

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

NICK HARP, on behalf of himself)
and all those similarly situated,)
)
Plaintiffs,)
)
vs.)
)
OFFICE OF PUBLIC ADVOCACY,)
)
Defendant.)

Case No. 3AN-22-07193 CI

⑧ ORDER GRANTING PLAINTIFFS' MOTION
FOR PARTIAL SUMMARY JUDGMENT

Pursuant to Alaska Civil Rule 56(a), plaintiff Nick Harp has moved this Court for partial summary judgment on his first cause of action against the defendant, the Office of Public Advocacy ("OPA"), alleging a violation of AS 13.26.316. This statute requires, in pertinent part, that OPA encourage its wards "to participate to the maximum extent of the ward's capacity in all decisions that affect the ward," and "assure through the initiation of court action and other means that the ward enjoys all personal, civil, and human rights to which the ward is entitled." AS 13.26.316(a), (c)(4).

This Court, being fully advised in the premises, hereby GRANTS the plaintiff's motion, holding that OPA violated AS 13.26.316 as a matter of law based on the following findings:

First, OPA was Mr. Harp's guardian from August 2012 until May 31, 2022.

Second, on May 3, 2022, in Mr. Harp's guardianship case,¹ OPA moved to resign as Mr. Harp's guardian, and for a private company called Cache Integrity Services to be substituted as his new guardian.

Third, the law required OPA to ensure that various procedural safeguards were afforded to Mr. Harp before the changing of his guardian. These safeguards include:

- A ward is entitled to be represented by an attorney.²
- If a ward is financially unable to employ an attorney, the ward is entitled to a court-appointed attorney.³
- The court must appoint a visitor.⁴
- The court visitor must serve a copy of the petition to the ward.⁵
- The court visitor must explain and provide written notice of a ward's right to counsel.⁶

¹ *In the Matter of Nick Harp*, Case No. 3AN-12-01085PR.

² AS 13.26.226(b).

³ *Id.*; see also *In re Protective Proceeding of Amy D.*, 502 P.3d 5, 10 (Alaska 2022) (holding that the "protective procedures include the appointment of counsel for an indigent person").

⁴ AS 13.26.226(c).

⁵ AS 13.26.231(a)(2).

⁶ AS 13.26.231(a); see also *Amy D.*, 502 P.3d at 10 (Alaska 2022) (holding that the "protective procedures" include "the court visitor's duty to explain to the respondent the scope of the respondent's right to counsel, including the right to have an attorney designated to advise and represent the respondent before and at any judicial hearings.").

- The court visitor must offer assistance in contacting an attorney.⁷
- A ward and their attorney, among others, are entitled to notice of any hearing for any guardianship proceedings.⁸
- Such “notice must set out the date, time, place, purpose, and possible consequences of the hearing and the rights of the ward or respondent and any other parties to the proceedings.”⁹

Fourth, Mr. Harp’s guardian was changed from OPA to Cache Integrity Services on May 31, 2022. Thomas McDuffie, Robert Bond II, and Jody Corazzini of Cache Integrity Services were appointed as Mr. Harp’s new co-guardians.

Fifth, before the changing of Mr. Harp’s guardian, OPA did nothing to ensure that the aforementioned procedural safeguards were afforded to Mr. Harp. Specifically, this Court finds the following undisputed failures:

- Mr. Harp was not represented by counsel.
- Mr. Harp was not appointed counsel.
- Mr. Harp received no written notice from OPA (or anyone else) about his right to counsel.
- Mr. Harp received no assistance from OPA (or anyone else) in contacting counsel.

⁷ AS 13.26.231(a).

⁸ AS 13.26.296(a).

⁹ AS 13.26.296(c).

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- Mr. Harp received no written notice from OPA (or anyone else) about the proposed changing of his guardian.
- Mr. Harp received no copy of OPA's filing seeking to change his guardian to Cache Integrity Services.
- Mr. Harp received no written notice from OPA (or anyone else) of any hearing about the proposed changing of his guardian.
- Mr. Harp was given no hearing to object to the proposed changing of his guardian.
- Mr. Harp received no written notice from OPA (or anyone else) about the possible consequences of the proposed changing of his guardian.
- Mr. Harp received no written notice from OPA (or anyone else) about his rights as to the proposed changing of his guardian.
- Mr. Harp never waived his right to counsel.

Accordingly, partial summary judgment is hereby entered on plaintiff's first cause of action against OPA. Plaintiff's other causes of action against OPA, the question of class certification, and the appropriate relief will remain for future litigation.

DATED this 20th day of Sept, 2022 at Anchorage, Alaska.

I certify that on 9/20/23 a copy
of the following was mailed/faxed/hand-delivered
to each of the following at their addresses of record.

Administrative Assistant

M. Ferontic
G. Dudukjian
S. Fletcher
J. Davis
N. Star
A. Miller


UNA S. GANDBHIR
Superior Court Judge

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