half-hour conference explaining everything to him, and Harold elected to appoint David as his power of attorney...This is all appropriate situations. Yes, he didn't notify David – excuse me – Brian in advance of the meeting” (*RT pg. 21*).

- On 1/11/2024, the Commissioner stated to Randy: “[M]aybe you know the answer to this question; maybe you don’t. But given your familiarity in this area of law...” (*RT pg. 23*).
- On 1/11/2024, during the hearing the Commissioner brought up that Randy has claimed that a POA who has a felony cannot serve as a fiduciary. Randy then testifies: But they do look it it’s a serious felony, talking about physical or threatening, and I think the conviction of Mr. Malnes still falls under that. So, he couldn’t be a guardian. And so, I believe, from my experience, and I think the case law supports it, that he’s not entitled to be power of attorney”
- On 1/11/2024, Julia Lindeman testified: “David rerouting his father’s Social Security and retirement income payments so that they point to his father’s account is not exploitation...David asking his brother for receipts so that any funds...is not exploitation... And, in fact, his actions have been ratified by Bank of America directly (*RT pg. 27*). Julia continues her testimony: “Brian hasn’t demonstrated that any money is missing or being actively misused” (*RT pg. 28*).

- The Commissioner stated: “[S]o that’s why I want to make sure that I explore that with the assistance, of course, with counsel who specialize in this area of law, as the Court does not” (*RT pg. 38*). The Commissioner continued: “Thank you for your very concise answer, Mr. Boyer, I can always count on you for that” (*RT pg. 39*).
- On 1/11/2024, Natalie Findley-Wolf stated: “He also had a \$5,000 check, and we gave the check number in our declaration. We don’t know personally whether it’s one of the three checks, but [Harold] tried to cash it and it bounced (*RT pg. 43*). Natalie continued: “I’m still frustrated by the explanation given Ms. Lindeman by BOA because I’m looking at this now, and all of these say ‘cleared.’ None of them say ‘posted’” (*RT pg. 46*).
- The Commissioner stated in her judgment: “Mr. Bennett – there have been some ethical violations that have been raised...I guess, collusion or planning without – between David and Mr. Bennett without Brian’s involvement” (*RT pg. 51-52*). “And that is [Leigh’s] purview. He is not required to share information with Brian” (*RT pg. 54*).
- On 1/11/2024 Commissioner Micheli denied the VAPO for both Leigh and David. Additionally, the Commissioner did not find enough evidence to support a contempt of order against Leigh (*CP# 71, pg. 369-375*).
- Brian filed a *Motion for Revision*, on 1/22/2023 (*CP#73, 364-368*).

- Brian did not get information on where the hearing was, and how he could access via Zoom. As a result, an *Order of Dismissal*, was signed on 2/6/2024, and then corrected on 2/8/2024 (CP#80, pg. 363, and CP#81, pg. 362).
- On 2/9/2024, Brian filed a *Notice of Appeals to Court of Appeals* (CP#82, pg. 1-9), which began the proceeding in this court.

III. ARGUMENT

1. In accordance with RCW 11.125.110(4), Brian spoke with the principal and took action else he too be liable for any damages caused by David and Lori's fraud. An attempt was made to communicate with Leigh privately, but Leigh had already made up his mind in favor of David.

RCW 11.125.110(4) states:

“An agent that has actual knowledge of a breach or imminent breach of fiduciary duty by another agent shall notify the principal and, if the principal is incapacitated, take any action reasonably appropriate in the circumstances to safeguard the principal's best interest. An agent that fails to notify the principal or take action as required by this subsection is liable for the reasonably foreseeable damages that could have been avoided if the agent had notified the principal or taken such action.”

