

EX PARTE DEPARTMENT
Hearing Date: April 20, 2023
Hearing Time: 10:30 A.M.

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

CHARLES A. HAROLD, JR., OBO VA
SHARON M. HAROLD,

Petitioner,

v.

DAVID ALLEN PAICE,

Respondent.

Case No. 23-2-03980-7 KNT

**SUPPLEMENTAL OPPOSITION TO
PETITION FOR PROTECTION
ORDER**

I. INTRODUCTION

When supported by admissible evidence of conduct that meets the statutory standard for issuance of a protective order under RCW 7.105.225, a civil-protection petition shields a vulnerable adult from abuse, abandonment, neglect, or financial exploitation. But when a petition for a civil-protection order is propped up by groundless conspiracy theories of foul play, when it regurgitates years-old factual disputes that are already set for trial before another judge in another matter (none of which are emergencies or could result in irreparable harm to the vulnerable adult), and when it falls far short of the statutory bar for entry of a civil-protection order, the petition becomes a bludgeon for perpetuating family dysfunction, not a shield.

This Petition for Protection Order is a legal bludgeon that must be dismissed. The Petition contains no evidence of “financial exploitation,” “neglect,” “abuse,” or “abandonment” as required by Washington’s civil-protection statutes; no evidence that Mr. Paice used the vulnerable adult’s trust funds or property for his own or another’s “profit or advantage”; and no evidence that Mr.

1 Paice, who serves as the Trustee of the vulnerable adult's irrevocable trust, withheld funds from
2 the vulnerable adult or breached his fiduciary duties. The Petition was filed by an upset residuary
3 beneficiary of the vulnerable adult's trust in order to open up a new front in the campaign against
4 Mr. Paice and smear him before a new judicial officer. This Court must see the Petition for what
5 it is: Mr. Harold's attempt to judge-shop his way to an order against Mr. Paice.

6 The Court should reject Mr. Harold's Petition in full. Respectfully, Mr. Paice requests that
7 the Reissued Temporary Protection Order be dissolved and that the Petition for Protection Order
8 be dismissed with prejudice.

9 **II. SUPPLEMENTAL STATEMENT OF FACTS**

10 Although Mr. Paice has already filed a lengthy Opposition to Petition for Protection Order
11 ("Opposition"), Mr. Paice respectfully submits this Supplemental Opposition in order to explain
12 certain recent facts that support Mr. Paice's position and weigh in favor of dismissing the Petition.

13 **A. Mr. Paice has filed a complete accounting of Ms. Harold's trust funds: there are no** 14 **funds belonging to the Harold Trust or Ms. Harold in his possession.**

15 Mr. Paice has filed a complete accounting of Ms. Harold's trust funds. *See* Ex. A to Third
16 Schilbach Decl.¹ (containing accountings from January 1, 2010 to December 31, 2021); Exs. A &
17 B to Fourth Paice Decl.² (containing accountings from January 1, 2022 to December 31, 2022, and
18 bank and investment statements from January 1, 2023 to March 31, 2023). These accountings and
19 financial statements show that Mr. Paice does not currently possess—and has never purposefully
20 possessed—funds belonging to Ms. Harold or the Harold Trust, and they show that Mr. Paice has
21 never taken money (including a salary) from Ms. Harold or the Harold Trust for his own benefit
22 or advantage. *See* Third Schilbach Decl., Ex. A; Fourth Paice Decl., Ex. A.

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26 ¹ Declaration of Aleksander R. Schilbach dated March 17, 2023.

27 ² Declaration of David A. Paice dated April 14, 2023.

