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Hearing is set: 10/29/21/Schaller Revision

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THURSTON COUNTY, WA
SUPERIOR COURT
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Linda Myhre Enlow
Thurston County Clerk

21-4-00577-34
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Response
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IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
COUNTY OF THURSTON

In re the guardianship of:

Hazel Smith

Case No.: 21-3-00577-34

**Response to Proposed Intervenor's Motion
for Revision**

w/Integrated Declaration

I. Introduction

Comes now, Petitioners Kathryn and Hans Stoker, by and through their counsel of record, Breckan Scott of Breckan Law PLLC, and submits this response to the subject motion. Petitioners request that this Court deny the motion, and affirm the ruling of the Commissioner because 1) the proposed intervenor's interests are adequately represented by current parties pursuant to CR 24(a)(2), and 2) the proposed intervenor has failed to timely and correctly bring this motion for revision before the Court.

II. Relevant Procedural and Factual Background

On July 6, 2021 Commissioner Thomas issued an oral ruling which, in relevant part, denied Mr. Smith's motion to intervene as a matter of right, finding that his interests were adequately represented by the existing parties. On July 8, 2021 and July 9, 2021 (before a written order had been entered), Mr. Smith filed two "Motions for Reconsideration" of the Court's oral rulings. On July 12 and July 16, 2021, Mr. Smith filed two "Motions for Revision" which appear to be identical (or nearly identical) to the 7/8 and 7/9 Motions for Reconsideration except they had a title page stating "Motion for Revision." On 7/29/21, the Court entered a written Order on its oral rulings, including the ruling which is the subject of

Response re: Motion for Revision

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1 the revision request at issue regarding Mr. Smith's Motion to Intervene. Between July 6 and
2 July 29, counsel for Petitioners repeatedly informed Mr. Smith that the Court would likely not
3 consider his Motion unless it was filed *after* the written order, and attempted (in vain) to get
4 an agreement on the form of Order encapsulating the Court's oral ruling prior to 7/29 so that
5 Mr. Smith could then file a properly noted and procedurally correct Motion for Revision. After
6 the written order was entered on 7/29, Mr. Smith did not file a Motion for Revision. There
7 was no Motion for Revision filed within 10 days after the 7/29 Order on Mr. Smith's behalf.

8 On 8/10/21, the Court issued an order consolidating the emergency and nonemergency
9 guardianship cases, and directing that all further pleadings be filed under 21-3-00577-34 and
10 21-3-00578-34, respectively (the Court may recall that there are two different cases tracking
11 together, as one of the children has a different Father) – as such, Petitioners have filed this
12 Response under those correct case numbers. Mr. Smith has refused to recognize the Court's
13 order consolidating the cases, and instead has proceeded under the Emergency Case numbers
14 under a mistaken belief that doing so confers a right for he and Ms. Smith to participate directly
15 without her appointed counsel's involvement.

16 III. Argument and Authority

- 17 1. Mr. Smith's Motion for Revision must be rejected because it is procedurally deficient,
18 and far exceeds the page limits allowed for Motion practice.

19 Motions for Revision are governed by LCR 53.2, which states in relevant part: "A motion
20 for revision must be filed within ten days *after* the commissioner's order of judgment is *entered*
21 (RCW 2.24.050) and must be served in the manner and time required by CR 5 and CR 6." *LCR*
22 *53.2(e)(2)*. A party moving for revision also *shall* either i) present proposed findings of fact
23 and conclusions of law, *or* provide a copy of the transcript of the court commissioner's ruling.
24 *LCR 53.2(e)(3)*. Further, a party must (at the time the motion is filed) schedule a hearing to
25 occur within 30 days after the motion is filed, unless the Court orders otherwise for good cause.

Response re: Motion for Revision

2

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Hearing is set: 10/29/21/Schaller Revision

1 LCR 53.2(e)(5). Subsection (e)(6) of that rule further mandates that the motion “shall be
2 conducted within 45 days unless the Court grants a continuance for good cause” and “[a]
3 motion to continue the hearing must include reasons to support the motion.” The hearing date
4 set by Mr. Smith for this motion for revision far exceeds the timeframes mandated by the rule
5 given that the subject Order was entered on 7/29/21 and the motion for revision is set for
6 10/29/21 – over 60 days later.

7 Further, the “Motion for Revision” which was filed before the Order was entered far
8 exceeds the 20 double spaced, 12 point font requirements mandated by local rule. If this Court
9 stops considering material after the allowed limit, it is questionable whether the Motion even
10 includes any coherent requests for revision of the denial of Mr. Smith’s Motion to Intervene.

11 2. Mr. Smith’s Motion for Revision should be rejected because the Commissioner’s
12 ruling was correct in that his interests are adequately represented by the current
13 parties.

14 CR 24(a)(2) provides that, even when an applicant otherwise would have intervention as
15 a matter of right, that the intervention may still be denied if “the applicants interest is
16 adequately represented by existing parties.” In the case at hand, the Commissioner was correct
17 in that Mr. Smith’s interests are adequately represented – both by his daughter, Selena Smith,
18 and, now by the Guardian Ad Litem who will investigate and make recommendations
19 regarding contact and visitation with family members, including Mr. Smith. Notably, Mr.
20 Smith has spent relatively small amounts of time with the children at issue in this action. A
21 review of his filed pleadings belies only a few occasions when he even saw the children – he
22 was at the birth of one, and can cite one occasion where he encouraged Ms. Smith to obtain
23 medical care for one of the children. There is no evidence that he has had any other meaningful
24 contact with the children in this case. Although the underlying guardianship statute confers a
25 broad basis for filing an action, it does not confer an unlimited right to anyone who seeks to

Response re: Motion for Revision

3

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1 insert themselves into litigation involving children over which the applicant has previously
2 displayed little interest or connection.

3 IV. Conclusion

4 For all of the aforementioned reasons, Petitioners request that this Court deny Mr.
5 Smith's Motion for Revision because it is 1) procedurally defective, and 2) the
6 Commissioner's denial was substantively correct because Mr. Smith's interests are
7 adequately represented by existing parties, including now the Guardian Ad Litem who will
8 ensure that Mr. Smith's *legitimate* interests are represented.

9
10 Dated this 26th day of October, 2021.

11 BRECKAN LAW PLLC

12 

13 By: Breckan Scott-Gabriel, WSBA 41585
14 Attorney for *Petitioners*

15 Under penalty of perjury under the laws of the State of
16 Washington, I swear or affirm that the information
17 contained herein is true and correct to the best of my
18 knowledge and belief.

19 Signed this 26th day of October, 2021 in Yelm, WA.

20 

21 Breckan Scott-Gabriel