Brian acted after many attempts to get information from his brother and Lori regarding the DRS and SSA accounts. All Brian got was silence, or as Julia stated in the hearing on 1/11/2024:

“The actions that Brian describes sound like Brian being confused with information being given him again and again...he doesn't seem to understand...how a power of attorney works” (RT pg. 28). But of course, Julia herself might not understand the law, “David rerouting his father's Social Security and retirement income payments so that they point to his father's account is not exploitation” (RT pg. 27).

Having talked with DRS and the SSA, Brian conferred with Harold about the money being diverted. Harold was concerned that the actions of his son David did not conform to the law, and so he decided to elect Brian sole agent and revoke the POA of David. The alleged crimes committed by David were ongoing, and given that Leigh was not forthcoming in his communication Harold executed a new POA on 10/16/2023. Laura Mangarella, in her *Declaration*:

“19. I was a part of conversations where Harry told us everything in his Declaration.” Laura’s signed *Declaration* continues: “21. When Brian talks with Harry he takes a long time with him, he wants his dad to know what is going on” (*CP#19, pg. 499*).

2. The Uniform Power of Attorney Act, Chapter 11.125 RCW, guarantees certain powers which, according to RCW 11.125.030(1): “This chapter applies to all powers of attorney,” the exceptions do not apply in this case. As such RCW 11.125 gives Brian certain rights and powers as Harold’s agent that Leigh and David did not abide by.

The POA signed by Harold on 10/16/2023 is valid in accordance with RCW 11.125.060(1):

“A power of attorney executed in this state on or after January 1, 2017, is valid if its execution complies with RCW 11.125.050.”

The POA requirements laid out in RCW 11.125.050(1), which states:

“A power of attorney must be signed and dated by the principal, and the signature must be either acknowledged before a notary public.”

On 10/16/2023 Harold signed the new POA in front of a notary republic, and several other witnesses. This is stark contrast to the fact Leigh coerced Harold with a threat of abandonment, got him to sign papers he could not

possibly of understood within a half-an-hour, and to top it off Leigh notarized the POA of 10/20/2023, not a witness in sight.

Despite what David and Lori believed, and a fact that was echoed by both Leigh and Julia, receipts are not required to be disclosed according to RCW 11.125.125(8):

“Except as otherwise provided in the power of attorney, an agent is not required to disclose receipts, disbursements, or transactions conducted on behalf of the principal.”

Additionally, reimbursements are required, and nothing is mentioned in the statute that requires receipts. RCW 11.125.120 states:

“Unless the power of attorney otherwise provides, an agent is entitled to reimbursement of expenses reasonably incurred on behalf of the principal and to reasonable compensation.”

Instead of having a new POA signed on 10/20/2023, both David and Leigh had the option under RCW 11.125.200(1)(a):

“A person shall either accept an acknowledged power of attorney or request a certification or a translation no later than seven business days after presentation of the power of attorney for acceptance.”

Neither Leigh or David attempted to request a certification or a translation.

Neither Leigh, nor David filed a Court petition under RCW 11.125.160, instead, they conspired to have a POA executed extra judicially. In addition, RCW 11.125.260(6) provides that an agent can:

“Engage, compensate, and discharge an attorney, accountant, investment manager, expert witness, or other advisor.”

And RCW 11.125.260(9) states that Brian, as agent can:

“Access communications intended for, and communicate on behalf of the principal, whether by mail, electronic transmission, telephone, or other means.”

These statutes indicate that Brian was entitled to the communications of Harold, and papers, and was authorized to hire an attorney for Harold when Leigh quit his representation of Harold on 10/16/2023, even writing to David and Brian on the same day:

“As such, your parents are now free to obtain other legal counsel going forward” (*CP#1, pg. 705*).

Leigh’s claim and the Commissioner agreed he had the right to seek Harold’s okay to give over he and Carolyn’s legal papers. However, RCW 11.125.240 unequivocally gives Brian the power to any papers that the principal had a right to.