1 **B. Mr. Paice presents no threat of imminent harm to Ms. Harold or the Harold Trust:**
2 **Judge Yip continued the TEDRA Proceeding involving the parties to November 2023**
3 **and the disputes that form the basis of this Petition, which are duplicative of the**
4 **disputes before Judge Yip, will soon be going to TEDRA mediation.**

5 In early December 2022, Mr. Paice, as Trustee of the Harold Trust, filed a Verified Petition
6 for Approval of Interim Account; For Discharge of Successor Trustee; and For Appointment of
7 Successor Trustee (“Verified Petition”) in *In re the Sharon M. Harold Irrevocable Trust dated*
8 *November 12, 2004*, King County Superior Court cause number 22-4-08326-1 KNT (“TEDRA
9 Proceeding”). Third Schilbach Decl., Ex. A. In early February 2023, this Court certified the
10 TEDRA Proceeding for trial before Judge Wyman Yip; the Clerk issued a 90-day trial only
11 schedule; and on April 7, Judge Yip granted Mr. Paice’s renewed motion to continue the trial date
12 from May 1, 2023 to November 13, 2023. Fourth Schilbach Decl., Ex. A.³ Mr. Paice has already
13 served a Notice of Mediation Pursuant to RCW 11.96A.300. Fourth Schilbach Decl., Ex. B. The
14 disputes and complaints asserted in this Petition are duplicative of the Objections filed to Mr.
15 Paice’s accounting in the TEDRA Proceeding. None of these disputes present a need for an
16 emergency remedy. Nor are they likely to cause imminent harm to Sharon Harold (the Objections
17 to Mr. Paice’s accountings relate to historical matters) and all of these disputes can be resolved in
18 mediation.

19 **C. Mr. Paice, as Trustee, has made the distribution of \$20,740.50 in satisfaction of the**
20 **Court’s Reissued Temporary Order and continues to make Ms. Harold’s regular**
21 **distributions.**

22 After this Court entered the Reissuance of Temporary Protection Order and Notice of
23 Hearing (“Reissued Temporary Order”) on March 24, 2023, which unfroze one of the Harold
24 Trust’s checking accounts, Mr. Paice, as Trustee, made a \$20,740.50 distribution to Ms. Harold.
25 Fourth Schilbach Decl., Ex. G (copy of check overnighted to Ms. Harold). Additionally, Mr. Paice
26 has resumed the monthly distributions to Ms. Harold and stands ready to make additional
27 distributions for Ms. Harold’s care and housing needs as they are made known to him.

³ Declaration of Aleksander R. Schilbach dated April 14, 2023.

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2 **D. Mr. Paice, as Trustee of the Harold Trust, is standing by to make appropriate**
3 **distributions for Ms. Harold's assisted-living and healthcare needs, but Mr. Harold**
4 **has not answered a request for specific instructions and guidance as to what Ms.**
5 **Harold needs from the Harold Trust.**

6 Although Mr. Paice, as Trustee of the Harold Trust, is standing by to help support Ms.
7 Harold's healthcare needs, Mr. Harold has failed to answer Mr. Paice's request. Fourth Schilbach
8 Decl., Ex. F (letter response to Mr. Harold's March 24 e-mail). In his March 24 e-mail to Mr.
9 Paice's counsel, Mr. Harold wrote:

10 I also want David to hear directly from me that Mom was in the
11 emergency room once again, this morning at approximately 4:00 am
12 for a stress related medical issue arising directly from this case. We
13 are reserving her medical privacy under HIPPA so that is all we will
14 say for now.

15 *Id.*, Ex. E. On March 31, Mr. Paice's counsel responded back to Mr. Harold to explain that Mr.
16 Paice was standing by to make distributions for the benefit of Ms. Harold's healthcare and assisted-
17 living needs:

18 Please know that Mr. Paice has always been, and continues to be,
19 concerned for Ms. Harold's health, well-being and comfort. If her
20 needs have changed such that she should be in assisted living, the
21 Harold Trust and its assets are available for that purpose. Setting
22 aside Mr. Harold's false claims of the Trustee's wrongdoing, the
23 Trustee has always been, and continues to be, willing to make
24 appropriate distributions to Ms. Harold, or on her behalf to third-
25 party care providers, from the Harold Trust. *If there is any*
26 *documentation that a care setting has been recommended or that*
27 *she has a particular housing alternative that she would like to*
pursue, please provide us with that information immediately so that
the Trustee can work to make funds available in her best interest.