One of the big claims Leigh makes is that Brian cannot be a POA as he is an ex-felon. The fact Brian has a felony that is over thirty-years-old is not relevant. Randy stated that an ex-felon cannot be a fiduciary. RCW 11.125.240(1)(g) states:

“Exercise fiduciary powers that the principal has authority to delegate.”

The language of RCW 11.125.340 begins:

“Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to claims and litigation authorizes the agent, without the need for appointment of a guardian or guardian ad litem under Title 4 RCW.”

Here the requirements of a guardian, or a conservator are not necessary to act on behalf of the principal. Making the argument made by Randy that

Brian is not eligible to be a POA because he cannot be a guardian or
moot. The Uniform Power of Attorney Act does not require anything of an
Agent except their willingness to take on the task RCW 11.125.130:

“Except as otherwise provided in the power of attorney, a person
accepts appointment as an agent under a power of attorney by
exercising authority or performing duties as an agent or by any
other assertion or conduct indicating acceptance.”

Leigh and David could have addressed their dissatisfaction with
Harold’s decisions by petitioning the court under RCW 11.125.160(2),
which states:

“A person designated in subsection (1) of this section may file a
petition requesting the court to construe a power of attorney or
grant any other appropriate relief.”

David’s *Petition for Guardianship*, for Harold happened after the
conspiracy between Leigh and David culminated in Leigh coercing Harold
to sign papers. Leigh stated:

“I told [Harold] that I would remain his legal counsel provided that
he designate David as his sole POA Agent, as David had done an
exemplary job managing his assets to date and that I was
concerned over having Brian in a position of authority over his
assets. So based on my advice, as his legal counsel, Harold signed
a new Durable Power of Attorney designating David in that
position (which I brought with me to that meeting if Harold so
chose)” (*CP#51*, pg. 68).

Harold stated in his *Declaration*:

“Leigh Bennett got me to sign papers I did not understand...I
cannot state clearly enough that I did not intend, nor want my son
Brian to be discontinued...Please do not take my son Brian away
from me” (*CP#10*, pg. 653).

In Harold’s own words he is direct in stating he did not want Brian to stop
being his agent. Thus, Leigh violated both Harold and Brian’s rights to

have the POA on 10/16/2023 lawfully abided by. The Uniform Power of Attorney Act provides rights, authority, and of course liability, but Leigh did not hesitate to take action and threatened to abandon Harold in his own room at Pacifica.

Clearly communication between Leigh and David occurred. An attorney wouldn't just designate whoever they thought would be the best agent, would they? The time line demonstrates that on 10/20/2023, in the early morning Leigh visits Harold for one half of an hour. With him he has a revocation of POA, and a new POA naming David as sole agent. He has Harold sign them both, and he himself notarizes them. There is not witness, and the notary is Harold's ex-lawyer, offering threats of abandonment, along with the quid pro quo that Leigh will stay on only if Harold removes Brian.

And what if David were a stand-up guy and when Leigh brought him the new POA naming him as sole agent he screamed foul knowing, and acknowledging Brian as the sole POA. On 10/17/2023, David e-mailed Brian and said:

“Leigh Bennett’s legal representation of our parents has been disappointing at best. He dropped the ball providing legal opinions for consideration – and that did not happen. Lori is in the process of transferring funds. She will be providing a Word document by the end of today that outlines all the actions you will need as sole POA to take on the bill paying” (*No. 86434-3, CP#21, pg. 249*).

What would Leigh have done then if David refused to be sole agent, go back and change it? Unfortunately, David does not seem to be a straight shooter.

David engaged the services of Julia and Chris who practice elder law.

Because Julia sent Brian an e-mail on 10/23/2023 at 2:00 in the afternoon:

“I represent David Malnes as Attorney-in-Fact for your father, Harry Malnes” (*No. 86434-3, CP#5, pg. 349*).

It is unknown if Julia and Chris had been engaged by David, on behalf of Harry, prior to 10/20/2023 or after. Either way it is clear that on 10/23/2023 Julia and Chris believed they represented Harry’s agent, “attorney-in-fact,” and by extension they represented Harry. However, on 10/27/2023, Lindeman and Lee signed the *Petition for Guardianship...* for Harold Malnes. Because Brian had not heard from Leigh yet, all he could assume was David had hired an attorney to protect the interests of Harold using his newly minted POA under RCW 11.125.260(6):

“Engage, compensate, and discharge an attorney, accountant, investment manager, expert witness, or other advisor.”

David’s hiring an elder law firm can have only two purposes: enforce the POA signed on 10/20/2023, or David, Julia, and Chris had already formulated a plan to petition for the guardianship they all eventually signed on 10/27/2023. But of course, the need for an attorney only seemed to occur after Leigh coerced Harold to sign the POA making David sole POA.

The facts and the timeline support the conclusion that David and Leigh conspired to have the POA signed on 10/20/2023. Thus, both men conspired to withhold the right of Harold to freely select, without undue

persuasion, who he wants to be his agent. And Brian, under the Uniform Power of Attorney Act, had the right to act, unmolested, as Harold's agent.

Conspiracy against rights is defined in 18 U.S. Code § 241:

“If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same.”

This definition is helpful, because it is doubtful the United States Department of Justice will prosecute this conspiracy, however, relief exist in Federal District court under 42 U.S.C. § 1985(3):

“If two or more persons in any State or Territory conspire...for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws... the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.”

3. The VAPO signed on 10/23/2023 against Leigh Bennett outlines several restrictions and restraints, which Leigh violated after being personally served the VAPO. This is Contempt of Court.

RCW 7.105.410(1)(a)(i) states:

“Whenever...a vulnerable adult protection order is granted under this chapter...and the respondent or person to be restrained knows of the order, a violation of any of the following provisions of the order is a gross misdemeanor, except as provided in subsections (4) and (5) of this section: The restraint provisions prohibiting acts or threats of violence against, or stalking of, a protected party, or the restraint provisions prohibiting contact with a protected party.”

The *Motion for Order to Go to Court* (CP#59, pg. 59) lists three violations of the VAPO issued in this cause. RCW 7.105.450(3) clearly states:

“A violation of a... vulnerable adult protection order...shall also constitute contempt of court and is subject to the penalties prescribed by law.”

Leigh did not obey **General Restraint A.** of the VAPO signed on 10/24/2023, which was reissued on 11/7/2023. Leigh was ordered:

“Do not...threaten or stalk the protected person.”

On 10/31/2023, Leigh, through his counsel Randy Boyer, sent the following e-mail to Brian:

“Maybe a referral to APS is warranted.”

This message was sent without a salutation, or a valediction. The ominous nature, and connotation of these seven words are a threat, otherwise, if Leigh and his attorney believed: “APS is warranted,” then they should have called APS instead of threatening to.

“Threat” is defined in RCW 9A.04.110(28)(c):

“[M]eans to communicate, directly or *indirectly* the intent [t]o subject the person threatened or any other person to physical confinement or restraint”

(emphasis added). By threatening to call Adult Protective Services (APS), Leigh, by and through his attorney Randy Boyer, communicated the menacing idea Harold Malnes could have his freedoms taken away through a guardianship process making those seven words in the e-mail sent on 10/31/2023 a threat.

The last pages of the VAPO served on Leigh contain “Attachment A: Definitions,” which has a section:

“‘Stalking’ means any of the following:

- (a) Any act of stalking as defined under RCW 9A.46.110;
- (b) Any act of cyber harassment as defined under RCW 9A.90.120; or
- (c) Any course of conduct involving repeated or continued contacts, attempts to contact, monitoring, tracking, surveillance, keeping under observation, disrupting activities in a harassing manner, or following of another person that:
 - (i) Would cause a reasonable person to feel intimidated, frightened, under duress, significantly disrupted, or threatened and that actually causes such a feeling;
 - (ii) Serves no lawful purpose; and
 - (iii) The respondent knows, or reasonably should know, threatens, frightens, or intimidates the person, even if the respondent did not intend to intimidate, frighten, or threaten the person.”