As you know, because of Mr. Harold's baseless Protection Order,
all but one of the Harold Trust's bank accounts remain frozen.
However, if there is a specific expenditure that should be made for
Ms. Harold's care, including, for example, specific medical invoices
or an admission or entrance fee for any alternative housing or care
arrangement, then please present the request or invoice to the
Trustee so that he can work with you to jointly request the Court
unfreeze the Harold Trust's accounts to pay such an expense.

Id., Ex. F at 2 (emphasis added). To date, Mr. Harold has failed to respond to Mr. Paice's request
for documentation or specific medical needs of Ms. Harold. *Id.* ¶ 6.

1 **III. EVIDENCE RELIED UPON**

2 This Supplemental Opposition relies upon the Declaration of David A. Paice, and the
3 exhibits thereto (“Fourth Paice Decl.”); the Declaration of Aleksander R. Schilbach, and the
4 exhibits thereto (“Fourth Schilbach Decl.”); and the pleadings on file in this matter, specifically,
5 the pleadings and declarations from the pending TEDRA Proceeding, which are attached to the
6 Third Schilbach Declaration filed in support of Mr. Paice’s Opposition to the Petition for
7 Protection Order.⁴

8 **IV. AUTHORITY**

9 **A. The Petition for Protection Order fails to satisfy RCW 7.105.225(1)(d) because there**
10 **is no evidence that Mr. Paice used Ms. Harold or the Harold Trust’s funds for his or**
11 **another’s advantage or benefit.**

12 Civil-protection orders are not entered automatically as a matter of course. Washington law
13 imposes strict requirements for what must be proved before a protection order can be entered, and
14 this Petition falls far short of meeting those requirements. The Petition alleges a myriad of
15 conspiratorial and bizarre claims but fails to support those claims with evidence. There is no
16 evidence that Mr. Paice engaged in the unauthorized use of funds belonging to Ms. Harold or the
17 Harold Trust, or that he received any benefits or advantages from misusing her or her trust’s
18 property. In short, the record is devoid of evidence that Mr. Paice enriched himself at the expense
19 of Ms. Harold or the Harold Trust.

20 This Petition for Protection Order claims that Mr. Paice, who lives in Burien, has
21 financially exploited Ms. Harold, a vulnerable adult living in Reedsport, Oregon. In order to obtain
22 a vulnerable-adult-protection order based on financial exploitation, a petitioner must prove that the
23 respondent has acted for the respondent or another’s “profit or advantage other than for the
24 vulnerable adult’s profit or advantage”:

25 (1) The court shall issue a protection order if it finds by a
26 preponderance of the evidence that the petitioner has proved the
27 required criteria specified in (a) through (f) of this subsection for

4 A table of the relevant declarations and pleadings filed in support of Mr. Paice’s Opposition is in the Opposition to
Petition for Protection Order. *See* Opposition at 3.

obtaining a protection order under this chapter.

....

(d) For a vulnerable adult protection order, that the petitioner has been . . . financially exploited, . . . or is threatened with . . . financial exploitation . . . by the respondent.

RCW 7.105.225(1)(d).

The term “financial exploitation” means

the illegal or improper use of, control over, or withholding of, the property, income, resources, or trust funds of the vulnerable adult by any person or entity *for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage*. "Financial exploitation" includes, but is not limited to:

(a) The use of deception, intimidation, or undue influence by a person or entity in a position of trust and confidence with a vulnerable adult to obtain or use the property, income, resources, government benefits, health insurance benefits, or trust funds of the vulnerable adult *for the benefit of a person or entity other than the vulnerable adult*;

(b) The breach of a fiduciary duty, including, but not limited to, the misuse of a power of attorney, trust, or a guardianship or conservatorship appointment, that results in the unauthorized appropriation, sale, or transfer of the property, income, resources, or trust funds of the vulnerable adult *for the benefit of a person or entity other than the vulnerable adult*; or

(c) Obtaining or using a vulnerable adult's property, income, resources, or trust funds without lawful authority, by a person or entity who knows or clearly should know that the vulnerable adult lacks the capacity to consent to the release or use of the vulnerable adult's property, income, resources, or trust funds.