On 11/6/2023, Brian was sent an e-mail from Jennifer Jones (Jennifer is Randy’s assistant) that included an unidentified conversation. Additionally, Leigh presented evidence to the court by way of the *Declaration of Jennifer Jones (CP#20, pg. 137-138)*, which included a written transcript of this unidentified conversation. This is a clear violation of RCW 9.73.030(1)(a-b):

- “(1) Except as otherwise provided in this chapter, it shall be unlawful for any individual, partnership, corporation, association, or the state of Washington, its agencies, and political subdivisions to intercept, or record any:
- (a) Private communication transmitted by telephone, telegraph, radio, or other device between two or more individuals between points within or without the state by any device electronic or otherwise designed to record and/or transmit said communication regardless how such

device is powered or actuated, without first obtaining the consent of all the participants in the communication;
(b) Private conversation, by any device electronic or otherwise designed to record or transmit such conversation regardless how the device is powered or actuated without first obtaining the consent of all the persons engaged in the conversation.”

As such, the transcript of the alleged phone conversation presented by Jennifer is a clear violation of privacy made on behalf of Leigh.

Accordingly, all persons responsible for violating the privacy rights of Harold, Brian, and an “unknown party,” without “first obtaining the consent of all persons engaged in the conversation,” are subject to the penalties provided for in RCW 9.73.090.

The Rules of Evidence clearly state in ER 901(a):

“The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.”

As no evidence was presented as to the date of the call, what number was called, what number received, time of the call, identification of all voices on the call, etc., the entirety of the *Declaration of Jennifer Jones*, needed to be thrown out.

Additionally, RCW 9.73.050 speaks to the admissibility of the *Declaration of Jennifer Jones*:

“Any information obtained in violation of RCW 9.73.030 or pursuant to any order issued under the provisions of RCW 9.73.040 shall be inadmissible in any civil or criminal case in all courts of general or limited jurisdiction in this state, except with the permission of the person whose rights have been violated

in an action brought for damages under the provisions of RCW 9.73.030 through 9.73.080.”

The analysis in Washington v. Smith, 189 Wash.2d 655, 405 P.3d 997

(2017) states:

“‘As with all questions of law, questions of statutory interpretation are reviewed de novo.’ Berrocal v. Fernandez, 155 Wn.2d 585, 590, 121 P.3d 82 (2005); State v. Kipp, 179 Wn.2d 718, 726, 317 P.3d 1029 (2014). “Washington State’s privacy act is considered one of the most restrictive in the nation.” Kipp, 179 Wn.2d at 724 (citing State v. Townsend, 147 Wn.2d 666, 672, 57 P.3d 255 (2002). RCW 9.73.030(l)(b) provides in relevant part: ‘Except as otherwise provided in this chapter, it shall be unlawful for any individual to record any:...[p]rivate conversation, by any device electronic or otherwise designed to record or transmit such conversation regardless how the device is powered or actuated without first obtaining the consent of all the persons engaged in the conversation.’

...

‘Evidence obtained in violation of the act is inadmissible for any purpose at trial. RCW 9.73.050.’ Kipp, 179 Wn.2d at 724. Nevertheless, the above noted statute provides an exception. RCW 9.73.030(2) provides in relevant part, ‘Notwithstanding subsection (1) of this section, . conversations (a) of an emergency nature, . or (b) which convey threats of. . . bodily harm...may be recorded with the consent of one party to the conversation.’”

The case of Washington v. Smith examines a recording of a message being left inadvertently on a machine and the Washington Supreme Court found the message was admissible. As Commissioner Micheli asked during the hearing on 1/11/2024:

“Wasn’t it a voicemail that was left on Mr. Bennett’s phone? Isn’t that how it came to be recorded?” (RT pg. 16).

Although the conversation might have been left on a message machine by Brian, there is not an emergency, no bodily harm has been reported, so the conversation presented into evidence by Jennifer, Leigh, and Randy

does not reach the high standard created to protect privacy in the State of Washington. Privacy, being a civil right in the State of Washington, Brian, Harold, and the unnamed other individual recorded and filed as evidence into this cause may all avail themselves of the corrective relief found in RCW 9.73.060:

“Any person who, directly or by means of a detective agency or any other agent, violates the provisions of this chapter shall be subject to legal action for damages, to be brought by any other person claiming that a violation of this statute has injured his or her business, his or her person, or his or her reputation. A person so injured shall be entitled to actual damages, including mental pain and suffering endured by him or her on account of violation of the provisions of this chapter, or liquidated damages computed at the rate of one hundred dollars a day for each day of violation, not to exceed one thousand dollars, and a reasonable attorney's fee and other costs of litigation.”

And of course, privacy is a civil right as described by Washington law, so it would be appropriate for the three individuals who's privacy was violated to seek relief under 42 U.S.C. § 1985(3).

As sending the e-mail containing this alleged conversation including Harold that serves no legal purpose, is an invasion of privacy, and is thus itself another instance of harassment by Leigh. RCW 9A.46.010 states:

“The legislature finds that the prevention of serious, personal harassment is an important government objective. Toward that end, this chapter is aimed at making unlawful the repeated invasions of a person's privacy by acts and threats which show a pattern of harassment designed to coerce, intimidate, or humiliate the victim. The legislature further finds that the protection of such persons from harassment can be accomplished without infringing on constitutionally protected speech or activity.”

Thus, this is the second instance of harassment committed by Leigh. And by definition Leigh has committed the act of stalking against Harold in violation of the VAPO Mr. Bennett was served with. RCW 9A.46.110(1)(a)(i) states:

“A person commits the crime of stalking if, without lawful authority the person: Intentionally and repeatedly harasses another person.”¹

Additionally, the VAPO itself states:

“Do not harass...or use phone, video, audio or other electronic means to record...the protected person.”

Clearly, by writing out the transcript of this alleged conversation Leigh is unambiguously stalking Harold, the vulnerable adult in this cause.

On 11/1/2023, Leigh spoke with the Court Visitor in Case No. 23-4-02071-31, *No. 86687-7*. This interaction between the Court Visitor and Leigh, along with violations of a court order and a conflict of interest with Brian, led to the dismissal of the Court Visitor under RCW 11.130.280(3)(a)(iii).

In his *Response in Opposition* (CP#50, pg. 101-124), Leigh provided an e-mail exchange that is protected under the First Amendment to the United States Constitution’s (and Article I, Section 4 and 5 of the Constitution of the State of Washington’s) protection of the Brian’s “right to petition the government for a redress of grievances.”

Leigh provided Exhibit A of his *Response in Opposition* (CP#50, pg. 101-124), which is a filing by the Court Visitor, in Case #23-4-02071-31,

¹ RCW 9A.46.110(6)(i): “‘Repeatedly’ means on two or more separate occasions.”

No. 86687-7. “A Court Visitor is the eyes and ears of the court,”² in cases and is thus a representative of government for purposes of the First Amendment. The Court Visitor introduced herself as a person participating in a government service, ordered by the court. RCW 9A.04.110(13) states:

“‘Officer’ and ‘public officer’ means a person holding office under a city, county, or state government, or the federal government who performs a public function and in so doing is vested with the exercise of some sovereign power of government, and includes all assistants, deputies, clerks, and employees of any public officer and all persons lawfully exercising or assuming to exercise any of the powers or functions of a public officer.”