RCW 7.105.010(14)(a)-(c) (emphasis added).

The Washington Court of Appeals has confirmed that in order to prove “financial exploitation” there must be evidence of unauthorized use of the property for the user’s (or another’s) benefit. *Gradinaru v. Dep’t of Soc. and Health Servs.*, 181 Wn. App 18, 22, 325 P.3d 209, *review denied*, 181 Wn.2d 1010, 335 P.3d 940 (2014) (analyzing definition of “financial exploitation” in context of chapter 74.34 RCW, Washington’s Abuse of Vulnerable Adults Act).

In *Gradinaru v. Department of Social and Health Services*, the Washington Court of Appeals held that an emotionally distressed caretaker who stole a vulnerable adult’s medically

1 prescribed morphine and drank it in a failed suicide attempt committed financial exploitation of
2 the vulnerable adult because the unauthorized use of the vulnerable adult's property "advanced"
3 the caretaker's goals by making it so that the she "did not have to spend her own money or time
4 finding some other source of morphine." *Id.* Unlike in *Gradinaru*, where there was evidence that
5 the caretaker used a vulnerable adult's property to advance her goal of committing suicide, here,
6 there is no evidence that Mr. Paice ever improperly used property from Ms. Harold or her Trust,
7 let alone that he did so to advance his own goals or enrich himself. Mr. Paice is, after all, married
8 to Ms. Harold's granddaughter and considers himself to be part of Ms. Harold's family. *See, e.g.,*
9 Third Paice Decl. ¶ 6 (describing longstanding positive familial relationship with Ms. Harold until
10 Mr. Harold became involved in Ms. Harold's affairs in September 2022).

11 Here, there is no evidence before the Court that Mr. Paice has improperly or illegally used
12 any funds belonging to either the Harold Trust or Ms. Harold for the benefit of someone other than
13 Ms. Harold. First, the accountings show that Mr. Paice has never taken funds from Ms. Harold or
14 the Harold Trust and that he currently does not possess any of her funds. Had Mr. Paice sought to
15 use the Harold Trust's funds for his own benefit, then he surely would have taken a salary, which
16 the Harold Trust allowed for. The accountings, however, show that Mr. Paice never collected a
17 salary for serving as trustee. He has accounted for each dollar that he received from the Harold
18 Trust, either inadvertently or as a reimbursement, and he has explained—exhaustively—each
19 instance where a third-party might have questioned certain entries on the accountings. For
20 example, the \$1,000 that Mr. Paice accidentally transferred from the Harold Trust to his own
21 account on July 26, 2020 was transferred back to the Harold Trust seconds later that same day; the
22 \$2,500 check Ms. Harold sent her granddaughter (Mr. Paice's wife) in May 2021 as a gift for Ms.
23 Paice's "B DAY[,] GRADUATION[,] VACATION" was sent back to Ms. Harold; and when Mr.
24 Paice bought discounted hotel and airfare for Ms. Harold at her request using his military discount
25 in 2016, the accountings show the payment back from the Harold Trust to Mr. Paice as a
26 reimbursement. *See* Third Schilbach Decl., Ex. A (Verified Petition & accountings from 2010 to
27 2021); First Paice Decl. ¶¶ 8-10 (explaining in detail how allegations of comingling are false).

1 Second, there is no evidence that Mr. Paice maintains a joint USAA bank account with Ms.
2 Harold, as alleged by the Petition. Mr. Harold points to Exhibit 20 as proof of comingling and a
3 jointly held USAA account, but Exhibit 20 shows on its face that Mr. Paice was not a joint account
4 holder with Ms. Harold on that account: the box marked “Add Account Holder(s)” is not checked
5 by Ms. Harold. Mr. Harold’s own exhibit contradicts his claim that Mr. Paice and Ms. Harold are
6 joint holders of that account.