Additionally, RCW 9A.04.110(23) states:

“‘Public servant’ means any person other than a witness who presently occupies the position of or has been elected, appointed, or designated to become any officer or employee of government, including a legislator, judge, judicial officer, juror, and any person participating as an advisor, consultant, or otherwise in performing a governmental function.”

Here, the statute is unambiguous, our inquiry ends without de novo review, *State v. Velasquez*, 176 Wn.2d 333, 336, 292 P.3d 92 (2013).

The right to petition the government is a cornerstone of our democratic system. The right of the Brian outweighs any objection to the speech used when exercising the First Amendment.

“The story of the United States is a story of dissent. Born from an unwillingness to bow to arbitrary rule, our national ethos has consistently embraced the ability of individuals to change history through their voices.” *McKesson v. Doe*, 592 U.S. ____ (2020).

Further,

² A quote by the Court Visitor during the hearing on motion for contempt held on 11/20/2023 before Commissioner Melissa Kirkley in the Superior Court of Snohomish County.

“‘[T]he right to petition extends to all departments of the [g]overnment.’ Cal.Motor Transp. Co. v. Trucking Unlimited, 404 U.S. 508, 510, 92 S. Ct. 609, 30 L. Ed. 2d 642 (1972). Thus, the right to petition includes the rights to (1) ‘complain to public officials and to seek administrative and judicial relief,’ Jackson v. New York State, 381 F. Supp. 2d 80, 89 (N.D.N.Y. 2005) (quoting Gagliardi v. Vill. of Pawling, 18 F.3d 188, 194(2d Cir. 1994)); (2) petition ‘any department of the government, including state administrative agencies,’ Ctr. For United Labor Action v. Consol. Edison Co., 376 F. Supp. 699, 701 (S.D.N.Y. 1974),” In re Marriage of Meredith, 148 Wn. App. 887 (Wash. Ct. App. 2009).

Leigh, in his Exhibit A, *Response in Opposition* (CP#50, pg. 101-124), has attempted to use the Brian’s written First Amendment protected speech as a defense of his actions.

“[Brian] attached the Court Visitor’s *Response to his Memorandum*...The document filed deleted much of the document pages. A full copy of the Response is attached hereto” (CP#50, pg. 101-124).

Brian did not include the portions of the document in question (*see* his *Memorandum in Support of MTSC – Contempt* (CP#49, 125-129)), because as that portion was his protected speech under the First Amendment’s Petition Clause. The Court Visitor used this protected speech as a counterclaim in her Response, this is a violation of RCW 4.24.510, which states:

“A person who communicates a complaint or information to any branch or agency of federal, state, or local government, or to any self-regulatory organization that regulates persons involved in the securities or futures business and that has been delegated authority by a federal, state, or local government agency and is subject to oversight by the delegating agency, is immune from civil liability for claims based upon the communication to the agency or organization regarding any matter reasonably of concern to that agency or organization. A person prevailing upon the defense provided for in this section is entitled to recover expenses and

reasonable attorneys' fees incurred in establishing the defense and in addition shall receive statutory damages of ten thousand dollars. Statutory damages may be denied if the court finds that the complaint or information was communicated in bad faith.”

The “NOTES” of RCW 4.24.510 state:

“Intent—2002 c 232: ‘Strategic lawsuits against public participation, or SLAPP suits, involve communications made to influence a government action or outcome which results in a civil complaint or counterclaim filed against individuals or organizations on a substantive issue of some public interest or social significance. SLAPP suits are designed to intimidate the exercise of First Amendment rights and rights under Article I, section 5 of the Washington state Constitution.’”

4. Randy Boyer violated the privacy of Brian, Harold, and another person. Randy also exaggerated the criminal history of Brian. Either he lied under oath, RCW 9A.72.020, or if he was not sworn then he violated RCW 9A.76.175.

Perjury in the first degree is stated as RCW 9A.72.020(1):

“A person is guilty of perjury in the first degree if in any official proceeding he or she makes a materially false statement which he or she knows to be false under an oath required or authorized by law.”

The alternative to Randy lying in open court would be a violation of making a false or misleading statement to a public servant according to RCW 9A.76.175:

“A person who knowingly makes a false or misleading material statement to a public servant is guilty of a gross misdemeanor. ‘Material statement’ means a written or oral statement reasonably likely to be relied upon by a public servant in the discharge of his or her official powers or duties.”

On 1/11/2024 Randy stated in court:

“But they do look if it’s a serious felony, talking about physical or threatening, and I think the conviction of Mr. Malnes still falls under that. So, he couldn’t be a guardian. And so, I believe, from

my experience, and I think the case law supports it, that he's not entitled to be power of attorney"

Very simply Brian does not have any violence in his history. In fact, Randy was served Brian's complete criminal biography.

5. Snohomish County Superior Court erred by not providing Brian information on how to access the Zoom meeting for the Hearing to consider his *Motion for Revision* (CP#73, pg. 364-368) on 2/6/2024.

Under RCW 7.105.205(5)(a):

"If a hearing is held with any parties or witnesses appearing remotely, the following apply: Courts should include directions to access a hearing remotely in the order setting the hearing and in any order granting a party's request for a remote appearance. Such orders shall also include directions to request an interpreter and accommodations for disabilities."

Brian was not given the information necessary from the ADA Coordinator and the Judge's clerk. Documents are available for this claim. Brian is simply aware that he cannot introduce new material to this court with prior approval. At this time Brian request permission to add documents to the record.

IV. CONCLUSION

Under RCW 7.105.225, the Court "shall issue a protection order if it finds by a preponderance of the evidence that the petitioner has provided the required criteria." RCW 7.105.225(1). Brian has met his burden against Leigh Bennett. The evidence demonstrates that Leigh Bennett took it upon himself to induce Harold Malnes to change his position on his

previous choices (at least twice Harold chose Brian) to have Brian Malnes as his Power of Attorney.

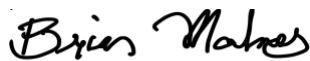
Brian asks the court to grant his VAPO against Leigh Bennett. That the court find that Leigh acted contemptuously in direct violation of the VAPO signed against him.

Brian asks the court to find that Randy Boyer lied to the court in representing Brian's criminal past, saying: "Brian's previous convictions of a felony (crimes based upon the taking of another's money by lethal force)" (CP#68, pg. 392). These lies are libelous and subject to RCW 9.58.010.

Brian asks the court to issue an advisement to the Superior Court of Snohomish County to publish dates and times of all Zoom meeting for not only Commissioners, but for the Judges who Review Commissioners under RCW 2.24.050.

I certify that this document contains 9,284 words, pursuant to RAP 18.17.

December 10th, 2024

A handwritten signature in black ink that reads "Brian Malnes". The signature is written in a cursive, flowing style.

Brian Malnes, *pro se*
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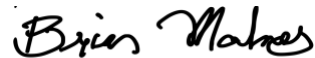
DECLARATION OF SERVICE

The undersigned declares that on this date I caused to be served by U.S.
First-Class mail postage prepaid and via-e-mail the foregoing document
upon the following party:

Randy Boyer
7017 196th St. SW
Lynnwood, WA. 98036
randyedlynlaw@gmail.com

I declare under penalty of perjury under the laws of the State of
Washington that the foregoing is true and correct.

DATED this 10th day of December 2024.

A handwritten signature in black ink that reads "Brian Malnes". The signature is written in a cursive, flowing style.

Brian Malnes, *pro se*

BRIAN MALNES - FILING PRO SE

December 10, 2024 - 11:09 AM

Transmittal Information

Filed with Court: Court of Appeals Division I
Appellate Court Case Number: 86433-5
Appellate Court Case Title: Brian Malnes obo Harold Malnes, Appellant v. Leigh Bennett, Respondent
Superior Court Case Number: 23-2-07781-2

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