7 Third, the use of the Harold Trust’s funds to pay counsel for the Harold Trust cannot
8 constitute the “illegal or improper use of, control over, or withholding of . . . trust funds of the
9 vulnerable adult” because Article F, ¶ 11 of the Harold Trust explicitly allows the Trustee to hire
10 and pay counsel and, in August 2022, Ms. Harold personally encouraged him to do so because she
11 was outraged by her children’s attacks on him. Third Schilbach Decl., Ex. A to Verified Petition;
12 Opposition at 14 (explaining authority of trustee to hire counsel); Fourth Paice Decl. Ex. C (Ms.
13 Harold texting Mr. Paice that “I want you to charge any money from your attorney to my trust[.]
14 You are NOT TO PAY anything out of your own pocket.”). The payment of attorney fees from
15 the Trust is one of the issues before Judge Yip and, of course, Mr. Paice will abide by whatever
16 his ruling is. Attorney fees are also going to be addressed in the upcoming TEDRA mediation. In
17 the interim, Mr. Paice has refrained from paying attorney fees from the Trust pending resolution
18 of these disputes and has not done so since February 2023.

19 **B. The Court must dismiss the Petition for Protection Order because it fails to meet**
20 **RCW 7.105.225(1)(d)’s requirements. Mr. Paice, as Trustee, remains ready to make**
21 **all necessary distributions for Ms. Harold’s health needs from the Harold Trust, but**
22 **Ms. Harold and her agents have not communicated to Mr. Paice what Ms. Harold’s**
23 **specific needs are.**

24 The Petition for Protection Order alleges that Ms. Harold “received a diagnosis of skin
25 cancer in her tear duct,” and Mr. Harold has alleged that the “Trustee continues to interfere with
26 disability planning and refuses to release trust funds to grantor for assisted living care.” Petition at
27 9; Harold Decl. ¶ 8 (all capitalizations and bold omitted); Fourth Schilbach Decl., Ex. E (“I also
want David to hear directly from me that Mom was in the emergency room once again, this
morning at approximately 4:00 am for a stress related medical issue arising directly from this

case.”). The statement that Mr. Paice “continues to interfere with disability planning and refuses to release trust funds” is simply false and more inflammatory rhetoric without evidentiary support.

Mr. Paice, however, has requested specific invoices for payment and requested specific documentation regarding Ms. Harold’s assisted-living care so that the Harold Trust can pay those expenses for Ms. Harold. *See, e.g.*, Fourth Schilbach Decl., Ex. F (letter to Mr. Harold dated March 31, 2023). To date, however, neither Ms. Harold nor Mr. Harold has provided Mr. Paice with that information. *Id.* ¶ 6. Mr. Paice, as Trustee, has never had decision-making authority over Ms. Harold’s medical needs, and without guidance from Ms. Harold’s authorized agents, the Harold Trust cannot make distributions as to what medical invoices need to be paid or what assisted-living entry fees (if any) need to be paid.

On these facts, the Court should reject any claim that Mr. Paice, as Trustee, has withheld funds from Ms. Harold. There is no reason why Mr. Paice, who is married to Ms. Harold’s granddaughter, would want Ms. Harold’s health or wellbeing to suffer.

C. The Petition is rife with false accusations and conspiratorial theories relating to Mr. Paice, none of which are supported by evidence.

The Petition for Protection Order, the Supplemental Brief in Support of Protection Order for Vulnerable Adult Financial Abuse, and the Declaration of Charles A. Harold in Support of Petition for Protective Order contain false accusations whose only purpose is to smear Mr. Paice and make him look bad before another judicial officer. A few of the many false statements are rebutted below:

- *“Trustee refuses to release trust funds to protected party so she can hire an attorney to defend herself against the Trustee’s TEDRA motion.”*

Facts: Mr. Paice, as Trustee, has always encouraged Ms. Harold to obtain independent legal counsel and has offered to pay for legal counsel. In fact, \$19,282.50 of the \$20,740.50 that the Trustee distributed to Ms. Harold was for Ms. Harold’s attorney’s fees for an attorney that Mr. Harold fired. *See* Third Paice Decl. ¶ 4, Ex. A (explaining distribution for attorney’s fees); Third Schilbach Decl., Ex. F at ¶ 4 (attorney Michelle Blackwell explaining that Mr. Harold terminated her services). The Trustee also made it clear to Judge Yip that the Harold Trust would pay for the costs of a guardian ad litem for Ms. Harold.

- *“Respondents and his attorneys extorted protected party’s trust funds for legal fees because beneficiaries refused to sign a ‘Release and Discharge of Trustee.’”*

Facts: Neither Mr. Paice nor his attorneys have ever extorted anybody—period. Mr. Harold’s own evidence shows his allegation is false. In a letter from September 8, 2022, for example, the Trustee’s attorneys informed Ms. Harold that while a beneficiary may choose not to approve an accounting, a fiduciary may bring the accounting to court for approval. Here is an excerpt from a September 8, 2022 letter from the Trustee’s counsel to Ms. Harold:

We are writing on behalf of our client, Mr. David Paice (“David”), as trustee of the Sharon M. Harold Irrevocable Trust dated November 12, 2004 (“Trust”). We recently sent you a copy of the Trust’s accountings for 2010 through 2021 and asked you to contact our office with any questions related to the Trust or the Trust’s accountings. We understand that you have reviewed and approved the accountings. Accordingly, we ask that you review and sign the enclosed Release and Discharge of Trustee (“Release”) to approve the actions taken by David as disclosed in the accountings and release him for the actions as disclosed in the accountings. We recommend that you seek counsel to review the Release for you before you sign it. Once you have signed it, please send the executed original Release to our office in the enclosed self-addressed stamped envelope at your earliest convenience.

Once we have received the Release we will ask the Trust’s residual beneficiaries (your children and grandchild) to execute a release. If we do not obtain executed releases from all of the residual beneficiaries, then David will need to file a petition to approve the Trust’s accountings with the court. David would strongly prefer not to incur these additional legal and administrative expenses, but he reserves the right to do so if we do not receive an executed release from each beneficiary.

V. CONCLUSION

Civil-protection orders are meant to shield vulnerable adults from harm, not to wound adversaries. This Court should not allow Mr. Harold to use the Petition for Protection Order as a bludgeon against Mr. Paice. The Petition contains falsehoods and conspiratorial allegations unmoored from the facts, and Mr. Harold deliberately brought it before a new judicial officer in order to try to circumvent the TEDRA Proceeding pending before Judge Yip. Mr. Paice respectfully urges this Court to dismiss the Petition with prejudice.

1 RESPECTFULLY SUBMITTED: April 14, 2023

2 LANE POWELL PC

3
4 By: 

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10 *Attorneys for David Allen Paice*

CERTIFICATE OF SERVICE

I certify, under penalty of perjury under the laws of the United States and the State of Washington, that on April 14, 2023, I served a copy of the foregoing document on all counsel of record as indicated below:

Charles A. Harold, <i>Pro Se</i> 1455 N. Tomahawk Road Apache Junction, AZ 85119 chuckharold@gmail.com Petitioner	<input type="checkbox"/> by CM/ECF <input checked="" type="checkbox"/> by Electronic Mail <input type="checkbox"/> by Facsimile Transmission <input checked="" type="checkbox"/> by First Class Mail <input type="checkbox"/> by Hand Delivery <input type="checkbox"/> by Overnight Delivery
Sharon M. Harold, <i>Pro Se</i> 100 River Bend Rd. #103 Reedsport, OR 97467 smharold7@gmail.com	<input type="checkbox"/> by CM/ECF <input checked="" type="checkbox"/> by Electronic Mail <input type="checkbox"/> by Facsimile Transmission <input checked="" type="checkbox"/> by First Class Mail <input type="checkbox"/> by Hand Delivery <input type="checkbox"/> by Overnight Delivery

Executed at Seattle, Washington this 14th day of April, 2023.

/s/ Silvia Webb
Silvia Webb